

1 STATE OF NEW HAMPSHIRE
2 SITE EVALUATION COMMITTEE

3 March 13, 2009 - 10:08 a.m.
4 Public Utilities Commission
21 South Fruit Street DAY 4
5 Concord, New Hampshire
6

7 In re: SITE EVALUATION COMMITTEE:
8 SEC DOCKET NO. 2008-04:
9 Application of Granite Reliable
10 Power, LLC, for a Certificate
11 of Site and Facility for the
12 Granite Reliable Power
13 Windpark in Coos County, New
14 Hampshire.

15 PRESENT: SITE EVALUATION COMMITTEE:
16 Thomas B. Getz, Chrmn. Public Utilities Commission
(Chairman of SEC Subcommittee - Presiding)
17 Donald Kent Dept. of Resources & Econ. Dev.
18 Glenn Normandeau, Director Fish & Game Department
19 Robert Scott, Director DES - Air Resources Division
20 Christopher Northrop N.H. Office of Energy & Planning
21 William Janelle Dept. of Transportation
22 Michael Harrington Public Utilities Commission

23 * * *

24 Counsel for the Committee: Michael J. Iacopino, Esq.

COURT REPORTER: Steven E. Patnaude, LCR No. 52

1 APPEARANCES:

2 Reptg. Granite Reliable Power, LLC,
3 and Noble Environmental Power:
4 Douglas L. Patch, Esq. (Orr & Reno)
Susan S. Geiger, Esq. (Orr & Reno)

Reptg. Counsel for the Public:
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 Senior Assistant Atty. General
 New Hampshire Dept. of Justice

6

7 Reptg. N. H. Fish & Game Division:
 Evan Mulholland, Esq.
 Assistant Atty. General
 New Hampshire Dept. of Justice

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9 Reptg. the Appalachian Mountain Club:
 David Publi cover
 Kenneth Kimball

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11 Reptg. Industrial Wind Action Group:
 Lisa Li nowes

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P R O C E E D I N G S

CHAIRMAN GETZ: Okay. Good morni ng,
everyone. We're back on the record in Site Evaluati on
Commi ttee Docket 2008-04, concerning the Appli cation for a
Certi ficate of Site and Faci lity by Grani te Reli able
Power. I'll note for the record that all seven members of
the Subcommi ttee are present thi s morni ng. And, let's
take appearances please.

MR. PATCH: Good morni ng. Doug Patch
and Susan Geiger, on behal f of the Appli cant.

CHAIRMAN GETZ: Good morni ng. Mr.
Mul hol l and.

MR. MULHOLLAND: Evan Mul hol l and, from
the AG's Offi ce, on behal f of Fi sh & Game.

CHAIRMAN GETZ: Good morni ng.

MR. MULHOLLAND: Good morni ng.

MR. ROTH: Good morni ng. Peter Roth,
Counsel for the Publ ic.

CHAIRMAN GETZ: Good morni ng.

20 DR. PUBLICOVER: David Publicover and
21 Ken Kimball for the Appalachian Mountain Club.

22 CHAIRMAN GETZ: Good morning, everyone.
23 Okay. I've been informed by Counsel to the Committee that
24 Ms. Keene is ill and will not be available today. So, the
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1 plan from two days ago had been to start with her, and
2 then return to the panel of Lyons, Gravel, and Pelletier,
3 to provide opportunity for cross-examination with respect
4 to the high level mitigation issues, including the
5 Settlement Agreement. So, let's get the panel back and
6 seated. And, then, my expectation, after that, would be
7 to turn to the Staats and Kelly panel, opportunity for
8 cross, including issues with respect to the Settlement
9 Agreement, and then to Dr. Publicover on the same issues.

10 And, I had also discussed the other day,
11 Mr. Roth, about the Mariani/Sanford panel, and the notion
12 was that they could be available in the afternoon. So, my
13 hope would be to end by 5:00 today. And, I guess it just
14 kind of -- if we can get at least a session in with
15 Mariani and Sanford, I'd like to do that today. But, I
16 don't know, I guess we'll have to see this morning how
17 quickly we go through these issues. And, I don't have a
18 good feel for what the extent of cross is, especially
19 since Ms. Linowes isn't present at the moment. Do we --

20 MR. IACOPI NO: I have not heard from
21 her.

22 CHAIRMAN GETZ: Okay.

23 MR. ROTH: She could be driving around
24 looking for a place to park. The lot was full.

[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 CHAIRMAN GETZ: That's right, there are
2 several meetings going on here today.

3 MR. ROTH: It was really full.

4 MR. IACOPI NO: She also may have assumed
5 that Ms. Keene was going first, and she indicated she had
6 no cross-examination for Ms. Keene. I'm sorry, Steve.

7 CHAIRMAN GETZ: Okay. All right. Well,
8 then let's proceed. I'll remind the members of the panel
9 that you're already sworn in. So, let's I guess open it
10 up. Are there questions for the panel from Dr.
11 Publi cover?

12 DR. PUBLICOVER: Yes, I do have some.

13 STEVEN PELLETIER, Previously sworn

14 ADAM GRAVEL, Previously sworn

15 MARK LYONS, Previously sworn

16 CROSS-EXAMINATION (resumed)

17 BY DR. PUBLICOVER:

18 Q. First, for Mr. Lyons, the first question is, can you
19 confirm the statement that Mr. Lobdell made during his
20 cross-examination on Wednesday that "the entire
21 wetlands mitigation parcel will be transferred in fee
22 to state ownership"?

23 A. (Lyons) Yes, that's correct. And, it's included in the
24 High Elevation Settlement Agreement.

[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 Q. Okay. Now, I'd like to ask just a few questions about
2 the regulatory environment in which -- that existed
3 during the process of our settlement discussions. So,
Page 6

- 4 in your supplemental testimony, which is Petitioner's
5 Exhibit 2.1, you state that you are "responsible for
6 the development of the Granite Reliable Windpark", is
7 that correct?
- 8 A. (Lyons) Yes.
- 9 Q. Okay. And, you are a lawyer, is that correct?
- 10 A. (Lyons) Yes.
- 11 Q. Okay. So, would your responsibilities include being
12 familiar with the laws and regulations in New Hampshire
13 governing wind power development?
- 14 A. (Lyons) To some extent, certainly. We have other
15 attorneys in New Hampshire as well.
- 16 Q. Now, during the -- sort of the early stages, during the
17 site selection process, you consider such things as the
18 wind resource, the availability of land, access to
19 roads and transmission capacity, correct?
- 20 A. (Lyons) Yes.
- 21 Q. Okay. And, is it fair to say that, for these factors,
22 you have a fairly clear and well-defined understanding
23 of what is necessary for a successful project?
- 24 A. (Lyons) Yes.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 Q. Okay. Now, regarding Project impacts on the natural
2 environment, scenic quality, and other public values,
3 is it your understanding that the primary guidance is
4 provided by New Hampshire RSA 162-H:16-c, which
5 requires the Committee to find that the project will
6 not have an unreasonable adverse effect on aesthetics,
7 historic sites, air and water quality, the natural
8 environment, and public health and safety?

- 9 A. (Lyons) Yes, that's my understanding.
- 10 Q. Okay. Would you agree that this provision is fairly
11 general, and that reasonable people could come to
12 different conclusions regarding whether it has met,
13 given the same set of facts?
- 14 A. (Lyons) That's possible.
- 15 Q. Okay. Would you agree that commercial wind power
16 development involves some unique issues that are not
17 shared by other more common types of development with
18 which regulatory agencies may have more experience?
- 19 A. (Lyons) Yes.
- 20 Q. Okay. Would you agree that, when it comes to
21 evaluating the unique impacts of wind power
22 development, in relation to 162-H:16-c, that there's
23 limited precedent or specific guidance that developers
24 at the SEC, State agencies, and stakeholders can turn
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 to?
- 2 MS. GEIGER: Excuse me, Mr. Chairman.
- 3 I'm going to object to this question. I think it's
4 calling for a legal conclusion from the witness. I don't
5 believe that he's prefiled testimony on this point, so I'm
6 questioning the scope of this cross. I don't believe Mr.
7 Lyons testified about this information that he's being
8 asked about now.
- 9 CHAIRMAN GETZ: Dr. Publicover.
- 10 DR. PUBLICOVER: Well, I'm just trying
11 to give the Committee a sense as to what guidance existed
12 in state statute or regulation as to how to proceed with
13 the issue and what -- how the parties understood what

14 might be necessary for mitigation. Because I think the
15 potential for varying interpretations of what might be
16 necessary, with regard to mitigation, sort of explain the
17 different approaches that the parties -- or, the different
18 understanding that the parties came to with regard to
19 this.

20 MR. ROTH: Mr. Chairman, I'd also add
21 that the witness is an attorney, and he did just testify
22 that he was familiar with state laws that respect this
23 issue.

24 CHAIRMAN GETZ: That's where I was
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

11

1 headed, Mr. Roth. We'll permit this line to continue.

2 DR. PUBLICOVER: Okay.

3 BY DR. PUBLICOVER:

4 Q. Okay. So, again, would you agree that, when it comes
5 to interpreting this provision, 162-H:16-c, with
6 regards to wind power development, that there really is
7 little -- limited precedent or specific guidance as to
8 how it should be interpreted?

9 A. (Lyons) Yes, I think it's probably appropriate for me
10 at this point to qualify my answer that "I am an
11 attorney" by saying I am not licensed to practice law
12 in the State of New Hampshire. And, I don't profess
13 that my understanding of New Hampshire law in any
14 matter is comprehensive.

15 Q. Okay.

16 A. (Lyons) And, in answer to your question, I guess I
17 would say that my -- I would guess, I'm not familiar
18 with the entire body of law underlying certificates

19 granted by this Committee either, but I would guess
20 that, in the various cases that have been considered
21 and decided by this Committee, there are analogous
22 impacts from a variety of different types of
23 facilities. So, I don't really have any view as to
24 whether the Committee had, you know, sufficient

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 precedent to make decisions with regard to wind power
2 facilities.

3 Q. Okay. But, in the process of understanding how New
4 Hampshire law guides wind power development, are you
5 aware of any provisions of New Hampshire law, a
6 regulation, rule or policy, that provide more specific
7 standards or guidance regarding what types of sites are
8 suitable for development, what constitutes an
9 unreasonable adverse effect, or what type of mitigation
10 should be required to compensate for the unavoidable --

11 A. (Lyons) As a matter of law?

12 Q. Anything in law, regulation, rule or policy that the
13 parties can turn to that says "this is the type of
14 mitigation that should be provided."

15 A. (Lyons) Not to my knowledge.

16 Q. Okay.

17 A. (Lyons) Oh, except with regard to specific impacts,
18 such as wetlands, for example.

19 Q. Yes. Granted. Now, would you agree that sort of the
20 precedents and specifics of how 162-H:16-c should be
21 interpreted for wind power projects are essentially
22 being developed on a case-by-case basis as the initial
23 projects enter into the regulatory process?

24 MS. GEIGER: Excuse me, Mr. Chairman.
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 I'm going to objection again. And, I apologize to Dr.
2 Publicover. But I believe the witness has already
3 testified that he's not a New Hampshire attorney and that
4 he's not familiar with those precedents. So, I'm not sure
5 where this line is going.

6 DR. PUBLICOVER: And, again, I'm just
7 trying to make the point that, as we develop this
8 mitigation plan, there was no clear and specific guidance
9 from state law and policy that told us how it should be
10 approached.

11 WITNESS LYONS: I would agree with that,
12 with regard to the issue of impacts on high elevation.

13 BY DR. PUBLICOVER:

14 Q. Okay. So, you agree we were operating in an
15 environment in which there was some amount of
16 regulatory uncertainty regarding impacts on
17 high-elevation environments?

18 A. (Lyons) I was neither cognizant of that or not. I
19 mean, it frankly wasn't an issue. I confess that we
20 took our guidance on what was appropriate here from the
21 New Hampshire Fish & Game Department staff and from the
22 Appalachian Mountain Club, who are the other parties to
23 this Agreement.

24 Q. Okay. Were you surprised that there was such a wide
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 difference of opinion between GRP on one side and New

2 Hampshire Fish & Game, AMC, and other parties on the
3 other side, as to what constitutes an "unreasonable
4 adverse effect" and how the project should be
5 mitigated?

6 A. (Lyons) Was I surprised at that? I didn't really have
7 any view about that. I think we -- I think we'd need
8 to talk about specific issues. You know, on what
9 particular point are you referring to?

10 Q. Again, --

11 A. (Lyons) I'm quite sure that we didn't disagree
12 dramatically on everything.

13 Q. No.

14 CHAIRMAN GETZ: Well, Dr. Publicover, it
15 seems to me that we're pursuing the same line of inquiry,
16 getting back to one of your earlier questions about "are
17 these topics on which reasonable people can differ?" And,
18 is this --

19 DR. PUBLICOVER: I just have two, two
20 final questions.

21 BY DR. PUBLICOVER:

22 Q. Would you agree that, as a general rule, regulatory
23 uncertainty can create problems for developers?

24 A. (Lyons) It can create challenges.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 Q. Okay. And, as a developer, do you think it would be
2 beneficial to have clearer guidance as to things such
3 as how "unreasonable adverse effect" is defined and
4 what type of mitigation is appropriate to compensate
5 for unavoidable impacts?

6 A. (Lyons) As long as that guidance was reasonable and

7 rational.
8 Q. Okay. Thank you. That's all on that line of
9 questioning. And, a few questions for Mr. Pelletier
10 and Mr. Gravel. And, I guess I'll address them to Mr.
11 Pelletier, since he is the more senior witness. And,
12 these questions are intended to help the Committee
13 understand why the parties believe that this mitigation
14 package is appropriate. You've read the Settlement
15 Agreement, I assume?

16 A. (Pelletier) Yes, I have.

17 Q. All right. Now, the Settlement Agreement, one of the
18 certain statements in here, it says "Whereas the
19 development of the Windpark will involve construction
20 of wind turbines and access roads in certain areas
21 above 2,700 feet in elevation encompassing
22 high-elevation spruce-fir habitat, which is recognized
23 in the state Wildlife Action Plan as a limited habitat
24 of particular importance and sensitivity." Do you

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 agree with that statement?

2 A. (Pelletier) Yes.

3 Q. Okay. And, it states "Whereas the Parties agree that
4 Mount Kelsey and Dixville Peak encompass high-elevation
5 ecosystems of particularly high quality, and that
6 development of the Windpark will impact these habitats
7 and wildlife species of conservation concern that are
8 known to or may potentially utilized them, including
9 but not limited to American marten, Bicknell's thrush,
10 three-toed woodpecker and Canada Lynx." Do you agree
11 with that statement?

- 12 A. (Pelletier) Yes.
- 13 Q. Okay. And, it states "Whereas the Parties agree that
- 14 in order to balance the impacts to high-elevation
- 15 habitat created by project development on Mount Kelsey
- 16 and Dixville Peak significant compensatory mitigation
- 17 is warranted and necessary, and that such mitigation
- 18 should focus on the permanent protection of
- 19 high-elevation habitats and research into the effects
- 20 of windpark development and operation on wildlife
- 21 species of concern." Do you agree with that statement?
- 22 A. (Pelletier) I don't disagree with that.
- 23 Q. Okay. And, the material in your supplemental prefiled
- 24 testimony, which is in Petitioner's Exhibit 14, is
- {SEC 2008-04} [Day 4] {03-13-09}

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 consistent with those statements?
- 2 A. (Pelletier) As I understand it, yes.
- 3 Q. All right. So, recognizing that you do not agree with
- 4 everything in my testimony or that of Mr. Staats or Ms.
- 5 Kelly, do you believe that there was a legitimate basis
- 6 for the concerns expressed by us regarding the impacts
- 7 or potential impacts of the development?
- 8 A. (Pelletier) I think the process ran its course. And,
- 9 that each of the parties I think put a best faith
- 10 effort here in how they understand the value of those
- 11 resources up there. We had the opportunity to spend a
- 12 great deal of time out there, and have had the
- 13 opportunity to look at other similar projects. And, I
- 14 can also understand there was some discourse on the
- 15 values of the difference between a first -- "spruce-fir
- 16 community" and a "fir community", and making sure that

17 we're all talking the same language here. But, in
18 general, I'm not really surprised that there was some
19 discussion about the values of that and what the real
20 impacts were.

21 Q. Okay. Now, much of your supplemental testimony is
22 focused on the adverse impacts of timber harvesting, as
23 compared to the impacts that would be created by the
24 Project, is that correct?

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

18

1 A. (Pelletier) That's correct.

2 Q. And, I assume you're not condemning all timber
3 harvesting as environmentally destructive, is that
4 correct?

5 A. (Pelletier) I'm a forester. I would encourage proper
6 -- proper silviculture and proper forest management.

7 Q. Okay. But the harvesting in mature high-elevation
8 forests is a particular concern because this habitat is
9 quite uncommon, and it's particularly important for
10 several rare species, correct?

11 A. (Pelletier) The habitat is important. I'll leave it at
12 that.

13 Q. But that's why the concern about harvesting is
14 particular to high-elevation forests?

15 A. (Pelletier) And properly so. How you manage those
16 forests and the prescriptions in what you're managing
17 for is always a point of contention.

18 Q. And, is it correct to say that protecting over
19 1,700 acres of high-elevation forest, as well as the
20 additional land that will be protected by the funding
21 provided, will increase the habitat value of these

22 areas, both by preventing the loss of existing mature
23 forests through future harvesting and by allowing the
24 long-term restoration of recently harvested forests to
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 a more natural condition?

2 A. (Pelletier) There is great value in that Settlement
3 Agreement.

4 Q. Okay. Again, so, it's correct to say that the
5 increased habitat value that will result from this
6 mitigation provides the necessary balance to the
7 unavoidable impacts created by the development?

8 A. (Pelletier) Yes. And, that's -- again, I agree with
9 where we stand today with this Settlement Agreement,
10 and recognizing the long-term benefits of avoiding the
11 unknowns of the forest management that could occur up
12 there, and the type of management that's kind of
13 traditionally occurred would have greater impact on the
14 species that we've been talking about. Whether it's
15 Bicknell's thrush that like some opening or pine marten
16 that like denser canopies. So, the value of this
17 particular Settlement Agreement, in these stands, is a
18 positive thing.

19 Q. And, would you agree that, without adequate mitigation,
20 the Project would have a net negative effect on
21 habitats?

22 A. (Pelletier) I'm still not -- I don't necessarily agree
23 with that broad statement, because the -- because of
24 the past influences of that natural community up there,

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 and if -- and you can go back and you can look at the
2 1986 aerial photos of the extent of cutting, and how
3 those areas would come back. And, again, the whole
4 nature of that -- particularly that fir, of how -- I
5 agree with the back-and-forths that we had during our
6 testimony and the correspondence about whether it's a
7 primary forest or old-growth, I would agree that it's a
8 relatively low commercial value, and that it's not
9 something that, you know, that you've typically seen a
10 lot of real extensive timber harvesting pressure, but
11 that those things change over time, but the resilience
12 of that particular community, how quickly it comes
13 back, is something that I don't think was given enough
14 credit. And, the fact that you have a relatively
15 limited road system and a pad, and then protection
16 measures surrounding that, that ultimately the same
17 species that are up there now would continue to
18 persist, if not, you know, easily maintain themselves
19 over time.

