Appendix A – Scoping Documentation

Roberts, Erika

From: Schumacher, John D. [jdschumacher@nd.gov]
Sent: Friday, February 26, 2010 6:26 PM
To: Roberts, Erika
Subject: CPV ASHLEY WIND POWER PROJECT

Ms. Roberts-

The North Dakota Game and Fish Department has reviewed this project for wildlife concerns.

Our primary concern with wind power development is the disturbance of native prairie associated with construction of turbines, access roads, and other associated facilities. We ask that work within native prairie be avoided to the extent possible. This could include micro-siting turbines onto adjacent previously disturbed land, locating access roads on existing section line trails rather than across undisturbed native prairie, etc.

National Wetland Inventory maps indicate numerous wetlands within the proposed project area. We recommend that any unavoidable wetland impacts be replaced in kind, above-ground appurtenances not be placed in wetland areas, and no alterations be made to existing drainage patterns.

We also recommend that routine monitoring for avian and bat mortality be included as part of the facility maintenance plan for the life of the project.

We would appreciate being kept informed as this project progresses, and as other wind power projects are developed in North Dakota. If possible, we would also like the GPS coordinates for each turbine after the site has been established.

If you have any questions please let me know.

john

JOHN SCHUMACHER
RESOURCE BIOLOGIST
ND GAME AND FISH DEPT
701.328.6321

1

Summary Table of Scoping Comments

Agency/Officer/Individual	Contact Information	Medium of Comment
U.S. Army Corps of Engineers, Omaha District	Mr. Jason Renschler Project Manager Department of the Army Corps of Engineers, Omaha District North Dakota Regulatory Office 1513 South 12th Street Bismarck, ND 58504-6640	Letter (dated Feb 24, 2010)
U.S. Fish and Wildlife Service	Mr. Jeffrey K. Towner Field Supervisor Ecological Services 3425 Miriam Avenue Bismarck, ND 58501	Letter (dated Mar 1, 2010)
Citizen (Mark Strauch)	Mr. Mark Strauch 10130 Soledad Canyon Rd. Las Cruces, NM 88011	Letter (Feb 9, 2010)
North Dakota State Water Commission	Mr. Larry Khudtson Research Analyst North Dakota State Water Commission 900 East Boulevard Avenue, Dept. 770 Bismarck, ND 58505-0850	Letter (dated Feb 25, 2010)
North Dakota Department of Transportation	Mr. Ronald J. Henke, P.E. Director, Office of Project Development North Dakota Department of Transportation 608 East Boulevard Avenue Bismarck, ND 58505-0700	Letter (dated Feb 4, 2010)
The Wildlife Society, North Dakota Chapter	Mr. Kent Luttschwager North Dakota Chapter of the Wildlife Society P.O. Box 1442 Bismarck, ND 58502-1442	Letter (dated Feb 26, 2010)
U.S. Department of Agriculture, Natural Resources Conservation Service	Codie Lacina Acting Assistant State Conservationist (FO) Natural Resources Conservation Service P.O. Box 2096 Jamestown, ND 58402-2096	Letter (dated Feb 22, 2010)
North Dakota Job Service	Maren L. Daley Executive Director Job Service North Dakota P.O. Box 5507 Bismarck, ND 58506-5507	Letter (dated Feb 1, 2010)
U.S. Environmental Protection Agency, Region 8	Larry Svoboda Director, NEPA Compliance and Review Program Ecosystems Protection and Remediation U.S. Environmental Protection Agency, Region 8 1595 Wynkoop Street Denver, CO 80202-1129	Letter (dated Mar 8, 2010)
North Dakota Parks and Recreation Department	Mr. Douglass Prchal Director North Dakota Parks and Recreation Department 1600 E. Century Ave, Suite 3 Bismarck, ND 58503-0649	Letter (dated Jan 29, 2010)
Federal Aviation Administration	Patricia L. Dressler Environmental Protection Specialist Federal Aviation Administration Bismarck Airports District Office 2301 University Drive, Building 23B Bismarck, ND 58504	Letter (dated Feb 2, 2010)
North Dakota Department of Health	L. David Glatt, P.E., Chief Environmental Health Section North Dakota Department of Health Gold Seal Center, 918 E. Divide Ave. Bismarck, ND 58501-1947	Letter (dated Feb 9, 2010)
North Dakota Game and Fish Department	John Schumacher Resource Biologist Nd Game And Fish Dept 701.328.6321	Email (Feb 26, 2010)

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
1513 SOUTH 12TH STREET
BISMARCK ND 58504-6640

February 24, 2010

[NWO-2010-269-BIS]

Tennessee Valley Authority
Attn: Bruce Yeager
400 West Summit Hill Drive, WT 11D
Knoxville, TN 37902

Dear Mr. Yeager:

This is in response to your request for Department of the Army, Corps of Engineers comments on the proposed purchasing of renewable energy from the CPV Ashley Wind Power Project in McIntosh County, North Dakota.

The Corps of Engineers regulates work affecting navigable waterways, such as the Missouri River, under Section 10 of the Rivers and Harbors Act (RHA). Through Section 404 of the Clean Water Act (CWA) the Corps of Engineers regulates the discharge of dredged or fill material into waters of the United States. Waters of the United States may include, but are not limited to, rivers, streams, ditches, coulees, lakes, and their adjacent wetlands. Fill material includes, but is not limited to earth, clay, rock, etc.... Should the proposed project or related construction activities result in the discharge of dredged or fill material into waters of the United States or affect a navigable waterway, a Corps permit would likely be required. If however, the project and associated work can be accomplished by avoiding a discharge of fill into waters of United States and not affect a navigable waterway, a Corps permit would not be required.

If you have RHA or CWA questions, permitting questions, are unsure as to what constitutes a discharge of fill, and/or are unsure of what constitutes waters of the United States, please do not hesitate to contact this office by letter or phone at (701)-255-0015.

Sincerely,

Jason Renschler
Project Manager
North Dakota Regulatory Office

Enclosure
- application

Printed on Recycled Paper

US Army Corps
Of Engineers
Omaha District

North Dakota Regulatory Office
Section 404 Clean Water Act
Section 10 Rivers and Harbors Act

1513 S. 12th Street
Bismarck, ND 58504
(701) 255-0015
FAX: (701) 255-4917

Instructions for Preparing a
Department of the Army Permit Application

Blocks 1 through 4. To be completed by Corps of Engineers.

Block 5. Applicant's Name. Enter the name and the E-mail address of the responsible party or parties. If the responsible party is an agency, company, corporation, or other organization, indicate the name of the organization and responsible officer and title. If more than one party is associated with the application, please attach a sheet with the necessary information marked Block 5.

Block 6. Address of Applicant. Please provide the full address of the party or parties responsible for the application. If more space is needed, attach an extra sheet of paper marked Block 6.

Block 7. Applicant Telephone Number(s). Please provide the number where you can usually be reached during normal business hours.

Blocks 8 through 11. To be completed, if you choose to have an agent.

Block 8. Authorized Agent's Name and Title. Indicate name of individual or agency, designated by you, to represent you in this process. An agent can be an attorney, builder, contractor, engineer, or any other person or organization. Note: An agent is not required.

Blocks 9 and 10. Agent's Address and Telephone Number. Please provide the complete mailing address of the agent, along with the telephone number where he / she can be reached during normal business hours.

Block 11. Statement of Authorization. To be completed by applicant, if an agent is to be employed.

Block 12. Proposed Project Name or Title. Please provide name identifying the proposed project, e.g., Landmark Plaza, Burned Hills Subdivision, or Edsall Commercial Center.

Block 13. Name of Waterbody. Please provide the name of any stream, lake, marsh, or other waterway to be directly impacted by the activity. If it is a minor (no name) stream, identify the waterbody the minor stream enters.

Block 14. Proposed Project Street Address. If the proposed project is located at a site having a street address (not a box number), please enter it here.

Block 15. Location of Proposed Project. Enter the latitude and longitude of where the proposed project is located. If more space is required, please attach a sheet with the necessary information marked Block 15.

Block 16. Other Location Descriptions. If available, provide the Tax Parcel Identification number of the site, Section, Township, and Range of the site (if known), and / or local Municipality that the site is located in.

Block 17. Directions to the Site. Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site. You may also provide description of the proposed project location, such as lot numbers, tract numbers, or you may choose to locate the proposed project site from a known point (such as the right descending bank of Smith Creek, one mile downstream from the Highway 14 bridge). If a large river or stream, include the river mile of the proposed project site if known

Block 18. Nature of Activity. Describe the overall activity or project. Give appropriate dimensions of structures such as wing walls, dikes (identify the materials to be used in construction, as well as the methods by which the work is to be done), or excavations (length, width, and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles, or float-supported platforms.

The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach an extra sheet of paper marked Block 18.

Block 19. Proposed Project Purpose. Describe the purpose and need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project. Give the approximate dates you plan to both begin and complete all work.

Block 20. Reasons for Discharge. If the activity involves the discharge of dredged and/or fill material into a wetland or other waterbody, including the temporary placement of material, explain the specific purpose of the placement of the material (such as erosion control).

Block 21. Types of Material Being Discharged and the Amount of Each Type in Cubic Yards. Describe the material to be discharged and amount of each material to be discharged within Corps jurisdiction. Please be sure this description will agree with your illustrations. Discharge material includes: rock, sand, clay, concrete, etc.

Block 22. Surface Areas of Wetlands or Other Waters Filled. Describe the area to be filled at each location. Specifically identify the surface areas, or part thereof, to be filled. Also include the means by which the discharge is to be done (backhoe, dragline, etc.). If dredged material is to be discharged on an upland site, identify the site and the steps to be taken (if necessary) to prevent runoff from the dredged material back into a waterbody. If more space is needed, attach an extra sheet of paper marked Block 22.

Block 23. Description of Avoidance, Minimization, and Compensation. Provide a brief explanation describing how impacts to waters of the United States are being avoided and minimized on the project site. Also provide a brief description of how impacts to waters of the United States will be compensated for, or a brief statement explaining why compensatory mitigation should not be required for those impacts.

Block 24. Is Any Portion of the Work Already Complete? Provide any background on any part of the proposed project already completed. Describe the area already developed, structures completed, any dredged or fill material already discharged, the type of material, volume in cubic yards, acres filled, if a wetland or other waterbody (in acres or square feet). If the work was done under an existing Corps permit, identity the authorization, if possible.

Block 25. Names and Addresses of Adjoining Property Owners, Lessees, etc., Whose Property Adjoins the Project Site. List complete names and full mailing addresses of the adjacent property owners (public and private) lessees, etc., whose property adjoins the waterbody or aquatic site where the work is being proposed so that they may be notified of the proposed activity (usually by public notice). If more space is needed, attach an extra sheet of paper marked Block 24.

Information regarding adjacent landowners is usually available through the office of the tax assessor in the county or counties where the project is to be developed.

Block 26. Information about Approvals or Denials by Other Agencies. You may need the approval of other federal, state, or local agencies for your project. Identify any applications you have submitted and the status, if any (approved or denied) of each application. You need not have obtained all other permits before applying for a Corps permit.

Block 27. Signature of Applicant or Agent. The application must be signed by the owner or other authorized party (agent). This signature shall be an affirmation that the party applying for the permit possesses the requisite property rights to undertake the activity applied for (including compliance with special conditions, mitigation, etc.).

DRAWINGS AND ILLUSTRATIONS

General Information.

Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map, a Plan View or a Typical Cross-Section Map. Identify each illustration with a figure or attachment number.

Please submit one original, or good quality copy, of all drawings on 8½ x11 inch plain white paper (electronic media may be substituted). Use the fewest number of sheets necessary for your drawings or illustrations.

Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view, or cross-section). **While illustrations need not be professional (many small, private project illustrations are prepared by hand), they should be clear, accurate, and contain all necessary information.**

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
(33 CFR 325)

OMB APPROVAL NO. 0710-0003
EXPIRES: 31 August 2012

Public reporting burden for this collection of information is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters, Executive Services and Communications Directorate, Information Management Division and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers; Final Rule 33 CFR 320-332. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This Information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of a public notice as required by Federal law. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued. One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME: First - Middle - Last – Company – E-mail Address –	8. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required) First - Middle - Last – Company – E-mail Address –
6. APPLICANT'S ADDRESS. Address - City – State – Zip – Country –	9. AGENT'S ADDRESS Address - City – State – Zip – Country –
7. APPLICANT'S PHONE NOs. W/AREA CODE. a. Residence b. Business c. Fax	10. AGENT'S PHONE NOs. W/AREA CODE a. Residence b. Business c. Fax

STATEMENT OF AUTHORIZATION

11. I hereby authorize, _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

_____
APPLICANT'S SIGNATURE DATE

NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions)

13. NAME OF WATERBODY, IF KNOWN (if applicable)	14. PROJECT STREET ADDRESS (if applicable) Address City - State – Zip -
15. LOCATION OF PROJECT Latitude: °N Longitude: °W	

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions)
State Tax Parcel ID Municipality
Section – Township – Range –

17. DIRECTIONS TO THE SITE

ENG FORM 4345, SEPT 2009 EDITION OF OCT 2004 IS OBSOLETE Proponent: CECW-OR

18. Nature of Activity (Description of project, include all features)

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

USE BLOCKS 20-23 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards:

Type Amount in Cubic Yards	Type Amount in Cubic Yards	Type Amount in Cubic Yards

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)
Acres
Or
Liner Feet

23. Description of Avoidance, Minimization, and Compensation (see instructions)

24. Is Any Portion of the Work Already Complete? Yes ☐ No ☐ IF YES, DESCRIBE THE COMPLETED WORK

25. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (If more than can be entered here, please attach a supplemental list).

Address –

City – State – Zip –

26. List of Other Certifications or Approvals/Denials Received from other Federal, State, or Local Agencies for Work Described in This Application.

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED

* Would include but is not restricted to zoning, building, and flood plain permits

27. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT DATE SIGNATURE OF AGENT DATE

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

ENG FORM 4345, SEPT 2009

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501

MAR 1 2010

Mr. Bruce Yeager, NEPA Program Manager
Tennessee Valley Authority
400 West Summit Hill Drive, 6th Floor
Knoxville, Tennessee 37902

Re: CPV Ashley Wind Energy Project

Dear Mr. Yeager:

This is in response to your January 28, 2010, letter and the February 4, 2010, Federal Register (Volume 75, Number23, page 5873-5875) with the Tennessee Valley Authority's (TVA) Notice of Intent to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) in relation to the potential for environmental effects of purchasing up to 200 megawatts (MW) of power from the proposed CPV Ashley Wind Energy Project in McIntosh County, North Dakota. The location for the proposed project is approximately 6 miles north of Ashley, North Dakota. We offer the following comments under the authority of and in accordance with the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) (MBTA), the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250), Executive Order 13186 "Responsibilities of Federal Agencies to Protect Migratory Birds", the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), the National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57), and the National Environmental Policy Act (NEPA).

The U.S. Fish and Wildlife Service (Service) holds certain resources in trust and manages them for the benefit of the American people. These resources include migratory birds, inter-jurisdictional fish, federally-listed threatened and endangered species of plants and animals and their habitats, and units of the National Wildlife Refuge system. One goal of Service policy is that conservation of fish and wildlife resources receive equal consideration with other features of resource development, and that conservation actions are coordinated with those other forms of development. Another goal is to conserve, protect, and enhance fish and wildlife and their habitats to facilitate the balanced development of the Nation's natural resources. The Service would be willing to be a cooperating Federal agency in the preparation of TVA's NEPA document.

Migratory Birds

Adequate consideration for avian and other wildlife resources early in the site evaluation process can help to minimize impacts and facilitate project review. Wind developers, are encouraged to avoid impacts to prairie and other native habitats to the maximum extent practicable. Avoidance

of impacts can be most effectively achieved by taking a landscape scale view, beginning with the process of prospecting for suitable sites for wind power development. Companies should assess not only those factors that indicate favorable conditions for development, such as a consistent wind resource, access to transmission, willing landowners, available financing, etc., but also anticipated impacts to wildlife and their habitats. Equal consideration should be accorded to wildlife resource conservation as to other features of development. When considering a project in a particular wind resource area, companies should use all available tools to ensure they have taken all practicable steps to avoid impacts to native habitats. This can be accomplished by utilizing GIS products depicting significant areas of contiguous prairie to site development in areas that are already impacted or fragmented. This analysis and potential site comparison should be accomplished prior to making any significant financial commitments, including entering into lease agreements with landowners. The Service's Interim Wind Turbine Siting Guidelines encourage project proponents to conduct a Potential Impact Index (PII) analysis on several potential sites within wind resource areas, to assist in their selection of a wind power site that minimizes the potential to impact migratory birds and other wildlife. If the Service's interim guidelines were not used to evaluate potential sites for development, the project developer should indicate which method(s) they used to assess avian and other wildlife resource impacts before selecting this site for development. The alternatives analysis for the project should describe the potential project sites that were evaluated and why they were rejected based on potential trust resource impacts.

The Service has coordinated with the Avian Power Line Interaction Committee (APLIC) to develop guidelines to assist companies in formulating Avian Protection Plans (APP). The guidelines can be accessed from APLIC's website at http://www.aplic.org/. These plans are utility specific and designed to reduce operational risks that result from avian interactions with electric utility facilities, but we suggest they may be adapted to wind energy facilities. Wind energy projects have the potential to negatively affect bats as well as avian species. Therefore, we encourage project developers to formulate an Avian and Bat Protection Plan (ABPP) if bats migrate through or may be present in the project area. Some of the things that the Service looks for in an APP or ABPP are typically a statement of company policy confirming the company's commitment to work cooperatively towards the protection of migratory birds and bats; identification of the process under which the company will obtain and comply with all necessary permits, including, but not limited to, nest relocation, temporary possession, depredation, salvage/disposal, and scientific collection; discussion of the company's plan for monitoring and reporting all incidents of avian or bat injury or mortality; a commitment to make all reasonable efforts to construct and modify infrastructure to reduce the incidence of avian and bat mortality; a mechanism to review existing practices, ensuring quality control and allowing for adaptive management; and a plan for providing adequate training for all appropriate utility personnel. An APP or ABPP reporting system is important to help the company pinpoint areas of concern by tracking both the specific locations where mortalities may be occurring, as well as the extent of such mortalities and the remedial actions taken/planned to address identified problem areas.

To minimize the electrocution hazard to birds, the Service, with support from the Rural Utilities Service, recommends that new or updated overhead power lines be constructed in accordance with the current guidelines for preventing raptor electrocutions. The recommended guidelines can be found in "2006 Suggested Practices for Avian Protection on Power Lines". To increase power

line visibility and reduce bird fatalities resulting from collisions with power lines, the Service recommends all new power lines that cross or run adjacent to rivers or large wetlands be modified according to "Mitigating Bird Collisions with Power Lines: The State of the Art in 1994". Both publications can be obtained by writing or calling the Edison Electric Institute, P.O. Box 266, Waldorf, Maryland 20604-0266, (1-800-334-5453) or visiting their website at www.eei.org.

The MBTA prohibits the taking, killing, possession, and transportation, (among other actions) of migratory birds, their eggs, parts, and nests, except when specifically permitted. While the MBTA has no provision for allowing unintentional take, the Service realizes that some birds may be killed during wind project construction and operation even if all known reasonable and effective measures to protect birds are used. The Office of Law Enforcement (OLE) carries out its mission to protect migratory birds through investigations and enforcement, as well as by fostering relationships with individuals, companies, and industries that have taken effective steps to avoid take of migratory birds and by encouraging others to implement measures to avoid take of migratory birds. It is not possible to absolve individuals, companies, or agencies from liability even if they implement bird mortality avoidance or other similar protective measures. However, OLE focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without identifying and implementing all reasonable, prudent and effective measures to avoid that take. Companies are encouraged to work closely with Service biologists to identify available protective measures when developing project plans and/or avian protection plans, and to implement those measures prior to/during project construction and operation.

To the extent practicable, construction should be scheduled for late summer or fall/early winter so as not to disrupt waterfowl or other wildlife during the breeding season (February 1 to July 15). If work is proposed to take place during the breeding season or at any other time which may result in the take of migratory birds, their eggs, or active nests, the Service recommends that the project proponent take all practicable measures to avoid and minimize take, such as maintaining adequate buffers, to protect the birds until the young have fledged. The Service further recommends that if field surveys for nesting birds are conducted with the intent of avoiding take, that any documentation of the presence of migratory birds, eggs, and active nests, along with information regarding the qualifications of the biologist(s) performing the surveys, and any avoidance measures implemented at the project site be maintained. Should surveys or other available information indicate a significant impact to migratory birds, the Service requests that this office be contacted for further consultation on the extent of the impact and the long-term implications of the intended use of the project on migratory bird populations.

Threatened and Endangered Species

A list of federally threatened and endangered species that may occur within the proposed project's area of influence is enclosed (enclosure 1). This list fulfills requirements of the Service under the ESA.

If a Federal agency authorizes, funds, or carries out a proposed action, the responsible Federal agency, or its delegated agent, is required to evaluate whether the action "may affect" listed species or critical habitat. If the Federal agency (in this case TVA) or its designated agent determines the

action "may affect, is likely to adversely affect" listed species or result in destruction or adverse modification of critical habitat, the responsible Federal agency shall request formal section 7 consultation with this office. If the evaluation shows a "no effect" determination for listed species or critical habitat, further consultation is not necessary. If a private entity receives Federal funding for a construction project, or if any Federal permit or license is required, the Federal agency may designate the fund recipient or permittee as its agent for purposes of informal section 7 consultation. The funding, permitting, or licensing Federal agency is responsible to ensure that it's actions comply with the ESA, including obtaining concurrence from the Service for any action that may affect a threatened or endangered species or result in the destruction or adverse modification of designated critical habitat.

The Aransas Wood Buffalo Population (AWBP) of whooping cranes is the only self sustaining migratory population of whooping cranes remaining in the wild. These birds breed in the wetlands of Wood Buffalo National Park in Alberta and the Northwest Territories of northern Canada, and overwinter on the Texas coast. Whooping cranes in the AWBP annually migrate through North Dakota during their spring and fall migrations.

Endangered whooping cranes have been documented using stopover habitat in the vicinity of this proposed project area. The proposed project area is located within that portion of the whooping crane migration corridor that includes 95% of all confirmed whooping crane sightings in North Dakota (enclosure 2). The presence of suitable roosting and feeding habitat for whooping cranes, and location within the whooping crane migration corridor, document the potential for whooping crane presence in the proposed project area. A wind energy project in this wind resource area has the potential to affect whooping cranes during their annual spring and fall migration through North Dakota. Potential effects may be direct (e.g. collision mortality) or indirect (e.g. avoidance of the site resulting in cranes seeking alternate habitat). The best available information indicates that whooping cranes avoid stopover habitat that is developed with wind energy appurtenances, particularly wind turbines. This avoidance may deny them the use of important habitat, and thus may result in an adverse effect in the form of harm by significant habitat modification. Whooping cranes use migration stopover habitat opportunistically and may not use the same stopovers annually. Whooping cranes often stop wherever they happen to be late in the day when they find conditions no longer suitable for migration. This tendency can make for a very unpredictable pattern of stopover use, depending on daily weather conditions. The Service recommends mapping wetlands at the project site within ½ mile of all turbines, identifying potentially suitable whooping crane stopover habitat, and analyzing the potential effects to migrating whooping cranes from loss of use of this habitat for migration stopovers.

