



United States Department of the Interior



FISH AND WILDLIFE SERVICE

300 Westgate Center Drive
Hadley, MA 01035-9589

In Reply Refer To:
FWS/Region 5/ES

APR 17 2007

Ms. Eve Firor
Friends of Beautiful Pendleton County
P.O. Box 218
Franklin, West Virginia 26807

05-1740-E-06

2007 APR 23 AM 9:09
FWS/REVIEWED
W. VA. COMMISSION
SECRETARY'S OFFICE

Dear Ms. Firor:

This letter is in response to your letter dated March 16, 2007, regarding the potential issuance of an incidental take permit (ITP) for the take of federally listed species in conjunction with the proposed Liberty Gap wind power facility located on Jack Mountain, in Pendleton County, West Virginia. The U.S. Fish and Wildlife Service (Service) appreciates your interest and concern in the protection of our natural resources and as your letter correctly points out, the agency cannot “prejudge” a project “before an application for the permit is formally submitted and made available for public comment.”

The Service is currently providing technical assistance to Liberty Gap Wind Force, who is developing a Habitat Conservation Plan (HCP), in support of the section 10 ITP process of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. §§1531, 1539(a)(10(B)) (ESA). The Service routinely provides this type of assistance to HCP applicants in the form of biological expertise, as well as recommended avoidance measures, minimization measures, mitigation measures, alternative project designs, development of monitoring plans, etc. While the Service works cooperatively with an applicant to facilitate development of an HCP that would satisfy all regulatory requirements, the HCP is the *applicant's* document, and ultimately the applicant determines which of the Service's recommendations it includes in the HCP. Therefore, the Service is unable to make any preliminary determinations or judgments on the issuance of an ITP until the entire review process is completed. This process includes review and evaluation of the final application and HCP under the section 10 ITP issuance criteria, evaluation of all public comments received on the draft HCP and National Environmental Policy Act (NEPA) document, completion of our “NEPA” analysis under the NEPA, as well as completion of our intra-Service section 7 consultation process.

To date, the applicant has not completed development of its HCP and, therefore, has not provided the Service with a final ITP application package for review. When the Service receives an application package, we will process the application according to appropriate statutory and regulatory criteria, engage in the appropriate public comment process, and thoroughly evaluate

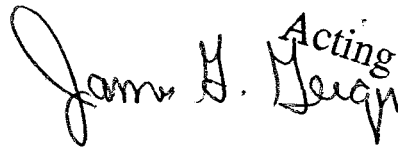
Ms. Eve Firor

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all information under the appropriate NEPA, section 7 intra-agency consultation, and section 10 ITP regulatory standards.

Thank you for your interest in natural resources. The Service always appreciates any additional constructive information, particularly during review of potential impacts of wind power to federally listed species. If you have any questions, please contact Christy Johnson-Hughes, Fish and Wildlife Biologist, West Virginia Field Office, at 304-636-6586.

Sincerely,

A handwritten signature in black ink, appearing to read "Marvin E. Moriarty". The signature is written in a cursive style. To the right of the signature, the word "Acting" is written in a smaller, more upright font.

Marvin E. Moriarty
Regional Director