20 So, at the end of the day, though, do I
21 like this, the package that we've got, in terms of its
22 ultimate value? Yes, because I do believe it's going
23 to take out the question of how other portions of that
24 mountain will be managed over the long term.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 Q. Okay. But would you agree that, in terms of overall
2 habitat value, the habitat value would be greater with
3 the Windpark and the mitigation, as compared to no
4 Windpark and no mitigation?
5 A. (Pelletier) Absolutely.

- 6 Q. All right. Thank you. And, do you believe it is
7 appropriate to include the provisions of the Agreement
8 as conditions of the Certificate?
9 A. (Pelletier) I don't know how we can get around that.
10 Q. All right. Thank you. And, again, I just want to make
11 one last thing clear. As you -- just to confirm, that
12 you confirm that, as stated in the "whereas" statement,
13 that the -- that the "mitigation is warranted and
14 necessary?
15 A. (Pelletier) I'm comfortable with the way the statement
16 was -- the way this process come out and the statements
17 that are on there. So, the fact -- I have a personal
18 opinion that the "necessary" is a strong term. But
19 I'm, again, very happy with the package that's been put
20 together and the amount of land that's been preserved
21 on top of that mountain.

22 DR. PUBLIC COVER: Okay. No further
23 questions.

24 CHAIRMAN GETZ: Thank you.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

22

- 1 Mr. Mulholland.
2 MR. MULHOLLAND: Thank you, Mr.
3 Chairman. I have just a few questions for either Mr.
4 Pelletier or Mr. Gravel.
5 BY MR. MULHOLLAND:
6 Q. Can you look at Page 19 of your supplemental testimony?
7 MR. IACOPI NO: That would be Petitioner
8 2.1, which is marked as "Volume 1a", and it's Tab (f).
9 BY MR. MULHOLLAND:
10 Q. You testified that the "road along the ridgelines will

- 11 be revegetated with endemic tree species". Which
12 endemic tree species?
- 13 A. (Pelletier) I think the strong preference would be for
14 balsam fir because of just how naturally it grows, and
15 it's almost hard to keep that species from trying to
16 regrow in open areas. And, the fact that it,
17 obviously, does very well up there.
- 18 Q. Would it be helpful to plant some seedlings, and maybe
19 along the Kelsey Ridge?
- 20 A. (Pelletier) I think the -- you know, with limited
21 soils, the amount of organic material that you've got,
22 the issues of frost, and planting things like putting
23 seedlings in ground, you'd probably have a lot of
24 success, but a lot of mortality as well. I mean,

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 seeding would be a more -- probably a more efficient
2 way of getting a greater number of individuals going
3 over a shorter period of time.
- 4 Q. You mean putting down fir seeds, is that what you're
5 talking about?
- 6 A. (Pelletier) Well, in a lot of respects, I mean, it's a
7 very proficient -- but it's a plant that produces -- a
8 tree that produces a lot of seed. You know, if you can
9 jump-start that in any way, that's great. Provided,
10 you know, they get -- they just need good rooting
11 substrate, that's relatively kept moist, and, well, it
12 doesn't need to be that deep, a couple of inches.

13 MR. MULHOLLAND: Thank you.

- 14 CHAIRMAN GETZ: Mr. Roth. And, I would
15 just note for the record that Ms. Linowes is here. And,

16 Ms. Linowes, that you would fall Mr. Roth in your
17 questioning, before we have questions from the Committee.

18 MS. LINOWES: Thank you, Mr. Chairman.
19 My apologies to all of you for my delay.

20 CHAIRMAN GETZ: Mr. Roth.

21 BY MR. ROTH:

22 Q. I guess the first question I have isn't really for
23 anybody in particular, but I suppose Mr. Lyons would be
24 probably the most appropriate person to answer it.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 It's my understanding in looking at this agreement that
2 the terms or the performance of the Applicant, with
3 respect to providing lands and money to the Fish & Game
4 Department, does not -- is not triggered until it
5 wishes to commence construction above 2,700 feet, is
6 that correct.

7 A. (Lyons) That is correct.

8 Q. And, does that mean that the Project could commence
9 construction in significant ways up to the 2,700-foot
10 line, without doing anything with respect to the deeds
11 or the cash that's promised to the Fish & Game
12 Department?

13 A. (Lyons) That is correct.

14 Q. And, can you tell us what -- what is the payment date,
15 and I understand that you probably don't have a
16 calendar date for it, but is there a way to compute the
17 payment date for the cash payment that's owed to the
18 Fish & Game Department?

19 A. (Lyons) There's no way to precisely compute or fix the
20 date. But it would be a date prior to commencement of

21 construction activities above 2,700 feet, on Mount
22 Kelsey or Dixville Peak.

23 Q. Okay. And, would you give the same answer with respect
24 to the delivery of deeds to the Fish & Game Department
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

25

1 for the mitigation lands?

2 A. (Lyons) Yes.

3 Q. Okay. Now, the Agreement provides that there are
4 options that Granite Reliable has obtained from the
5 landowners. Can you tell us which landowners?

6 A. (Lyons) Yes. There are two. One is Bayroot, LLC, and
7 the other is Kennebec West Forest, LLC.

8 Q. Okay. And, have you provided copies of those options
9 to any of the parties in this case?

10 A. (Lyons) I don't believe so.

11 Q. Okay. And, are you prepared to do that?

12 A. (Lyons) Yes.

13 Q. Okay. Now, turning to -- in the Agreement, it says "If
14 the land is", and that is the Retained Land, and what I
15 understand the "Retained Land" to be is the areas on
16 Mount Kelsey where the Project road and turbine pads
17 will be constructed. Is there more than that in the
18 "Retained Land" definition?

19 A. (Lyons) Yes. There is a margin around those
20 facilities, that is defined as a radius of 500 feet
21 around each wind turbine tower, and a width of 75 feet
22 in both directions from the center line of each access
23 road.

24 Q. Okay. So, those areas will not be deeded to the Fish &
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 Game Department?
2 A. (Lyons) Not initially, no.
3 Q. Okay. And, what is the purpose for having those
4 margins?
5 A. (Lyons) The purpose is several-fold. When our
6 discussions with the landowners, to summarize, it's to
7 address concerns of the landowners, and anticipated
8 concerns of the Project Lenders and investors. And,
9 when we, with regard to the landowners, when -- it was
10 clear in our discussions with the other parties to this
11 Agreement that there was a preference to have fee title
12 conveyances of the land, rather than conservation
13 easements, if possible. So, we pursued that
14 possibility with the landowner, and we were successful.
15 But, in doing so, the landowner's concern about having
16 a comfortable margin around the facilities within which
17 that, you know, that would not be deeded over
18 initially, was -- they expressed that concern. And,
19 so, we agreed that we would -- that we would retain,
20 for their ownership, a margin around the facilities
21 that coincided with the lease hold under our ground
22 lease with them. So, this is -- this Retained Land
23 margin is the land that GRP is leasing from Bayroot,
24 for example.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 The concerns that we anticipated from
2 investors and lenders was simply that, in the case that
3 a turbine fell over, for example, it does happen

- 4 occasionally, that it would happen, you know, not on
5 Fish & Game property, but on our lessors' property.
6 So, it was a margin that seemed prudent from the
7 perspective of a number of parties.
- 8 Q. Do you intend to clear trees and conduct earthwork or
9 excavation in that margin?
- 10 A. (Lyons) Our proposal is to conduct earthwork and
11 clearing only in accordance with the Certificate as
12 approved and conditioned by this Committee, in
13 accordance with the plans that we've submitted. And,
14 beyond that, between there and the edge of the Retained
15 Lands, we have no plan whatsoever to do any clearing.
16 And, the Agreement itself does prohibit commercial
17 timber harvesting within that, within the Retained
18 Lands. Tree-clearing is allowed under this only for
19 the purpose of constructing and maintaining the
20 Windpark.
- 21 Q. Okay. Now, if and when the Retained Land is abandoned
22 by the landowner for wind energy production, the
23 Agreement provides that it's going to be conveyed to, I
24 assume, the Fish & Game Department, is that correct?

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 Or, is it going to be re -- conveyed to the GMO and
2 Bayroot?
- 3 A. (Lyons) Well, the ownership will be retained by GMO and
4 Bayroot. And, at that point in time, when it is
5 permanently abandoned by the landowner for wind energy
6 purposes, it would be conveyed to Fish & Game.
- 7 Q. Okay. I'm looking at Paragraph 6 of the Agreement.
8 And, I guess I'm a little bit confused about who the

- 9 landowner is and who the owner is in that paragraph.
10 Can you help us out with that? What is meant by
11 "landowner" in the first line of Paragraph 6?
- 12 A. (Lyons) The word "landowner" there refers to the then
13 current owner of the Retained Land, which would be
14 either GMO or Bayroot, or their grantees, successors in
15 interest.
- 16 Q. Okay. And, in the second line, it refers to "the
17 owner" --
- 18 A. (Lyons) "The owner of the adjoining high-elevation
19 lands", which at that point in time presumably would be
20 Fish & Game.
- 21 Q. Okay. Now, when and if there is a conveyance for the
22 purpose of perpetual conservation, is there anything in
23 this agreement that requires the Applicant or the owner
24 of the Windpark, I guess at that point, to deliver the
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 property essentially broom-clean, that is, you know,
2 turbines removed, roadways removed? Is there any
3 requirement like that in this Agreement?
- 4 A. (Lyons) Not in this Agreement. That would be contained
5 in the Decommissioning Plan.
- 6 Q. Okay. Is there anything in this Agreement that
7 provides for a backstop of the Decommissioning Plan, in
8 the event that, for example, and, you know, we talked
9 earlier about the "perfect storm" situation. You know,
10 where there's a bankruptcy and a hurricane. And, is
11 there anything in here that provides for the Fish &
12 Game Department, in the event that there is no
13 Decommissioning Fund, and there is a delivery to the

- 14 Fish & Game Department under the terms of this
15 Agreement?
- 16 A. (Lyons) Is there any -- I'm sorry, I didn't understand
17 the question. Is there any provision for what?
- 18 Q. A couple of days ago we spoke about a hypothetical
19 where the Decommissioning Fund is not funded, correct?
- 20 A. (Lyons) Yes. Right.
- 21 Q. And, as currently proposed, the Applicant's
22 Decommissioning Plan is not to be funded -- to begin to
23 be funded until year ten, is that correct?
- 24 A. (Lyons) Correct.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 Q. If, for example, the terms of Paragraph 6 were to
2 become operative in year nine, --
- 3 A. (Lyons) Right.
- 4 Q. -- is there anything in this Agreement which provides
5 for the owner of the Windpark to essentially perform
6 decommissioning activities on the Retained Land?
- 7 A. (Lyons) Not in this Agreement, no.
- 8 Q. Is there any other agreement that provides for that?
- 9 A. (Lyons) Presumably, that will be a Certificate -- a
10 condition of the Certificate that would reflect an
11 agreement between the Applicant and Coos County.
- 12 Q. So, that would be the Decommissioning Plan?
- 13 A. (Lyons) That's as we envision it, yes.
- 14 Q. All right. But, right now, your Decommissioning Plan
15 doesn't put any money in there until year ten. And,
16 what I'm suggesting is that, on year nine, you're
17 making a conveyance, perhaps, in my hypothetical, to
18 the Fish & Game Department under Paragraph 6. And,

19 there's no money in the Decommissioning Plan. So,
20 there's nothing in this Agreement or any other
21 agreement that provides for essentially the
22 decommissioning costs to be benefit --

23 A. (Lyons) Yes.

24 Q. -- to the benefit of the Fish & Game Department before
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 year ten?

2 A. (Lyons) Yes. I think what you're suggesting is that
3 there's potentially an additional party that might have
4 an interest in ensuring that the Decommissioning Plan
5 is adequately funded when it's needed.

6 Q. I'm not sure what you mean by that?

7 A. (Lyons) I think you're suggesting that, under your
8 hypothetical, if the "perfect storm" came through, and
9 coincided with a bankruptcy of the then, you know, GRP,
10 or its successor, that's your hypothetical, and that
11 the Windpark ceased to have any use -- its useful life
12 was at an end, which, again, I think is a bit of a
13 stretch, and the money wasn't there to decommission it,
14 then -- and that the landowner then affirmatively and
15 permanently abandoned that site for wind energy
16 purposes, which is an additional pre-condition, and
17 there was stuff left up there that was not removed,
18 that Fish & Game might have a concern about that. And,
19 I agree that, if all of those things happened, which I
20 find highly unlikely, then Fish & Game would -- is an
21 additional party that might have an interest in that
22 condition. Yes, I agree with all of that.

23 Q. Okay.

24 A. (Lyons) I don't agree that it's likely to happen.
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 Q. Okay. I understand you don't agree that it's likely.
2 But I just want to make clear that are you suggesting
3 that the Fish & Game Department provide the
4 Decommissioning Plan to backstop between year one and
5 year ten?

6 A. (Lyons) Not at all.

7 Q. Okay.

8 A. (Lyons) Not at all.

9 Q. All right.

10 A. (Lyons) I think the decommissioning issues need to be
11 addressed within the context of the Decommissioning
12 Plan.

13 Q. Okay. Now, with respect to Paragraph 8 of the
14 Agreement, the "Granite Reliable is making a one-time
15 payment of \$200,000 to Fish & Game to conduct studies
16 of the impacts of the development on use of the area by
17 American marten, Bicknell's thrush, or other wildlife
18 species of concern, with the studies to be designed by
19 Fish & Game and conducted by the Fish & Game or other
20 party or parties designated by Fish & Game." That's
21 basically what Paragraph 8 says, correct?

22 A. (Lyons) Yes.

23 Q. And, then, I guess there's more on the second page,
24 that it's "not intended to be -- to substitute for the

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 need on the part of Granite Reliable to conduct any
2 bird or bat post-construction monitoring studies that

- 3 might be required through this or any other permitting
4 process." All right. I just want to make clear that,
5 because it seems to me that one could say "other
6 wildlife species of concern" is a fairly wide area,
7 isn't it?
- 8 A. (Lyons) I would say it's as broad as Fish & Game would
9 like it to be.
- 10 Q. Perhaps as broad as Granite Reliable Power wants it to
11 be?
- 12 A. (Lyons) I don't see that Granite Reliable Power has
13 anything to say about the specific scope of those
14 studies.
- 15 Q. I guess I would like it to be perfectly clear to the
16 Committee that, if the Committee orders a condition
17 that says that "the Applicant has to conduct
18 post-construction mortality studies on avian species",
19 whether it's migratory birds, bats, or raptors, that
20 the response of the Applicant is not going to be "Oh,
21 we already paid for that in Paragraph 8." Is that your
22 clear understanding?
- 23 A. (Lyons) Yes. I think that's made explicit in the last
24 sentence to Paragraph 8.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 Q. Okay. Now, does the Project have any anticipation of
2 paying the 200,000 under Paragraph 8 to the Fish & Game
3 Department any time earlier than the commencement of
4 construction activities at the 2,700-foot level?
- 5 A. (Lyons) I do not know of any such plans.
- 6 Q. So, for example, if the Fish & Game Department desired
7 to conduct a pre-construction marten study at the

- 8 property line, they would not have any money from the
9 Applicant to do that until essentially the excavators
10 were already at -- nipping at the edge of the marten
11 habitat, is that correct?
- 12 A. (Lyons) They may or may not.
- 13 Q. Okay. But they wouldn't have the \$200,000 from you?
- 14 A. (Lyons) Not unless it was paid.
- 15 Q. Okay. Now, I have a question or two for Mr. Pelletier
16 and Mr. Gravel, with respect to the restoration of the
17 roadway at that elevation. Now, one of you testified
18 yesterday that, if there were an effort to spread seed,
19 you would be quickly followed by a hoard of red
20 squirrels consuming that seed. Is that essentially
21 what you said yesterday or the day before?
- 22 A. (Pelletier) I don't think that was us saying that.
- 23 Q. Oh. Okay. That was Mr. LaFrance. Were you here when
24 Mr. LaFrance said that?

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 A. (Pelletier) No.
- 2 Q. Did you hear him say that?
- 3 A. (Pelletier) No.
- 4 Q. Would you be concerned, in looking at this situation,
5 that, if you were to spread seed on the site, that
6 resident rodents would consume it?
- 7 A. (Pelletier) As much as they consume any of the other
8 seeds that are -- I mean, balsam fir is a fairly
9 prolific seeder. So, as much as they would be in the
10 adjoining woodlands around it.
- 11 Q. Would you expect there to be any increase in population
12 of rodents on the site as a result of the construction

- 13 activities or the openings that are being made?
- 14 A. (Pelletier) Any time you have a great seed year, no
15 matter what species it is, those species that feed on
16 those seeds always have their little -- there's always
17 a little boom and crash cycle, depending on how
18 prolific seeds are. So, there -- would there be maybe
19 a lot more? If you really went at it and spread them
20 everywhere, it would probably be an increased number of
21 small mammals and maybe even some birds, you know,
22 using those areas.
- 23 Q. Okay. Would you expect the opening, though, even if
24 you weren't to spread any seed, simply the act of

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 opening the areas on Mount Kelsey with the cuts and the
2 fills and the roadway and the turbine pads, would that
3 have any consequences? Do you think that that would
4 create a baby boom for rodents and raccoons and that
5 kind of stuff?
- 6 A. (Pelletier) No.
- 7 Q. No. So, do you think that the road -- all other things
8 being equal, the roadway would not cause any increase
9 in small mammal populations?
- 10 A. (Pelletier) There's always some change in some species.
11 And, again, when you're talking about which small
12 mammals, some are better able to move and travel
13 around, and others are less hampered. So, again, it
14 would be some specific. Certain species would have a
15 greater opportunity to travel and move around, others
16 would be restricted by the openings.
- 17 Q. Would the openings do you think create opportunities

18 for species like blue jays and crows to habituate the
19 high-elevation areas?
20 A. (Pelletier) They would be in those areas, as much as
21 they are in any other opening in high-elevation areas.
22 Would I see a big shift in different population use?
23 It would be hard to document that, the extent of that
24 change.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 A. (Gravel) And, I think that we're talking about a
2 temporary situation as well. You know, once these
3 seeds are started that that source is removed. So,
4 it's not going to be -- it may be a flux temporarily,
5 and then they become established and it's back to
6 normal conditions or normal seed sources, natural seed
7 sources.
8 Q. Okay. Okay. Do you think that it would be useful and
9 prudent for the engineering people who are designing
10 the roadway and the cuts and the fills and the
11 restoration of the roadway to work with people like
12 yourselves or someone else who has experience in
13 evaluating and assessing high-elevation habitat, to
14 work with them to help to restore the areas consistent
15 with good value high-elevation habitat?
16 A. (Pelletier) I think it would be important to have good
17 specs, in terms of what we mean by "organic material",
18 to what depth, and where it's spread, and making sure
19 it's maintained. So, yes. Whether or not that will be
20 someone like ourselves or somebody who is a specialist,
21 and then they're followed.
22 Q. And, would that include advice from someone like

23 yourselves, with respect to species of plants and trees
24 and diversity to be consistent with high-elevation

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 habitat?

2 A. (Pelletier) Right. It would be somebody competent.
3 But, again, I think, you know, a hands-down choice is
4 balsam fir. So, you don't really need to get into very
5 detailed plans as to where -- what kind of species need
6 to be put.

