

TOWN OF NEWARK PLANNING COMMISSION
c/o Town Clerk's Office
1336 Newark Street
Newark, VT 05871
802-467-3336

June 12, 2012

Susan Hudson, Clerk
Vermont Public Service Board
112 State St., Drawer 20
Montpelier, VT 05620-2701

Re: DOCKET # 7867

Application of Seneca Mountain Wind LLC for a Certificate of Public Good for Temporary Meteorological Stations, Pursuant to 30 V.S.A. §§ 246 and 248

Response to SMW letter of June 4, 2012

Dear Ms. Hudson:

The Newark Planning Commission received the letter that Andrew Raubvogel submitted to the Public Service Board on June 4 on behalf of Seneca Mountain Wind, LLC.

Mr. Raubvogel's letter was intended to respond to comments that were submitted to the Board during the public comment period. However, the letter contains information that contradicts information that SMW submitted in its original application. The letter raises new concerns and issues that are so significant that, taken with SMW's other submissions, there is ample reason for the Board to deny SMW's request for a Certificate of Public Good.

Short of an outright denial of a CPG, the Newark Planning Commission requests:

- that an environmental assessment team (to be agreed upon by the Board, SMW, ANR, and the Newark Planning Commission) carry out a thorough survey in order to: finish Arrowwood Environmental's uncompleted site work and verify the questionable and contradictory conclusions that SMW has presented to the Board regarding the project's environmental impact
- that the Board conduct site visits to the MET tower sites so that the Board, Planning Commission, residents, and other interested persons can bear witness to the impact that the SMW project will have on the proposed sites
- that the PSB hold a hearing into the necessity of installing a MET tower in Newark

- that the Board take SMW's comments on energy requirements into consideration and broaden its MET tower deliberations to include issues of supply and demand, utilization of existing capacity, transmission, and the economics of industrial wind
- that the Board require a "balloon test" to verify SMW's claims and demonstrate the visibility of the towers from various points in Newark
- that in light of SMW's past failures, the Board require SMW to engage a third party to verify that their list of adjoining property owners is accurate and complete
- that the Board require that SMW provide complete documentation of their intrusions upon private property in Newark
- that the PSB consider denying SMW a CPG for the proposed MET tower until the Board of Directors of the Northeastern Vermont Development Association votes on the Executive Committee's recommendation to pass a resolution to suspend development of new wind projects
- that the PSB consider denying SMW a CPG for the proposed MET tower until the ANR completes its investigation and issues a ruling on alleged land-use violations on land that SMW leases

(All site visits should, of course, respect the seasonal restrictions that ANR has recommended.)

Newark residents and property owners were disappointed and disturbed by the dismissive tone of Mr. Raubvogel's letter.

The Newark Planning Commission, Newark Selectboard, the citizen's group Newark Neighbors United, and many Newark citizens and property owners took the time to read, review and research the Seneca Mountain Wind Application for a Certificate of Public Good for Temporary Meteorological Stations dated April 12, 2012. Citizens and organizations documented their findings and comments attempting in good faith to participate in the PSB process. One organization submitted a petition opposing SMW's project; it was signed by over 300 Newark residents and property owners. To read Mr. Raubvogel's repeated dismissal of every comment as "purely speculative and general" shows a clear lack of respect for the citizens of Newark.

The following passage appears on the website of Eolian Renewable Energy, one of SMW's corporate parents:

Eolian's projects are designed keeping community needs in mind. We are committed to engaging and listening to stakeholders while bringing new economic development, revenue and other benefits to host communities.

By working closely with landowners, community leaders, residents and other stakeholders, Eolian is helping to build a local, clean energy infrastructure that will stimulate the next 100 years of economic growth in healthier, more prosperous ways.

The sentiments that Eolian expresses ring hollow in light of Mr. Raubvogel's letter. The letter is inappropriate for a company that purports to be "keeping community needs in mind" and "listening to stakeholders."

The Newark Planning Commission stands behind its letter to the PSB, dated May 9, 2012. In this current letter, the Commission provides a detailed discussion of the issues, old and new, raised by SMW's letter of June 4.

30 V.S.A. §248 (b)(1) - Orderly Development of the Region

1. Some commenters assert that the prominence and visibility of the MET towers will have a negative effect on both property values and the local economy, which is fueled by tourism.

Property Values: The Newark Planning Commission cites the study, *Wind Farm Proximity And Property Values* from Illinois State University¹, which concludes that wind projects, in their preliminary phases, have a negative effect upon property values. The Commission considers preliminary phases to include project announcement, the permitting process, site evaluation (i.e., MET towers), and construction.

