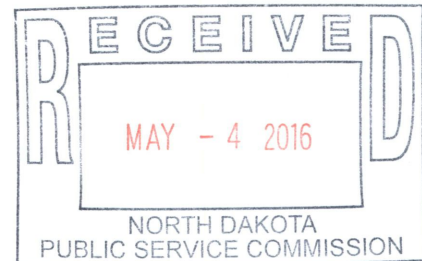


Brian R. Bjella  
100 West Broadway, Suite 250  
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Bismarck, ND 58502-2798  
701.223.6585  
bbjella@crowleyfleck.com

May 4, 2016

Mr. Darrell Nitschke  
Executive Director  
North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480



Dear Mr. Nitschke:

In re: Brady Wind II, LLC  
PSC Case No. PU-16-042  
Our File No. 35-218-027

The undersigned, as counsel for Brady Wind II, LLC, received correspondence from the Commission's outside counsel with respect to a call to the Commission from Mr. Jon Wert as to possible raptor nests.

Brady Wind II has been in consultation with the U.S. Fish & Wildlife Service and the North Dakota Game & Fish Department with respect to raptor nests in the vicinity of the project area.

Enclosed for filing please find the following:

1. On Tetra Tech letterhead, a memorandum entitled "Brady II Public Comment Received by PSC Regarding Raptor Nests." This memorandum details Brady II's contacts with the U.S. Fish & Wildlife Service and North Dakota Game & Fish Department, and the results of recent raptor nests surveys.

With respect to the occupied golden eagle nest in the NE $\frac{1}{4}$  of Section 14, Brady Wind II is removing turbine #55 from the array and is moving all project facilities out of a 0.5 mile buffer around the nest. As a result, the closest turbine is .9 miles away to the northwest.

With respect to the red-tailed hawk nest identified in the NW $\frac{1}{4}$  of Section 2, Township 136 North, Range 96 West., this nest is located 0.2 miles outside of the project boundary and 0.6 miles from the nearest turbines.

23 PU-16-42 Filed: 5/4/2016 Pages: 8

Copy of memorandum, meeting minutes, & correspondence regarding raptor nests

Brady Wind II, LLC

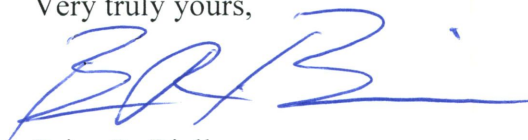
Brian Bjella, Crowley Fleck, PLLP

2. On Tetra Tech letterhead, minutes of conference call notes between Brady Wind II representatives and the U.S. Fish & Wildlife Service.
3. Email correspondence between representatives for Brady Wind II and the North Dakota Game & Fish Department. This includes a photograph of one nest.

As illustrated by the foregoing, Brady Wind II is committed to moving any project facilities outside of a one-half mile buffer around the occupied golden eagle nest; and has been in direct consultation with the U.S. Fish & Wildlife Service and the North Dakota Game & Fish Department regarding these raptor nests.

Please contact me should you have any questions.

Very truly yours,



Brian R. Bjella

bw  
enc.

cc: Zach Pelham  
Julie Prescott  
Jerry Lein

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TO: NextEra Energy Resources, LLC  
FROM: Tetra Tech, Inc.  
DATE: April 26, 2016  
SUBJECT: Brady II Public Comment Received by PSC regarding Raptor Nests

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John Wert contacted the North Dakota Public Service Commission (PSC) and reported active golden eagle nests in NE ¼ Section 14 and NW ¼ Section 4 of T136N R96W. Status of nests in these and nearby sections are given below.

#### **NE ¼ of Section 14 T136N R96W**

NextEra/Tetra Tech are aware of an active golden eagle nest in this ¼ section. During our spring aerial raptor nest survey conducted March 29-30, 2016 a golden eagle was seen incubating in a previously identified small stick nest (2015\_39) located in a tree approximately 0.2 mile south of the proposed Brady II Project Area boundary. The nest was first discovered during a nest survey conducted in fall 2015 and based on overall size and shape along with stick size was classified as a small raptor (red-tailed hawk or ferruginous hawk) nest.