7 Q. In terms of restoration, are there other aspects of
8 high-elevation habitat that wouldn't be met simply by
9 planting a bunch of balsam fir trees, for example,
10 snags? There were a number of things described in the
11 various testimonies about the qualities of the
12 high-elevation habitat. But is simply planting trees
13 going to get you there or do you need to do other
14 things as well?

15 A. (Pelletier) It's always nice to add enhancements, and
16 they don't have to be high-tech, they can be very
17 straightforward. And, again, just properly designed
18 and put in during construction. It's not -- It's not a
19 very difficult task to add these things as habitat
20 enhancers.

21 Q. Okay. And, my last question is, would an abundance of
22 rodents and other small mammals at the site create an
23 attractive place for raptors to feed?

24 MS. GEIGER: Excuse me, Mr. Chairman.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 I'm going to object to this question. I think we're
2 getting a little far afield of the terms of the
3 High-Elevation Mitigation Settlement Agreement that I
4 thought was going to be the basis of the questioning for
5 cross-examination. So, I'd object to the question.

6 CHAIRMAN GETZ: Well, I --

7 MR. ROTH: I guess I have one question
8 that will help put this in context.

9 CHAIRMAN GETZ: And, well, I've spoken
10 before that it's not just the Mitigation Settlement, but
11 to the extent that there was testimony about the high
12 level habitat issues that are relevant, then that's also
13 subject to questioning.

14 MS. GEIGER: Okay.

15 CHAIRMAN GETZ: And, I think we're, if I
16 heard correctly, at the last question.

17 MR. ROTH: Yes.

18 BY MR. ROTH:

19 Q. And, my last question, if I can even remember what it
20 was, does the plan -- does the High-Elevation
21 Settlement Agreement provide any terms or conditions,
22 and any of you can answer this, for the specifications
23 of the restoration of areas that the Project plans to
24 restore? For example, the Project is intending or has

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 specified somewhere that they're going to bring the
2 road back to the 12-foot width. Is there anything in
3 this Agreement that specifies conditions under which
4 that will be done?

5 A. (Lyons) The condition under which that will be done is

6 after construction is completed.
7 Q. Is that, where -- is that in the Agreement?
8 A. (Lyons) "After project construction the roadway shall
9 be revegetated so that the roadbed is limited to 12
10 feet in width."

11 MR. IACOPI NO: Paragraph 5.

12 BY MR. ROTH:

13 Q. Okay. But it doesn't specify any details about what
14 "revegetated" means, does it?

15 A. (Lyons) No.

16 MR. ROTH: Okay. That's all. Thank
17 you.

18 CHAIRMAN GETZ: Ms. Linowes.

19 MS. LINOWES: Thank you, Mr. Chairman.

20 Good morning.

21 BY MS. LINOWES:

22 Q. With regard to the -- oh, actually, I do want to get
23 one clarification for my own understanding. Mr.
24 Pelletier, you stated this morning that you're a
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

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1 "forester"?

2 A. (Pelletier) That's correct.

3 Q. I'm not sure I saw, perhaps you did provide your
4 credentials, but are you a biologist also or are you
5 predominantly a forester?

6 A. (Pelletier) I'm a licensed forester, certified by the
7 Society of American Forestry. I'm a Guild Forester.
8 And, I'm a certified wildlife biologist.

9 Q. So, you've been trained as a biologist?

10 A. (Pelletier) Academically and professionally.

11 Q. With regard to the Agreement, the last "whereas" on the
12 first page, says "Whereas the Parties share a mutual
13 interest in ensuring the Windpark is developed in a
14 manner that minimizes potential adverse environmental
15 impacts, and which ensures that the benefits of the
16 project development outweigh potential adverse
17 environmental impacts." It appears from the wording of
18 this that the benefits of the project development are
19 certain, but the adverse impacts are possible. Is this
20 -- I mean, are we to understand that this Project site
21 will not have adverse impacts?

22 A. (Pelletier) I'm not sure where you're reading that, but
23 are you --

24 Q. Do you have the Agreement in front of you?

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 MR. IACOPI NO: The last "whereas"
2 clause.

3 BY MS. LINOWES:

4 Q. It's the last "whereas" on the first page.

5 A. (Pelletier) I'm happy with that statement. What's the
6 question?

7 Q. The word "potential" is preceding the words "adverse
8 environmental impacts". Is it your understanding, any
9 one of you on the panel, that this Project may or may
10 not create adverse environmental impacts?

11 A. (Lyons) May I point out that this Agreement was drafted
12 by the Attorney General's Office, not by us. So, I
13 would just, you know, ask your indulgence on the use of
14 specific words here, particularly in a "whereas"
15 clause. We didn't choose these specific words.

16 Q. Should I hold that question for Dr. Publicover then?

17 A. (Lyons) I'm not sure Dr. Publicover drafted it either,
18 but --

19 CHAIRMAN GETZ: Well, I think it's fair
20 to ask what you're understanding, as a signatory to this
21 Agreement.

22 BY THE WITNESS:

23 A. (Lyons) Our understanding is that the Project will have
24 impacts, will have impacts that include adverse

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 impacts. But that, overall, the Project will not have
2 an unreasonable adverse impact.

3 BY MS. LINOWES:

4 Q. And, is -- perhaps the wording of this "whereas" is not
5 correct?

6 A. (Lyons) I didn't write it. I didn't write it.

7 Q. The other question I had along those, Mr. Lyons, on
8 Monday, I believe it was, I had asked you to qualify
9 and quantify, if at all possible, the benefits of the
10 Project. Is the benefits here, is this going back to
11 the emissions offset, perceived reduction in
12 environmental -- rather, pollution and other things,
13 because of -- go ahead. Is that --

14 A. (Lyons) Yes. You asked about the range of
15 environmental benefits of the Project. And, I said
16 that they included reducing emissions from energy
17 production. Where it wasn't -- Where it might not
18 reduce emissions from energy production, which is if
19 there were no existing fossil-fired resources in the
20 system, then the environmental benefit, with regard to

21 air emissions, would consist of generating
22 electricity without -- with zero emissions. It also
23 avoids the environmental impacts associated with
24 extracting and transporting fossil fuels. You know,
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 think of coal trains running through your town, and
2 natural gas pipelines and things. And, in the case of
3 this Project, this Settlement Agreement constitutes a
4 very special additional environmental benefit, in that
5 it allows for the wildlife preservation of high quality
6 forest land.

7 Q. But, just so we're clear on that, isn't it true that
8 the purpose of the mitigation is to compensate for what
9 has been taken out of action, in the form of wildlife
10 habitat? So, to argue that this Project is improving
11 things, isn't that pressing it, pushing it a little?

12 A. (Lyons) No, not at all. I think this gets back to a
13 notion that Dr. Publicover was referring to in his
14 questions, which is that, you know, reasonable parties
15 can differ on the exact degree of impact that the
16 Project would have, and even necessarily the specific
17 types of impacts. And, there's no -- there's no firm
18 metric in place for prescribing mitigation for those
19 impacts. And, this Agreement was entered into
20 voluntarily, you know, with a group of reasonable
21 people. And, our view is that it provides a
22 substantial net benefit to the wildlife habitat in the
23 Project area, --

24 Q. Okay.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 A. (Lyons) -- because, without this project, that habitat
2 is likely to continue to be periodically disturbed by
3 commercial timber harvesting.

4 Q. Thank you, Mr. Lyons. I --

5 A. (Lyons) Our view is that it does provide a net
6 environmental benefit.

7 Q. Okay. Then, to my next question, at the top of the
8 second page, "Whereas the Parties agree that in order
9 to balance the impacts of high-elevation habitat
10 credited by the project development on Kelsey and
11 Dixville Peak significant compensatory mitigation is
12 warranted and necessary". To your knowledge -- do you
13 see that?

14 A. (Lyons) Yes.

15 Q. Okay. To your knowledge, has any effort been
16 undertaken by GRP, AMC, or Fish & Game to quantify the
17 benefits or the impacts, so that we can get a balance?

18 A. (Lyons) Well, I think -- I think both the impacts and
19 the benefits can easily be quantified by adding up the
20 acreage of both the proposed disturbance and the
21 perpetual conservation. And, our proposed disturbance
22 in high elevation is on the order of 80 acres, I
23 believe, and the proposed perpetual conservation of
24 high-elevation acreage is about 1,735, which is about a

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 22 to 1 ratio.

2 Q. And, Mr. Lyons, that 80 acres, can you tell me exactly
3 what that comprises again?

4 A. (Lyons) I believe that comprises our proposed

5 disturbance of land at or above 2,700 feet within this
6 Project.

7 Q. That's the full cutting range, not just the finished
8 road, correct?

9 A. (Lyons) Yes, that's all construction disturbance.

10 Q. Okay. Are you taking into consideration the impact of
11 edge effects and the distance into the forest of edge
12 effects travel?

13 A. (Lyons) No.

14 Q. So, you do not consider that part of the impacts?

15 A. (Lyons) I think it is potentially a part of the
16 impacts. And, we had a great deal of discussion with
17 Fish & Game staff and our scientists about this issue.
18 And, you know, I think it's fair to say that we didn't
19 completely agree about the potential for those
20 secondary impacts and their extent. But I think we did
21 agree that, if we permanently conserved, without any
22 future disturbance, areas of known high-quality
23 habitat, --

24 Q. Okay. I understand that. I understand that. You

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1 don't have to repeat it again.

2 A. (Lyons) then you don't have to debate the issue
3 anymore.

4 Q. The only question I wanted to verify is how far you
5 went in terms of quantifying the impacts. Now, my
6 understanding, and maybe Mr. Roth had received
7 clarification on this, but I just want to make sure I
8 understand this. Noble will be purchasing the land and
9 then deeding it over to Fish & Game, is that correct?

10 A. (Lyons) I suspect that what will actually occur is that
11 we will pay the landowners to directly convey it to
12 Fish & Game.

13 Q. Okay. And, then, -- okay. And, Mr. Roth covered the
14 questions about "when does the ownership happen?" And,
15 let me go to the next one. Some of these questions
16 Mr. Roth had covered for me. Okay. Under Paragraph 5,
17 this would be A.5, and I'm not sure what page this --
18 there are no page numbers. I guess it's the third
19 page. It starts with "Within the Retained Land on
20 Mount Kelsey, only those trees necessary for project
21 construction will be cut." And, in the page just prior
22 to that, there's a Mitigation Provision 1(a). And, you
23 define the area that is the Retained Land. That is
24 "500 feet around each wind turbine tower", and then a

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 75-foot distance from the center of the access road on
2 both sides, so it will be 150 feet. Is that accurate?

3 A. (Lyons) Yes.

4 Q. That's the Retained Land?

5 A. (Lyons) Yes.

6 Q. The Retained Land is not equal to or is it equal to the
7 area that you'll be cutting trees?

8 A. (Lyons) It's greater than.

9 Q. I'm referring specifically to what the paragraph says.
10 I understand that's your intent. What is -- Is that
11 what the -- paragraph says "Within the Retained Land on
12 Mount Kelsey, only those trees necessary for project
13 construction will be cut"?

14 A. (Lyons) Yes.

- 15 Q. Is that right? Okay. So, you can cut them all?
16 A. (Lyons) Within the Retained Land?
17 Q. Uh-huh.
18 A. (Lyons) Well, if it would be necessary for project
19 construction.
20 Q. Do you know that right now?
21 A. (Lyons) I doubt it.
22 Q. I'm asking if you know?
23 A. (Lyons) I don't know one way or the other, but I -- my
24 understanding is that the proposed disturbance in the
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- 1 plans is less than the Retained Land. And, we will not
2 be clearing a 150 foot road width. And, I believe that
3 the road width that we have proposed to construct under
4 our Alteration of Terrain Permit is less than 150 feet
5 wide up there.
6 Q. I understand the surface area is. But we did hear
7 testimony from Mr. LaFrance that at some point some of
8 the road -- portions of the road will be 150 feet wide.
9 Do you know if any of those such road conditions are up
10 there on Kelsey?
11 A. (Lyons) I'm not that familiar with the details of the
12 plan. And, I couldn't tell you one way or the other.
13 Q. So, we should just draw the conclusion that anything
14 within the 150 feet can be cut, correct?
15 A. (Lyons) If it's necessary to construct the Project, not
16 for commercial timber harvesting.
17 Q. Okay. Now, is it your intent to have the owner, who is
18 a commercial timbering company, do the cutting?
19 A. (Lyons) I don't know that we -- I certainly don't know

20 that any decision has been made on that.

21 Q. Does he not technically own the trees?

22 A. (Lyons) They do own the trees.

23 Q. They do own the trees?

24 A. (Witness Lyons nodding affirmatively).

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 Q. So, they may see value in cutting whatever they want to
2 cut?

3 A. (Lyons) I don't -- I don't know.

4 Q. We heard -- in some questions Mr. Harrington on the
5 Committee asked Mr. LaFrance about the likelihood of
6 the road revegetating back. And, it sounded to me,
7 from what I heard, that it was fairly unlikely that we
8 would -- if there were events where maintenance had to
9 be done, the roads would be cleared once again if the
10 Goldhofer had to be brought back up to that site. Is
11 that what you heard as well?

12 A. (Lyons) Sorry, could you say that again?

13 Q. The questioning from Mr. Harrington on the Committee to
14 Mr. LaFrance about the likelihood of that road
15 revegetating back to 12 feet --

16 A. (Lyons) Uh-huh.

17 Q. -- seemed rather small, in the -- because of the events
18 of maintenance?

19 A. (Lyons) I recall that questioning.

20 Q. Is that your understanding, too? Do you recall that?

21 A. (Lyons) I heard that interchange. I don't have any
22 independent view on it.

23 Q. Okay. So, is it -- is it fair to say that, while trees
24 may be allowed to grow on the road, they will not reach

[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 any level where we have a canopy? If you can't answer
2 it, Mr. Pelletier can answer it.
- 3 A. (Pelletier) One of the -- Right now, what you have
4 again, with that fir community, is a lot of young
5 regeneration that grows to a particular height, you
6 know, 30, 35 feet, and then, you know, when it gets a
7 little bit mature, it starts falling over. That's one
8 of the things about that high-elevation community right
9 there. So, you're going to -- bottom line is the idea
10 of setting up a condition that tries to get, you know,
11 promote vegetation, get it growth, let it go. And, it
12 will be providing, you know, that relatively low canopy
13 will be providing great Bicknell thrush habitat.
- 14 Q. I'm just trying to get a sense of what you mean by
15 "vegetating back"?
- 16 A. (Pelletier) Well, by -- you're getting shrubs, small
17 trees.
- 18 Q. Okay. And, then, in Paragraph 8, the -- actually,
19 before I get to Paragraph 8, is there -- I believe,
20 when we went through the technical session, there was
21 some discussion about allowing the turbine pads to
22 revegetate back and across the roads, too. And, I
23 think maybe, Mr. Lyons, it was you who said that the
24 "warranties may not allow" -- the "warranties on the

[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 turbines might not allow for much in the way of
2 revegetating back." Is that true?

- 3 A. (Lyons) I don't recall that. Is this in the context
4 of the discussions that led to this Agreement?
- 5 Q. No, it was in one of our technical sessions, which was
6 on December 19th.
- 7 A. (Lyons) Okay.
- 8 Q. There was a question, I believe Mr. Roth had asked it
9 at the time, "why is it that the pads are not allowed
10 to revegetate back?"
- 11 A. (Lyons) That's right. I said that I thought that the
12 turbine warranties may require the continued existence
13 of a cleared area of some dimension, yes.
- 14 Q. The 200 foot?
- 15 A. (Lyons) I don't know -- I must say, I don't know for a
16 fact that it is required. And, I don't know, if it is
17 required, what the exact dimensions would be.
- 18 Q. So that, when you're talking about the roads possibly
19 revegetating back, there is suggestion that the pads
20 stay intact without revegetating, is that correct?
- 21 A. (Lyons) Again, I was -- I wasn't saying that with any
22 particular knowledge. I just said I thought it might
23 be true.
- 24 Q. Can we get validation of that then? I mean, if this is

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- 1 being put into a agreement, I would think that Fish &
2 Game, those that are participating in this Agreement
3 would like to have an understanding of what is allowed
4 versus what you're saying you would like to do.
- 5 A. (Pelletier) I'd like to add that there may be some --
6 some of these decisions can be part of the
7 post-construction monitoring plan, because having those

8 areas open really facilitates the opportunity for, you
9 know, the post-construction work that you're going to
10 be out there. So, those are the kinds of things. I
11 think the impacts have been addressed by the amount of
12 open area that's being disturbed, so that's what the
13 basis of the compensation plan is in. And, how that is
14 left to come back, whether it's left to come back, I
15 think it's a conversation still to be had.

16 Q. So, that perhaps that sentence there, "After project
17 construction the roadway shall be revegetated so that
18 the roadbed is limited to 12 feet in width" is a nicety
19 that has no -- no teeth to it, is that what I'm
20 hearing?

21 A. (Lyons) No, that is the -- that's what -- that's what
22 the Agreement says.

23 Q. I understand that.

24 A. (Lyons) Okay.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 Q. But did you have any basis, any basis to support that
2 statement?

3 A. (Lyons) The basis to support that statement is that
4 that's what we agreed to do. We did not make any
5 guarantees or representations about what the results of
6 the revegetation would be.

7 Q. But, Mr. Lyons, I think there's a possibility, I don't
8 know, I mean, I think it's kind of come out here, that
9 there may be another party involved in all of this,
10 Vestas, who has a warranty agreement with you, that has
11 another opinion on this?

12 A. (Lyons) I'm not aware of that.

13 CHAIRMAN GETZ: Well, Ms. Linowes, are
14 you equating the roadway and the pads as -- that
15 "roadways" contains within it a subset that includes the
16 pads?

17 MS. LINOWES: Yes, I think so, because
18 one of the other things that had come up during the
19 testimony, when Mr. Roth was questioning Mr. LaFrance, was
20 whether or not the road could actually be built as part of
21 the pad. I don't know if they will make those changes but
22 --

23 CHAIRMAN GETZ: Well, that was in one
24 particular instance. But let me just -- what's the
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1 understanding of the Applicant, under Paragraph 5, are
2 pads included within "roadway"?

3 WITNESS LYONS: No. No.

4 MS. LINOWES: Okay.

5 BY MS. LINOWES:

6 Q. So, I don't know, I guess I would have to say that, in
7 my reading of this, it's unclear what will ultimately
8 happen with that. Would you agree with that?

9 A. (Lyons) I would agree that I don't know what will
10 ultimately happen. But I think the language that's
11 there is fairly clear.

12 Q. In Paragraph A-8, this says "GRP will make a one time
13 payment of \$200,000". Has, to your knowledge, has
14 anyone validated that number and come to understand the
15 scope of work that can be completed, the number of years
16 of studies that \$200,000 would purchase? Or, was that
17 just a number that was thrown out and accepted?

