

PECFN UPDATE – January 13, 2014

(Presentation to Prince Edward County Council)

In August, Gilead Power and the Ministry of the Environment appealed the Environmental Review Tribunal decision which revoked the approval of the wind project at Ostrander Point Crown Land.

An appeal of a Tribunal decision can only be based on perceived legal errors. In their appeals, Gilead and the MOE say that the Tribunal erred in not recognizing the precedence of the Endangered Species permit to harm and kill the Blanding's turtle.

In addition, Gilead Power and the MOE recently made a late motion to the Court to present 'New Evidence' in its appeal. The 'new evidence' consists of an agreement by the MNR to lease Gilead the land on which they will construct the access road. The lease will allow Gilead to close the road to public traffic from May to October. PECFN will deny permission for the inclusion of the so-called 'new evidence'

Gilead has been trying to frame the Tribunal decision as only concerned with road mortality to the turtle and this is why it is important for us to inform the Court that the Tribunal's finding was much broader. The Tribunal found that the company's proposed mitigation measures were totally inadequate on the site as well as on the so-called 'compensation property' (the other half of the Blanding's turtle habitat that Gilead purchased in 2010).

The Endangered Species Act allows harm to an endangered species if the proponent provides an 'overall benefit' to the species. Gilead proposes that by purchasing the other half of the habitat of Ostrander Point's population of Blanding's turtles and studying their adaptation [and decline] the company will be providing an overall benefit to the species. Gilead's information says, "The MNR, which is the body with jurisdiction in this area, decided that the best way to help Blanding's turtles was to permit some of them to be killed at Ostrander Point."

PECFN maintains that the Tribunal was correct in finding that the effects of the construction of this project on the turtle cannot be mitigated. Blanding's turtles are known to travel widely, up to 6 km, in their foraging, mating and nesting activities. In spring they will leave the overwintering pond in the southern part of Ostrander Point and roam through the wetlands of the site and surrounding areas. A female must live 25 years before she will lay eggs, many of which will not survive due to high predation. The survival rate of young turtles is, similarly, poor. The population at Ostrander Point has been stable because of the conditions of this remote South Shore Important Bird and Biodiversity Area. Unmaintained roads have curtailed the mortality rate for this species and others on the threatened species list, such as the Common Musk turtle, Map turtle, Milk snake, and the Western Chorus frog.

The South Shore IBA has been invaluable as a crucial stop to rest and feed for millions of birds migrating every spring over Lake Ontario on their way to nest in Canada's Boreal Forest. In fall it is the staging area for those birds and their offspring as well as thousands of raptors waiting to cross the lake as well as for bats (in severe decline with White Nose disease) and Monarch butterflies who can find the milkweed and nectar sources along the south shore that they have lost elsewhere from widespread pesticide use.

All these creatures depend on this imperilled Alvar site in the centre of the last undeveloped wildlife habitat on the northern shore of Lake Ontario. This is why PECFN will be defending the Tribunal decision on Blanding's Turtle and also asking the Divisional Court to extend legal protection to the Alvar and birds.

The significance of this first successful appeal of Ontario's Renewable Energy Act on environmental grounds and the Tribunal's first revocation of an approval has likely alarmed the turbine industry that thought it had been given carte blanche access to Crown land throughout Ontario. Wind energy companies have also been included on the list of industries recently granted exclusion from the provisions of the Endangered Species act.

The Canadian Wind Energy Association (CanWEA) has applied for intervenor status at the Court to express its members' fears about the risks to their industry. They will presumably be making the case that their industrial developments should not be restricted to farm fields and brownfields but allowed access to every last scrap of remaining significant wildlife land or their profits will not keep growing.

For instance, in its application for tenure over the access road, Gilead expressed as its reasons: its investments, future financing, legal control over access to its turbines and potential liability to the company and MNR. None of these reasons show any concern for the welfare of the turtle.

In order to defend the Tribunal decision we are continuing to fundraise. We co-sponsored the award winning film Watermark at the Regent Theatre. It showed the importance of preserving water and wetlands around the world. Such as the wetlands which make Prince Edward County so rich in natural heritage. We have also joined other groups to seek conservation status for the South Shore IBA. We hope to work with government bodies at all levels to save our significant wildlife habitats as many other governments are doing around the world.

We will continue to keep you updated on this fiasco as we go into our second year fighting to Save Ostrander Point.