We began ground-based monitoring of the nest the week of April 4. USFWS was notified and a conference call which included Mr. Kevin Shelley (USFWS), Kim Wells and Melissa Hochmuth (NextEra), Dr. Chris Farmer (DNVGL) and Mark Martell (Tetra Tech) was held to discuss monitoring of the nest and implications for the project. Sandy Johnson at North Dakota Game and Fish Department (NDGF) was informed of the nest via email.

This nest is located 0.2 mi outside the Study Area boundary and 0.4 mi from the nearest turbine (#55). NextEra is removing turbine #55 from the Project array, and is moving all Project facilities out of a 0.5 buffer around the nest. The next closest turbine is #54, located 0.9 mile northwest of the nest location.

NextEra/Tetra Tech are continuing to monitor this nest.

#### **NW ¼ of Section 4 T136N R96W**

Our aerial and ground searches have found no stick nests in the NW ¼ of Section 4 T136N R96W. However, during a Brady II public comment session a nest was reported by the public on property owned by the Dorner family. Using public land records NextEra/TetraTech checked property owned by the Dorner family in the area and had a biologist search, from public roads, for any raptor stick nests. A small stick nest (2015\_07) which we had previously recorded, was seen in the SE ¼ Section of T136N R96 W. This nest was unoccupied. Our biologist found no other nests during his search but noted that golden eagle nest 2015\_39, noted above, was plainly visible from that area (email attached).

Nest 2015\_07 is located 0.2 mi inside the Project Area boundary and 0.2 mi from the nearest turbine (#43).

On April 18, Sandy Johnson from NDGF reported to Tetra Tech a nest “within the footprint of the Brady Wind project” and asked us to confirm the status of this nest. Ms. Johnson reported the location of the nest as 46.626939, -102.710975 which corresponds to NW ¼ Section 2 T136N R96W. A Tetra Tech biologist checked this nest (now numbered 2016\_24) on April 20, 2016 and found a dark-phase red-tailed hawk incubating on a nest. A second hawk was seen flying in the area close to the nest. Tetra Tech reported this information to Ms. Johnson on April 22, 2016 (email attached).

Nest 2016\_24 is located 0.2 mi outside the Project Area boundary and 0.6 mi from the nearest turbines (#52 and #53).



CONFERENCE CALL NOTES  
BRADY II WIND PROJECT  
APRIL 12, 2016

**In attendance:**

- Kimberly Wells, NextEra
- Melissa Hochmuth, NextEra
- Kevin Shelley, U.S. Fish and Wildlife Service (USFWS)
- Mark Martell, Tetra Tech
- Chris Farmer, DNV GL

**Background**

The purpose of the call was to provide information to the USFWS regarding the recently discovered golden eagle nest (2015\_39) just south of the southern boundary of the proposed Brady II project and receive feedback regarding next steps.

A golden eagle was found incubating in a small stick nest (2015-39) located in a tree just south of the proposed Brady II boundary during spring aerial raptor nest survey (March 29-30) conducted by Tetra Tech. The nest was first discovered in fall 2015 and based on overall size and shape along with stick size was classified as a small raptor (red-tailed hawk or ferruginous hawk) nest.

**Monitoring**

- Tetra Tech has conducted ground-based monitoring of the nest
- Golden eagle sitting (incubating posture) on the nest
- Observed nest exchanges between male and female eagles.
- Biologists are mapping flight paths associated with the nest, and flights observed thus far have been to the South-southeast.