18 A. (Lyons) That was a number that was -- I just want to
19 say, as an overall kind of statement here, that --
20 Q. Actually, can you just answer the question?
21 A. (Lyons) Well, I think it's important to note, because I
22 don't know where the questions are going to go, and I
23 think it's important to note that all the parties that
24 gathered over at Fish & Game to have these discussions,
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1 and the parties who ultimately entered into the
2 Agreement, we had an understanding that all of the
3 discussions, you know, that we had in that room, to the
4 extent that they weren't public knowledge, would be
5 held confidential. And, that's a commitment that we
6 were happy to share in. I didn't have any strong view
7 about it one way or the other. But I just wanted to
8 say that, if you ask me questions that require that I
9 breach that confidence, I'm going to feel a little
10 uncomfortable that. And, you were one of the people in
11 the room. So, I don't have any particular problem
12 answering this question or others, but I just wanted to
13 say that for the record that -- to honor the fact that
14 we did disagree that, for whatever reason, those
15 discussions would be confidential.

16 But, having said that, I think it is
17 fair to say that this dollar amount was a dollar amount
18 that was specified by Fish & Game, for a purpose that
19 they articulated. We didn't question it. I assume,
20 and I think it's a valid assumption, that Fish & Game
21 knows what they're doing here. So, that was their
22 number, and we agreed to it.

23 Q. For the record, I was not in the room when that -- I
24 don't know where that number came from. So -- With
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1 regard to Paragraph A-9, it says "GRP shall take
2 commercially reasonable efforts to restrict motorized
3 public access". What is meant by "commercially
4 reasonable efforts"?

5 A. (Lyons) It's fairly standard contractual language that,
6 and I can't tell you everything that it means, because,
7 you know, my legal expertise does not necessarily
8 include all of that knowledge. But what it means is
9 that -- what it doesn't mean is that we are going to
10 guarantee that it would be restricted. We'll do, you
11 know, we'll do what is reasonable in typical commercial
12 practice to do that. And, I'm afraid that kind of
13 exhausts my knowledge about how that might be
14 interpreted in specific areas. But the specific
15 commitments that we are making as an Applicant are to
16 put up locked gates and signs that tell people to stay
17 out.

18 Q. Okay. Then, on Paragraph A-11, it states "GRP agrees
19 that it will not construct wind turbines or associated
20 infrastructure on Whittcomb Mountain"?

21 A. (Lyons) Uh-huh.

22 Q. I don't know where Whittcomb Mountain is. And, I don't
23 think there's any reference to this in this document
24 that describes it geographically or graphically.

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1 A. (Lyons) Well, I don't know that it's described in this
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2 Agreement, but I think it's not easy to find Whittcomb
3 Mountain on a map. It's on the western ridge, kind of
4 in between Mui se Mountain and Long Mountain.

5 Q. Yes, I appreciate that. I appreciate you know where it
6 is. But wouldn't it be appropriate that at least it be
7 defined and the area of what you're talking about?

8 A. (Lyons) I don't see a need for it on behalf of GRP and,
9 apparently, neither of the other parties saw a need for
10 it either. I think we can, if it's a concern, I think
11 we could commit that we're not going to put wind
12 turbines on any place called "Whittcomb Mountain".

13 Q. In New Hampshire?

14 A. (Lyons) No matter where it might be.

15 Q. I would recommend that that paragraph be expanded. In
16 that, in Whittcomb Mountain, does that happen to be the
17 area where you had a wind lease, wind rights lease?

18 A. (Lyons) Yes.

19 MR. DECKER: Whittcomb Mountain is
20 actually labeled in Figure 3 of the Application, that's
21 found in the Application.

22 BY MS. LINOWES:

23 Q. But, just for the record, it's not in the Agreement
24 anywhere, is that correct?

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1 A. (Lyons) It's not in the High-Elevation Agreement, no.

2 Q. So, are you -- when you state that you "will not
3 construct wind turbines or associated infrastructure",
4 does that mean that you're going to retain your lease
5 on that property in perpetuity?

6 A. (Lyons) It doesn't speak to that issue.

- 7 Q. What does it mean then?
- 8 A. (Lyons) Well, it means what it says.
- 9 Q. For how long?
- 10 A. (Lyons) There's no limitation in time. So, the
11 implication is that it's forever.
- 12 Q. As long as you hold a lease on that property?
- 13 A. (Lyons) It doesn't say that. It says that "GRP will
14 not construct wind turbines or associated
15 infrastructure on Whittcomb Mountain."
- 16 Q. I understand that's what it says.
- 17 A. (Lyons) Period.
- 18 Q. But, if GRP no longer has a lease on it, then, you give
19 up your lease tomorrow, then basically that paragraph
20 has no -- it doesn't mean anything.
- 21 A. (Lyons) It means -- I'm sorry, I don't mean to be rude.
22 It means what it means. What do you think it doesn't
23 mean, and that might help me answer your question?
- 24 Q. Well, the perception in my reading that Agreement is
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 that Whittcomb will somehow be protected from wind
2 turbines for a very long time. And, at first glance,
3 one would think that when they read it. If one looked
4 a little closer, they would understand that you hold
5 the lease on it and can do whatever you wish with that
6 lease, is that correct? And, that you don't own that
7 land?
- 8 A. (Lyons) I think -- I don't think it's breaching a
9 confidence to confirm that we do have lease hold rights
10 to Whittcomb Mountain. And, I think that was the
11 understanding of the parties when we made this

12 commitment. Otherwise, why would we bother? So, yes,
13 we do have -- we currently have rights to develop wind
14 energy facilities on Whittcomb Mountain. And, by virtue
15 of this Agreement, in Paragraph 11, we relinquish
16 whatever rights we may have under that lease to do so.

17 Q. As long as you hold that lease?

18 A. (Lyons) You know what? It doesn't say that.

19 CHAIRMAN GETZ: But is it fair to say
20 that, as long -- that GRP never intends --

21 WITNESS LYONS: Correct.

22 CHAIRMAN GETZ: -- to build anything on
23 Whittcomb Mountain?

24 WITNESS LYONS: Correct. Correct.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 CHAIRMAN GETZ: And, to the extent that
2 someone else intended to, --

3 WITNESS LYONS: Yes.

4 CHAIRMAN GETZ: -- you would not allow
5 them to interconnect to your transmission facilities?

6 WITNESS LYONS: That's exactly right.

7 And, so, we have made as extensive a commitment for
8 ourselves as we can regarding wind energy facilities on
9 Whittcomb Mountain. I think the Chairman put it exactly
10 right.

11 BY MS. LINOWES:

12 Q. If I may, I believe it will be clearer if you were to
13 at least state that you will retain your lease for the
14 duration that you're holding the lease on the other
15 projects? Would that make sense?

16 A. (Lyons) I don't think it's necessary. I think, if you

17 think about it a minute, by not referencing the lease,
18 this is actually a commitment of longer duration, as
19 the Chairman said "never". Okay? GRP, this Applicant,
20 hereby commits that it will never construct wind
21 turbines or associated infrastructure on Whittcomb
22 Mountain or permit any other party to use its electric
23 collection lines to do so.

24 Q. Okay. I'll move on, Mr. Lyons. I don't believe it's

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 that cut-and-dry. On Provision B.7, yes, B.7, here
2 "GRP agrees to defend, indemnify and hold harmless the
3 State of New Hampshire", I think there's some typos
4 here while we're at it. It says "through its Fish &
5 Game Department, from and against any and all claims,
6 liabilities or penalties asserted against the State, by
7 or", I believe the word "on behalf", "on" should be in
8 there?

9 A. (Lyons) There should be an "on" in there, yes.

10 Q. "On behalf of any person, on account of, based or
11 resulting from", and then there are some words here
12 "from arising out of", I believe that those are
13 duplicative, because it --

14 A. (Lyons) I think that there should be an "or" before
15 "arising".

16 Q. And, then you have the parenthetical there, which seems
17 to talk about "arising out of". So, I'm not sure how
18 that should work, but it doesn't --

19 A. (Lyons) Well, what that is "or which may be claimed to
20 arise out of". So, that if you -- you could debate
21 whether it does, in fact, arise out of, but this adds

22 "or" -- that it "may be claimed that it might arise out
23 of". So, obviously, you need to prove that it did, in
24 fact, arise out of. But, once again, I didn't draft

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 this.

2 Q. And, the intent of this paragraph is to ensure that, if
3 anything happens to a member of the public or their
4 property that they own, a blade throw, an ice throw, a
5 turbine falls down, something happens, Fish & Game, the
6 State of New Hampshire will hold no liability. Is that
7 your understanding of that?

8 A. (Lyons) I wouldn't put it that way. But I would say
9 that "GRP agrees to defend, indemnify and hold them
10 harmless against any such liability, and name them as
11 an additional insured."

12 Q. On any insurance you're carrying?

13 A. (Lyons) Yes.

14 Q. So, there's no certainty that it won't happen? That if
15 someone will sue, they're going to sue?

16 A. (Lyons) Correct.

17 Q. And, then, on Paragraph C.3 and C.4, those appear to be
18 duplicative there. And, I just want to -- you know,
19 just some minor things. But, you know, are they? C.3
20 says "GRP shall at times have the right to sell,
21 assign, encumber, transfer", and then that same
22 paragraph appears in its entirety as part of Paragraph
23 C.4.

24 A. (Lyons) Yes.

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- 1 Q. Is it intended to be duplicative? You can work that
2 out. That's not a big deal. But, my main question on
3 this, it says "GRP has the right to sell, assign,
4 encumber, transfer or grant subordinate rights". Why
5 is Fish & Game not granted the same rights?
- 6 A. (Lyons) I just will repeat, I did not draft it. I can
7 only guess as to why such language was not included.
8 That perhaps Fish & Game did not envision the need to
9 assign it.
- 10 Q. Okay. And, then, in the Paragraph 14, C.14, this one
11 talks about "Project Changes and Dispute Resolution".
12 And, about the sixth line or seventh line down it
13 begins "If any party to the Agreement that determines
14 that there has been a material change that results in a
15 significant and new adverse impact that materially
16 prejudices the party, the party shall provide, within
17 ten days", and it goes on to talk about a resolution of
18 that. What was being envisioned at the time you were
19 talking about that and would any material change on
20 that level have to come back before the Site Evaluation
21 Committee?
- 22 A. (Lyons) The answer to the second question is "probably
23 it would." The answer to the first question is "we
24 didn't discuss this." This was language that was

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 included in the Agreement when we got it, and we didn't
2 question it. We didn't discuss it.
- 3 Q. Okay. So, you don't know --

4 MR. MULHOLLAND: Mr. Chairman, I'm going

5 to object to some of these questions. The Agreement says
6 what it says. And, in terms of the contract that the
7 State entered into with the Applicant and with AMC, you
8 know, the terms govern. And, any other sort of oral
9 evidence outside of the terms don't affect the contract.
10 It's a contract.

11 CHAIRMAN GETZ: Well, clearly, at some
12 point in the future, to the extent this needs to be
13 interpreted, the terms will speak to themselves, and
14 anything today I don't suspect would be, you know, parol
15 evidence in interpreting it. But I think it's fair for
16 Ms. Linowes to inquire as to what the parties may think
17 particular pieces of the Agreement mean. But, once they
18 say they "haven't spoken about it" or they're "not sure",
19 I'm not sure how much further inquiry is helpful or moves
20 the ball.

21 MS. LINOWES: I guess, Mr. Chairman, I'm
22 particularly concerned because this is an agreement that
23 was entered into by an entity in the State of New
24 Hampshire and the developer, and we don't represent, and I

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 believe the State of New Hampshire is representing the
2 public, we don't have a good understanding of what's being
3 contemplated here. And, it's just a little bit
4 disconcerting.

5 CHAIRMAN GETZ: Well, certainly, I mean,
6 there's a difference then between inquiring about what
7 provisions might mean, and, then, if you want to make an
8 argument in closing or in brief that there are certain
9 defects in your view, then you can make those arguments,

10 and then ultimately the Committee will have to decide
11 where to go.

12 BY MS. LINOWES:

13 Q. And, then, I just have -- I'm almost done. Mr. Roth
14 had talked about a post-construction review, which it
15 does not appear to be contemplated in this document, is
16 that correct? This would be in terms of an Invasive
17 Species Mitigation Plan that may have -- so that
18 someone is monitoring the results of the revegetation
19 of this road and the edge effects and other issues.
20 What is the -- well, let me put it this way. Mr.
21 Gravel, you had testified the other day that "it is
22 unusual for a Technical Advisory Committee to be formed
23 after say the first project that the State has had
24 experience with, and after that it's left up to the

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 developer to work with the State agencies." Did you
2 say something to that effect?

3 A. (Gravel) Yes, I have.

4 Q. Would you agree that this project is significantly
5 different, in terms of the environment it's going to be
6 located in and the size of this Project, the amount of
7 construction, significantly different from the Lempster
8 Wind Project?

9 A. (Gravel) Yes, I think it's bigger than the Lempster
10 Wind Project.

11 Q. And, would you agree that some of the issues that are
12 arising out of it are different than what may have
13 arisen out of the Lempster Project?

14 A. (Gravel) Yes.

15 Q. So, a Technical Advisory Committee to potentially
16 oversee the High-Elevation Mitigation Settlement
17 Agreement would, and other things, might be
18 appropriate?

19 A. (Gravel) Well, I think, in this case, it's a different
20 situation, because the State is the holder of this
21 land. So, I don't -- I guess maybe I don't understand
22 your question. But I feel like it's quite a bit
23 different in this case where -- are you asking for a
24 Technical Advisory Committee to oversee what New

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1 Hampshire Fish & Game is doing or how they're managing
2 --

3 Q. No, to oversee the edge effects. So, at some point,
4 the Project site, the Retained Land abuts what will
5 ultimately become State of New Hampshire land, correct?

6 A. (Gravel) Yes.

7 Q. And, there are affects -- there are effects, as a
8 result of construction, that would, do you agree, need
9 to be managed?

10 A. (Gravel) I think it is managed with the
11 post-construction funding to Fish & Game.

12 Q. The \$200,000?

13 A. (Gravel) Yes.

14 Q. That does not talk about species, invasives, I do not
15 believe, does it?

16 A. (Gravel) No, it just talks to species of concern.

17 Q. So, and the types of invasive species I'm talking about
18 are not just rodents and small animals that are -- may
19 be moving into the area, but we're also talking about

20 plants?

21 A. (Gravel) Plants.

22 A. (Lyons) Aren't those issues the subject of recommended
23 conditions by DES, Alteration of Terrain Permit?

24 Q. I don't know.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 A. (Lyons) I think they are.

2 Q. So, to the extent that there will be a Committee to
3 oversee -- a Technical Advisory Committee to oversee
4 this Project during the construction and
5 post-construction for any studies, would you agree that
6 that would be appropriate?

7 A. (Lyons) No.

8 Q. Do you realize that one such Technical Committee was
9 put together for Lempster?

10 A. (Lyons) My understanding is that a Technical Advisory
11 Committee was put together with regard to
12 post-construction avian issues at Lempster.

13 Q. That's true. But I think we established that this
14 Project will have different issues?

15 A. (Lyons) And, I believe, with regard to high-elevation
16 issues, I think those issues are dealt with in this
17 Agreement, which we agree should be incorporated in the
18 Certificate.

19 Q. And, how are they dealt with?

20 A. (Lyons) Well, we just spent an hour talking about that.

21 Q. How are they dealt with?

22 A. (Lyons) They were dealt with by Agreement.

23 Q. What specific things are dealt with please?

24 CHAIRMAN GETZ: Well, let me try and get

[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 back to the line of questioning. I want to make sure I
2 know where we are. I take your basic question to be,
3 similar to what was done in Lempster, should there be, in
4 addition to everything else that's happened here with
5 respect, including the Mitigation Settlement and any
6 conditions by any -- by DES or whoever, should there be
7 another Technical Advisory Committee created? And, your
8 answer to that question is?

9 WITNESS LYONS: I don't -- I don't see
10 the need for it. And, I'm not sure what value it would
11 add. And, it's rather undefined with regard to its
12 structure, function, a whole host of other issues.

13 CHAIRMAN GETZ: And, to the extent you
14 want to propose in closing or in your brief that such a
15 Technical Advisory Committee be created and for which
16 particular purposes, then certainly you can make that --

17 MS. LINOWES: Okay.

18 CHAIRMAN GETZ: -- recommendation to the
19 Committee.

20 MS. LINOWES: Thank you, Mr. Chairman.
21 I have no further questions.

22 WITNESS LYONS: And, just to follow up,
23 I guess it's my understanding and view that the whole
24 range of issues that have been discussed here are being

[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 adequately addressed by recommended conditions by DES, by
2 this Agreement with Fish & Game and AMC with regard to
3 high elevation, with regard to the appropriate agencies on

4 avian issues. I'm not sure what a -- what a broad ranging
5 Technical Advisory Committee would add to that.

6 MS. LINOWES: Thank you. Thank you, Mr.
7 Chairman.

8 CHAIRMAN GETZ: Mr. Roth.

9 MR. ROTH: Mr. Chairman, I know I've
10 finished my cross of this panel, but something that Ms.
11 Linowes asked about prompted my looking at some of the
12 responses to -- the Applicant's responses to requests that
13 I made at a technical session concerning the Vestas
14 turbine warranties. That I'd just like to ask a couple of
15 questions about the warranties again, to clarify one of
16 the provisions in the Agreement.

17 CHAIRMAN GETZ: Then, please proceed.

18 BY MR. ROTH:

19 Q. Mr. Lyons, when -- at the technical session December
20 19th, were you present at that session?

21 A. (Lyons) I believe I was.

22 Q. You may or may not recall it, but I asked the Applicant
23 whether the warranty for the wind turbines required
24 maintenance of a clear 200-foot radius around the base

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 of the wind turbines. And, on December 31st, an answer
2 was provided, and this is in Technical Session answer,
3 Question 3-6, which is part of the record, I'm not sure
4 what exhibit it is, but it should be in there
5 somewhere. And, the answer that was provided said "The
6 warranty does not specify a clear 200 foot radius
7 around the turbine base, but it requires free access to
8 the turbine sites to perform maintenance work, which in

9 i t s e l f r e q u i r e s t h i s r a d i u s . "

10 M R . I A C O P I N O : T h a t a n s w e r i s c o n t a i n e d

11 i n P e t i t i o n e r ' s E x h i b i t 2 1 - 3 .

12 B Y M R . R O T H :

13 Q . I s t h a t a n s w e r -- D o y o u b e l i e v e t h a t a n s w e r t o b e

14 c o r r e c t ?

15 A . (Lyons) I b e l i e v e i t t o b e c o r r e c t , y e s .

16 Q . O k a y . T h e n , d o e s t h a t s o u n d l i k e e s s e n t i a l l y y o u ' r e

17 g o i n g t o h a v e , f o r t h e w a r r a n t y p e r i o d , o r a s r e q u i r e d

18 b y t h e w a r r a n t y , a 2 0 0 - f o o t c l e a r i n g a r o u n d t h e

19 t u r b i n e s f o r m a i n t e n a n c e p u r p o s e s ?

