

NH DEPT. OF
ENVIRONMENTAL SERVICES

MAR - 2 2008

RECEIVED

Jeffrey W. Elliott
81 Middle Street
Lancaster, NH
USA 03584

26 February, 2009

Thomas S. Burack, Chairman
Site Evaluation Committee
New Hampshire Department of Environmental Services
29 Hazen Drive, Box 95
Concord, NH 03302-0095

To: Chairman Site Evaluation Committee
Date; 1 February 2009
Re: Application of Granite Reliable Power, LLC, Docket No. 2008-04

Dear Chairman Burack:

Submitted by:
JEFFREY W. ELLIOTT
81 MIDDLE STREET
LANCASTER, NH
03584

I. SUMMARY OF THE SUBMISSION; part a.

As Party to the North American Agreement on Environmental Cooperation ("Agreement") The United States Army Corp of Engineers, New Hampshire Fish and Game, and The United States Department of the Interior, and The United States Fish and Wildlife Service are failing to effectively enforce environmental laws Section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.;) and/or The Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712, July 3, 1918, as amended, and/or The Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668c and/or Western Hemisphere Convention(Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere; 56 Stat. 1354; TS 981).

This submission, made pursuant to Article 14 of the North American Agreement on Environmental Cooperation (NAAEC), identifies the failure of the United States Government, The United States Army Corp of Engineers, and The United States Department of the Interior, Fish and Wildlife Service to enforce Section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; that requires federal agencies, in consultation with and with the assistance of the Secretaries of Commerce and Interior, to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of endangered or threatened species or destroy or adversely modify designated critical habitat. The principles, practices, and protocols for section 7 consultations are identified in the Endangered Species Act, and regulations promulgated in 1986 for implementing section 7 (50 CFR. Part 402), further expound the procedural and substantive requirements for consultation, reference to American Bald Eagle (*Haliaeetus leucocephalus*), the Canada Lynx (*Lynx canadensis*).

II. SUMMARY OF THE SUBMISSION; part b.

These agencies, to include the State of New Hampshire through its agent and representative, The New Hampshire Fish and Game Department have failed to recognize and act upon New Hampshire's Endangered Species Conservation Act thereby "Taking" endangered species to include but limited to; American Martin (*Martes americana*), Canada Lynx (*Lynx canadensis*) Bicknell's Thrush (*Catharus bicknelli*), American Three-toed Woodpecker (*Picoides dorsalis*), Spruce Grouse (*Dendragapus canadensis*), Bay Breasted Warbles (*Dendroica castanea*), and Bicknell's Thrush (*Catharus bicknelli*).

Comment: In Northern New Hampshire our amazing complex of Core, Corridor, and Buffers are on one hand growing and becoming solidified through redefined ownership patterns, while on the other the most critical and unique habitats, our sky islands, are being sacrificed. Ironically the sites most threatened by global climatic shift are being threatened with wind-farm development. (...to bomb N. Vietnam villages to protect them from communism comes to mind.) The few that are working to defend these sky islands, including NH Fish & Game biologists, are being run amuck by the biggest of big business. Wind developers are asking that the Endangered Species act (in all of its manifestations) not be considered, or allowed in this case. To me this smacks of precedent setting rewrite of the law...

As an Environmental Biologist, my scientific opinion understands mountaintop development will challenge species; degrade ecological settings such as critical and/or fragile wildlife habitats or unique communities.

Mountaintops are isolated cold region habitats surrounded by more typical local habitat types. These isolated communities are called 'sky islands'. Many individuals and species depend on sky island refuges for their existence. Creatures such as; northern bog lemming, transient raptures, some neo-tropical birds, some rare bats, Canada Jay, Canada Lynx, Spruce Grouse, Hoary Redpoll, crossbills, Northern Goshawk, Boreal Chickadee, American Three-toed Woodpecker, American Martin, Bicknell's Thrush, Bay Breasted Warbles, and Cape May Warbler are apt to reside or pass through these high elevation habitats. Recognize that an estimated forty species depend on these sky islands of Northern New Hampshire.

Sky islands in this ecotone have become more isolated as the local northern boreal climate denigrates toward a southern type. Just as New Hampshire and Vermont are unique in having Fish Crows and Raven, White tail and Moose, Southern and Northern Bog Lemming, these boreal sky islands have ecological communities who's 11,000-year-old structure is more endemic than its occupants. As these islands become more isolated and reduced in size because of climatic shift, they become more unique, more stressed, and more valuable. The old saw of 400feet in elevation equating to 100miles of latitude applies in both directions. As planting zone 5 slips north 100miles, so too does the mountaintop boreal forest-habitat become more pinched onto the ridge tops.

The scheme to convert our region into a power generation center for Boston and New York is criminal. To protect the high elevation sky islands from the tortures of acid rain and global warming by a phony alternative that in actuality destroys them is to except a Faustian deal with the devil.

Though this process appears to be exempt from laws and regulations that deal with environmental, ecological and societal concerns, federal laws and conflicting State rules cannot be disregarded. Wind Farm development will lead to degradation of sky island habitats whose denizens are species covered under several forms of International, Federal, and State litigations. The understanding of this is demonstrated by testimony of The State of New Hampshire's Fish and Game Department, and several non-governmental organizations. With cognizance comes

the guilt of FAILURE TO ENFORCE: The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); and/or Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712, July 3, 1918, as amended, and/or The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c) (and other related treaties and laws).

1. The Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and the Endangered Species Act—are the federal laws most relevant to protecting wildlife from wind power facilities, and these laws generally forbid harm to various species of wildlife. FWS is the federal agency that has primary responsibility for implementing and enforcing these three laws. Although none of the three laws expressly require wind power developers and operators to take specific steps to ensure that wildlife will not be harmed during either the construction or operation of their facilities, wind power developers or operators are liable for any harm to protected species that may occur.

Over the past 6 years, FWS has referred about 50 instances of golden eagles killed by 30 different companies in Altamont Pass either to the Interior Solicitor's office for civil prosecution or to the Department of Justice for criminal prosecution.

A recent study shows that over 1,000 raptors are killed by wind power facilities in northern California each year. Many experts attribute this large number of fatalities to unique aspects of wind power development in northern A 2001 analysis of studies estimated that wind turbines in the United States cause roughly 33,000 avian deaths per year.

There are several Bald Eagle nests and potential nesting sites within a few miles of the proposed Wind Farm. This and related data some of which is reviewed above demonstrates the alleged violation and negligence.

Submitted BY:

Jeffrey W. Elliott



81 Middle Street
Lancaster,
New Hampshire 03584