In attempting to refute the Commission's assertion that MET towers negatively affect property values, SMW cites its Lempster study. The Lempster study is not an independent study; it was sponsored by Eolian Renewable Energy, LLC, one of SMW's parent companies.

The Eolian-sponsored Lempster study cannot be used to draw conclusions about MET towers because it was designed to measure the post-construction impact of wind turbine operations on property values. However, the Eolian-sponsored study cannot even provide an accurate measure of post-construction impact because it was poorly designed and executed:

- 1) The number of transactions in the study is too small.
- 2) It ignores the length of time that properties take to sell.
- 3) It fails to account for properties that go unsold.
- 4) It fails to account for the abandonment of property in the vicinity of turbines.

The effects of points 2 and 3 are clearly shown in this map of Lempster. The map was prepared by photographing every For Sale sign in Lempster with a GPS camera. The push pins in the map show the locations of the For Sale signs. Note the clusters of unsold properties in the vicinity of the turbines.

¹ Hinman, J., "Wind Farm Proximity And Property Values: A Pooled Hedonic Regression Analysis Of Property Values In Central Illinois," Illinois State University, May 2010, Available online at <http://friendsofwind.ca/wp-content/uploads/2011/07/USA-2010-Hinman-Wind-Farm-Proximity-and-Property-Values.pdf>



Tourism: The SMW project will affect a region of the NEK that is heavily dependent on ecotourism, outdoor recreation, and vacation homes. These economic activities rely on the area’s “wilderness appeal.” Industrializing this wilderness will destroy the region’s greatest economic and natural resource.

The Executive Committee of the Northeastern Vermont Development Association has recommended that new wind project construction be suspended and that new studies of project impacts be conducted. Independent studies of this type might provide quantification of the economic damage that projects like SMW’s will cause in the NEK. The Newark Planning Commission supports the recommendation of NVDA’s Executive Committee to suspend wind development.

The Newark Planning Commission argues that it would be prudent to delay the granting of a CPG for SMW’s MET towers until the studies that the Executive Committee recommends can be taken into account.

2. *Some commenters claim that the project is inconsistent with the Newark Town Plan in its Vision Statement and Environmental, Recreational, and Commercial sections, including protection of two deer wintering areas, and that the visibility of a MET tower on Hawk Rock from Center Pond would also contradict the Town Plan.*

Newark’s citizens and Planning Commission, working closely with the Northeastern Vermont Development Association, have written and maintained a Town Plan for decades. We are proud that our Town Plan has been approved for regional inclusion by the NVDA. The citizens of

Newark and the Newark Planning Commission are very familiar with the history and details of this plan. We object to SMW's misinterpretations and misrepresentations of the Town Plan, which are clearly intended to twist the letter and the spirit of the Plan in order to make it appear that the Town Plan supports their project proposal.

Newark is a small Town that doesn't have full time staff or lawyers. The only full time employees are our road staff. Volunteer citizens fill nearly all town positions and take their roles and responsibilities seriously. The Newark Town Plan isn't hundreds of pages long or steeped with minute details. What our Plan does have is a Vision Statement which the town has used to guide its development. The Town Plan is supported with seventeen chapters (31 pages and maps), which is appropriate for the size and makeup of the town.

We restate the vision expressed in the Newark Town Plan:

Newark is a rural town with a beautiful natural setting. Woodlands, open fields, hills, scenic vistas, clean water and air, and clean streams and pristine ponds make Newark a unique and pleasant community to visit and live in. The environment is clean and healthy.

It is these characteristics which the Town of Newark intends to protect and preserve.

Nowhere in this vision statement will you find support for the SMW project. Whether or not the Newark Town Plan references the development of renewable energy is immaterial to the proposed construction of industrial-scale meteorological stations for the ultimate purpose of constructing an industrial wind facility. The fact that the Town Plan does not contain a specific prohibition on the construction of meteorological stations or wind turbines does not negate the fact that the industrialization of Newark conflicts with the vision expressed in the Town Plan. Since the construction of an industrial-scale MET tower on Hawk Rock would cause undue impacts to the character of the town and to its recreational, environmental, and scenic resources, such development would violate the principles expressed in the Town Plan.

Large scale energy generation and transmission facilities are recognized and clearly listed as a threat in Newark's Town Plan. The Plan states that this type of development should be "reviewed with extreme caution". The Planning Commission has reviewed SMW's proposal with extreme caution and found it to be out of conformance with the Town Plan. On this basis alone, the Newark Planning Commission believes that the Board should deny SMW a Certificate of Public Good.