20 A . (Lyons) Y e s . A n d , I r e a l i z e t h e a n s w e r s e e m s t o b e a

21 b i t c o n v o l u t e d , b u t I d o r e c a l l a s k i n g a b o u t t h a t , --

22 Q . O k a y .

23 A . (Lyons) -- a f t e r y o u a s k e d m e . A n d , t h e r e s p o n s e I g o t

24 w a s t h a t , " w h i l e t h e w a r r a n t y d o e s n ' t s p e c i f y 2 0 0 f e e t

{ S E C 2 0 0 8 - 0 4 } [D a y 4] { 0 3 - 1 3 - 0 9 }

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[W I T N E S S P A N E L : P e l l e t i e r | G r a v e l | L y o n s]

1 p e r s e , b u t d o e s r e q u i r e a s u f f i c i e n t s p a c e f o r

2 m a i n t e n a n c e w o r k , w h i c h , a s a m a t t e r o f f a c t , w o u l d b e

3 a b o u t 2 0 0 f e e t . "

4 Q . F o r e x a m p l e , i f y o u h a d t o t a k e t h e r o t o r d o w n , y o u

5 w o u l d n e e d a b i g e n o u g h a r e a t o l a y i t d o w n a n d --

6 A . (Lyons) Y e s .

7 Q . -- d o w o r k o n i t ?

8 A . (Lyons) Y e s .

9 Q . O r , i f y o u h a d t o r e m o v e -- t o d o a m a j o r c o m p o n e n t

10 c h a n g e o r r e p a i r , y o u m i g h t n e e d i t t o b r i n g a c r a n e

11 i n , c o r r e c t ?

12 A . (Lyons) Y e s .

13 Q . O k a y . N o w , t h e n e x t q u e s t i o n w a s T e c h n i c a l S e s s i o n

P a g e 6 1

14 Number 3-7, where I asked "What was the length of the
15 warranty period?" And, the answer was "The proposed
16 warranty is two years, two years. A proposed three
17 year service agreement would effectively extend the
18 warranty provisions to three years." Is that -- so,
19 the three years is now on top of the two, to create
20 five, is it?

21 A. (Lyons) No, it's a total of three.

22 Q. So, under your service agreement, you would just be
23 buying an additional year?

24 A. (Lyons) Yes.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 Q. Okay. Is this kind of like, when you go to buy an
2 appliance and they say "Do you want the extended
3 warranty?"

4 A. (Lyons) I think that's what it's like. But, in this
5 case, you're advised to get it.

6 Q. It's probably a little bit more than \$29, though, isn't
7 it?

8 A. (Lyons) Yes, you can be sure.

9 Q. Now, the next question, number 3-8, asks, in essence,
10 "Does the warranty require maintenance of the width of
11 the curve on the roads, on the access road to the
12 turbine sites and will these areas be allowed to
13 revegetate?" And, the answer was "Yes. The proposed
14 warranty requires essentially the same access as
15 required for initial turbine/tower/blade deliveries."
16 Do you remember that answer?

17 A. (Lyons) Yes.

18 Q. And, do you believe that answer to be correct?

- 19 A. (Lyons) I don't know whether it's correct or not. I
20 asked our operations person that, and that was the
21 answer I was given.
- 22 Q. So, is it fair to say then that the turbine warranty
23 would require the roads to be maintained at their
24 34-foot width, with all the radii, that is the cuts and
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 the distances required to swing large equipment and
2 blades, in place for at least three years from Project
3 completion?
- 4 A. (Lyons) I see that there's some potential inconsistency
5 there. All I can tell you is that I asked the same
6 individual about the answer to this question, and
7 whether we could make the commitment in here to
8 revegetate to 12 feet, and he said that was fine.
- 9 Q. Okay. So, you agree with me that, while the agreement
10 provides for a 12-foot roadway width, your warranty may
11 require a 34-foot width?
- 12 A. (Lyons) It might. But, again, I deferred to our
13 operations and maintenance guy.
- 14 Q. Okay.
- 15 A. (Lyons) And, he had no problem with the revegetation.

16 MR. ROTH: Okay. That's all. Thank
17 you.

18 CHAIRMAN GETZ: Questions from the
19 Subcommittee? Mr. Scott.

20 DIR. SCOTT: Good morning.

21 WITNESS LYONS: Good morning.

22 BY DIR. SCOTT:

- 23 Q. Back to the issue of revegetation within 12 feet, which

24 I believe is on the Mitigation Agreement, A, under A.5.
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 I just want to clarify, is it your understanding that
2 the Applicant plans on allowing that to naturally grow
3 in, I call it "passive revegetation" or does the
4 Applicant plan on actively helping it revegetate?
5 A. (Lyons) I don't know that that's been specifically
6 addressed in this context. So, I don't know the answer
7 to that.

8 DIR. SCOTT: Thank you.

9 CHAIRMAN GETZ: Mr. Northrop.

10 BY MR. NORTHROP:

11 Q. Back to the question of Whitcomb Mountain, and Granite
12 has a lease on there now. I'm looking at the map
13 that's behind you, it's Figure 3, the Project site map.
14 And, it does show at least the summit, the peak of
15 Whitcomb Mountain, in the unincorporated place of
16 Odell. And, it appears that, again, at least the
17 summit of Whitcomb Mountain, is within the Nash Stream
18 State Forest, and it's a blue cross-hatched area,
19 which, on the key, says it's "New Hampshire State
20 Land". Does the State of New Hampshire own Whitcomb
21 Mountain and is your lease agreement with the State of
22 New Hampshire?

23 A. (Lyons) No. No. The State of New Hampshire owns part
24 of it, and the eastern part, east of that property

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 line, is owned by Kennebec West Forest. And, they are

- 2 the lessor under our lease.
- 3 Q. Okay.
- 4 A. (Lyons) So, the property line divides the mountain,
5 between the state and GMO.
- 6 Q. Okay. So, is it fair to say that the State of New
7 Hampshire at least owns some of Whittcomb Mountain?
- 8 A. (Lyons) Yes. Yes.
- 9 Q. And, it's the area that's shown on this map in the blue
10 --
- 11 A. (Lyons) Yes.
- 12 Q. -- cross-hatched areas.
- 13 A. (Lyons) Yes.
- 14 Q. Okay. Does -- Part of the Mitigation plan would
15 require or envisions lands being transferred from the
16 current owners to the State of New Hampshire to Fish &
17 Game being paid for by Granite Reliable Power. When
18 those lands are identified and transferred, or I should
19 say prior to the actual transfer of those lands, would
20 that require a subdivision approval from the -- I guess
21 it would be the Coos County Planning Board?
- 22 A. (Lyons) I believe it will.
- 23 Q. Okay. And, you're prepared to go through that process
24 and make the Application, and I'm not sure what

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 actually you have to do?
- 2 A. (Lyons) Yes.
- 3 MR. NORTHROP: Okay. That's it.
- 4 CHAIRMAN GETZ: Mr. Janelle.
- 5 BY MR. JANELLE:
- 6 Q. I just have a question again about Clause 5 and the

7 revegetation width of the road. Is that intended to be
8 only the high-elevation portion of the roadways?

9 A. (Lyons) Yes, because it's within the Retained Land.

10 Q. Okay.

11 A. (Lyons) Which is on the high elevation.

12 MR. JANELLE: Okay. Thank you.

13 CHAIRMAN GETZ: Dr. Kent.

14 DR. KENT: I have a few questions for

15 Mr. Lyons.

16 BY DR. KENT:

17 Q. First, this Agreement, this Mitigation Agreement
18 replaces the elements of the initial agreement, as it
19 includes high elevation?

20 A. (Lyons) Yes, sir.

21 Q. There's no change to the wetland mitigation, other than
22 land being designated to go to Fish & Game or to some
23 other State agency?

24 A. (Lyons) Correct.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 Q. Yes. You made that statement yesterday about the
2 wetlands "being conveyed to Fish & Game or another
3 State agency". Does that require some agreement with
4 DES for that to happen?

5 A. (Lyons) My understanding is that Fish & Game has had a
6 discussion with DES. I did express a concern about
7 making a commitment to have it conveyed to Fish & Game
8 without having DES's concurrence in that. And, I was
9 told by Fish & Game staff that they had that
10 discussion, and DES concurred.

11 Q. Thank you. One last question. I just want to be clear

12 on who's conducting the post-construction bird and bat
13 studies?

14 A. (Lyons) Those would be conducted by Fish & Game or
15 their designee.

16 DR. KENT: Thank you.

17 CHAIRMAN GETZ: Mr. Harrington.

18 MR. HARRINGTON: Yes.

19 BY MR. HARRINGTON:

20 Q. I almost hate to get back this, but back to the 12-foot
21 road thing, on Section 5. It says in there that,
22 "After project construction the roadway shall be
23 revegetated so that the roadbed is limited to 12 feet
24 in width." And, just sort of going as a follow-up to
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1 the questions I asked yesterday, I'm assuming that, if
2 it's required to perform maintenance two, three, four,
3 ten, fifteen years down in time, that the road will
4 have to be widened in order to allow the -- as
5 necessary, to allow the trucks, cranes, spare rotors,
6 whatever, in?

7 A. (Lyons) Just as necessary.

8 Q. Just as necessary. Okay. And, it also says the word
9 here there will be "no commercial timber harvesting".
10 So, if you widen the road, then does that mean that
11 whatever wood is cut down will just be left where it
12 goes or can you collect it and sell it?

13 A. (Lyons) No. The intent there was that the trees would
14 not be cut down for the purpose of commercial timber
15 harvesting.

16 Q. Okay. Thanks. That answers that question. Going down

17 to the next paragraph, Paragraph 6, it says "If and
18 when the Retained Land is permanently abandoned by the
19 landowner". I guess I'm -- what exactly does
20 "permanently" imply? Could -- Let's say the wind
21 facility is shut down, and the landowner says "well,
22 I'm still pondering wind energy production from this",
23 and then 30 years later they're still pondering, does
24 that meet with the requirements of this or is there

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 some more definitive what "permanently" means?
2 A. (Lyons) Well, "permanently" is pretty clear. But --
3 Q. Maybe to make it clearer, and it might make the
4 question -- that was kind of a loose question. Does
5 this mean "whenever the landowner decides that they
6 want to transfer the property over", that will be
7 defined -- that will be what "permanently" is defined
8 as?
9 A. (Lyons) Yes, that's what it means. And, the reason why
10 it was drafted this way is because we were given
11 friendly reminders at many turns by the landowners that
12 we cannot make commitments, future commitments for
13 them. That we could only make direct commitments for
14 ourselves.
15 Q. Okay. And, let me see, I guess this would be for Mr.
16 Pelletier. On your testimony, in Page 10, on the top
17 of the page, you're talking about, again, we're getting
18 back to the 12 foot road revegetation. "The road will
19 be infrequently traveled and restricted to authorized
20 motorized vehicle traffic only." And, this is
21 specifically talking about the turbine strings that are

22 along Mount Kelsey and Dixville Peak. "Further, these
23 roads will not be maintained during winter months."
24 And, so, my question -- a couple of questions on this.

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1 First, I don't see, and maybe I'm missing it, I don't
2 see any duplication of that statement in the Settlement
3 Agreement, that "the roads will not be maintained",
4 meaning that the "high altitude roads will not be
5 maintained during the winter months". Is that an
6 oversight? Or, is there some reason it's not there?
7 Or, is this a commitment in his testimony for the
8 Applicant?

9 A. (Lyons) It was not specifically included in the
10 Agreement. But it is a proposed -- it is a commitment
11 of the Applicant.

12 Q. Okay. So, that applies then to the Mount Kelsey and
13 Dixville Peak regions?

14 A. (Lyons) Yes.

15 Q. Okay. So, they won't be. And, I guess the next
16 question would be, there has to be some routine
17 maintenance, so, since it's not going to be maintained,
18 which I take as being plowed, are you going to use Snow
19 Cats or some other, snowmobiles?

20 A. (Lyons) Yes. That's right.

21 Q. But, again, getting back to that, if maintenance is
22 required, that would require you to bring a crane or
23 something up there, I'm assuming if -- that whatever
24 the failure is happens in December, you're not going to

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 wait until May to do it, that there may be plowing on
2 an as needed basis?
- 3 A. (Lyons) That's right. The intention there was that
4 they would not be routinely plowed.
- 5 Q. Yes.
- 6 A. (Lyons) Which would be an ongoing and potentially
7 unnecessary incursion.
- 8 Q. Okay. Mr. Pelletier, you mentioned a couple of times
9 about a "Post-Construction Monitoring Plan". And, you
10 sort of alluded, without specifically saying that "it's
11 not written yet". So, I guess my first question is, is
12 there a Post-Construction Monitoring Plan for this
13 Project?
- 14 A. (Pelletier) My understanding is that one would be
15 developed. But it's not as yet put together. And,
16 that it's probably inappropriate to try to pull one
17 together right now, because of, again, all the
18 different things we're learning over time here about
19 how to properly assess impacts.
- 20 Q. So, I guess the answer is "not yet", but there will be
21 one?
- 22 A. (Pelletier) My understanding, yes.
- 23 Q. Okay. Mr. Lyons, could you confirm that the Applicant
24 intends to have a Post-Construction Monitoring Plan?

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- 1 A. (Lyons) Yes.
- 2 Q. And, given that it's not written yet, is there a scope
3 or some type of document that says what a
4 "Post-Construction Monitoring Plan" will address?
- 5 A. (Lyons) I have to defer to our environmental staff on

6 that. Certainly, there will be a proposed scope. I
7 don't know what that scope is.

8 MR. HARRINGTON: Mr. Chairman, could we
9 take that as a follow-up then, or whatever the appropriate
10 legal term is? I'd like to see, because, I mean, a
11 "Post-Construction Monitoring Plan" could be, in the
12 extreme end, could be "Look at the mountain and make sure
13 it's still there." Okay? So, on the other hand, it could
14 be 300 pages of detail. So, maybe if you could provide us
15 a scope, again, understanding it won't be complete, --

16 WITNESS LYONS: Yes.

17 MR. HARRINGTON: -- but a scope of the
18 areas it would address?

19 WITNESS LYONS: Yes.

20 MR. HARRINGTON: Thank you.

21 CHAIRMAN GETZ: Okay. Well, let me just
22 confirm it. So, if we reserve, I think we're up to
23 Exhibit 49 --

24 MR. IACOPI NO: Forty-nine.

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1 CHAIRMAN GETZ: -- for the Petitioner,
2 this is a scope of the Post-Construction Monitoring Plan
3 that we can get within the next week, so that it will be
4 something that we can consider in our deliberations? Is
5 that --

6 MR. PATCH: Yes.

7 MS. GEIGER: Yes. I believe so. And,
8 Mr. Chairman, just I think it would be helpful also for
9 Mr. Harrington to make sure that we're understanding what
10 you mean by "Post-Construction", I believe you used the

11 word "Monitoring Plan". And, if you could give us some
12 idea of what your understanding of that term is, it would
13 be helpful?

14 MR. HARRINGTON: Okay. My understanding
15 is -- of that term is I have no idea what it is, because
16 the first time I heard of it was this morning. And, I'm
17 assuming Mr. Pelletier, since he used the plan -- the term
18 often enough, he must know what it is. It sounds like
19 it's kind of a standard practice. And, in general
20 understanding, I would say it is some type of plan that's
21 laid out, that you go back and, okay, now it's been built,
22 you're going to look at maybe the wildlife effects, maybe
23 the geographical effects, run-off, whatever. The changes
24 that might occur due to the building of the Project.

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1 MS. GEIGER: And, I just want to be
2 clear --

3 MR. HARRINGTON: And, that's -- excuse
4 me. That's why I wanted the scope, because I really don't
5 know what it involves.

6 MS. GEIGER: Okay. I guess -- I guess,
7 in my mind, and I just want to make sure the witnesses
8 understand what the assignment is. There are monitoring
9 plans that have suggested and recommended by the
10 Department of Environmental Services for the Project's
11 effects on wetlands and water quality and alteration of
12 terrain. So, there are those monitoring activities that
13 have been recommended by DES. This morning, I think we
14 also got into the subject matter of, you know, monitoring
15 or doing surveys regarding post-construction avi an

16 mortalities. That's a whole separate, that's a wildlife
17 and avian and perhaps bat study, issue. So, I just want
18 to make sure we have clear in our minds what type of
19 monitoring we're talking about.

20 MR. HARRINGTON: Well, let me make it
21 easier. Whatever type of monitoring you intend to do,
22 give us a type of list that say "these are the types of
23 things we intend to address." And, then, we'll be able to
24 look at them and make some determination whether we feel

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1 it's a complete list. I mean, I'm not asking for
2 specifics, just a scope document. Those are all the
3 questions.

4 MS. LINOWES: Mr. Chairman, I just want
5 to say that the types of post-construction studies are
6 open to debate. And, so, it's not necessarily -- there
7 are a lot of people that should be participating in
8 recommendations for post-construction studies. So, I
9 don't know where the opportunity would come in this
10 process to allow other voices to be heard, other than
11 perhaps an Advisory Committee, after the Project has been
12 certificated, if it is.

13 MR. IACOPI NO: Mr. Chairman, as I
14 understand Mr. Harrington's request, he wants like an
15 example, something that's illustrative, not necessarily
16 exact, is that correct?

17 MR. HARRINGTON: I'm looking for
18 something, let's just say if we're going to have a Post
19 Shovel ing Moni toring Plan of my driveway. How much -- Is
20 the driveway clear? How high are the snowbanks? It's

21 something on that idea. So, in this case, I'd say,
22 whatever is standard industry practice to look at
23 afterwards as a condition that you want to monitor over
24 time based on the Windpark being there. And, I don't

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1 claim to be an expert at it, but I assume these gentlemen
2 are.

3 CHAIRMAN GETZ: Mr. Scott.

4 DIR. SCOTT: I have another question for
5 Mr. Lyons, unrelated to the past discussion.

6 BY DIR. SCOTT:

7 Q. On the Mitigation Agreement, Settlement Agreement, A.9,
8 which talks about "restricting the access". First, I
9 have a couple of questions. The first, the word -- it
10 says "GRP shall take commercially reasonable" available
11 "efforts to restrict access". And, it just strikes me
12 as odd that the word "commercially" being stuck in
13 there. Why is that there?

14 A. (Lyons) That's a legal term.

15 Q. Okay.

16 A. (Lyons) I didn't add it, but it was proposed by, you
17 know, our corporate counsel. And, you know, my
18 understanding is that it -- is that it means "efforts
19 that are reasonable within usual commercial
20 transactions". Which implies to me that it has, you
21 know, an implication for cost-effectiveness. And,
22 beyond that, I can't quote chapter and verse on how
23 that clause, which shows up in a lot of contracts, has
24 been interpreted. But, you know, my understanding and

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1 our intent was that we do what we reasonably can to
2 restrict motorized traffic. And, we have made specific
3 proposals outside of this Agreement to put up locked
4 gates and signs. And, obviously, we're going to do
5 whatever the Committee tells us to do. But that's what
6 we would suggest would be "reasonable efforts". And, I
7 don't, you know, want to waste a lot of time talking
8 about what I think might not be reasonable, like
9 putting up razor wire. There are things that just
10 would not be reasonable for us to do. But that's what
11 we think would be reasonable, and that is accommodated
12 by this language.

13 Q. And, to follow up on that, do you feel it would be
14 inappropriate -- to characterize it from my point of
15 view as a layman, would -- "commercially reasonable"
16 would be something that is standard practice for
17 commercial entities in general for limiting access, is
18 that fair?