The interactions of whooping cranes with wind turbines and wind farms are currently not fully known, although it is expected that these large birds with relatively low maneuverability are susceptible to mortality via collisions with turbines. The highest known source of mortality to fledged whooping cranes is from striking power lines. Currently, collisions with power lines have accounted for the death or serious injury of at least 46 whooping cranes since 1956. If power lines will be constructed in association with this project, the Service recommends they be placed underground to avoid collision mortality. If underground construction is not practicable, we

recommend installation and maintenance of visual marking devices on all new power lines within one mile of potentially suitable whooping crane stopover habitat and an equal length of existing power line in the whooping crane migration corridor within one mile of potentially suitable whooping crane habitat.

Piping plovers, a federally threatened species, are known to use beaches of alkali lakes adjacent to the proposed project area during the breeding season. Additionally, the Service has designated these lakes as critical habitat for piping plovers (enclosure 3). Critical habitat on alkali lakes and wetlands includes: 1) sandy to gravelly, sparsely vegetated beaches, salt-encrusted mud flats and/or gravelly salt flats; springs and fens along edges of alkali lakes and wetlands; and adjacent uplands 200 feet (61 meters) above the high water mark of the alkali lake or wetland. The Service recommends that no construction activities take place within ½ mile of these critical habitats.

Fish and Wildlife Service Property Interests

The Service administers Waterfowl Production Areas owned in fee title as well as wetland and grassland easements throughout North Dakota. A review of Service realty records for the proposed project area indicates Service property interests are located in the proposed project area. Wetland easements are legal agreements with private landowners that permanently protect wetland basins from being drained, burned, leveled, or filled. Grassland easements are legal agreements with landowners that permanently protect grassland vegetation, primarily native prairie, from being destroyed or developed. Grassland easements prevent these grasslands from being converted to cropland. Mowing, haying, and grass seed harvesting must be delayed on grassland easements until after July 15 each year to protect grassland nesting birds. The primary responsibility in protecting these interests is to review all proposed uses to ensure that the requests are compatible with Service easement regulations and various laws and policies. These comments and suggestions are made in an attempt to accomplish three goals: 1) avoid impacts to Service grassland and wetland easements in the project area as much as possible; 2) if unavoidable, ensure that any proposed turbine and associated infrastructure impacts (roads, buried collection lines, transmission lines, sub-stations, etc.) on any Service easement areas are kept to an absolute minimum; and 3) investigate all potential alternatives to eliminate or reduce impacts to easement areas to protect the integrity of the easement.

High Value Habitat Avoidance

High value wildlife habitat types in North Dakota include native prairies, wetlands, wooded draws, and riparian forests. We recommend that construction of wind towers and appurtenant facilities in the above habitat types be avoided whenever possible.

The proposed project area is located in the Missouri Coteau region of North Dakota and includes areas of native mixed-grass prairie. Since the 1800s, North Dakota has lost approximately 75 percent of its native grasslands, primarily due to crop production. Native prairie has significant natural resource values including:

- Provides habitat for a number of migratory and resident grassland birds whose populations are declining.
- Provides nesting habitat for millions of waterfowl.
- Contains 200-300 plant species, which provide genetic diversity important to agriculture and medicine.
- Provides habitat for thousands of insects including the Dakota skipper, a candidate species for listing under the ESA, and other butterflies (Ex: Regal fritillary, Tawny crescent).
- Crucial for soil and water conservation.
- Provides recreational opportunities (hunting, bird watching/wildlife observation, hiking).
- Living laboratories for scientific research.

Our review of NWI maps indicates that wetland areas are located within the project area. NWI data can be accessed directly by visiting their website at (wetlands.fws.gov). Section 404 of the Clean Water Act regulates placement of fill materials in certain wetlands. A Corps of Engineers' 404 permit may be required if fill material will be placed in aquatic sites including wetlands. The project proponent should contact Mr. Dan Cimarosti, Regulatory Office, Corps of Engineers, 1513 South 12th Street, Bismarck, North Dakota 58504 (701-255-0015), to determine their permit requirements. If a 404 permit is required, the Service will also provide recommendations on this project to the Corps.

Construction activities should be conducted in a manner that will minimize impacts to the wildlife and the existing habitat in the project area. To help avoid impacts, we recommend the project proponent:

- Reseed disturbed native prairie with a diverse native grass/forb seed mixture. Obtain seed stock from nurseries within 250 miles of the project area to insure the particular cultivars are well adapted to the local climate.
- Minimize grassland disturbance by using fewer, larger turbines, and limiting new road construction.
- Design meteorological towers to be self standing (no guywires). If towers must be guyed, install and maintain appropriate visual line marking devices to reduce the potential for avian collision mortality
- Locate appurtenant facilities to avoid placement of fill in wetlands along the route.
- Install and maintain appropriate erosion control measures to reduce sedimentation and water quality degradation of wetlands and streams near the project area.
- Replace unavoidable wetland losses with functionally equivalent wetlands.

Research, Monitoring, and Assessment

We recommend project proponents conduct collision monitoring studies designed to determine the effect of several factors, such as site selection, turbine designs, the layout of wind plants, wind plant operations, habitat alteration, and changes in available perching and nesting sites, on bird deaths. Annual reports outlining the results of these monitoring studies should be submitted to this office. The Avian Subcommittee of the National Wind Coordinating Committee (NWCC)

has developed a guidance document to assist wind energy developers in designing studies that will produce credible and comparable results of avian interaction with wind power plants. The NWCC document, "Studying Wind Energy/Bird Interactions: A Guidance Document. Metrics and methods for determining or monitoring potential impacts on birds at existing and proposed wind energy sites," can be obtained by contacting the National Wind Coordination Committee, c/o RESOLVE, 1255 23rd Street, Suite 275, Washington, D.C. 20037, or by visiting their website at (www.nationalwind.org).

Thank you for the opportunity to provide comments. If you require further information as project planning proceeds, please contact Terry Ellsworth of my staff, or contact me directly, at (701) 250-4481, or at the letterhead address.

Sincerely,

Jeffrey K. Towner

Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

Enclosures (3)

Enclosure 1

FEDERAL THREATENED AND ENDANGERED SPECIES
AND DESIGNATED CRITICAL HABITAT FOUND IN
MCINTOSH COUNTY, NORTH DAKOTA
March 2010

ENDANGERED SPECIES

Birds

Whooping crane (Grus Americana): Migrates through west and central counties during spring and fall. Prefers to roost on wetlands and stockdams with good visibility. Young adult summered in North Dakota in 1989, 1990, and 1993. Total population 140-150 birds.

Mammals

Gray wolf (Canis lupus): Occasional visitor in North Dakota. Most frequently observed in the Turtle Mountains area.

THREATENED SPECIES

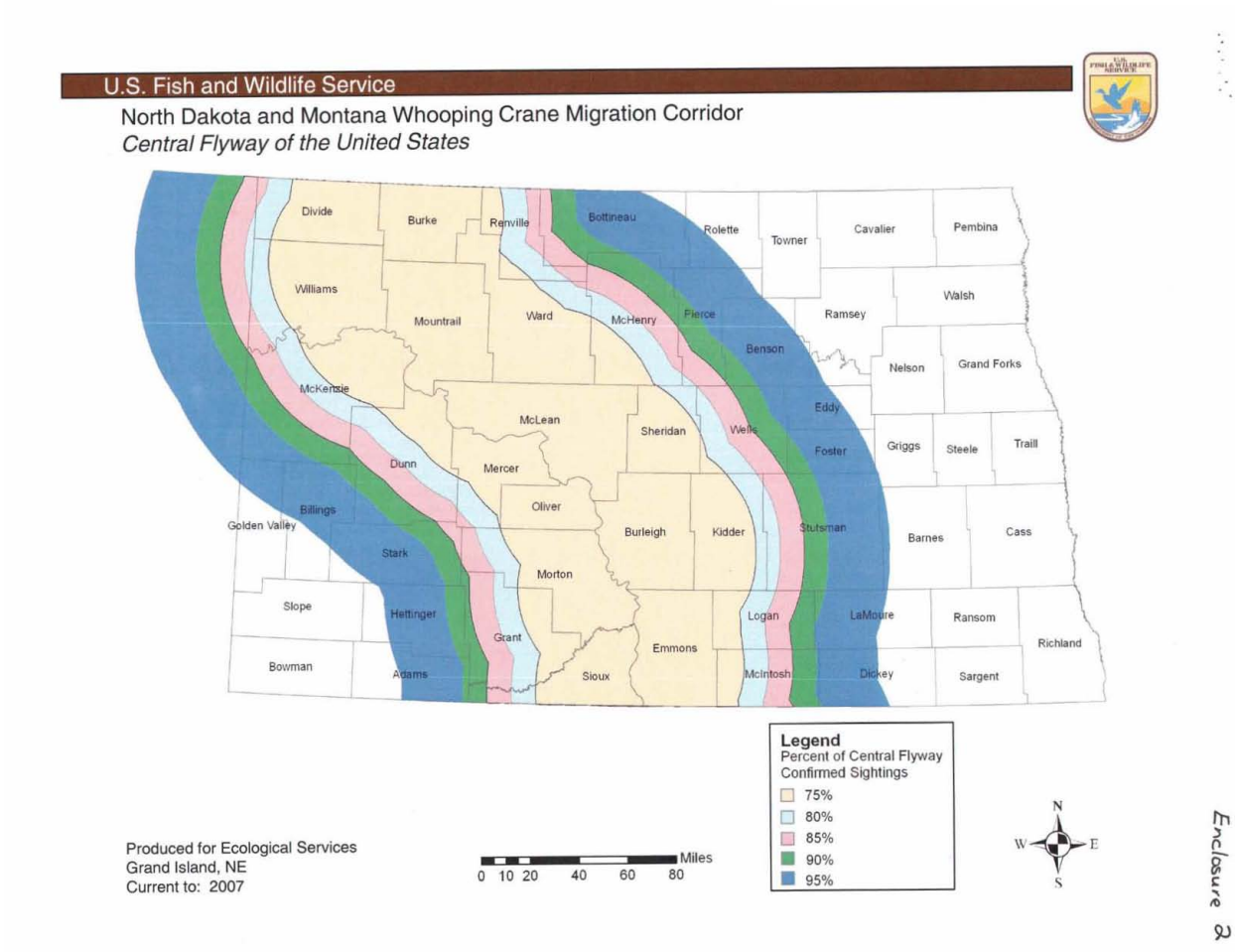
Birds

Piping plover (Charadrius melodus): Nests on midstream sandbars of the Missouri and Yellowstone Rivers and along shorelines of saline wetlands. More nest in North Dakota than any other state.

