



COMMONWEALTH of VIRGINIA

L. Preston Bryant, Jr.
Secretary of Natural Resources

Department of Historic Resources
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Kathleen S. Kilpatrick
Director

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August 19, 2009

William H. Chambliss, Esq.
General Counsel – State Corporation Commission
Tyler Building, 11th Floor
1300 East Main Street
Richmond, VA 23219

Re: Highland New Wind Development, LLC
SCC Case No. PUE-2005-00101; DHR File No. 2003-1027; DEQ Project # 06-011S

Dear Mr. Chambliss:

The Department of Historic Resources (DHR) requests the assistance of the State Corporation Commission (SCC) regarding Highland New Wind Development's (HNWD) compliance with the SCC's Final Order authorizing this project.

It is our reading of the December 20, 2007 Final Order that HNWD has been directed to enter into constructive consultation with DHR concerning the necessary studies to identify historic resources and the evaluation of the project's effects. While HNWD has consulted with DHR, it has not undertaken identification studies to the standards recommended as appropriate, and we do not believe that HNWD's efforts have been sufficient to comply with the Order. Furthermore, we believe that the Order assumes that if adverse effects are identified, reasonable efforts will be undertaken to address them. To our knowledge, HNWD has made no efforts to minimize effects, and has instead terminated consultation with this agency. Accordingly, we believe that the HNWD has failed to comply with either the letter or the spirit of the Order.

DHR has independently sought the comments of Shenandoah Valley Battlefields Foundation, NPS American Battlefield Protection Program, Monongahela National Forest, and the West Virginia Division of Culture and History. We are in agreement that this project will likely have a negative impact on the pristine historic setting of Camp Allegheny, a National Register-listed Civil War battlefield. HNWD has not demonstrated a willingness to consider and minimize the impacts of the project on this significant battlefield.

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Since HNWD has terminated consultation with this office without resolving these outstanding issues and proceeded to construction, we seek the guidance and opinion of the SCC on whether HNWD has met the intent of the Final Order. Under the circumstances, expedited review and response are requested.

If DHR can be of assistance to the SCC in its consideration of this matter, please do not hesitate to contact me or Project Review analyst Roger Kirchen at roger.kirchen@dhr.virginia.gov.

Sincerely,



Kathleen S. Kilpatrick
Director

cc: Mr. Steven O. Owens, Senior Assistant Attorney General
Mr. John W. Flora, Esq., Lenhart Obenshain, PC
Mr. Henry T. McBride, Jr., Highland New Wind Development, LLC
Ms. Roberta A. Lambert, Highland County Administrator
Mr. Michael Murphy, DEQ
Ms. Elizabeth Paradis Stern, Shenandoah Valley Battlefields Foundation
Ms. Tanya M. Gossett, NPS - American Battlefield Protection Program
Mr. John A. Calabrese, Monongahela National Forest
Ms. Susan M Pierce, WV Division of Culture and History