19 A. (Lyons) Yes. Yes. But I think it's --

20 Q. It's standard practice?

21 A. (Lyons) Correct. But I think we need to take the site
22 into consideration. So that, what might be reasonable
23 on a waterfront, you know, a commercial/industrial
24 waterfront, might not be appropriate in the middle of

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1 the woods. I think we have an open mind on this issue.
2 We have to remember that we don't own this land. And,
3 we don't want to put anybody at harm, but we want to

4 give law-abiding people, you know, every chance to do
5 the right thing.

6 Q. Okay. And, my last question on this same line, again,
7 it specifically narrows the scope only to motorized
8 public access?

9 A. (Lyons) Yes.

10 Q. Do you know why that is?

11 A. (Lyons) That was so we don't prevent hikers from
12 entering. It's not our intention to keep all foot
13 traffic away. It was -- we were, you know, it was
14 suggested to us by a number of parties in developing
15 this that there's kind of a balancing here. That
16 motorized traffic has an extra impact on the wildlife
17 in the area, but hikers and hunters may not. So, you
18 know, again, we -- it wasn't our intent to prevent
19 hikers from being in there.

20 DIR. SCOTT: And, if I could, Mr.

21 Chairman?

22 BY DIR. SCOTT:

23 Q. So, following up on that, understanding you want access
24 to the general area for hikers and hunters and that

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1 type of thing, how would -- in earlier discussions, we
2 were talking about ice throws and potential safety and
3 security issues.

4 A. (Lyons) Yes.

5 Q. How would -- what does the Applicant plan to do to
6 notify those hikers and hunters? How would they know
7 they're getting too close or they may be in a danger
8 area?

9 A. (Lyons) Yes. Through signage, that informs them, you
10 know, adequately about the risks. And, in particular,
11 as those risks may change from time to time, I mean, if
12 there's icing conditions in effect, you know, we'd want
13 them to be aware of that.

14 DIR. SCOTT: And, if I could still --

15 CHAIRMAN GETZ: Yes.

16 BY DIR. SCOTT:

17 Q. So, within that, is there a plan to post signage on
18 trees or can you give me a little more detail, if I'm a
19 hiker or a hunter and I'm in that area, the access road
20 hasn't blocked me, it's understood I have access to the
21 general area, --

22 A. (Lyons) Right.

23 Q. -- as I get closer, how will I know?

24 A. (Lyons) Well, through signs. And, I'm not aware of any
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1 specific proposal we've made with regard to that. But
2 I think it would be reasonable, and we would be more
3 than happy to provide signs that notify, you know, the
4 public about any foreseeable risk within the zone of
5 that risk. So, yes, I -- and, again, the
6 countervailing interest that needs to be balanced here
7 is the interest of the landowner. So, I think it's
8 kind of a three-way discussion. But we're certainly
9 willing to do and eager to do whatever is reasonable to
10 notify people of those risks, where those risks are
11 obtained.

12 DIR. SCOTT: Thank you.

13 CHAIRMAN GETZ: Any questions?

14 Mr. Iacopi no.

15 MR. IACOPI NO: I have just a couple.

16 BY MR. IACOPI NO:

17 Q. First, for you, Mr. Lyons. Yesterday, I don't know if
18 it was yesterday or today, you told us that the cost of
19 obtaining the property, which will be deeded in fee to
20 the State of New Hampshire, for the company was
21 \$2.4 million. And, in addition, the Agreement
22 identifies I think \$950,000 of payments. Am I correct
23 in those?

24 A. (Lyons) Those are not additive. The 2.4 million
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1 includes the cost of the land, and the 750,000, and the
2 \$200,000.

3 Q. Okay. Thank you. And, that \$2.4 million overall
4 figure then, is it the Company's intention that you're
5 going to access those funds as part of your overall
6 financing for the project?

7 A. (Lyons) Correct.

8 Q. Okay. There was -- you were asked, and I just want to
9 make this clear, you were asked about "liability of the
10 State of New Hampshire" as a result of the indemnity
11 clause, and you said that "anybody can sue anybody",
12 essentially. But, just for the public, what that
13 indemnity clause means is that you're going to pick up
14 the tab for those lawsuits for the State of New
15 Hampshire, isn't that correct?

16 A. (Lyons) Yes.

17 Q. Mr. Pelletier, you were asked initially, at the
18 beginning of your testimony today, about this -- going

19 back to this question about the relative effects of
20 logging versus building a windpark up in this high
21 elevation. And, you told us you're a forester, is that
22 correct?

23 A. (Pelletier) Yes.

24 Q. Is timber harvesting permitted above 2,700 feet in New
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1 Hampshire?

2 A. (Pelletier) My understanding it is, with a permit.

3 Q. I'm sorry?

4 A. (Pelletier) With a permit.

5 Q. And, could you just tell us in a nutshell what the
6 process is, if somebody wants to harvest timber above
7 2,700 feet, what do they have to do?

8 A. (Pelletier) I'm not that familiar with New Hampshire's
9 laws that regulate timber harvesting. But, from what I
10 have seen, is that typical commercial harvests usually
11 uses mechanical equipment orders, it's not necessarily
12 something that's being done with just a chainsaw and
13 cable skidder or something. So, it's a fairly
14 intrusive event.

15 Q. But my question, though, is more towards the regulatory
16 process. Do you know what regulatory process they must
17 go through?

18 A. (Pelletier) No, I'm not that familiar with it.

19 CHAIRMAN GETZ: Mr. Mulholland.

20 MR. MULHOLLAND: Mr. Chairman, sorry to
21 interrupt. But we have Mr. Staats here, who probably
22 knows more about that than anyone in New Hampshire, you
23 can ask him.

24 BY MR. IACOPI NO:

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1 Q. Mr. Pelletier, is there any standard ratio that is used
2 in your industry in order to gauge what is an
3 appropriate level of mitigation in high-elevation areas
4 for development?

5 A. (Pelletier) There's no standard ratio. It's a
6 case-by-case, site-by-site, depending on the type of
7 community, the type of species that are being
8 potentially impacted.

9 Q. And, lastly, are you aware of any requirement in any of
10 the permits involving invasive species at all?

11 A. (Pelletier) I'm not aware of any.

12 Q. Okay. So that, for some reason, we got off on invasive
13 species. Have you suggested to anybody that you're
14 going to do some sort of post-constructive invasive
15 species study?

16 A. (Pelletier) No.

17 MR. IACOPI NO: I have no further
18 questions, sir.

19 CHAIRMAN GETZ: Okay. Is there anything
20 further from the Subcommittee?

21 (No verbal response)

22 CHAIRMAN GETZ: Mr. Patch or Ms. Geiger,
23 is there going to be redirect?

24 MS. GEIGER: Yes, Mr. Chairman. I was

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1 hoping that, since we've been going now for almost two
2 hours, and since we've covered a lot of different

3 subjects, some of which I was not prepared to do redirect
4 on as of Wednesday evening, I was hoping that we could
5 take the lunch break at this time. So that I could confer
6 with the witnesses, in order to be better prepared for
7 redirect, and hopefully eliminate some questions.

8 CHAIRMAN GETZ: So, then, at this point
9 you're thinking it may be somewhat extensive?

10 MS. GEIGER: Yes.

11 CHAIRMAN GETZ: Okay. All right. Then,
12 let's take the lunch recess at this point. Before we do,
13 though, let me make sure what the game plan is for the
14 rest of the day. So, it will be redirect for this panel,
15 then we'll hear from Mr. Staats and Ms. Kelly, and they
16 will be subject to cross. And, Ms. Linowes, do you have
17 extensive cross for the Fish & Game witnesses?

18 MS. LINOWES: It's probably about 40
19 minutes.

20 CHAIRMAN GETZ: And, then we would go to
21 Dr. Publicover. And, I guess the same question, is there
22 going to be extensive cross-examination?

23 MS. LINOWES: I do have a -- quite a few
24 questions for him.

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1 CHAIRMAN GETZ: Okay.

2 MR. ROTH: And, then, I would have a few
3 questions for each of those panels.

4 CHAIRMAN GETZ: Okay. And, then, will
5 there be some -- Dr. Publicover, you have some questions
6 for Fish & Game?

7 DR. PUBLICOVER: One or two minutes max.
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8 CHAIRMAN GETZ: And, Mr. Mulholland,
9 you'll have --
10 MR. MULHOLLAND: Very brief.
11 CHAIRMAN GETZ: Okay. All right. Then,
12 it gets me to the other question of whether -- are
13 Mr. Mariani and Mr. Sanford on their way here?
14 MR. ROTH: It's not clear whether they
15 are. And, if they aren't, I'd like to call them and tell
16 them whether they should be or should not be. I
17 personally cannot go into the evening, and I know you want
18 to end at 5:00. But I have other commitments after, you
19 know, shortly after 6:00 that I have to attend to.
20 CHAIRMAN GETZ: Yes. And, I'm getting
21 -- I'm not optimistic about reaching Mariani and Sanford
22 today, given, you know, the way these things tend to
23 proceed. But it gets me back to the issue of Monday we're
24 addressing the financial witnesses. I mean, what's the
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1 feeling among the attorneys on whether we're going to be
2 able to get to all of the financial issues on Monday?
3 MR. ROTH: I think we, when Mr. Patch
4 and I conferred with you a couple of days ago, we believed
5 that we could accomplish the financial package on Monday.
6 CHAIRMAN GETZ: Okay. And, Ms. Linowes,
7 what type of extensive cross do you think you might have
8 for the financial witnesses?
9 MS. LINOWES: Probably not -- I'm sure
10 not a lot.
11 CHAIRMAN GETZ: Okay.
12 (Multiple parties speaking at the same

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time.)

CHAIRMAN GETZ: And, Dr. Publicover?

DR. PUBLICOVER: We're not a party to the confidentiality, so we will not be here.

MR. MULHOLLAND: I'm sorry, I said I have zero minutes of questions.

CHAIRMAN GETZ: Okay. And, I guess, and maybe this is fair warning to everyone then, that we would go as long as it takes on Monday to get the financial testimony done. And, then, we would turn on Tuesday to Mariani and Sanford. And, I would say, you know, Mr. Roth, let them know to don't take the trip north

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1 today. And, we do have to address the issue of when to
2 have the direct examination of Ms. Keene and permit her
3 cross of Mr. Staats and Ms. Kelly. So, maybe we can -- I
4 can't recall if I put this on the record at the beginning
5 of the day that she's ill today and couldn't make it. So,
6 perhaps we can reschedule what we were going to do today
7 to Tuesday. But let's -- I'll ask counsel to reach out to
8 Ms. Keene to see if we can do that.

9 So, with that, let's take the lunch
10 recess. It's 12:15, and we'll resume at 1:30.

11 (Whereupon the lunch recess was taken at
12 12:15 p.m. and the hearing reconvened at
13 1:44 p.m.)

14 CHAIRMAN GETZ: Okay. Good afternoon,
15 everyone. We're back on the record in the Site Evaluation
16 Committee Docket 2008-04. I apologize for the delay in
17 resuming this afternoon. I think we were going to turn to

18 the Applicant for redirect. But I understand, Ms. Geiger,
19 that there's now a substituted Revised Supplemental
20 Testimony for Mr. Gravel and Mr. Pelletier that's
21 proposing as "Exhibit Number 50".

22 MS. GEIGER: Right. And, it's not going
23 to replace anything that's already on the record. It's
24 just going to add to the record. I think we talked about
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1 this the other day, that we would provide a strike-out
2 version of the Supplemental Prefiled Testimony of Mr.
3 Pelletier and Mr. Gravel, to show the updated Mitigation
4 Plan that resulted from the Settlement Agreement.

5 CHAIRMAN GETZ: Okay. Thank you. And,
6 let me just note for the record as well that Mr. Janelle
7 is not here at the moment. He is at a Stimulus meeting on
8 behalf of Department of Transportation. And, it's not
9 clear if he will be rejoining us, it depends on how long
10 that meeting goes this afternoon.

11 But we'll turn to redirect.

12 MS. GEIGER: Thank you, Mr. Chairman.

13 REDIRECT EXAMINATION

14 BY MS. GEIGER:

15 Q. Now, Mr. Gravel and Mr. Pelletier, during
16 cross-examination the other day you were shown a
17 document entitled "Guidelines for Conducting Bird and
18 Bat Studies at Commercial Wind Energy Projects", which
19 was marked as "Exhibit IWA-X-27" in this case. Do you
20 recall that document?

21 A. (Gravel) Yes.

22 A. (Witness Pelletier nodding affirmatively).

23 Q. Do you know who published that document?

24 A. (Gravel) New York Department of Environmental

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 Conservation.

2 Q. Could you speak into the microphone please, and repeat
3 your answer.

4 A. (Gravel) The New York Department of Environmental
5 Conservation.

6 Q. To your knowledge, has any agency of the State of New
7 Hampshire adopted similar guidelines for use by
8 projects that wish to build wind energy facilities in
9 New Hampshire?

10 A. (Gravel) No.

11 Q. Now, before you began your avian and bat studies and
12 surveys for this Project, did you contact any state or
13 federal agencies to provide them with information about
14 the Project, and to request information from them
15 regarding any known resources of concern at the Project
16 site?

17 A. (Gravel) Yes. I think it was October 2006 -- or,
18 excuse me, November 2006, we sent out letters
19 requesting information on natural resources of concern
20 and other rare, threatened or endangered wildlife
21 species of concern.

22 Q. And, who did you send those letters to?

23 A. (Gravel) New Hampshire Fish & Game Department, U.S.
24 Fish & Wildlife Service, Natural Heritage Bureau. I

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- 1 believe that was it.
- 2 Q. Okay. And, did you receive any responses to those
- 3 letters?
- 4 A. (Gravel) Yes, we did.
- 5 Q. What responses did you receive?
- 6 A. (Gravel) We received responses back from New Hampshire
- 7 Fish & Game, Mike Marchand; Natural Heritage Bureau,
- 8 and U.S. Fish & Wildlife Service.
- 9 Q. Okay. And, prior to conducting studies for this
- 10 Project, did you meet with any representatives of Fish
- 11 & Game or any other State or federal agencies to
- 12 discuss your proposed studies?
- 13 A. (Gravel) We met with New Hampshire Fish & Game on a
- 14 couple of occasions; once for met tower siting and also
- 15 for winter track surveys. At the winter track survey
- 16 meeting, we briefly described what we had intended on
- 17 doing for all studies combined, but quickly jumped
- 18 right into the winter tracking survey methodology.
- 19 Q. Did you prepare a written work plan by which you would
- 20 conduct your surveys and studies?
- 21 A. (Gravel) Yes, we did.
- 22 Q. And, did you share information about that plan with any
- 23 State or federal agency before conducting the studies?
- 24 A. (Gravel) We briefly discussed it, but more specifically
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 discussed the winter track survey.
- 2 Q. Okay. And, would it be fair to say that the New
- 3 Hampshire Fish & Game Department and the U.S. Fish &
- 4 Wildlife services knew about your proposed studies, at
- 5 least in a general fashion, before you conducted them?

- 6 A. (Gravel) Yes.
- 7 Q. Did either of those agencies express any objections to
8 or concerns about your proposed studies before you
9 began them?
- 10 A. (Gravel) No.
- 11 Q. Either before or during your studies, did either Fish &
12 Game or U.S. Fish & Wildlife Service express any
13 concerns about bat caves on the Project site?
- 14 A. (Gravel) No. That concern came from the U.S. Fish &
15 Wildlife Service following field surveys.
- 16 Q. Okay. Now, how did you decide upon the types of
17 studies to conduct and the methodology to use for those
18 studies?
- 19 A. (Gravel) We followed studies conducted for similar
20 projects that we conducted in Maine, as well as
21 Vermont, and even New York. So, it was kind of a blend
22 of, you know, standard practices throughout the
23 industry.
- 24 Q. In addition to conducting studies on the Project site,
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- 1 did you look at any other data in developing your
2 conclusions about this Project's effect on avian and
3 bat species?
- 4 A. (Gravel) Yes. We looked at -- basically compared these
5 results with a number of other publicly available
6 radar, raptor, and bat survey results using similar
7 methods.
- 8 Q. Now, is it true that there was, concurrently with your
9 study, that there was another wind energy project being
10 studied in close proximity to this Project site?

11 MR. ROTH: Mr. Chairman, it's going to
12 be a long afternoon if we have to hear the direct
13 testimony repeated again. It's all in the record already.
14 All of these -- A number of these questions that are being
15 asked and this information that's being provided were
16 already in the direct testimony. And, I think the
17 redirect is supposed to be limited to things that were
18 brought out on cross.

19 MS. GEIGER: Mr. Chairman, in
20 cross-examination by both Ms. Linowes and Mr. Roth as
21 well, there were challenges made to the survey
22 methodologies, the number of days that were studied, and
23 the types of things that were studied by these witnesses.
24 What I'm trying to do on redirect is merely rehabilitate

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1 them and get them to provide information on the record
2 about the soundness of their studies, the information that
3 State agencies knew about the studies before they were
4 conducted, and then the results of those studies.

5 CHAIRMAN GETZ: Yes. I'm reluctant to
6 rely entirely on my memory for what exactly has been in
7 the prefiled and what exactly has been covered on cross.
8 But I do believe that Ms. Geiger is correct, that some of
9 these issues were raised on cross-examination. And, I
10 think there should be some latitude in, as she puts it, in
11 rehabilitating with respect to some of these issues. But,
12 and I don't think it's necessary to go through all of the
13 redirect, if we could keep it -- or to direct, if we could
14 focus in, that would be helpful.

15 BY MS. GEIGER:

16 Q. The last question I had was with respect to another
17 project that was being surveyed at the same time as
18 this Project, and whether you relied on any data from
19 that Project?

20 A. (Gravel) Yes. During Fall 2006 and Spring 2007, we
21 conducted similar studies using radar and acoustic bat
22 detectors at the North Country Wind Project four miles
23 north of the Project, of the GRP Project, just north of
24 the Balsams.

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1 Q. Okay. And, excuse me, approximately how many studies
2 has your company conducted for wind projects?

3 A. (Gravel) We have a number of them. I think the count
4 is over 100 at this point.

5 Q. And, how would you compare the results of your studies
6 at the Noble site, the GRP/Noble site, with the results
7 of other studies that you have conducted for other wind
8 energy facilities?

9 MR. ROTH: Mr. Chairman, during
10 cross-examination, the witness testified to having
11 conducted a number of published studies or publicly
12 available studies, and a number of unpublic studies. And,
13 I guess I would ask that the question be limited to those
14 that are public studies, in fairness, since we don't have
15 access to any of that other stuff.

16 CHAIRMAN GETZ: Well, I think the
17 question, if we can differentiate between how many public
18 and how that were not public, that would be helpful for
19 the record.

20 MS. GEIGER: Sure. And, with respect to

21 the numbers, we can do that. And, then, I can also just
22 ask the witnesses on the second question to compare the
23 results of their publicly available studies with the
24 results for this Project?

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1 MR. ROTH: Thank you.

2 BY THE WITNESS:

3 A. (Pelletier) I think it's fair to say that, with both
4 the public -- the publicly available and in the ones
5 that are still unavailable, that the results have been
6 very consistent and within the bounds of the types of
7 findings we were finding at Coos.

8 A. (Gravel) Can I elaborate on that, too? The North
9 Country Wind Project, which was only 4 miles north of
10 this Project, was very similar flight heights between
11 seasons and passage rates between seasons were almost
12 identical.