DESIGNATED CRITICAL HABITAT

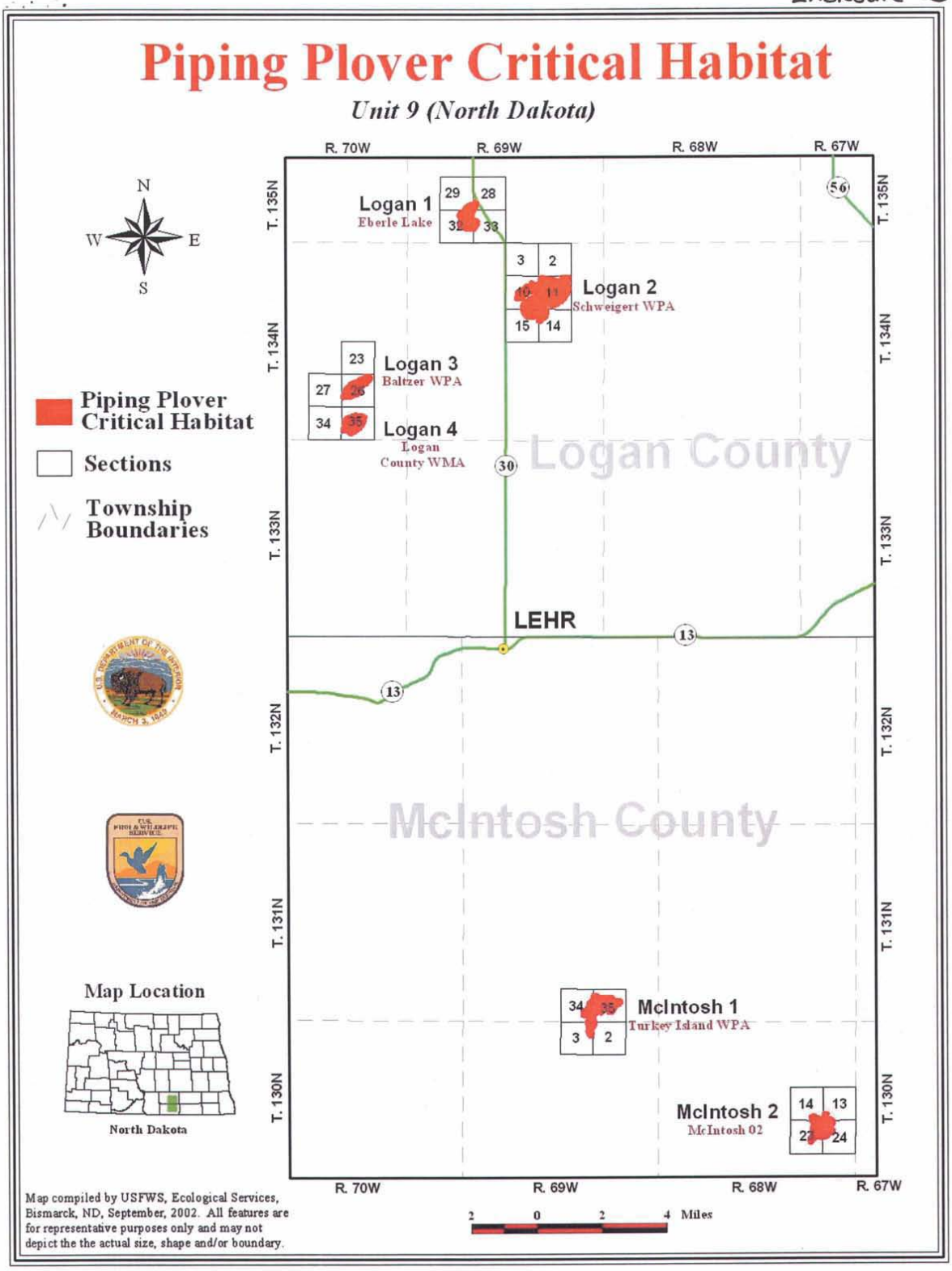
Birds

Piping Plover - Alkali Lakes and Wetlands - Critical habitat includes: (1) shallow, seasonally to permanently flooded, mixosaline to hypersaline wetlands with sandy to gravelly, sparsely vegetated beaches, salt-encrusted mud flats, and/or gravelly salt flats; (2) springs and fens along edges of alkali lakes and wetlands; and (3) adjacent uplands 200 feet (61 meters) above the high water mark of the alkali lake or wetland.


U.S. Fish and Wildlife Service
North Dakota and Montana Whooping Crane Migration Corridor
Central Flyway of the United States
Divide
Burke
Renville
Bottineau
Rolette
Towner
Cavalier
Pembina
Williams
Mountrail
Ward
McHenry
Pierce
Ramsey
Walsh
Benson
Nelson
Grand Forks
McKenzie
McLean
Sheridan
Wells
Eddy
Foster
Griggs
Steele
Traill
Dunn
Mercer
Oliver
Billings
Golden Valley
Stark
Burleigh
Kidder
Stutsman
Barnes
Cass
Morton
Slope
Hettinger
Grant
Logan
LaMoure
Ransom
Richland
Emmons
Bowman
Adams
Sioux
McIntosh
Dickey
Sargent
Legend
Percent of Central Flyway
Confirmed Sightings
75%
80%
85%
90%
95%
Produced for Ecological Services
Grand Island, NE
Current to: 2007
Miles
0 10 20 40 60 80
N
W
E
S

Enclosure 2

Enclosure 3


Piping Plover Critical Habitat
Unit 9 (North Dakota)
R. 70W
R. 69W
R. 68W
R. 67W
T. 135N
T. 134N
T. 133N
T. 132N
T. 131N
T. 130N
N
W
E
S
Logan 1
Eberle Lake
Logan 2
Schweigert WPA
Logan 3
Baltzer WPA
Logan 4
Logan County WMA
Logan County
LEHR
McIntosh County
McIntosh 1
Turkey Island WPA
McIntosh 2
McIntosh 02
Piping Plover Critical Habitat
Sections
Township Boundaries
Map Location
North Dakota
Map compiled by USFWS, Ecological Services, Bismarck, ND, September, 2002. All features are for representative purposes only and may not depict the the actual size, shape and/or boundary.
2 0 2 4 Miles

MARK STRAUCH
10130 SOLEDAD CANYON RD.
LAS CRUCES, NEW MEXICO 88011

February 9, 2010

Bruce Yeager
NEPA Program Manager
Tennessee Valley Authority
400 West Summit Hill Drive
Mail Stop VT 11D
Knoxville, TN 37902

Reference: Environmental Assessment or Environmental Impact Statement for Purchase of Renewable Energy from CPV Ashley Wind Power Project in North Dakota.

Dear Mr. Yeager,

I offer the following comments on the scope of the proposed EA/EIS review.

1. Since wind is irregular and unreliable, it must be backed by a dispatchable source of power. Any EA/EIS should include the environmental impacts of those dispatchable power sources.
2. Given that backup systems to wind energy are generally not run at their most efficient design point, it is not assured there is any environmental benefit to wind energy systems. Any EA/EIS should take into consideration sub-optimal operation of any units that back wind.
3. A mission element of the TVA "...is the generation, transmission, and sale of reliable and affordable electric energy." Wind energy is inconsistent with this TVA mission element.
4. Wind energy is inimical to the reliable operation of a grid system. The experiences of BPA (Bonneville Power Administration) and ECROT (Electric Reliability Council of Texas) regarding wind should be examined if TVA continues down this path.
5. TVA could have easily realized a much-reduced environmental footprint had it continued its original nuclear build-out program. Nuclear has by far the lowest environmental impact of any electricity energy source, with high availability and reliability.

Sincerely,

North Dakota State Water Commission
900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850
701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696 • INTERNET: http://swc.nd.gov

February 25, 2010

Bruce Yeager
Tennessee Valley Authority
400 West Summit Hill Drive WT 11D
Knoxville, TN 37902

Dear Mr. Yeager:

This is in response to your request for review of environmental impacts associated with the purchase or renewable energy form the CPV Ashley Wind Power Project.

The proposed project have been reviewed by State Water Commission staff and the following comments are provided:

- The property is not located in an identified floodplain and it is believed the project will not affect an identified floodplain.

- All waste material associated with the project must be disposed of properly and not placed in identified floodway areas.

- No sole-source aquifers have been designated in ND.

There are no other concerns associated with this project that affect State Water Commission or State Engineer regulatory responsibilities.

Thank you for the opportunity to provide review comments. If you have any questions, please call me at 328-4969.

Sincerely,

Larry Knudtson
Research Analyst

LJK:ds/1570

JOHN HOEVEN, GOVERNOR
CHAIRMAN

DALE L. FRINK
SECRETARY AND STATE ENGINEER

North Dakota Department of Transportation

Francis G. Ziegler, P.E.
Director

John Hoeven
Governor

February 4, 2010

Bruce L. Yeager, NEPA Program Manager
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1499

ASHLEY WIND ENERGY PROJECT, MCINTOSH COUNTY, NORTH DAKOTA

We have reviewed your January 28, 2010, letter.

North Dakota Highway 13 between Wishek and Lehr is scheduled for reconstruction during 2011 and 2012. The highway reconstruction project may prevent movement of over dimensional loads through the project during this time period.

Should Tennessee Valley Authority (TVA) purchase any existing transmission lines they will be required to notify NDDOT. The construction of a line across state highway or the necessity to cross a state highway with a power line, a utility permit will be required.

Additionally, if because of this project any work needs to be done on highway right-of-way, appropriate permits and risk management documents will need to be obtained from the Department of Transportation District Engineers, John Thompson at 701-845-8800.

Ronald Henke

RONALD J. HENKE, P.E - DIRECTOR, OFFICE OF PROJECT DEVELOPMENT

57:rjh:js

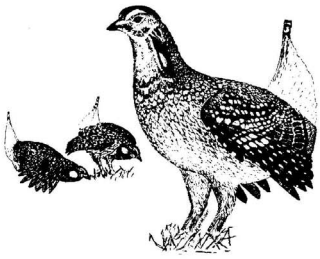
c: John Thompson, Valley City District Engineer

608 East Boulevard Avenue • Bismarck, North Dakota 58505-0700
Information: (701) 328-2500 • FAX: (701) 328-0310 • TTY: (701) 328-4156 • www.dot.nd.gov

North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



North Dakota Chapter of the Wildlife Society
P.O. Box 1442
Bismarck, ND 58502-1442
February 26, 2010

Mr. Bruce Yeager
NEPA Program Manager
Tennessee Valley Authority
400 West Summit Hill Drive, WT 11D
Knoxville, TN 37902

Mr. Yeager:

This letter is in response to the scoping process for the proposed CPV Ashley Wind Power Project. The North Dakota Chapter of The Wildlife Society (Chapter) is generally supportive of the wind industry as a renewable source of energy that can be produced locally. The Chapter is concerned, however, about the impacts that wind facilities placed in grasslands, particularly extensive tracts of native prairie, have on ecosystem health and wildlife. In a 2007 report, *Environmental Impacts of Wind-Energy Projects*, by the National Research Council to the U.S. Congress, the Council recognized that the construction and operation of wind-energy facilities directly influence ecosystem structure. These influences include disturbance, removal of vegetation, soil compaction and erosion, and changes in hydrologic features. Wildlife is impacted directly through mortality or indirectly through alteration of habitat and behavioral avoidance. Furthermore, research conducted in various parts of the United States indicates small-scale displacement of songbirds. Specifically, preliminary research results conducted in North Dakota and South Dakota by the US Geological Survey indicate displacement of some species of grassland songbirds by wind facilities.

The Chapter is particularly concerned with the impact to wildlife of wind facilities placed on the Missouri Coteau, such as the CPV Ashley Wind Project. The Missouri Coteau contains large expanses of unfragmented grasslands intermixed with millions of wetlands and is a vital breeding area for many grassland and wetland nesting birds. In addition, it is a hunter's paradise and a prime area for ecotourism potential. The Missouri Coteau is in the midst of the Central Flyway, a migratory corridor used by millions of migrating waterfowl and other migratory birds during spring and fall. It is also an endangered ecosystem, even more so than tropical rainforest. Only about 30% of mixed-grass prairie remains intact in North America. The Missouri Coteau is critically important for wildlife in North Dakota, as well as to the hunters, outdoor enthusiasts, and operators of ecotourism industries that value these irreplaceable resources. The importance of tourism to the state's economy is underscored by the fact that the tourism industry ranks second in its contribution to the state's economic base; tourism generated $3.96 billion in 2008. Hunting contributes about $365 million annually to the state's tourism industry. The CPV Ashley Wind Project would be located in an area of largely intact native prairie with high wetland density. Because of the unfragmented nature of the area within which the CPV Ashley Wind Project would be located, the Chapter is concerned about the impact of the CPV Ashley Wind Project to wildlife and the native prairie ecosystem.