In its June 4th letter SMW also introduces the issue of energy requirements for Vermont and Newark. The Newark Planning Commission would welcome a broader discussion of energy issues and requests that the Board take SMW's comments into consideration and expand the scope of MET tower deliberations to include:

- Electricity demand in the Northeast Kingdom
- Capacity utilization of existing generation facilities, including those at Moore and Comerford dams

- Transmission capacity in northern Vermont
 - The economics of industrial wind energy
- 3. *One commenter states that he will consider moving and has already had two clients (to his log-home construction business) cancel their projects in the area or place them on hold due to the application becoming public. He believes the impact on sales and development in the area will be extensive and negative “because of a wind farm.”***

The Newark Planning Commission is aware of a number of development, renovation, and property sale plans that have been canceled or put on hold because of concerns about SMW’s project. These impacts are entirely consistent with studies of the “anticipatory effect” associated with industrial wind projects (see Point 1, above).

The Commission is aware of the situation of Charles Santo whose log home construction business has already been affected by the SMW project. Mr. Santo will submit documentation to the PSB that supports his assertion that clients are unwilling to proceed with home construction due to the SMW project. The documentation should demonstrate that Mr. Santo’s assertions are not “rumors” as SMW claims.

The Commission is also aware that the impact upon Mr. Santo’s business will ripple through the local economy, affecting a large number of local merchants, trades people, and other small business people.

- 4. *One commenter states that Hawk Rock “is a fragile, rare, and irreplaceable natural area because of its wildlife, iconic appearance, and its proximity to vital conservation lands” and contends that the proposed project will result in an undue adverse effect that cannot be mitigated...Placement of a MET tower on Hawk Rock will materially interfere with the enjoyment of Newark’s conserved lands and...with the orderly development of the area.”***

Environmental assessment: First, SMW has submitted contradictory statements on the nature of the Hawk Rock cliffs.

As it states in SMW’s environmental assessment, Arrowwood Environmental was unable to complete its site survey of Hawk Rock. Nonetheless, consulting a 50-year-old map, Arrowwood was able conclude that Hawk Rock’s bedrock is calcareous Waits River formation. However, in their June 4th letter, SMW suggests that the cliffs are granitic New Hampshire Series Pluton.

This distinction is important, because the bedrock type will likely determine the natural community type and the presence or absence of certain rare species. Without knowing which is correct, it is impossible to determine whether the natural community type is Boreal Calcareous Cliff (a S2-ranked or rare community type) or Boreal Acidic Cliff (a S4-ranked or common natural community type). Thus, the correct identification of the natural community type and underlying bedrock geology needs to be investigated further because these cliffs are located down-slope of the proposed MET site and are highly likely to be impacted by any activities at the proposed site.

Recent bedrock geology maps show this site as being underlain by New Hampshire Series Pluton, which is granitic. However, given the potential importance of this distinction and the lack of any appropriately-timed (i.e., during the growing season, not the winter), on-the-ground environmental assessments, this issue raises serious questions about both the completeness and accuracy of the full environmental assessment. In addition, this discrepancy raises a serious concern that Arrowwood Environmental's environmental assessment and SMW's other submissions contain other substantive errors.

Finally, it appears that Arrowwood Environmental only conducted on-site investigations of the Hawk Rock site during the winter (i.e., January 2012). A winter-only site assessment is completely unacceptable for accurately and thoroughly assessing most or all of the environmental criteria, especially the presence of rare and irreplaceable natural community types; threatened and endangered species, important wildlife habitat, water resources, among others.

In order to address concerns about discrepancies, errors, and incomplete site surveys, the Newark Planning Commission requests that the Public Service Board require a complete, appropriately timed, and independent environmental assessment and impact assessment of all four sites. The Commission requests that the assessment be conducted by a consultant who meets the approval of the PSB, ANR, the Newark Planning Commission, and SMW. Any site surveys should be conducted in accordance with the seasonal site visit restrictions that ANR has required.

Second, in regard to the Hawk Rock site, Arrowwood states in their environmental assessment that "Given the natural community, elevation and geology present, it is not likely that any rare plants exist on the site." However, given their possibly erroneous description of the underlying bedrock (i.e., is it Waits River Formation as they claim or New Hampshire Series Pluton as SMW claims in their response to public comments) and the apparent lack of any site visits except during the middle of winter in January 2012, this conclusion is not supported.