13 BY MS. GEIGER:

14 Q. Okay. Now, could you please refer to Ms. Linowes"
15 Exhibit IWA-X-29", which has been labeled "Summary" --
16 or, which is labeled "Summary of Available Radar
17 Surveys" -- "Survey Results for Proposed Terrestrial
18 Wind Facilities". Do you have that? The first
19 question I have is, how does that particular document
20 compare with the document that is appended to your
21 supplemental prefiled testimony labeled "Attachment 5"?

22 A. (Gravel) Attachment 5 includes results from more
23 recently publicly available surveys, I believe up to
24 2007 and 2008.

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- 1 Q. So, is it fair to say that Ms. Linowes' Exhibit 29 is a
2 subset of your Attachment 5?
- 3 A. (Gravel) Yes.
- 4 Q. Okay. And, I believe Ms. Linowes asked you the other
5 day about how many of the projects listed on her
6 Exhibit 29 have publicly available post-construction
7 survey results? Do you remember that question?
- 8 A. (Gravel) Yes, I do.
- 9 Q. And, do you recall your answer to the question?
- 10 A. (Gravel) I believe my answer was Mars Hill, Maine.
- 11 Q. Okay. And, are you familiar with the Mars Hill, Maine
12 post-construction survey results?
- 13 A. (Gravel) Yes, I am.
- 14 Q. Could you please describe them in a general fashion?
- 15 A. (Gravel) During the 2007 surveys, there was something
16 like 25 birds and 22 bats counted under wind turbines.
17 And, then, 2008 was 22 birds and 5 bats.
- 18 Q. And, are you familiar with the Mars Hill
19 pre-construction survey results?
- 20 A. (Gravel) Yes.
- 21 Q. And, how did the Mars Hill pre-construction survey
22 results compare with the GRP pre-construction survey
23 results?
- 24 A. (Gravel) The passage rates at the Mars Hill site were
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 higher in the fall than the GRP site, and pretty
2 similar in the spring to the GRP site.
- 3 Q. Okay. And, how would you compare the Mars Hill
4 post-construction survey results with post-construction

5 survey results from other wind energy facilities that
6 you have conducted?

7 A. (Pelletier) They're --

8 MR. ROTH: Mr. Chairman, I'll object to
9 this also. This is directly in the prefiled supplemental
10 testimony. I mean, it's word-for-word.

11 MS. GEIGER: Okay. I'll withdraw the
12 question and move on.

13 BY MS. GEIGER:

14 Q. I believe that you were asked some questions about
15 "whether you were aware of any wind energy facilities
16 where overhead power lines were in close proximity to
17 those facilities?" Do you recall those questions?

18 A. (Gravel) Yes.

19 Q. Okay. Are you aware of any such situation where that
20 configuration exists? In other words, there are
21 overhead power lines in close proximity to wind
22 turbines?

23 A. (Gravel) Yes. The Mars Hill Project again. The other
24 unique part about that project is the southern slope of

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 that project area was a ski slope or is a ski slope,
2 which has a variety of open edge type conditions caused
3 by ski trails and overhead chairlifts and lift lines.

4 Q. And, how would you characterize the avian mortality
5 rates at Mars Hill?

6 A. (Gravel) We would characterize them as "low".

7 Q. Are you familiar with the bat mortality rates at Mars
8 Hill?

9 A. (Gravel) Yes.

10 Q. And, how do they compare with the two facilities that
11 Ms. Linowes asked you about the other day, the
12 Mountaineer Project in West Virginia and the Buffalo
13 Mountain Project in Tennessee?

14 A. (Gravel) Much lower.

15 Q. Okay. I believe that, in response to questions from
16 Ms. Linowes, you agreed with her that there are some
17 poor studies out there on bird and bats, but that you
18 put a lot of effort into your studies and that you
19 stand behind your result. Is that your testimony?

20 A. (Gravel) Yes.

21 Q. Okay. Now, how is your -- what is your understanding
22 about how revegetation will be accomplished for this
23 Project?

24 A. (Pelletier) In general, the road construction will

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 occur as it's needed, to get up and get the Project
2 built. And, following that, the roadbed will be
3 essentially closed and -- to a 12-foot opening, that
4 there will be, on the roadbed itself, will be wood
5 grindings, course material, and kind of an organic
6 matter would be mixed with some soil amendments, as
7 it's available. But, essentially, built up so you got
8 a bed that can retain some moisture, provide some
9 organic material, and support planned establishment out
10 there. And, again, it's aimed at species like balsam
11 fir, because balsam fir really regenerates well on just
12 that kind of a soil material, that kind of a duff, and
13 essentially let that go. And, should there be a need
14 for maintenance later on that can't be handled by the

15 equipment, and, again, I believe something we didn't
16 talk about before, was some of this equipment can be
17 broken down. It's not necessarily always going to be a
18 big crane, but some of these cranes are broken down to
19 smaller components and brought up. But, given that
20 maintenance has to happen in the -- over the long term,
21 that that area that's got the vegetation will basically
22 be cleared to allow that equipment to be up, and then
23 allowed to regrow again.

24 Q. And, could you provide us with your understanding of
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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 what type of monitoring will occur for invasive
2 species?

3 A. (Pelletier) My understanding is that monitoring is
4 required under the -- for the wetland mitigation
5 aspects of the Project.

6 Q. Okay.

7 A. (Pelletier) Purple loosestrife, you know, species that
8 are common to taking over some disturbed wetlands.

9 Q. Okay. I believe the other day we were referencing the
10 -- I believe I referenced it with Mr. Lobdell, the
11 letter from you, Mr. Gravel, to Mr. Decker, regarding
12 the rare plant surveys that were conducted at the
13 Project site. Are you familiar with that letter?

14 A. (Gravel) Yes.

15 Q. Do you know whether that letter was ever sent to the
16 New Hampshire Natural Heritage Bureau?

17 A. (Gravel) Yes. I believe it was sent to the Natural
18 Heritage Bureau, and it was referenced in their
19 November 13th progress report.

20 Q. Okay.

21 A. (Gravel) Both reports were referenced in their letter.

22 Q. And, would -- is it fair to that Ms. Coppola, at the
23 Natural Heritage Bureau is aware of that letter?

24 A. (Gravel) Yes.

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 Q. And, again, what was the basic finding in that report
2 by you?

3 A. (Gravel) I have to go back to that one.

4 Q. Okay.

5 MR. ROTH: Mr. Chairman, this is again
6 going into direct testimony that I don't recall anybody
7 seriously challenging the contents of the rare plant
8 survey. That was not -- you know, the issue was whether
9 it was -- had been provided to the Natural Heritage
10 Bureau. That's been established. But the contents of the
11 rare plant survey were not -- was not, as I recall, the
12 subject of much cross-examination yesterday.

13 MS. GEIGER: That's fine. I'll withdraw
14 the question.

15 BY MS. GEIGER:

16 Q. Now, I believe, Mr. Pelletier, you this morning
17 testified that it was your opinion that the Project,
18 with the High-Elevation Mitigation Settlement
19 Agreement, was, in your opinion, more favorable than no
20 Project and no High-Elevation Mitigation Settlement
21 Agreement. Was that your testimony?

22 A. (Pelletier) That's correct.

23 Q. And, what is your understanding of what would happen on
24 the Project site, if the Project did not go forward and

[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 the High-Elevation Mitigation Settlement Agreement were
2 not implemented?
- 3 A. (Pelletier) That over time portions of the upper -- the
4 upper elevation areas would be harvested or able to be
5 harvested.
- 6 Q. And, why is that your understanding?
- 7 A. (Pelletier) It's happening now. There's actually a
8 permitted area that's going to be cut, and discussions
9 about other ones that will be coming up in the future.
- 10 Q. Do you know how many acres have been permitted for
11 cutting in high elevations in the Project site?
- 12 A. (Gravel) 223 acres.
- 13 Q. And, is it your understanding that, under the High
14 Elevation Mitigation Settlement Agreement, that that
15 cutting will not occur?
- 16 A. (Pelletier) That's correct.
- 17 Q. And, just for the Committee's edification, could one of
18 you point out the location again of Whitcomb Mountain,
19 which is referenced in the Settlement Agreement?
- 20 A. (Gravel) It's over on the western portion here, in the
21 middle.

22 CHAIRMAN GETZ: And, you're pointing to
23 the map that's actually contained in the Application
24 following Page 102.

[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 MS. GEIGER: It's Figure 3.
2 CHAIRMAN GETZ: Figure 3.

- 3
4 BY MS. GEIGER:
5 Q. Okay. Mr. Lyons, I have a question for you. I believe
6 you gave some testimony this morning about -- in
7 response to questions about the obligations in the
8 Settlement Agreement with respect to GRP's
9 responsibilities to indemnify the State of New
10 Hampshire. Do you recall those questions?
11 A. (Lyons) Yes.
12 Q. And, could you please indicate that, in the event that
13 the State of New Hampshire were to be sued for actions
14 revolving around events at the proposed -- or, at the
15 Project site, what is your position about the Project's
16 obligations to indemnify the State of New Hampshire, in
17 the event if such a suit were to be filed?
18 A. (Lyons) Well, it's provided for in the Agreement.
19 Q. So, in other words, is it your position that the terms
20 of the Agreement would govern that situation, as
21 opposed to anything that you said orally this morning
22 on the witness stand?
23 A. (Lyons) Yes. It's provided for and delimited in the
24 Agreement --

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

- 1 MS. GEIGER: Thank you, Mr. Chairman. I
2 don't have any further questions.
3 CHAIRMAN GETZ: Okay. Thank you.
4 Anything further from the Committee?
5 (No verbal response)
6 CHAIRMAN GETZ: Okay. Hearing nothing,
7 then the witness are excused. Thank you, gentlemen.

8 Mr. Mulholland.
9 MR. MULHOLLAND: Mr. Chairman, we'd like
10 to call Jill Kelly and Will Staats.
11 (Whereupon Jillian Kelly and William
12 Staats was duly sworn and cautioned by
13 the Court Reporter.)
14 JILLIAN KELLY, SWORN
15 WILLIAM STAATS, SWORN
16 DIRECT EXAMINATION

17 BY MR. MULHOLLAND:
18 Q. Mr. Staats, can you please introduce yourself and state
19 where you're employed?
20 A. (Staats) My name is William W. Staats. I'm employed by
21 New Hampshire Fish & Game Department. I'm the Regional
22 Wildlife Biologist of the Region 1 office, in
23 Lancaster, New Hampshire.
24 Q. And, Ms. Kelly.

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1 A. (Kelly) My name is Jillian Kelly. And, I'm the
2 Assistant Regional Wildlife Biologist out of the New
3 Hampshire Fish & Game office in Lancaster.
4 Q. And, do either of you have any professional
5 certifications?
6 A. (Staats) Yes. I'm a certified wildlife biologist.
7 A. (Kelly) I am a certified wildlife biologist as well.
8 Q. And, Mr. Staats and Ms. Kelly, have you looked at
9 what's been marked as "Fish & Game Exhibit 1", the
10 prefiled testimony?
11 A. (Staats) Yes, we have.
12 A. (Kelly) Yes.

13 Q. And, if I were to ask you those same questions today,
14 would you answer in the same way?

15 A. (Staats) Yes.

16 A. (Kelly) Yes.

17 Q. Do you have any updates to that testimony that you'd
18 like to present to the Committee, specifically on the
19 Mitigation Agreement that Fish & Game's entered into?

20 A. (Staats) Yes. Since the time of our testimony, as we
21 have discussed here, Fish & Game has developed an
22 agreement with the Applicant and AMC. And, it has been
23 our position, as Fish & Game, that that agreement helps
24 to compensate for the adverse impacts to -- from the

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[WITNESS PANEL: Kelly|Staats]

1 Project to wildlife and wildlife habitat.

2 MR. MULHOLLAND: Thank you. That's it.

3 CHAIRMAN GETZ: Okay. Then, let's start
4 with, Dr. Publicover, do you have questions for the panel?

5 DR. PUBLICOVER: Yes, just a very few
6 questions for Mr. Staats.

7 CROSS-EXAMINATION

8 BY DR. PUBLICOVER:

9 Q. In your prefiled testimony, Pages 7 and 8, there's a
10 discussion of the "High Elevation Memorandum of
11 Understanding" governing timber management in these
12 areas. You were part of the team that helped negotiate
13 that agreement, correct?

14 A. (Staats) That's correct.

15 Q. And, I was also part of that, correct?

16 A. (Staats) Correct.

17 Q. All right. And, you were also Chair of a group known

18 as the "Biologists Advisory Committee" that provided
19 scientific input on the development of those
20 guidelines, is that correct?

21 A. (Staats) That's correct, yes.

22 Q. And, is it fair to say that that group contains some of
23 the state's most knowledgeable wildlife biologists and
24 silviculturalists?

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[WITNESS PANEL: Kelly|Staats]

1 A. (Staats) Yes, I would say that. Yes.

2 Q. All right. And, on Page 8 of your testimony it says
3 that "It was the consensus of this group", i.e. the
4 Biologists Advisory Group, "that no timber harvest was
5 the most effective strategy to safeguard the natural
6 resource attributes at these elevations." That's
7 correct?

8 A. (Staats) That's correct.

9 Q. And, the Settlement -- the provisions of the Settlement
10 Agreement, for the lands that are to be conserved,
11 essentially incorporates that preferred recommendation
12 of the Biologists Advisory Group?

13 A. (Staats) Yes, that's correct.

14 Q. And, essentially -- so, the Settlement Agreement
15 provides the type of protection that is not currently
16 provided by either the Memorandum of Understanding,
17 which is certainly no longer in effect, Coos County
18 Zoning Ordinances, or New Hampshire timber harvesting
19 policies, is that correct?

20 A. (Staats) That's correct.

21 DR. PUBLICOVER: All right. Thank you.

22 No more questions.

23

24 BY MR. ROTH:

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[WITNESS PANEL: Kelly|Staats]

1 Q. Now, this morning, Mr. Staats, you were offered up as
2 an expert on permitting for forestry activities in
3 northern New Hampshire, do you remember that?

4 A. (Staats) I do.

5 Q. Are you happy about that offering?

6 A. (Staats) Well, I've had plenty of experience with it, I
7 guess, yes.

8 Q. Okay. Now, are you aware that -- certainly, you've
9 seen permits that have been offered or obtained for
10 logging in areas in the Phillips Brook and the Bayroot
11 parcels?

12 A. (Staats) Yes, I sure have. Yes.

13 Q. Okay. And, is it your experience and knowledge that
14 those permits are routinely granted by the Coos County
15 Planning Board?

16 A. (Staats) Yes. They are certainly routinely granted,
17 because these harvests occur in what are called "PD6
18 zones", or "Protected District 6". And, the landowner
19 -- those zoning ordinances pertain to the unorganized
20 towns only in New Hampshire. And, so, in order to
21 harvest above 2,700 feet, harvest timber above 2,700
22 feet, you have to obtain a permit from the County
23 Planning Board.

24 Q. Okay. And, when the Planning Board undertakes to

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[WITNESS PANEL: Kelly|Staats]

1 permit such an activity, do they -- does either the

2 Planning Board consult with Fish & Game Department or
3 does the person that is seeking the permit consult with
4 the Fish & Game Department?

5 A. (Staats) Yes. The protocol that we've developed over
6 the years is that the Planning Board relies on my
7 expertise to meet with the forester or land manager who
8 is planning that timber harvest. We come to an
9 agreement in the field. I write that up, they write
10 that up in their permit application, and it goes before
11 the Board and they approve the permit.

12 Q. And, in your experience, are the applicants for those
13 permits responsive to your comments and concerns about
14 natural features and wildlife in the areas that they're
15 going to harvest?

16 A. (Staats) Absolutely, yes. They -- yes.

17 Q. And, do they agree to conditions that limit the impacts
18 of their activities in those areas?

19 A. (Staats) Yes, that's been the case. Yes.

20 Q. Okay. Now, you've been in northern Coos for quite some
21 time, correct?

22 A. (Staats) That's correct.

23 Q. And, is it your experience that large tracts of
24 northern Coos are already in conservation, correct?

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[WITNESS PANEL: Kelly|Staats]

1 A. (Staats) That's correct.

2 Q. And, do you have any knowledge as to whether the
3 tracts, the parcels that are the subject of this
4 proceeding were under consideration for conservation
5 before the Project was proposed?

6 A. (Staats) Yes. The GMO tract or the Kennebec Forest

- 7 West tract was under consideration for a forest legacy
8 easement, that's right.
- 9 Q. And, what is a "forest legacy easement"?
- 10 A. (Staats) Well, it's an easement that would protect that
11 land permanently from development. And, it's through
12 some federal funding dollars, it's protected thousands
13 of acres of land in the Northeast and other places in
14 the country.
- 15 Q. And, would that have covered all the areas that are
16 over 2,700 feet that are in the Project area?
- 17 A. (Staats) The application would have covered all that,
18 yes.
- 19 Q. Okay. And, what happened to that possibility?
- 20 A. (Staats) Well, my understanding was that, because the
21 applicant for the easement, i.e. the landowners,
22 Kennebec West, was interested in wind development, that
23 they decided to withdraw from the application process.
- 24 Q. Okay. And, when you say that they're "interested in
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[WITNESS PANEL: Kelly|Staats]

- 1 wind development", was it your understanding that it
2 was this project and the Applicant's Project in
3 particular?
- 4 A. (Staats) No. We were not sure what -- no, they were
5 going to explore wind power development on the property
6 is what we understood.
- 7 Q. And, when did those -- when was the property under
8 consideration?
- 9 A. (Staats) Oh, I can't recall the exact years, but it was
10 probably three or four years ago, yes.
- 11 Q. And, do you recall when GMO decided it was no longer

12 interested?

13 A. (Staats) It was -- well, during the same application
14 period, whatever period that was, Peter, sort of, yes.

15 Q. Okay. Now, turning now to a different line of
16 questions here. There was some testimony made that
17 Stantec submitted its work plan and its methodology to
18 the Fish & Game Department. Did you hear some of that
19 testimony?

20 A. (Staats) I did.

21 Q. And, that Fish & Game Department never responded to the
22 initial submissions with respect to the -- at least
23 with respect to the migratory bird species, is that
24 what you understood?

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[WITNESS PANEL: Kelly|Staats]

1 A. (Staats) That's what I understood from what I heard
2 here, yes.

3 Q. Okay. And, in your knowledge of what -- of the Fish &
4 Game Department, was that answer consistent with what
5 you know about how the work plan was received at the
6 Fish & Game Department? I guess it -- here's the
7 question. Is it possible that the Fish & Game didn't
8 respond to Stantec's proposals to how they were going
9 to do the bird studies?

10 A. (Staats) It may be possible that they did not, that's
11 true.

12 Q. Okay. And, it was also -- yesterday there was
13 testimony that the Fish & Game Department concurred in
14 Mr. Pelletier's and Mr. Gravel's conclusions. Do you
15 know whether the Fish & Game Department concurred in
16 Mr. Pelletier's and Mr. Gravel's conclusions about the

- 17 bird species issues?
- 18 A. (Staats) Yes, I'm not sure that there was concurrence.
19 I know that there was concerns regarding the raptor
20 surveys. And, I believe Mike Marchand might have had
21 some concerns about the bird surveys as well.
- 22 Q. Okay. And, do you believe that Mr. Marchand
23 communicated those concerns to the representatives of
24 the Project?