The Chapter also has concerns about the larger landscape in which the CPV Ashley Project is embedded. That area of the Missouri Coteau is experiencing rapid growth by the wind industry. The operational NextEra Energy's Kulm/Edgeley Wind Center and Acciona Energy's Tatanka wind facility are near the

1

CPV Ashley Project. Future nearby projects include the next growth phases for the NextEra and Tatanka wind resource areas, and individual projects under development by EnXco, BP Alternative Energy, and Just Wind – Wind Farm Development.

Because of current regulations, some wind developments may not or did not require oversight by the North Dakota Public Service Commission, other than for powerline route considerations. In some cases, limited liability corporations register themselves independently of parent companies, and do not trigger state regulation due to the state cutoff for regulatory review of >60 MW. Wildlife and ecosystems, however, do not recognize these cutoffs. Many plant and animal species are sensitive to anthropogenic disturbance, be it increased human presence on the landscape or the introduction of a non-native plant into the environment. These types of influences seldom work independently on wildlife. The combination of new roads, increased vehicular traffic, increased human presence, alteration of wetlands, introduction of non-native plants, construction of very large structures on the landscape, and other anthropogenic disturbances, are termed cumulative impacts. The cumulative impacts of wind developments and other anthropogenic pressures on wildlife undoubtedly will be negative. Whereas one wind facility may have minimal discernible negative influence on wildlife, the accumulation of numerous wind facilities built in the same area may begin to break down species' thresholds of tolerance to disturbances.

The several "small" projects in the same vicinity could in time become, in essence, one wind facility, but because of current state regulations, the facilities' biological effects could accumulate without the benefit of regulatory review. The Chapter strongly believes that each new wind facility should be considered in the context of other existing and planned projects in the region. This consideration of cumulative effects should include *all* other anthropogenic impacts in the area, including such things as additional transmission lines, roads, and other types of infrastructure that may or may not be unrelated to wind facilities. Whether or not the aforementioned projects will have minimal impact on the environment can not be ascertained without a cumulative impacts analysis. The Chapter looks forward to the opportunity to review the cumulative impacts section of the draft EA or EIS.

The Chapter is most supportive of wind facilities that are placed in habitats of limited conservation value to wildlife, such as cropland in predominantly agricultural landscapes. In areas where turbine placement on grasslands is unavoidable, the Chapter urges mitigation in ratios exceeding 1:1. That is to say, for every acre of grassland destroyed, more than an acre should be restored or protected. Native prairie should receive the highest mitigation ratio, followed by planted grasslands. The Chapter realizes that there is no established system in North Dakota for this type of mitigation for wind facilities, but also realizes that Basin Electric Power and BP Alternative Energy and Clipper WindPower Development (for a jointly owned South Dakota project), have already committed to voluntary conservation measures. The Chapter applauds these efforts.

The CPV Ashley Wind Project is within the migration corridor of the federally listed (endangered) Whooping Crane. The proposed site is located within the Whooping Crane migration corridor that includes 95% of all confirmed Whooping Crane sightings in the state[1]. The project area is situated in an area with potentially suitable roosting or foraging habitat for Whooping Cranes during spring and fall migration. Mortality by transmission lines is considered a major potential source of mortality for Whooping Cranes. Where feasible, power lines should be buried, and the use of guy wires should be avoided. If lines cannot be buried, markers should be required on guy wires and overhead transmission lines.

The Chapter understands the proprietary nature of the wind industry when dealing with industry competitors over easements and other issues. However, the Chapter urges wind developers to contact state and federal natural-resource agencies early in the planning process to discuss the entire scope of a wind-resource area, and thus ultimate impact footprint, regardless of current regulations. If contacted early, agencies and wind developers can address concerns over potential cumulative impacts, as well as

ways to avoid or minimize them. Although legal, the currently piecemeal approach unfortunately ignores biological realities on the landscape.

Another benefit of early contact with state and federal agencies, as well as other concerned entities, is the opportunity to coordinate efforts to study the potential impacts of wind facilities on wildlife. There are numerous unanswered questions about the impacts of wind facilities on wildlife. Whereas many wind developers conduct pre-operational baseline surveys and sometimes post-operational monitoring surveys, these surveys are not always relevant to a particular region. Money might be better spent on surveys of a different nature. For example, in North Dakota, very little is known about rates of bird and bat mortality or the impacts of turbines on prairie grouse. To our knowledge, very little research is being conducted in the state on these issues. Data from such research would help biologists make better-informed decisions about the impact of wind facilities on wildlife.

Some wind developers are beginning to write Avian and Bat Protection Plans for their facilities. The Chapter supports the development of such plans, especially if these plans are written in coordination with state and federal natural-resource agencies, address what pre- and post-operational monitoring will be conducted, how the resulting data will be used and shared, and explains how potential impacts to migratory and resident birds and bats will be avoided, minimized, and mitigated.

Because the Chapter's members are wildlife professionals, the Chapter would be happy to engage wind developers in discussions about our concerns, as well as serving in an advisory capacity.

Sincerely,

Kent Luttschwager

Kent Luttschwager
Past President, North Dakota Chapter of The Wildlife Society
701-253-5510

The Wildlife Society is an international, nonprofit, scientific and educational organization composed of professionals, students, and laypersons active and interested in wildlife research, management, education and administration. The NDCTWS is an active affiliate. It is specifically concerned with approaches to effective management of North Dakota's plant and animal communities. The Chapter provides expertise in advising legislative and judicial processes surrounding the controversial management of many natural resource assets. It advocates the holistic treatment of environmental questions. The Chapter was founded in 1963 and incorporated in 1981 under the laws of North Dakota. The NDCTWS would be very willing to engage the PSC in issues concerning wildlife impacts from wind facilities, as well as offer advice based on member's expertise in matters of wildlife management and impacts of human-derived disturbances.

[1] Data obtained from opportunistic observations that are annually submitted to USFWS, Ecological Services.

United States Department of Agriculture

NRCS

Natural Resources Conservation Service
P.O. Box 2096
Jamestown, ND 58402-2096

February 22, 2010

Bruce L. Yeager, NEPA Program Manager
Tennessee Valley Authority
400 West Summit Hill Drive, WT 11D
Knoxville, TN 37902

RE: Notice of Intent to Prepare an Environmental Assessment or Environmental Impact Statement on the Purchase of Renewable Energy from the CPV Ashley Wind Project, McIntosh County, North Dakota

Dear Mr. Yeager:

The Natural Resources Conservation Service (NRCS) has reviewed your letter dated January 28, 2010 regarding comments to the potential for environmental effects of purchasing up to 200 megawatts of power from the proposed CPV Ashley Wind Energy Project in McIntosh County, North Dakota. NRCS concerns are in regards to prime farmlands, wetlands, and soil erosion. NRCS policy regarding prime farmlands and wetlands is as follows.

Farmland Protection Policy Act FPPA) – NRCS has a major responsibility with FPPA in documenting conversion of farmland (i.e., prime, statewide, and local importance) to non-agricultural use. If your proposed project does not include any federal funds FPPA does not apply; therefore, no further action is needed. If your project includes, any federal funds, FPPA may apply, and the enclosed form AD-1006 must be completed. A fill-able, web based form Farmland Conversion Impact Rating Form AD-1006 is available at http://www.nrcs.usda.gov/Programs/fppa/pdf_files/AD1006.PDF to record the following information. Please complete Part I and Part III and return to Frederick P. Aziz, Area Resource Soil Scientist, 208 2nd Avenue SW, PO Box 2096, Jamestown, ND, 58402-2096 or call 701-252-1460 EXT 115. If applicable, you may email the information to fred.aziz@nd.usda.gov. We will also need a map of the sites at an appropriate scale so we can accurately assess the area (e.g., 1:20,000 or 1:24,000). If the farmland (i.e., prime, statewide, and local importance) is determined to be subject to the FPPA, we will then complete Parts II and IV. NRCS will measure the relative value of the site as farmland on a scale of 0 to 100, according to the information sources listed in CFR 658.5(a). If FPPA applies to this site, Form AD- 1006 will be returned to your agency for completion of Part VI, Site Assessment Criteria.

For the past year, NRCS has been monitoring Farmland Conversion Impact Ratings (Form AD-1006 and Form AD-106). Over this period of time, we have become concerned with how the forms are being completed, particularly Part IV – Site Assessment Criteria, which is consistently being scored below 60 points. As a general rule, if FPPA applies and the site is in agricultural production, rarely would it be appropriate for it to have a score of less than 60 points. According to CFR 658.4(g), your agency is requested to return a copy of the Form AD-1006, which Page 2

Mr. Yeager
Page 2

indicates the final decision, to NRCS so we can meet our reporting requirements and for data collection process.

Wetlands - The Wetland Conservation Provisions of the 1985 Food Security Act, as amended, provide that if a USDA participant converts a wetland for the purpose of, or to have the effect of, making agricultural production possible, loss of USDA benefits could occur.

NRCS has developed the following guidelines for the installation of permanent structures where wetlands occur. If these guidelines are followed, the impacts to the wetland(s) will be considered minimal allowing USDA participants to continue to receive USDA benefits. Following are the requirements: 1) Disturbance to the wetland(s) must be temporary, 2) no drainage of the wetland(s) is allowed (temporary or permanent), 3) mechanized landscaping necessary for installation is kept to a minimum and preconstruction contours are maintained, 4) temporary side cast material must be placed in such a manner not to be dispersed in the wetland, and 5) all trenches must be backfilled to the original wetland bottom elevation.

NRCS would recommend that impacts to wetland(s) be avoided. If the alignment of the permanent structure requires construction in a wetland, NRCS can complete a certified wetland determination, if requested by the landowner/operator. In addition, care should be taken during the construction of the proposed project to minimize soil blowing and water erosion as these may cause negative impacts to adjacent farmlands

Sincerely,

For Judith P Gg

CODIE LACINA
Acting Assistant State Conservationist (FO)

Enclosure

cc: w/o encl.
Mary K. Bauman, DC, NRCS, Ashley, ND
Fred Aziz, ARSS, NRCS, Jamestown, ND

★ U.S. GOVERNMENT PRINTING OFFICE: 1984-451-159/1324

U.S. Department of Agriculture

FARMLAND CONVERSION IMPACT RATING

PART I *(To be completed by Federal Agency)*	Date Of Land Evaluation Request
Name Of Project	Federal Agency Involved
Proposed Land Use	County And State
PART II *(To be completed by SCS)*	Date Request Received By SCS

Does the site contain prime, unique, statewide or local important farmland? *(If no, the FPPA does not apply — do not complete additional parts of this form).*	Yes ☐ No ☐	Acres Irrigated	Average Farm Size
Major Crop(s)	Farmable Land In Govt. Jurisdiction Acres: %	Amount Of Farmland As Defined in FPPA Acres: %	
Name Of Land Evaluation System Used	Name Of Local Site Assessment System	Date Land Evaluation Returned By SCS	

	Alternative Site Rating			
	Site A	Site B	Site C	Site D
PART III *(To be completed by Federal Agency)*				
A. Total Acres To Be Converted Directly				
B. Total Acres To Be Converted Indirectly				
C. Total Acres In Site				
PART IV *(To be completed by SCS)* Land Evaluation Information				
A. Total Acres Prime And Unique Farmland				
B. Total Acres Statewide And Local Important Farmland				
C. Percentage Of Farmland In County Or Local Govt. Unit To Be Converted				
D. Percentage Of Farmland In Govt. Jurisdiction With Same Or Higher Relative Value				
PART V *(To be completed by SCS)* Land Evaluation Criterion Relative Value Of Farmland To Be Converted *(Scale of 0 to 100 Points)*				

PART VI *(To be completed by Federal Agency)* Site Assessment Criteria *(These criteria are explained in 7 CFR 658.5(b)*	Maximum Points				
1. Area In Nonurban Use					
2. Perimeter In Nonurban Use					
3. Percent Of Site Being Farmed					
4. Protection Provided By State And Local Government					
5. Distance From Urban Builtup Area					
6. Distance To Urban Support Services					
7. Size Of Present Farm Unit Compared To Average					
8. Creation Of Nonfarmable Farmland					
9. Availability Of Farm Support Services					
10. On-Farm Investments					
11. Effects Of Conversion On Farm Support Services					
12. Compatibility With Existing Agricultural Use					
TOTAL SITE ASSESSMENT POINTS	160				
PART VII *(To be completed by Federal Agency)*					
Relative Value Of Farmland *(From Part V)*	100				
Total Site Assessment *(From Part VI above or a local site assessment)*	160				
TOTAL POINTS *(Total of above 2 lines)*	260				

Site Selected:	Date Of Selection	Was A Local Site Assessment Used? Yes ☐ No ☐

Reason For Selection:

JOB SERVICE North Dakota
www.jobsnd.com

John Hoeven, Governor • Maren L. Daley, Executive Director

PO Box 5507 • Bismarck, ND 58506-5507

February 1, 2010

Mr. Bruce L. Yeager
NEPA Program Manager
Tennessee Valley Authority
400 West Summit Hill Drive, WT 11D
Knoxville, Tennessee 37902

RE: Ashley Wind Energy Project
McIntosh County, North Dakota

Dear Mr. Yeager:

Job Service North Dakota administers the employment service and unemployment insurance programs.

