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New York State Department of Environmental Conservation
Division of Fish, Wildlife and Marine Resources, Region 5
Bureau of Wildlife
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May 4, 2007

Ms. Merrilyn Pulver, Supervisor
Town of Fort Edward
115 Broadway
Fort Edward, NY 12828

Ms. Christine Latham, Clerk
Town of Fort Edward Planning Board
PO Box 127
Fort Edward, NY 12828

**Re: Killian's View Subdivision
Finding of Significant Use by Endangered Short-Eared Owls**

Dear Supervisor Pulver and Clerk Latham:

As the Town of Fort Edward Planning Board reviews the proposed Killian View Subdivision, it is important that the Town and Planning Board have the most up-to-date information available concerning the use of the site by New York State listed endangered, threatened and species of special concern wildlife. The purpose of this letter is to provide you with the most current information we have on the use of this area by the endangered short-eared owl (*Asio flammeus*) and the threatened northern harrier (*Circus cyaneus*).

Please be advised that extensive surveys of short-eared owls during the winter of 2006/2007 by New York State Department of Environmental Conservation (Department) staff has shown widespread and significant use of the Killian Farm and adjacent properties by this endangered species. As the Department has discussed with the Town in previous letters, the Fort Edward Grassland Important Bird Area (IBA) is critically important as an over-wintering site for the short-eared owl. We have now determined that the Killian Farm is directly used by these owls as a foraging (hunting and feeding) site, and may also be used for roosting (resting). The Department is concerned that this subdivision, if approved as originally submitted, could have the following significant adverse impacts to short-eared owls:

- Loss of important foraging and roosting habitat.
- Increased mortality from collisions with motor vehicles (we are aware that at least two owls were killed this year by motor vehicles). With nearly 400 homes being proposed, with an assumed 800 or more vehicles, additional mortality to over-wintering owls could cause significant harm to this unique population.

- Growth inducing aspects of this project which will lead to construction of additional subdivisions and associated facilities resulting in further loss of owl habitat and increased mortality from motor vehicle use.
- The eventual loss of short-eared owls from the Fort Edward IBA. This IBA is one of the most important areas for short-eared owl wintering in all of New York.

Department staff have also verified that the Killian property is used throughout the winter by foraging northern harriers, a threatened species in New York. Our findings support those of Timothy Judge of MASADA Resource Group and Lee Harper of Riveredge Associates as detailed in their "*Surveys for Rare, Threatened and Endangered Grassland Birds On The Killian's View Site, Fort Edward, New York,*" that the Killian View site is used by both short-eared owls and northern harriers.

For more detailed information on this year's winter survey data, the Town Planning Board or the project sponsor should not hesitate to contact Sr. Wildlife Biologist Timothy Post at (518) 402-8903, or contact him by email at tjpost@gw.dec.state.ny.us


It is the Department's belief that the Killian View subdivision, as currently proposed, would involve the direct removal of roosting and foraging habitat, and impose substantial interference with, and potentially inflict undue mortality to the site's short-eared owl and northern harrier populations. Consequently, these actions may have a significant adverse impact to threatened and endangered species. Please be advised that the New York State Environmental Conservation Law Section 11-0535 prohibits the "take" of an endangered or threatened species. Under certain circumstances the loss of habitats may be determined to be "take."

In accordance with 6NYCRR Part 617 State Environmental Quality Review, it is the Department's recommendation that this new information be included and the impacts considered in the Draft Environmental Impact Statement (DEIS) from this project. It is important that information relating to the importance of this grassland habitat for short-eared owls, northern harriers, and other grassland nesting birds be included in the Environmental Setting section of the DEIS. It is also important that the Alternatives and Mitigation portion of the DEIS clearly address ways the project will first avoid impacts to these habitats, and secondly how the project will then minimize and mitigate for any impacts to habitat that do occur. However, as outlined in 617.8(h), if the project sponsor chooses not to include this new survey data into the DEIS, then this information must be considered as public comment on the draft DEIS.

As you know, the Department, the Audubon Society, and others, including the Washington County Agricultural Stewardship Association, have been engaged in an effort to identify and protect the most important "core" grasslands within the Town of Fort Edward, that are critical to these species. We would welcome the opportunity to sit down with the Fort Edward Town Board and/or its Planning Board to discuss our objectives and to identify how we can work together to achieve both the goals of protection of critical grassland areas and growth and development within the Town. Such a meeting may also provide an opportunity to discuss short-eared owl and northern harrier habitat at Killian's View and other, future, subdivisions.

Please contact me at my office at (518) 897-1291 if either the Town or Planning Boards, or both, would like to meet to discuss these issues. Thank you for consideration of these comments and I look forward to hearing from you in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth L. Kogut". The signature is fluid and cursive, with the first name "Kenneth" being the most prominent.

Kenneth L. Kogut
Regional Wildlife Manager

KLK/cmt

pc: M. Migliore , Environmental Permits
P. Nye, Endangered Species Unit
T. Post, Non-Game Unit
T. Eidle, Sr. Attorney, NYSDEC
C. Lacombe, Regional Attorney, NYSDEC
Golf Links of McGregor Corporation, Saratoga Springs, New York (Project Sponsor)