Third, as Arrowwood Environmental clearly stated in their Environmental Assessment (Attachment E Arrowwood Environmental Report), they were unable to complete their assessment of the deer-wintering area:

*"The area was investigated by an AE biologist in January of 2012 for use by deer ... Due to the presence of snow cover, the identification and quantification of winter deer scat **could not be completed**. As of January 2012, **it is uncertain** if the potential deer wintering area identified is actively/currently utilized by deer." (emphasis added)*

Thus, SMW's claim in their Response to Public Comments that "no deer wintering areas are directly or indirectly affected by the MET sites" cannot be evaluated, and we maintain that potential impacts on this habitat—as well as most of the other environmental criteria—require a complete and independent assessment.

Finally, we would like to also note that one of the four proposed sites for the meteorological stations (Seneca Mountain) is located within a large (approximately 500 acre) patch of suitable

habitat for Bicknell's Thrush (a S2B-ranked or rare species of special concern), and breeding pairs of Bicknell's thrush have been recorded on Seneca Mountain in years past. In addition, Seneca Mountain and some of the other peaks located within the project boundary may also support breeding pairs and/or non-breeding individuals of black-backed woodpecker, gray jay, and boreal chickadee, all three of which are S2-ranked or rare species. No information on any of these species was presented in the environmental assessment. Habitat loss, fragmentation, and degradation – such as that required to construct the proposed meteorological stations – are key threats facing Bicknell's thrush; however, it is unclear what, if any, additional impacts might be caused by the construction and operation of the proposed meteorological stations. Such impacts should be identified and assessed prior to the construction of these stations.

The Newark Planning Commission calls the attention of the Board to the environmental impacts of the projects, the incompleteness of SMW's environmental assessment, and the inaccuracies and discrepancies contained in SMW's various submissions.

Conserved Lands: In its June 4th letter, SMW claims that there will be limited if any visibility from the western shore of Center Pond, and there are no lands conserved for wildlife purposes that would be impacted.

The Newark Planning Commission challenges the visibility claim and suggests that PSB require a "balloon test" to demonstrate visibility.

We expect that such a test would show the MET towers to be highly visible from numerous locations within the town of Newark and adjacent towns. In particular, the towers will be highly visible from Beck Pond Road, Center Pond Road, the upper end of Hollow Road, Newark Street, Duford Road, and Vermont Route 114 and adjacent roads. All of these areas are home to numerous year-round and seasonal residences and border lands extensively used for recreation, hunting, fishing, and other outdoor activities.

The Commission also challenges the SMW claim that "there are no lands conserved for wildlife purposes that would be impacted" by the project. As the Commission noted in its May 9th letter to the PSB, the citizens of Newark, in partnership with the Vermont Housing and Conservation Board and the Vermont Land Trust, invested substantial time, energy, and money in the conservation of lands around Center Pond. These conserved lands span the entire area from Center Pond to the Hawk Rock cliff face. A map of the area is attached.

Note that the map shows that a significant area of the Hawk Rock cliffs fall within the conserved area.

The grant of development rights for this property states that one of its primary purposes is "to conserve scenic and natural resources associated with the Protected Property... and to maintain for the benefit of future generations the essential characteristics of the Vermont landscape."

The grant also states that "the property consists of northern hardwood forest that supports a variety of bird and mammal species, a further objective of this Grant is to facilitate the

management of the property and forest resources in a fashion that promotes a continuing diversity of wildlife species...”

30 V.S.A. §248 (b)(4) - Economic Benefit to the State and its Residents

- 5. Some commenters assert that the prominence and visibility of the MET towers will have a negative effect on both property values and the local economy, which is fueled by tourism.***

The Newark Planning Commission challenges SMW’s claims about property values and tourism. Please refer back to item 1.

- 6. Some commenters claim that the Project will provide no economic benefit to Vermont or Newark and will have a “deleterious effect on the economy.”***

SMW argues that its employees and consultants purchase food, fuel, and supplies. The Newark Planning Commission notes that Newark has no commercial outlets at which these materials can be purchased.

Elsewhere, SMW claims that their project would have a minimal impact on the area and that tower maintenance will require only infrequent visits. In making this new economic claim, SMW is suggesting that their MET tower activities will be far more extensive and intrusive—extensive enough to improve business at gas stations, stores, and restaurants.

While some area merchants may enjoy a slight benefit from SMW’s activities, the Commission is concerned that the area’s business people, merchants, and trades people are already seeing a negative impact as a result of SMW’s project. The negative impact of SMW’s project will deepen, be long-lasting, and will far outweigh the slight benefits that it will provide.

The Newark Planning Commission calls the Board’s attention to both the issue of economic impact and to the discrepancies contained in SMW’s various submissions.