We have no comments regarding the proposed project and have no applicable permits that are required from Job Service North Dakota.

Sincerely,

Maren L. Daley
Executive Director

701.328.2825 (Voice) • 800.366.6888 (TTY Users - Relay ND) • 701.328.4000 (FAX)
Job Service North Dakota is an equal opportunity employer/program provider.
Auxiliary aids and services are available upon request to individuals with disabilities.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

MAR 08 2010

Ref: 8EPR-N

Bruce Yeager, NEPA Program Manager
Tennessee Valley Authority
400 West Summit Hill Drive
Mail Stop WT 11D
Knoxville, Tennessee 37902

RE: EPA Scoping Comments for Ashley Wind Power Project, North Dakota

Dear Mr. Yeager:

The U.S. Environmental Protection Agency (EPA) Region 8 has reviewed Tennessee Valley Authority's (TVA) Notice of Intent for the Ashley Wind Power Project (Ashley). TVA will prepare either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) in order to address the potential environmental impacts associated with the proposed project. In accordance with EPA's responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4332(2)(C), and Section 309 of the Clean Air Act, 42 U.S.C. Section 7609, we are providing scoping comments regarding issues that we believe should be considered during preparation of the EA or EIS.

Proposal

CPV Ashley Renewable Energy Company LLC (CPV), a direct subsidiary of CPV Renewable Energy Company LLC, proposes to construct and operate a wind-powered generating facility in McIntosh County, North Dakota. Proposed power generation from Ashley is up to 200 megawatts (MW), on 17,400 acres of private land approximately six miles north of Ashley, ND. CPV has not identified the specific turbine model to be utilized at the site, but it is expected that the selected turbine will range between 1.5-3.0 MW in generating capacity, 80-90 meters in hub height, and 80-103 meters in rotor diameter. Additional project components include:

- Improvements to existing roads;
- Construction of new gravel access roads;
- Installation of underground electrical collection lines;
- Construction of an operation and maintenance building;
- Construction of an electrical switchgear facility;
- Construction of an interconnection substation facility; and

- A temporary construction staging area.

The proposed project would interconnect to the Midwest Independent Transmission System Operator (MISO) electric grid via a 230-kilovolt (kV) Montana Dakota Utility Company transmission line.

Range of Alternatives

The NEPA analysis should summarize the criteria and process that was used to develop the proposed alternatives, including any environmental criteria used to identify potential sites. The NEPA analysis should also disclose the reasoning used to eliminate alternatives.

Environmental Concerns

Based upon the information provided, EPA has identified wetland impacts and impacts related to surface disturbance as potential issues of concern for Ashley. McIntosh County is located within the Prairie Pothole Region identified by the United States Geological Survey. We have identified numerous mapped wetlands within the proposed project area. The NEPA analysis should address potential impacts to all resources of concern for the project, but we recommend particular attention be given to impacts related to surface disturbance and protecting wetlands and riparian areas and associated ecosystems.

Protecting Wetlands and Riparian Areas and Associated Ecosystems

EPA considers the protection, improvement, and restoration of wetlands and riparian areas to be a high priority. Wetlands and riparian areas increase landscape and species diversity, support many species of western wildlife, and are critical to the protection of water quality and designated beneficial water uses. Discharge of dredged or fill material into waters of the United States, including wetlands, are regulated under CWA Section 404. This permit program is administered jointly by the U.S. Army Corps of Engineers (Corps) and EPA. Please consult with the Corps to determine if any jurisdictional wetlands are present in the project area, and determine the applicability of CWA Section 404 permit requirements to this project. Additionally, Executive Order (EO) 11990 directs Federal Agencies to "take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities." The NEPA analysis should describe how the Project will address the wetland protection goals in EO 11990, if applicable. EPA suggests a mitigation commitment that indirect draining of, or direct disturbance of, wetland areas will be avoided if at all possible, and requiring complete avoidance of disturbance to any fen wetland (a Category I resource).

Installation of wind turbine generators, access road construction, electrical collection system installation, and construction of the collector substation all have potential to impact wetlands in the proposed project area. Please note that wetland impacts should be avoided and minimized, to the maximum extent practicable, and then unavoidable wetland impacts should be compensated for through wetland restoration, creation, or enhancement. Wetland mitigations

often require evaluation of less environmentally damaging project alternatives. In general, the required compensatory mitigation should be located within the same watershed as the impact site, and should be located where it is most likely to successfully replace lost functions and services. Specific information on mitigation plans should be provided, including the type and location of planned mitigation; this mitigation plan should include consideration of direct, indirect, and cumulative effects.

Surface Disturbance

Although the majority of the surface disturbance generally associated with wind projects is temporary, this disturbance should be minimized to the maximum extent practicable. Temporary surface disturbances create potential for long-term environmental impacts including erosion, invasive plant species growth, and loss of habitat. We recommend TVA consider ways to reduce temporary surface disturbance from the proposed project, and require of all contractors that surface disturbance be reduced to the maximum extent practicable. We particularly note that crane walks present an opportunity for significant disturbance. EPA recommends TVA look for ways to maximize use of access roads for crane movement, and minimize cross-country crane walks, after final turbine layout is determined. Permanent surface disturbance associated with access roads should also be reduced to the maximum extent practicable, by utilizing transportation planning to establish proper road location and design, and using primitive two-track roads where possible.

Based on our current knowledge of the proposed project and the area, EPA has identified seven additional issues commonly applicable to wind energy development projects. We recommend the following issues be addressed by the NEPA analysis:

1. Protecting water quality;
2. Protecting air quality;
3. Effects on wildlife habitat and vegetation;
4. Road and construction issues;
5. Cumulative impacts;
6. Environmental Justice; and
7. Greenhouse gases and climate change.

We are enclosing our detailed scoping comments that provide additional information and further discussion of these issues and concerns.

3

EPA appreciates the opportunity to provide comments at this early stage of the NEPA process for the Ashley Wind Power Project. We hope you will find our comments useful in preparing the EA or EIS, with regard to the alternatives analysis as well as consideration of surface disturbance and potential environmental impacts. If an EA is prepared, we would be interested in reviewing the draft. If you have any questions you may contact me at (303) 312-6004, or you may contact Molly Brodin of my staff at (303) 312-6577.

Sincerely,

Larry Svoboda
Director, NEPA Compliance and Review Program
Ecosystems Protection and Remediation

Enclosure: EPA's detailed comments

4

Detailed Scoping Comments by the Environmental Protection Agency
Ashley Wind Power Project

1. *Protecting Water Quality*

The NEPA analysis should clearly describe water bodies within the analysis area that may be impacted by project activities. An analysis of the area's geology, topography, soils and stream stability in terms of erosion and mass failure potential may be necessary to adequately evaluate the potential risks to surface and subsurface water quality and quantity, aquatic habitat, and other resources from specific project activities. The NEPA analysis should also include the construction, design and operational practices that will be incorporated into the project to protect water quality from erosion. Some examples include the need for a stormwater construction permit and design practices that will be used to minimize the erosion from turbine pad runoff, roads, culverts, etc. We recommend that TVA prepare a Stormwater Pollution Prevention Plan (SWPPP) to be included as an appendix to the NEPA analysis. Additionally, the NEPA analysis should disclose who will be responsible for implementing the SWPPP. Runoff of sediments is a potential concern beyond the construction phase. TVA should develop an operational plan for finding and solving runoff problems, such as from erosion of an access road or turbine pad.

Events during project construction, including road building, such as vehicular spills of hazardous or toxic materials could result in significantly more adverse habitat and water quality impacts. The NEPA analysis should describe vehicle maintenance facilities (if any), and spill and release response capabilities. Specific BMPs should be implemented to protect water quality from storm water runoff, including contaminated runoff from construction and maintenance activities. Examples of these practices include the following:

- Preserve existing vegetation during clearing and grading;
- Divert upland runoff around exposed soils;
- Use sediment barriers to trap soil in runoff where sheet flows occur;
- Protect slopes and channels from gullying;
- Install sediment traps and settling basins to reduce the velocity of channeled runoff;
- Store chemicals for project activities in covered containers in a specific location;
- Identify areas and procedures for fueling, and provide a protected vehicle washout;
- Preserve vegetation near all waterways; and
- Inspect the effectiveness of best management practices.

The NEPA analysis should provide information on Clean Water Act (CWA) Section 303(d) impaired waters in the project area, if any, and should describe existing restoration and enhancement efforts for those waters and any mitigation measures that will be implemented to avoid further degradation of impaired waters. The NEPA analysis should also disclose how the project proponent plans to coordinate with any on-going protection efforts. Maps outlining the project area(s) including road placement in relation to water resources is recommended to be included in the NEPA analysis.

5

2. *Protecting Air Quality*

Protection of air quality should be addressed in the NEPA analysis. The NEPA analysis should present existing air quality conditions in the project vicinity, including criteria pollutants and air quality related values (AQRV). The amount of mobile and non-road source emissions activities should be quantified and disclosed. Particulate emissions from construction activities and ongoing operation of the roadways are important concerns and should also be addressed. The NEPA analysis should evaluate and disclose air quality impacts and, if necessary, detail mitigation steps that will be taken to minimize associated adverse impacts. This analysis should address and disclose the project's potential affect on all criteria pollutants (especially PM_{10} and $PM_{2.5}$) under the National Ambient Air Quality Standards (NAAQS) and AQRV regarding the protection of any affected Federal Class I Areas designated under the Clean Air Act. Any significant concentrations of hazardous air pollutants should be evaluated to ensure public health protection.

3. *Effects on Wildlife Habitat and Vegetation*

Wind energy generation projects potentially may disrupt important wildlife species habitat. During construction of the proposed project, vegetation would be cleared and soils moved during road building activities, the establishment of wind turbine foundations, and construction of substation(s) and other associated facilities. The effects of project activities on area ecology, including vegetation, wildlife, and their habitats, should be disclosed and evaluated in the NEPA analysis. The NEPA analysis should describe the current quality and capacity of habitat and its use by wildlife in the proposed project area. The NEPA analysis should include a description of any critical habitat for the species, identify any impacts the proposed project will have on the species and their critical habitats, and describe how the proposed project will meet all requirements under the Endangered Species Act (ESA). Continuous, uninterrupted habitat is particularly important to prairie ecosystems. The NEPA analysis should evaluate for fragmentation impacts on individual species related to placement of a large number of turbines, support structures, right of ways, and new roads. A proposed mitigation plan with detailed mitigation steps to minimize or eliminate adverse impacts should be presented.