**Local Prey Resource Availability**

DNV GL/NextEra provided a description of prey resource inventory efforts and findings to date:

- Prairie dog towns – locations mapped and activity noted, but areal extent not known
- Mapping of land parcels belonging to cattle operations conducted
- Winter aerial surveys of ungulates conducted – looking for concentration areas



### **Avoidance Measures**

- NextEra described willingness to commit to the ½ -mile nest buffer recommended by NDGF, and asked for Mr. Shelley's thoughts regarding this.
- NextEra asked if it would be beneficial to move or remove the nest in this situation

### **Feedback from Kevin Shelley:**

- Should look to prey resources to help understand flight patterns and predict additional movements
- NDGF wildlife staff did a modeling effort for deer fawning areas focusing on woody draws, which could prove helpful in predicting deer natal areas here; they may also have data regarding the location of traditional natal areas for deer and pronghorn. The contact would be Jeb Williams, Chief of the Wildlife Division – 701-328-6686.
- Nest buffer size is variable and depends on space use; however he suggests using a 2-mile buffer as a starting point. The appropriate buffer may be larger or smaller, depending on movements of birds and location of prey resources.
- He has no inherent reservations about a smaller buffer, but thinks it needs to be based on information from the site
- Noted that juvenile mortality is the primary problem for golden eagles in ND, and most of the mortality comes from interaction with anthropogenic factors.
- There are permits that allow for nest removal, but the practice is generally frowned upon and discouraged
- There is uncertainty regarding the continued viability of a relocated nest
- Suggests increasing effort at nest observations to have a biologist follow adults when they leave the nest to identify prey resource locations – if artificial nest platforms are added, they may be most likely to succeed if located between current nest and prey areas
- He will ask for input from Migratory Birds regarding nest move or alternate nest platforms.

### **Action Items**

- NextEra/Tetra Tech will follow-up with Mr. Williams of NDGF regarding ungulate study.
- NextEra/Tetra Tech will develop a protocol for extended monitoring the nest which will include attempts to determine foraging areas and extend through nestling fledging.
- USFWS will contact Migratory Birds office to get their input regarding nest removal or relocation and alternate nest platforms

## Brian R. Bjella

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**From:** Martell, Mark <Mark.Martell@tetrattech.com>  
**Sent:** Thursday, April 21, 2016 11:25 AM  
**To:** Johnson, Sandra K.; Low, Tara  
**Cc:** Wells, Kimberly; Young, Rich  
**Subject:** RE: Raptor Nest in Brady Wind Project  
**Attachments:** RTHA nest 46.6N\_102.7W\_TetraTech.JPG

Sandy,

Thank you for providing us with the report of a raptor nest located at: 46.626939 -102.710975.

Tetra Tech/NextEra had a biologist observe the site from a public roadway and he was able to confirm the presence of a nest at that location. The biologist was able to positively identify an incubating dark phase red-tailed hawk at the nest. He saw this bird leave the nest for a short period and return – allowing him to confirm his identification. He also observed a second red-tailed hawk flying in the vicinity of the nest.

I have attached a photo of the nest taken through a spotting scope.

### **Mark Martell | Senior Ecologist**

Direct: 612-643-2245 | Cell: 612-961-3926

[mark.martell@tetrattech.com](mailto:mark.martell@tetrattech.com)

### **Tetra Tech, Inc. | Sciences**

350 Indiana St., Suite 500, Golden, CO 80401

and

2001 Killbrew Dr. Suite 141, Bloomington, MN 55425

[www.tetrattech.com](http://www.tetrattech.com)

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**Think Green - Not every email needs to be printed.**

**From:** Johnson, Sandra K. [mailto:sajohnson@nd.gov]  
**Sent:** Monday, April 18, 2016 4:06 PM  
**To:** Low, Tara <tara.low@tetrattech.com>; Martell, Mark <Mark.Martell@tetrattech.com>  
**Subject:** Raptor Nest in Brady Wind Project

Hi Tara and Mark,

There is another nest within the footprint of the Brady Wind project that was not included in the data Anne-Marie sent. It is located at: 46.626939 -102.710975. One of the local landowners had seen a large raptor in it last week and over the weekend another landowner believes he saw a golden eagle in it. Do you still have surveyors in the area that could confirm the status of this nest?

Thanks,  
Sandy

*Sandy Johnson  
Conservation Biologist  
North Dakota Game and Fish Department  
100 N. Bismarck Expwy.  
Bismarck, ND 58501-5095*