30 V.S.A. §248 (b)(5) - Water resources

- 7. One commenter claims that construction of MET towers will increase the change of flooding because “mountains hold water.” Another commenter raised concerns that the Project will impact wetlands, including a bog.***

In their June 4 letter, SMW claims that their original application “established that the MET sites are neither in nor directly abutting any floodways, streams, or wetlands, they will result in very little clearing, and thus they have no potential to cause flooding or impacts to wetlands.”

However, the environmental assessment presented by Arrowwood Environmental clearly shows that two of the proposed meteorological stations (Brighton and Bull Mountain) are located <150 feet from perennial, headwater streams and small, high-elevation wetlands (Attachment E Arrowwood Environmental Report). Given that the footprints of all four MET towers will extend >80 feet from their base, there is the distinct possibility that construction and maintenance activities will cause changes in hydrology and increased erosion and sedimentation into these headwater streams and wetlands.

Furthermore, the Planning Commission asserts that development within a *watershed* and not just land use within or abutting a waterway, can have the potential to increase runoff to these waterways and adversely impact downstream flooding. The MET sites are situated in the upper Passumpsic watershed, draining to the East Branch of the Passumpsic River. There is a well-documented flooding problem on the main stem of the Passumpsic River in the Town of Lyndon. Development upstream of a problem flooding area is a serious matter that merits serious study.

To dismiss this concern by suggesting that the MET sites “have no potential to cause flooding,” ignores the strong possibility of increased runoff within the context of the watershed.

The Newark Planning Commission calls the Board’s attention to both the issue of wetlands and watershed impacts and to the discrepancies contained in SMW’s various submissions.

30 V.S.A. §248 (b)(5) - Necessary wildlife habitat and endangered species

8. *The Agency of Natural Resources provided comments to the Board dated May11, 2012 that included recommendations on seasonal restrictions for construction and maintenance activities in order to protect nearby bear habitat and peregrine falcon habitat.*

In their June 4th letter, SMW states that ANR *did not express any other concerns regarding environmental resources, including impacts to streams, wetlands, flooding, shorelines, outstanding resource waters, rare and irreplaceable natural areas, or other forms of necessary wildlife habitat.*

The Newark Planning Commission notes that ANR’s May 11 letter references, as an attachment, a letter dated April 3 in which ANR states: *based on your preliminary field work and the maps you provided, it appears the study area is quite wet with the potential for high elevation streams and wetlands. Streams and wetlands above 2500’ are considered class A, high quality resources which if impacted by the project, may be difficult to permit.*

The Commission is concerned that despite its own studies, which identify high elevation streams and wetlands in the project area, and despite subsequent concerns explicitly stated by ANR, SMW continues to dismiss potential impacts with respect to 30 V.S.A. §248 (b)(5).

The Newark Planning Commission draws the attention of the Board to the mischaracterization of ANR’s submission and to the discrepancies contained in SMW’s various submissions.

9. *Some commenters expressed general concerns about a variety of wildlife species including wintering deer, the common loon, birds, bats, bears, moose, and coyotes.*

In its June 4th letter, SMW states: *bear scarred beech trees were identified approximately 100’ northeast of the proposed Hawk Rock site and access trail. This area of scarred beech is in close proximity to an existing road that sees regular use by various vehicles and equipment. SMW continues given the high level of use of the area and low level of impact of the MET tower, no effect is expected on the existing level of bear use of the beech stand from the proposed project.*

The Arrowwood Environmental report Hawk Rock MET Tower Installation Plan indicates that a bear scarred beach stand lies immediately adjacent to the existing access road and less than 100' from the proposed access road. The Newark Planning Commission contends that this road receives infrequent use and the claim that "no effect is expected" is speculative and general in nature and fails to address potential impacts on necessary wildlife habitat with respect to increased road activity, forest clearing/disturbance and the presence/installation of the proposed MET tower.

SMW's June 4th letter also references "a potential (not observed) deer yard" in the vicinity of the proposed tower site. This again calls attention to the fact that Arrowwood Environmental did not conduct a complete survey of the site area.

The Newark Planning Commission requests that a complete site survey be conducted by a consultant mutually agreeable to the Board, ANR, the Commission, and SMW. The timing of the survey should conform to ANR's seasonal restrictions on the site.

Additionally, SMW makes reference to wildlife studies conducted by environmental consultant Stantec. The Newark Planning Commission requests copies of all pertinent studies and reports conducted by Stantec with respect to the SMW MET proposal.

10. The construction of MET towers, especially MET towers supported by guy wires, are a hazard to the endangered peregrine falcon.

In its June 4th letter, SMW dismisses concerns that guyed MET towers pose a risk to falcons. SMW's justification for dismissing concerns about the falcons focuses on an extremely limited set of adult behaviors. The Newark Planning Commission emphasizes that Hawk Rock is an active nesting site where adult falcons engage in the widest possible range of behaviors with their young. These behaviors include migration, hunting, courting, nesting, defending their territory, feeding their young, and fledging.