The NEPA analysis should include maps that identify locations of important migration corridors of birds in the project area, and identify potential avian collision hazard areas. Avian flyways and migration corridors should be avoided, as well as areas where birds are highly concentrated. Having a thorough understanding of bird flight patterns in and around the project area will be beneficial in determining a turbine layout that will be effective in reducing the likelihood of migratory bird mortalities. The configuration of turbines should be explored to reduce the risk of avian mortality. Sources of avian mortality at wind generation facilities include guy wires, transmission lines and electrocution from power lines. The NEPA analysis should evaluate potential effects on birds, including bird mortality and changed migratory patterns, and identify mitigation to avoid adverse effects to birds.

The relatively high rate of bat fatalities related to wind energy projects is an increasing concern. Bat migration corridors should also be identified and mapped in the NEPA analysis,

and these areas should be avoided. Locations where there are known bat hibernating, breeding, and maternity/nursery colonies should also be avoided when placing turbines. Barotrauma has been identified in numerous studies as a cause for high bat mortality rates. The potential impacts to bats and mitigation plans for offsetting these should be addressed in the NEPA analysis.

If any pesticides and herbicides will be used for pest control or vegetation treatment during the proposed project operations, the NEPA analysis should disclose any potential toxic hazards related to the application of the chemicals, and describe what actions will be taken to assure that impacts by toxic substances released to the environment will be minimized. If vegetation burning is proposed, then the NEPA analysis should include a smoke management program that would be followed to reduce public health impacts and potential ambient air quality exceedances. A noxious weeds management plan should also be considered to reduce the risk of the dispersion of invasive species.

EPA supports project strategies that include a monitoring program that can identify problems as they occur so that corrective actions or additional mitigation can be implemented. A monitoring program could be designed to include an effective feedback element, including implementation and effectiveness monitoring. Please consider developing a monitoring plan for terrestrial and aquatic habitats prior to disruption in order to establish a valid baseline database from which to measure and detect future impacts. It may be helpful if the monitoring plan utilizes available information from state environmental and conservation agencies and nonprofit conservation organizations to help establish baseline conditions prior to project development. This information will aid in monitoring bird and bat mortality rates as well as infestation of noxious weeds.

4. *Road and Construction Issues*

The NEPA analysis should evaluate effects of any proposed road improvements, new road construction, and general right of way construction and operation activities on the area. The evaluation should include increased access, travel management and enforcement aspects, as well as impact to the flora and fauna of the area. Dust particulates from construction and ongoing operations on roadways are important concerns. Airborne dust may not only be a visual nuisance, but can be potentially dangerous to asthma sufferers. Additionally, sedimentation run-off can severely impact the aquatic environment, and blowing dust may impact the flora and fauna of the area. Construction techniques such as 95% base compaction prior to placement of gravel, culverts for water drainage, steep slope construction measures to prevent erosion, and appropriate dust control methods (including dust suppression agents or reduced vehicle speeds) are important dust suppression and sediment reduction techniques. Detailed plans for addressing dust control for the project should be included. The plans should include, though are not limited to, dust suppression methods, inspection schedules, and documentation and accountability processes.

5. *Cumulative Impacts*

NEPA requires that cumulative impacts be addressed as the incremental impacts when added to other past, present, and "reasonably foreseeable" future actions regardless of whether they are federal actions, including evaluation of direct and indirect effects of these actions on all resource categories, including water quality, aquatic habitat, fisheries, wetlands, air quality, vegetation, and wildlife habitat. This includes analysis and disclosure of the impacts of activities on private adjacent land irrespective of what agency/entity has decision-making authority or analysis responsibility. The cumulative impacts analysis should also include cradle-to-grave considerations for the Project. This includes a discussion of such things as long-term maintenance and final decommissioning.

EPA considers five key areas of information in reviewing cumulative effects analyses:

1. Clear identification of resources being cumulatively impacted and the geographic area where impacts occur.
2. Use of appropriate analysis area boundaries for the resource and time period over which the cumulative effects have occurred or will occur.
3. Identify impacts that are expected to resources of concern in each area from the proposed management direction through analysis of cause-and-effects relationships (include scientifically defensible threshold levels).
4. Adequate evaluation of all past, present, and reasonable foreseeable future actions that have affected, are affecting, or would affect resources of concern (include adequate evaluation vs. benchmark or baseline or reference conditions).
5. Disclosure of the overall cumulative impacts that can be expected if the individual impacts are allowed to accumulate, and provide comparisons of cumulative impacts for the proposed management direction and the reasonable alternatives in relation to the no action alternative and/or an environmental reference point.

6. *Environmental Justice*

The NEPA analysis should include potential impacts on low income, minority, and/or Tribal communities. The project evaluation should consider how to meet environmental justice requirements consistent with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," applicable to federal agencies that conduct activities that substantially affect human health or the environment. In accordance with this order, the NEPA analysis should disclose and evaluate environmental justice issues associated with impacts on rural low-income communities by the proposed actions for the reasonably foreseeable development analysis.

7. *Greenhouse Gas Emissions and Climate Change*

EPA recommends the NEPA analysis include an analysis and disclosure regarding climate change. We suggest a four step approach:

1. Discuss projected regional climate change impacts relevant to the action area, consider any future needs and capacity of the proposed action to adapt to projected climate change effects, and if appropriate, identify effects from the action that may be exacerbated by projected climate change.

2. Characterize and quantify the expected annual and total project lifetime cumulative greenhouse gasses (GHGs).

3. Briefly discuss the link between GHGs and climate change and the potential impact of climate change.

4. Discuss potential means to mitigate project-related emissions.

John Hoeven, Governor
Douglass A. Prchal, Director

1600 East Century Avenue, Suite 3
Bismarck, ND 58503-0649
Phone 701-328-5357
Fax 701-328-5363
E-mail parkrec@nd.gov
www.parkrec.nd.gov

January 29, 2010

Erika J. Roberts
Tetra Tech EC, Inc.
133 Federal Street, 6th Floor
Boston, MA 02110

Re: Ashley Wind Energy Project

Dear Ms. Roberts:

The North Dakota Parks and Recreation Department (NDPRD) has reviewed the above referenced project proposal to develop a wind energy project located in Sections 5-11, 14-23, and 26-30, T131N, R69W; Sections 1, 2, 11-14, 23, and 24, T131N, R70W; Sections 31 and 32, T132N, R69W; and Sections 35 and 36, T132N, R70W; McIntosh County.

Our agency scope of authority and expertise covers recreation and biological resources (in particular rare species and ecological communities). The project as defined does not affect state park lands that we manage or Land and Water Conservation Fund recreation projects that we coordinate.

The North Dakota Natural Heritage biological conservation database has been reviewed to determine if any current or historic plant or animal species of concern or other significant ecological communities are known to occur within an approximate one-mile radius of the project area. Based on this review, we do have records for the occurrence of *Charadrius melodus* (piping plover) in a section adjacent to the project area indicating that the habitat in the project area may be suited for this specie or other rare, threatened, sensitive or endangered species. Please see the attached spreadsheet and map for more information on this occurrence. We defer further comments regarding animal species to the North Dakota Game and Fish Department and the United States Fish and Wildlife Service.

Because this information is not based on a comprehensive inventory, there may be species of concern or otherwise significant ecological communities in the area that are not represented in the database. The lack of data for any project area cannot be construed to mean that no significant features are present. The absence of data may indicate that the project area has not been surveyed, rather than confirm that the area lacks natural heritage resources.

Regarding any reclamation efforts, we recommend that any impacted areas be revegetated with species native to the project area.

Given the potential for not only habitat disturbance and disruption but the threat to nesting, feeding and migratory bird and bats in the area we suggest that all efforts be made to avoid impacts to wildlife species and their habitats. In an effort to avoid or minimize impacts to wildlife and their habitats we encourage proper evaluation of all potential wind energy sites. To identify and assess adverse impacts to wildlife we suggest pre and post construction avian and bat monitoring studies be conducted.

It is our policy to charge out-of-state requests for data services including data retrieval, data analysis, manual and computer searches, packaging and collection of data. An invoice for services provided has been enclosed.

Thank you for the opportunity to comment on this project. Please contact Kathy Duttenhefner (701-328-5370 or kgduttenhefner@nd.gov) of our staff if additional information is needed.

Sincerely,

Jesse Hanson

Jesse Hanson, Coordinator
Planning and Natural Resources Division

R.USNDNHI*2010-022

Play in our backyard!

ND Parks and Recreation Department

ND Natural Heritage Inventory
1600 East Century Ave., Suite 3
Bismarck, ND 58503-0649
(701) 328-5370 FAX: (701) 328-5363

INVOICE NO: 0112
DATE: 1/29/2010

To: Erika J. Roberts
Tetra Tech EC, Inc.
133 Federal Street, 6th Floor
Boston, MA 02110

CONTACT	REFERENCE NO.	DATE SHIPPED	SHIPPED VIA	F.O.B. POINT	TERMS
K.Duttenhefner	R.USNDNHI*2010 -022	1/29/2010			

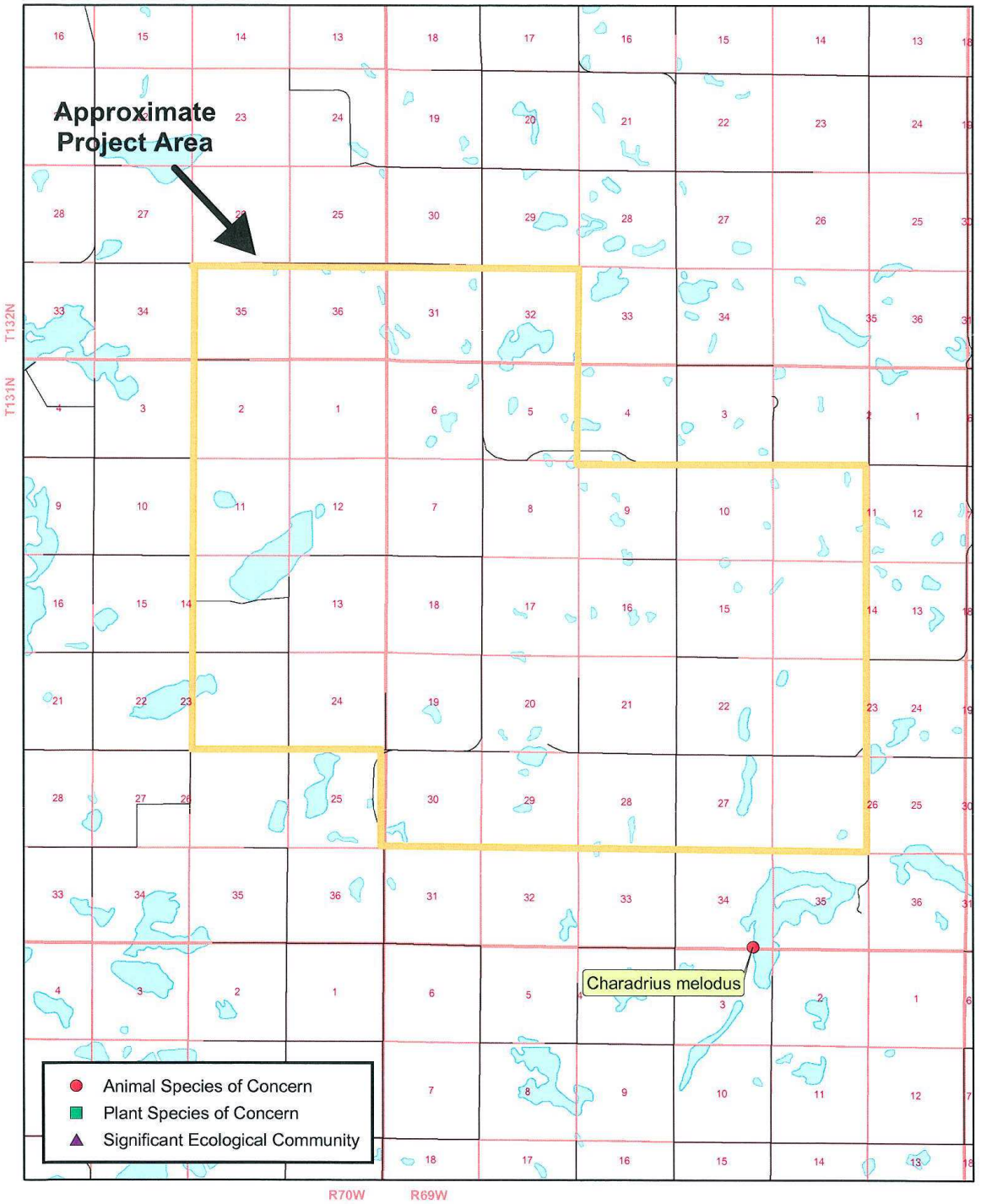
QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	Computer data search, data retrieval, spreadsheet and map creation.	$ 60.00	$ 60.00
		SUBTOTAL	$ 60.00
		SALES TAX	
		SHIPPING & HANDLING	
		TOTAL DUE	$ 60.00

Make all checks payable to: ND Parks and Recreation Department
If you have any questions concerning this invoice, call: Kathy Duttenhefner, (701) 328-5370

THANK YOU FOR YOUR INTEREST IN RARE SPECIES CONSERVATION.