In order to accommodate the full range of falcon behaviors, Margaret Fowle, author of the *Vermont Peregrine Falcon Recovery Plan*, made the following recommendations, which were included in the Planning Commission's letter of May 9th:

- restrict construction within ¼ mile of a nesting cliff
- towers should not have guy wires
- maintenance work should not happen during the breeding season if roads or access are within ¼ mile of the cliff

Despite their awareness of Ms. Fowle's concerns, SMW proposes to violate each of her recommendations by constructing their MET tower at an inappropriate location. SMW's repeated dismissal of critical issues raises concerns about their commitment to the protection of the area's wildlife and wildlife habitat.

Additionally, the SMW claim that because "peregrine falcons are diurnal migrants and highly maneuverable fliers... therefore [they] should be able to see and avoid the MET tower and its

associated guy lines” is speculative and not only assumes that peregrines can avoid guy wires at extraordinarily high speeds, but also confirms that guy wires will, in fact, pose a risk of collision, injury and death. It must be noted that, according to the US Fish and Wildlife Service, the Peregrine falcon is the fastest flying bird in the world and, in a stoop (dive), can attain speeds in excess of 200 miles per hour.

Ms. Fowle wrote to Planning Commission members on June 11, 2012 confirming these concerns and offered the following comments about SMW’s MET tower at Hawk Rock:

Since this tower will likely be close to 200' and above the forest canopy, the guy wires will be exposed.

The guy wires are concerning to me, based on what I know about peregrine falcon behavior: 1) peregrines are very territorial and defend their cliff/nesting territories aggressively from other raptors or species they believe to be a threat (especially ravens) - depending on the visibility of the guy wires, peregrines might not see them during their fast flights to chase off potential intruders or during their courtship flights near the cliff in the early spring. It is also possible that the height of the tower will attract other raptors to perch there, thus triggering more territorial responses from the peregrines, or possibly attracting the peregrines to perch there when keeping an eye out for potential intruders; 2) peregrines do hunt from their breeding cliffs occasionally - I have seen this at a few VT sites. Food studies may show that most food is from open habitat, but I have seen the falcons take warblers, pileated woodpeckers, and a few other species associated with forest habitats; 3) falcons that nest near roads in VT have been hit by cars on several occasions, indicating that because they are such good and fast fliers, they often don't see potential obstacles when pursuing prey or defending their territories.

Ms. Fowle’s recent comments confirm the Newark Planning Commission’s contention that the construction and operation of the meteorological station on Hawk has the potential to cause undue adverse impacts on peregrine falcons and their habitat. SMW’s claim that peregrine falcons “should be able to see and avoid the MET tower and its associated guy lines” is purely speculative and unsubstantiated, fails to provide any concrete evidence that adult or juvenile peregrine falcons are able to see and avoid guy wires, and thus fails to refute the existence of a significant issue under section 248(b)(1).

[Note that the applicant makes the same speculative and unsubstantiated comment about common loons in their Response to Public Comments: “Because loon activity is limited to water, the risk of loons colliding with the MET tower is extremely low since any activity above the ridgeline would occur during migratory flight, and *this activity would occur during daylight hours when loons could see and avoid the MET tower.* (emphasis added)].

Previous studies have shown that guy wires on MET towers constitute extreme hazards to migrating and foraging birds and bats, including many listed species and Species of Special Concern. Previous studies have identified collisions with towers and other structures and electrocutions from collisions with electrical wires as significant sources of mortality and injury for peregrine falcons, especially fledglings just learning to fly. Given its extremely close proximity to the nest site on Hawk Rock, the Hawk Rock MET tower would pose an extreme and

adverse hazard to the adult and juvenile peregrine falcons using that nest site. In addition, because peregrine falcons are considered a “low-altitude” migrant, they are extremely susceptible to injury and mortality caused by towers and guy wires, especially those located along high-elevation ridgelines.

Locating a MET tower less than 1/4 mile from an active peregrine falcon nest will likely have an undue adverse affect on the breeding pair and their offspring. Previous studies have shown that approximately 60% of hunting flights occur within five miles of the nest; however, even if the individual peregrine falcons breeding at the Hawk Rock site do concentrate most their hunting in valley locations and areas with a variety of land cover types (e.g. agriculture, wetland, forest), they will need to travel between their nest site and their hunting grounds. It should be noted, however, that these land cover types that are preferred by hunting peregrine falcons can be found in all directions within a five-mile radius of the Hawk Rock eyrie and will necessitate travel over high-elevation mountain terrain, including the proposed Hawk Rock MET tower site: broad lowlands along the East Branch Passumpsic River, its wetlands, as well as mixed residential properties to the east; extensive forest areas in all directions around Hawk Rock, particularly to the north, east and west; and extensive agricultural lands located in nearby areas of Newark to the west and in Charleston and Brighton to the north. This dispersion of potential hunting sites surrounding the Hawk Rock eyrie indicates that the peregrine falcons nesting at Hawk Rock will necessarily fly along and over the ridgeline where the Hawk Rock MET tower would be located.

Finally, although SMW claims to have agreed to adhere to ANR’s seasonal restrictions on construction and maintenance activities at Hawk Rock, they argue that they should be allowed to violate the restrictions if the Board issues a CPG on or after August 1, 2012.

The Newark Planning Commission again questions SMW’s commitment to protecting Newark’s wildlife and wildlife habitat. The Commission argues SMW should not be permitted to violate ANR’s restrictions under any circumstances.

30 V.S.A. §248 (b)(5) –Aesthetics

11. Some commenters claim that the Project “will result in an undue adverse effect that cannot be mitigated” because Hawk Rock is a “prominent feature” forming “the backdrop for the town’s most important conservation area.” Another commenter “rejects SMW’s claim that the tower will be difficult to see more than 1 or 2 miles away” and “that the towers will not represent a complete new or foreign visual element in the region.” The Town of Newark Planning Commission letter dated 5-9-12 highlights the visibility and importance of Hawk Rock, Packer and Walker Mountains in the town.

The June 4th SMW letter includes information provided by the contracted firm LandWorks and claims that there will be “little, if any visibility from Center Pond.” Again, the Newark Planning Commission refers back to its discussion of Point 4 in this letter and requests that the PSB order a “balloon test” to demonstrate the visual impact of the tower.

The June 4th letter also states that “the primary visibility of this tower will be to the eastern section of the town, in the vicinity of Route 114...”

The Newark Planning commission agrees that the tower will be highly visible from these locations. Visibility from Route 114 should be of particular concern; the tower will adversely impact the scenic Hawk Rock cliff and “offend the average person” by marring the otherwise largely unbroken forested landscape. This stretch of Route 114 is the primary route for residents and visitors traveling between southern points such as Interstate 91, Lyndonville and East Burke and popular natural and recreational areas to the north including Island Pond, Brighton State Park, the Silvio O. Conte National Wildlife Refuge, the Wenlock and West Mountain WMAs, and the Clyde River and Connecticut River Valleys.

We refer the board to the photo evidence provided in the May 9, 2012 letter from the Newark Planning Commission.

The SMW response states: “based upon... the presence of other towers in the area in the past... the tower at Hawk Rock will not shock or offend the average person.” The Newark Planning Commission refutes this claim and notes that no other towers are or have been located in Newark west of Route 114 and that the Hawk Rock MET would represent a new and substantial change in appearance. This tower will be particularly shocking and offensive when viewed in contrast to the adjacent scenic mountainside rock outcrop located nearby.

13. Some commenters requested a balloon demonstration to gauge the visual effect of the towers.

The Newark Planning Commission made no such request. However, in light of SMW’s claims about the visibility of the tower from various locations, the Commission now requests that the Board consider requiring a balloon test at Hawk Rock in order to validate the claims.

30 V.S.A. § 248 (b)(5) - Development affecting Public Investments

15. Some commenters stated that the impact of the project on the large tracts of land abutting Center Pond that have been conserved by the town will be negative and placement of a MET tower on Hawk Rock will “materially interfere with the public’s enjoyment of Center Pond and of the conservation lands that the Town of Newark has protected.” The same is true for the other MET tower sites in Brighton and Ferdinand, especially the high-elevation bog on Bull Mountain.

The SMW response notes “All four [MET] sites have existing access”. The Newark Planning Commission challenges this claim and objects to SMW’s efforts to minimize potential natural resource impacts.

The proposed Hawk Rock MET tower site does not have 100% access and requires the development of approximately 550-feet of new path, or roughly 0.1-acre of disturbance. Additionally, SMW states: “only 1.3-acres of total new clearing will be required for all four towers to be installed and operated.”

It should be noted that, depending on the design alternatives, approximately 1.2-acres (+/- 0.1-acre) of disturbance would be located in Newark at the proposed Hawk Rock site. This accounts for 92% of all disturbances—a substantial portion of the total impact. As such, the Newark Planning Commission considers any effort to minimize the total impacts within the Town of Newark by comparison with that at the Brighton and Ferdinand sites or by misrepresenting the true extent of access, clearing or other disturbance involved as inaccurate and misleading.