Entry Event	Fund	Dept.	Project	Activity
463021	398	1508	OR15082	15082

North Dakota Parks and Recreation Department
North Dakota Natural Heritage Inventory



January 2010

North Dakota Natural Heritage Inventory

Rare Animal and Plant Species and Significant Ecological Communities

State Scientific Name	State Common Name	State Rank	Global Rank	Federal Status	Township Range Section	County	Last Observation	Estimated Representation Accuracy	Precision
Charadrius melodus	Piping plover	S1S2	G3	LE, LT	131N069W - 34; 130N069W - 03	McIntosh	1995		S

1

North Dakota Natural Heritage Inventory Biological and Conservation Data Disclaimer

The quantity and quality of data collected by the North Dakota Natural Heritage Inventory are dependent on the research and observations of many individuals and organizations. In most cases, this information is not the result of comprehensive or site-specific field surveys; many natural areas in North Dakota have never been thoroughly surveyed, and new species are still being discovered. For these reasons, the Natural Heritage Inventory cannot provide a definite statement on the presence, absence, or condition of biological elements in any part of North Dakota. Natural Heritage data summarize the existing information known at the time of the request. Our data are continually upgraded and information is continually being added to the database. This data should never be regarded as final statements on the elements or areas that are being considered, nor should they be substituted for on-site surveys.

Estimated Representation Accuracy

Value that indicates the approximate percentage of the Element Occurrence Representation (EO Rep) that was observed to be occupied by the species or community (versus buffer area added for locational uncertainty). Use of estimated representation accuracy provides a common index for the consistent comparison of EO reps, thus helping to ensure that aggregated data are correctly analyzed and interpreted.

Very high (>95%)
High (>80%, <= 95%)
Medium (>20%, <= 80%)
Low (>0%, <= 20%)
Unknown
(null) - Not assessed

Precision

A single-letter code for the precision used to map the Element Occurrence (EO) on a U.S. Geological Survey (USGS) 7.5' (or 15') topographic quadrangle map, based on the previous Heritage methodology in which EOs were located on paper maps using dots.

S - Seconds: accuracy of locality mappable within a three-second radius; 100 meters from the centerpoint
M - Minute: accuracy of locality mappable within a one-minute radius; 2 km from the centerpoint
G - General: accuracy of locality mappalbe to map or place name precision only; 8 km from centerpoint
U - Unmappable

U.S. Department
of Transportation
**Federal Aviation
Administration**

Federal Aviation Administration
Bismarck Airports District Office
2301 University Drive, Building 23B
Bismarck, ND 58504

February 2, 2010

Ms. Erika J. Roberts
Project Manager
Tetra Tech EC, Inc.
133 Federal Street, 6th Floor
Boston, MA 02110

Ashley Wind Energy Project
CPV Ashley Renewable Energy Company, LLC
and the Tennessee Valley Authority
McIntosh County, North Dakota

Dear Ms. Roberts:

The Bismarck Airports District Office has no objections to the proposed Ashley Wind Energy Project in McIntosh County identified in your letter dated January 8, 2010 and the Tennessee Valley Authority letter dated January 28, 2010 provided:

1. The Federal Aviation Administration (FAA) is notified of construction or alterations as required by Federal Aviation Regulations, Part 77, Objects Affecting Navigable Airspace, Paragraph 77.13. Please note that Part 77 includes temporary construction vehicles and equipment. The Notice of Proposed Construction or Alteration Form 7460-1 may be filed online at https://oeaaa.faa.gov.

2. FAA technical operations are contacted to identify any possible impacts to aircraft navigation and/or communication equipment. The Minneapolis Technical Support Center Manager (MSP TSCM) may be contacted in writing at FAA MSP Technical Support Center, 14800 Galaxie Avenue, Suite 300, Apple Valley, MN, 55124 or by phone at (952) 997-9261.

3. The design, construction, and operation of the project and related improvements (including storm water retention ponds, drainage improvements, and any potential wetland mitigation sites) do not create a hazardous wildlife attractant to surrounding airports. Hazardous wildlife and hazardous wildlife separation distances are defined in FAA Advisory Circular (AC) 150/5200-33B, Hazardous Wildlife Attractants on or near airports. All design, construction, and operation of the facility and all facility components (such as materials handling, landscaping, ditches, and storm water management) shall comply with FAA AC 150/5200-33B, Hazardous Wildlife Attractants on or near Airports. A copy of the advisory circular may be obtained at www.faa.gov.

2

Please be advised FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants On or Near Airports, advises a 5,000 or a 10,000 foot separation distance between airports (the airport) and a hazardous wildlife attractant. Additionally, it is recommended that a 5-mile separation distance be considered when the attractant could cause wildlife movement into or across the approach or departure airspace.

If you or the proponents are uncertain if the proposed development will cause a wildlife hazard for airports, we recommend you or the proponent consult with the United States Department of Agriculture, APHIS, Wildlife Services or another qualified wildlife biologists. We recommend any wildlife biologist consulting on a matter such as this, meet the qualifications identified in FAA Advisory Circular 150/5200-36, "Qualifications for wildlife biologist conducting wildlife hazard assessments and training curriculums for airport personnel involved in controlling wildlife hazards on airports".

If not already included in your planning process, we request that Ashley Municipal Airport be given the opportunity to provide input and comments.

I appreciate that our office was given the opportunity to review this project. Please contact me at (701) 323-7380 if you have any questions or need further information.

Patricia L. Dressler
Environmental Protection Specialist

cc: The Honorable Donald A. Kosel, Mayor, City of Ashley

NORTH DAKOTA
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION
Gold Seal Center, 918 E. Divide Ave.
Bismarck, ND 58501-1947
701.328.5200 (fax)
www.ndhealth.gov

February 9, 2010

Ms. Erika J. Roberts
Tetra Tech EC, Inc.
133 Federal Street, 6th Floor
Boston, MA 02110

Re: Notice of Intent to Prepare an EA or an EIS for Purchase of Renewable Energy from the CPV Ashley Wind Power Project, McIntosh County, North Dakota

Dear Ms. Roberts:

This department has reviewed the information concerning the above-referenced notice of intent submitted by Bruce L. Yeager of the Tennessee Valley Authority, under date of January 28, 2010. Our comments on the proposed project remain the same as those in our January 26, 2010 letter to you (copy attached). We look forward to reviewing the Environmental Assessment or Environmental Impact Statement on the project when it is completed.

If you have any questions regarding our comments, please feel free to contact this office.

Sincerely,

L. David Glatt, P.E., Chief
Environmental Health Section

LDG:cc
Attach.

Environmental Health Section Chief's Office 701.328.5150 | Division of Air Quality 701.328.5188 | Division of Municipal Facilities 701.328.5211 | Division of Waste Management 701.328.5166 | Division of Water Quality 701.328.5210

Printed on recycled paper.

NORTH DAKOTA
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION
Gold Seal Center, 918 E. Divide Ave.
Bismarck, ND 58501-1947
701.328.5200 (fax)
www.ndhealth.gov

January 26, 2010

Ms. Erika J. Roberts
Tetra Tech EC, Inc.
133 Federal Street, 6th Floor
Boston, MA 02110

Re: Ashley Wind Energy Project, McIntosh County, North Dakota

Dear Ms. Roberts:

This department has reviewed the information concerning the above-referenced project submitted under date of January 8, 2010, with respect to possible environmental impacts.

This department believes that environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods. With respect to construction, we have the following comments:

1. All necessary measures must be taken to minimize fugitive dust emissions created during construction activities. Any complaints that may arise are to be dealt with in an efficient and effective manner.

2. Care is to be taken during construction activity near any water of the state to minimize adverse effects on a water body. This includes minimal disturbance of stream beds and banks to prevent excess siltation, and the replacement and revegetation of any disturbed area as soon as possible after work has been completed. Caution must also be taken to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. Guidelines for minimizing degradation to waterways during construction are attached.

3. Projects disturbing one or more acres are required to have a permit to discharge storm water runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover. Further information on the storm water permit may be obtained from the Department's website or by calling the Division of Water Quality (701-328-5210). Also, cities may impose additional requirements and/or specific best management practices for construction affecting their storm drainage system. Check with the local officials to be sure any local storm water management considerations are addressed.

4. Noise from construction activities may have adverse effects on persons who live near the construction area. Noise levels can be minimized by ensuring that construction equipment is

Environmental Health Section Chief's Office 701.328.5150	Division of Air Quality 701.328.5188	Division of Municipal Facilities 701.328.5211	Division of Waste Management 701.328.5166	Division of Water Quality 701.328.5210

Printed on recycled paper.

NORTH DAKOTA
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION
Gold Seal Center, 918 E. Divide Ave.
Bismarck, ND 58501-1947
701.328.5200 (fax)
www.ndhealth.gov

Construction and Environmental Disturbance Requirements

These represent the minimum requirements of the North Dakota Department of Health. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect the waters of the State of North Dakota. All projects will be designed and implemented to restrict the losses or disturbances of soil, vegetative cover, and pollutants (chemical or biological) from a site.

Soils

Prevent the erosion of exposed soil surfaces and trapping sediments being transported. Examples include, but are not restricted to, sediment dams or berms, diversion dikes, hay bales as erosion checks, riprap, mesh or burlap blankets to hold soil during construction, and immediately establishing vegetative cover on disturbed areas after construction is completed. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, or land resources will be protected against compaction, vegetation loss, and unnecessary damage.

Surface Waters

All construction which directly or indirectly impacts aquatic systems will be managed to minimize impacts. All attempts will be made to prevent the contamination of water at construction sites from fuel spillage, lubricants, and chemicals, by following safe storage and handling procedures. Stream bank and stream bed disturbances will be controlled to minimize and/or prevent silt movement, nutrient upsurges, plant dislocation, and any physical, chemical, or biological disruption. The use of pesticides or herbicides in or near these systems is forbidden without approval from this Department.

Fill Material

Any fill material placed below the high water mark must be free of top soils, decomposable materials, and persistent synthetic organic compounds (in toxic concentrations). This includes, but is not limited to, asphalt, tires, treated lumber, and construction debris. The Department may require testing of fill materials. All temporary fills must be removed. Debris and solid wastes will be removed from the site and the impacted areas restored as nearly as possible to the original condition.

Environmental Health Section Chief's Office 701.328.5150	Division of Air Quality 701.328.5188	Division of Municipal Facilities 701.328.5211	Division of Waste Management 701.328.5166	Division of Water Quality 701.328.5210

Printed on recycled paper.