General

19. One commenter complains of lack of direct notification of project and lack of public discussions/hearings.

The Newark Planning Commission notes that when SMW filed its initial application on April 12, 2012 the application was incomplete because it failed to include a complete list of adjoining property owners. SMW had to amend its filing in order to correct its error.

The Planning Commission calls the Board's attention to Attachment B of SMW's application. Attachment B is a site map that shows a clearly marked boundary that the legend describes as *Project Properties (approx)*. There are dozens of property owners whose properties adjoin the "project properties" who are not included in SMW's list of adjoining.

The Planning Commission is concerned that SMW's list of adjoining is still incomplete and that property owners who are entitled to adjoining status have not been notified, as required by Vermont law.

Therefore, the Commission requests that the Board require SMW to engage a third party to verify the accuracy and completeness of their adjoining lists in Newark, Brighton, and Ferdinand.

20. One commenter states that she is deeply concerned about deception on the part of SMW about the construction of a road falsely designated as a logging road, illegal quarrying activities, and deception about aerial photography.

One or more complaints have been filed with ANR regarding land-use activities near the Hawk Rock site. The Newark Planning Commission has already submitted an article from the Caledonian Record that describes the complaint and information that the ANR has chosen to make public.

Concerned Newark citizens are assembling documentation pertaining to these alleged land-use violations. Documentation includes receipts that may indicate illegal quarry operations and aerial photographs that show the extent of the alleged violations. Analysis of the photographs may show that the operations extend into lands which are protected by conservation restrictions.

The Commission has no knowledge of the intent of these operations, but notes that it is possible that the operations are being carried out in anticipation of the granting of a CPG under Section 246 or Section 248.

SMW's letter states that "the private logging roads have been in place and under construction for legal forestry operations for years."

The Newark Planning Commission is aware that narrow forest trails have recently been widened, graded, and surfaced beyond the requirements of any other forestry operation in the area.

The Commission requests that the Board deny SMW a Certificate of Public Good until the ANR completes its investigation and issues a ruling on this matter.

21. One commenter claims that surveyors affiliated with SMW trespassed on her and others' property and states she therefore does not trust anything to do with SMW. She asked the MET permit to be denied to preserve "rural living" and because the "environmental impact on ourselves and animal population domestic and wild will be jeopardized. Finally she states that "industrial windmill sites are not green."

SMW states, "SMW's surveyors were performing work related to a potential wind project, not this MET application," and, "the surveyors did not trespass on posted land; they left aerial survey markers in various locations, one of which was on un-posted private property with a note left on the owner's door."

There is a tradition of "open lands" in the Northeast Kingdom. Landowners generously allow access to their lands for various recreational purposes. Guests who make use of this access are generally courteous, appreciative, and respectful.

There is also an appreciation of good business practices in the Northeast Kingdom. It is generally acknowledged that it is a good business practice to seek the permission of a property owner prior to accessing the property for commercial purposes. Whether it is legal or not, entering private property for commercial purposes without prior permission is a poor business practice. Such practices earn the distrust of folks in the Northeast Kingdom.

The Newark Planning Commission finds it interesting that SMW wishes to distinguish between its intrusions "related to a potential wind project" and intrusions related to their MET tower application. The distinction is not important to the Planning Commission or to the people upon whom SMW has intruded. The Commission is far more concerned about the poor business practices in which SMW engages.

SMW has selected Newark to be one of its "host communities." The Planning Commission regards SMW as a poor guest and notes that Eolian, one of SMW's parent corporations, has a history of poor relations with its "host communities." (The attached November 24, 2011 article from The Bangor Daily News describes some of Frankfort, Maine's experiences with Eolian.)

The Newark Planning Commission requests that SMW document its entire history of intruding on private property in Newark and include dates, times, locations, the identities of the intruders, and a full description of the activities that they and their agents engaged in.

Furthermore, the Commission requests that the Board examine SMW's business practices, investigate Eolian's relations with the town of Frankfort, Maine, and consider whether SMW is a company to which Board wants to issue a CPG.

For the reasons described in this letter, the Newark Planning Commission opposes awarding SMW a Certificate of Public Good. The Commission finds that:

1. The project is inappropriate and environmentally unsound.
2. The application materials are incomplete, contradictory, and lack credibility.
3. SMW does not respect the values of the people of Newark and has not conducted its business in a manner that merits the respect and trust of the people of Newark.

Respectfully submitted,

TOWN OF NEWARK PLANNING COMMISSION

Kim Fried, Chairman

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