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[WITNESS PANEL: Kelly|Staats]

- 1 A. (Staats) I'm not sure, Peter, if they did. I know that
2 some -- in our Technical Progress Report, I think in
3 February, there were some language regarding bird and
4 bat surveys in there.
- 5 Q. Okay. Was there a progress report made in November to
6 the Site Evaluation Committee?
- 7 A. (Staats) In the form of a letter from Mr. Marchand or
8 --
- 9 Q. There was a -- There was a November 13th, 2008 letter
10 from the Fish & Game Department to Mr. Burack, that was
11 signed by Carol Henderson, and included a report. And,
12 I'll show you the report.
- 13 A. (Staats) Yes. Yes. I'm familiar with that, yes.
- 14 Q. Are you familiar with that?
- 15 A. (Staats) That's what I was referring to, yes.
- 16 Q. Okay. Do you know who wrote this report?
- 17 A. (Staats) A number of us had a hand in that report. In
18 regards to the forest issues and marten and so forth,
19 that would be Jill Kelly and myself. But we did not
20 write the section on birds and bats.
- 21 Q. Okay. Do you know who did write the section on birds

22 and bats?

23 A. (Staats) I believe it was Mike Marchand, actually, yes.

24 Q. Okay. And, is it fair to say that Mr. Marchand's

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[WITNESS PANEL: Kelly|Staats]

1 approach to it was essentially to agree with the survey

2 methodology that was being asked or that was being

3 requested by the U.S. Fish & Wildlife Service?

4 A. (Staats) Yes, I think that would be a fair

5 characterization, sure.

6 Q. Okay. And, do you believe, having reviewed

7 Mr. Marchand's report, that the Fish & Game Department,

8 through Mr. Marchand, was comfortable with the results

9 of the surveys that were conducted by the Applicant

10 with respect to the migratory birds?

11 A. (Staats) Well, I haven't seen Mike's direct comments

12 regarding the results of the surveys. But it sounds

13 like he had some concerns with the survey methodology

14 from that report in front of you there, I would say.

15 Q. Okay. Thank you.

16 CHAIRMAN GETZ: And, Mr. Roth, let me

17 make sure. And, this is the November 13th, 2008 letter, I

18 guess signed by Ms. Henderson, the Environmental Review

19 Coordinator?

20 MR. ROTH: That's correct. And,

21 attached to it was the New Hampshire Fish & Game

22 Department Progress Report.

23 CHAIRMAN GETZ: Okay. Thank you.

24 BY MR. ROTH:

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- 1 Q. Now, there has been some testimony about "caves on
2 Mount Kelsey". Did you hear that testimony?
3 A. (Staats) I heard something to that effect, yes.
4 Q. And, this is completely out of the blue, I have no idea
5 how you're going to answer this one. And, do you know
6 where those caves are?
7 A. (Staats) I do not know --
8 Q. Okay.
9 A. (Staats) -- where those caves are on Mount Kelsey.
10 Q. All right. Ms. Kelly, do you know about them?
11 A. (Kelly) No, I've heard about the possibility of their
12 existence, but I do not know where they're located.
13 Q. Okay. Now, based on what you both know about wildlife
14 research, if someone had identified caves, would you
15 suggest that a study for bats on the property would
16 include a review of the caves, to see if there's an
17 abundant bat population in those caves?

18 MS. GEIGER: Excuse me, Mr. Chairman.
19 I'm going to object to this line of questioning. I
20 thought that Mr. Roth was going to be cross-examining
21 these witnesses on their direct prefiled testimony. I
22 think we're going a little bit afield of that, in view of
23 Mr. Roth's admonitions of me when I wondered into
24 different areas, it seems to me only fair that we stick to

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[WITNESS PANEL: Kelly|Staats]

1 questions that relate to a cross-examination of these
2 witnesses based upon what they filed in this docket.

3 CHAIRMAN GETZ: It does seem, in some
4 respects, you're using them as a rebuttal witness, for

5 issues that I don't recall being in their -- either in
6 their direct or are you making a relationship somehow to
7 the Settlement Agreement? What's the basis for this
8 inquiry?

9 MR. ROTH: In their direct testimony,
10 they acknowledged a great deal of familiarity with the
11 natural condition of the site and the various fauna of the
12 site. And, I just thought it was only fair to have them
13 testify about their knowledge of that site. And, in
14 addition, the Fish & Game Department has opined in its
15 status report about the methodology used. And, I'm asking
16 these witnesses about, as Fish & Game Department
17 employees, what that status report indicated and whether
18 they're comfortable with the methodology of the Project to
19 research birds and bats and other species.

20 CHAIRMAN GETZ: And, now we're into the
21 cave issue. And, you're making the relationship that the
22 Mount Kelsey cave, is in particular related to the bat
23 issue, which is related to the Fish & Game report, and
24 they happen to work at Fish & Game. So, let's see how far

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[WITNESS PANEL: Kelly|Staats]

1 you're going to go down this path. How much more cross do
2 you have in this area on these -- on issues that are
3 really not directly related to their testimony?

4 MR. ROTH: I actually have only a few
5 more questions in total.

6 CHAIRMAN GETZ: All right. I'll permit
7 the answer to this question. Let's see where else we're
8 headed.

9 MR. ROTH: Okay.

10

11 question, Peter?

12 BY MR. ROTH:

13 Q. The question was, if you knew of caves on the site,
14 would you expect a proper survey for bats to include an
15 investigation of the caves, to see if there was an
16 abundant bat population in the cave?

17 A. (Staats) Absolutely.

18 A. (Kelly) Yes.

19 Q. Thank you. Now, both of you have had occasion on
20 numerous times, apparently, according to your direct
21 testimony, to visit the mountains and the site, and the
22 Project site, is that correct?

23 A. (Staats) That's correct.

24 A. (Kelly) Yes.

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[WITNESS PANEL: Kelly|Staats]

1 Q. And, have you observed raptors on the sites that you
2 believe are resident in the site?

3 A. (Staats) I haven't observed any raptors while I've been
4 there on those particular occasions.

5 Q. You have not?

6 A. (Staats) No, I have not.

7 Q. Okay.

8 A. (Kelly) I have not either.

9 Q. Okay. That's fine. Well, let me ask you this. Have
10 you seen any nests or roosts for raptors on the site?

11 A. (Staats) I'd have to say not.

12 A. (Kelly) No.

13 Q. Okay. Now, we've heard a lot about the High-Elevation
14 Mitigation Plan. And, I take it that, since the Fish &

15 Game Department is a party to that, you're satisfied
16 with the terms and conditions of the High-Elevation
17 Mitigation Plan in general, correct?

18 A. (Staats) That's correct.

19 A. (Kelly) Correct.

20 Q. And, do you believe that the Project's, notwithstanding
21 the High-Elevation Mitigation Plan, do you believe that
22 the Project's plans for restoration activities along
23 side the road cuts on Mount Kelsey and Dixville are
24 adequate?

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1 A. (Staats) There's no question that I would agree that we
2 want to see those roads brought to that 12-foot width
3 if possible. And, there has been some discussion
4 regarding seeding versus planting of trees and so
5 forth, and certainly our preference would be to see
6 that revegetate with natural vegetation, preferably
7 spruce or -- preferably balsam fir and spruce, you
8 know, from seedlings from the site, that are endemic to
9 that site, so -- versus introducing grasses that are
10 perhaps non-native. There aren't grasses there to
11 begin with. So, we don't want -- you know, we'd have
12 concern about introducing grasses to the site, to
13 revegetate the road edges at those high elevations.

14 A. (Kelly) And, I would just add to that that grasses can
15 significantly inhibit the recolonization of that site
16 by trees. So, it would compound the effect for that
17 reason.

18 Q. Okay. Now, there was some testimony this morning, or I
19 believe Mr. Pelletier agreed with me that, to restore

20 the roadside sites would require the addition of other
21 features, and I suggested "snags". Do you recall that
22 testimony?

23 A. (Staats) Yes.

24 Q. Are there other types of features that you can suggest
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1 that ought to be restored to the site, in addition to
2 snags and trees?

3 A. (Staats) It would be my preference that it just
4 revegetate to a forested condition to the extent
5 possible. I would have some -- I would question the
6 value of throwing a bunch of snags along the road edge,
7 frankly, since there's quite a few off into the woods
8 there anyway. So, --

9 Q. Okay.

10 A. (Staats) Yes.

11 Q. Go ahead, Ms. Kelly.

12 A. (Kelly) Just speaking from a marten perspective, I
13 would say, for additional features, I would concur with
14 Will and say that it's most important for the trees to
15 grow back.

16 Q. Okay. Good. Now, there was -- yesterday I asked some
17 questions about whether it was important to have a good
18 plan and appropriate people, that is experts in kind of
19 high-elevation forest ecology, involved in creating a
20 restoration effort. Do you agree with that?

21 A. (Staats) Yes, I think you would want the appropriate
22 people to look into that, what's appropriate for
23 restoration, sure.

24 Q. Do you think it would be an appropriate restoration

[WITNESS PANEL: Kelly|Staats]

1 plan to have the Project's engineers simply go through
2 and plant contractor mix and fast-growing Rye grasses
3 and that kind of stuff?

4 A. (Staats) No.

5 Q. Now, this morning I asked some questions about invasive
6 species. And, in particular, I asked whether jays,
7 blue jays and crows would take advantage of the
8 openings and move into the Project site. Do you
9 remember those questions?

10 A. (Staats) Yes.

11 Q. And, as part of a restoration effort, do you believe
12 that it would be important to control the introduction
13 of predators like that into the area, to protect the
14 native species, such as the Bicknell's thrush that are
15 there?

16 A. (Staats) Well, first, I'd like to know what the extent
17 of that problem would really truly be. I'm not so sure
18 there would be an invasion of crows and ravens -- or,
19 crows and blue jays to the site due to the openings.
20 There may be some other species that use that now,
21 because there is an opening there for sure. But you'd
22 have to evaluate that to see if those species were
23 having any impact on the Bicknell's thrush or whatever
24 else you were concerned with right there. So, you

[WITNESS PANEL: Kelly|Staats]

1 would have to evaluate that as it developed, really.

2 Q. So, that's the kind of thing that could be part of an
3 appropriate monitoring plan, to ensure that the

- 4 restoration is occurring properly?
- 5 A. (Staats) Oh, sure. Yes, you'd want to see what sort of
6 shift in species that you may -- may or may not occur
7 there, sure.
- 8 Q. Okay. In terms of the \$200,000 that the Fish & Game
9 Department is supposed to get from the Project to
10 conduct its survey work, do you think it would be
11 important to have that \$200,000, so that you could
12 actually get involved in that process and assist in the
13 monitoring and conduct studies on the populations that
14 exist up there now?
- 15 A. (Staats) Oh, is it -- maybe you can restate that
16 question.
- 17 Q. Yes, I guess that was kind of a complicated question.
- 18 A. (Staats) Yes.
- 19 Q. Let me put it this way. You're getting \$200,000 from
20 the Project, once they reach the 2,700-foot elevation,
21 is that correct?
- 22 A. (Staats) Right.
- 23 Q. And, once they start work in the 2,700-foot elevation,
24 there are going to be disturbances on marten habitat

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[WITNESS PANEL: Kelly|Staats]

- 1 and Bicknell's thrush habitat, correct?
- 2 A. (Staats) Correct.
- 3 Q. And, is it true that, once they start the disturbances
4 on those habitats, there will be -- that there will be
5 mortality of marten and Bicknell thrush?
- 6 A. (Staats) Well, it's true that, once they start the
7 construction above 2,700 feet, there will be some
8 impacts to the habitat and/or the species. That's

- 9 true.
- 10 Q. Okay. Now, if you're going to determine the impact of
- 11 the Project on those species, isn't it important to
- 12 have a pre-construction baseline of what those
- 13 populations are like now?
- 14 A. (Staats) Ideally, absolutely. Sure.
- 15 Q. But, getting the 200,000 to do the study, at the point
- 16 that the bulldozers are already in the habitat, isn't
- 17 that too late?
- 18 A. (Staats) To do an ideal pre-construction study, it
- 19 could be, yes.
- 20 Q. Okay. Now, in terms of a post-construction mortality
- 21 survey, is it your understanding that most of those,
- 22 most post-construction mortality surveys are conducted
- 23 in the migration periods?
- 24 A. (Staats) I'm a lot less familiar with those

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- 1 post-construction mortality studies on birds. So, I
- 2 can't say for certain when the ideal time to do that
- 3 would be. Obviously, sometime around migration would
- 4 be important, because of the influx of birds that you
- 5 would have passing over the site, for sure. But there
- 6 might be other times of the year that you'd want to
- 7 look at that as well, for instance, particularly with
- 8 Bicknell's thrush, a resident bird there or other
- 9 resident birds there, whether they were experiencing
- 10 mortality as well. So, there are other times of the
- 11 year that may be important to certain species.

- 12 MR. ROTH: That's all the questions I
- 13 have for them. Thank you very much.

14 CHAIRMAN GETZ: Thank you. Ms. Linowes.

15 MS. LINOWES: Thank you, Mr. Chairman.

16 Good. Good afternoon.

17 BY MS. LINOWES:

18 Q. Is it fair to say from your testimony that you have
19 reservations about this Project being built? Your
20 testimony that was filed in December?

21 A. (Staats) Certainly, our testimony identified a lot of
22 concerns that we had regarding the Project.

23 Q. Do those concerns still exist today?

24 A. (Staats) We still have concerns about the impacts,
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1 certainly. And, that's why we, you know, developed the
2 Mitigation Plan that we did.

3 Q. Before I get into some of the specific questions on
4 your testimony, I wanted to follow up very quickly on a
5 question that Dr. Publicover asked you. He asked, at
6 the time when the MOU was -- or, rather, when the MOU
7 was negotiated or created, it was believed that
8 timbering at 2,700-foot elevations was a very bad
9 thing, is that correct? I'm paraphrasing, obviously.

10 A. (Staats) Yes. Well, we had the same concerns then as
11 we do now about timber harvest above high elevations,
12 for sure. There were some concerns that had come out
13 regarding or -- and exist today, and that's what we
14 were meeting to develop that high elevation MOU about,
15 yes.

16 Q. And, the focus of the MOU was specifically on
17 timbering?

18 A. (Staats) Absolutely. We did not address -- that was --

- 19 timber harvest was the focus, yes.
- 20 Q. So, you weren't contemplating the impacts of a Wal-Mart
- 21 built at 2,700 feet?
- 22 A. (Staats) Absolutely not.
- 23 Q. Or a wind energy development?
- 24 A. (Staats) Absolutely not. Never came up.

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- 1 Q. So, comparing the two was not really part -- I mean,
- 2 any other development and timbering, that really wasn't
- 3 part of the equation?
- 4 A. (Staats) Yes. The closest thing we came to anything
- 5 that involved development was the issue of roads above
- 6 2,700 feet through the MOU.
- 7 Q. And, those roads would have been timber roads or they
- 8 would have been state highways?
- 9 A. (Staats) They would be roads for accessing the timber.
- 10 Q. Okay. You state on Page 6 of your testimony, Line 7,
- 11 if you let me just find that. You state "This profile
- 12 asserts that these forests often come" -- excuse me,
- 13 "offer some of the last blocks of large, remote
- 14 contiguous blocks of spruce-fir habitat. In addition,
- 15 this profile outlines the rarity of this habitat,
- 16 accounting for only about 4 percent of the state's land
- 17 area and this habitat type supports 66 vertebrate
- 18 species." Is that correct?
- 19 A. (Staats) That's correct.
- 20 Q. Under -- And, then it goes on, one last sentence:
- 21 "Under the proposed project, significant portions of
- 22 high-elevation habitat will be greatly impacted." Do
- 23 you still agree with that?

24 A. (Staats) That's correct.

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[WITNESS PANEL: Kelly|Staats]

1 Q. Okay. Then, and I'm not sure if this is in the record,
2 but the New Hampshire Audubon submitted a letter to
3 Chairman Burack dated February 27th. And, if I may,
4 I'd like to read you a sentence out of that. And, this
5 is on the second page, third paragraph. It says "The
6 impacts of road construction along these high
7 ridgelines will extend far beyond the footprint of the
8 openings. The extensive linear openings in the forest
9 canopy will expose the adjacent forests to increased
10 wind resulting in significant and progressive
11 blowdown", and then it goes on from there. Do you
12 agree with that?

13 A. (Staats) I agree that that's a distinct possibility,
14 that there will be blowdown off the edge of any kind of
15 opening that happens up there, whether it's a road or a
16 natural opening.

17 Q. But you also agree, or I'm asking you, that the impact
18 extends far beyond the footprint of the opening?

19 A. (Staats) Yes, our contention is that the impacts can
20 extend beyond the opening, absolutely.

21 Q. Okay. And, then, one more quote, this is from
22 Dr. Publicover's testimony on Page 9. He states "As
23 described in the progress reports from both the New
24 Hampshire Fish & Game and New Hampshire Natural

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1 Heritage Bureau, the Project's impacts will extend well

2 beyond the actual cleared area to which the Applicant's
3 consultants, Adam Gravel and Steven LaFrance indicate."
4 Do you -- Is that basically saying the same thing as --
5 A. (Staats) Yes. That was our contention, yes.
6 Q. And, then, he goes on to say "In addition, the linear
7 nature of the Project creates impacts that greatly
8 exceed those of more compact -- those of a more compact
9 area of comparable size." Do you agree with that?
10 A. (Staats) And, that's from Audubon's again?
11 Q. No, that's AMC's.
12 A. (Staats) AMC's? The linear nature, yes, that can
13 contribute to impacts off the -- off those linear
14 edges, absolutely.
15 Q. That exceed beyond the --
16 A. (Staats) Yes, the natural footprint, sure.
17 Q. Okay. Now, on Page 13 of your testimony, let me get
18 that, you state -- you make reference to the number of
19 acres impact, this is on the first paragraph, on Line
20 2: "Therefore, New Hampshire Fish & Game asserts that
21 the full impact of this project extends to all the high
22 elevation lands", and then in parentheses you have
23 "3,747 acres", that are "found on the four high
24 elevation ridgelines slated for development." Can you

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1 explain that sentence?
2 A. (Staats) Yes. Our assertion is that the impacts, and
3 impacts can be anything from blowdown to influence to
4 the wildlife species and their ability to use that
5 habitat, we're saying that it wasn't just the Project
6 footprint that would impacted, but the greater high

- 7 elevation areas that were involved.
- 8 Q. So, am I correct in understanding this, that somewhere
9 in the range of 34,000 -- excuse me, 3,400 acres
10 potentially are negatively impacted by this
11 development?
- 12 A. (Staats) Potentially, uh-huh.
- 13 Q. And, that's at the high elevation?
- 14 A. (Staats) Those are all high-elevation area in the
15 acres, yes.
- 16 Q. So, you're not contemplating the roads that are built
17 leading up to those peaks?
- 18 A. (Staats) That wasn't considered in this statement, no.
- 19 Q. And, Mr. Staats, I wanted to ask you about a sentence
20 or a statement you had made at one of the discovery
21 meetings that we had had with the Applicant. You said
22 something to the effect that "New Hampshire had a
23 global responsibility to protect this habitat." Do you
24 remember saying something like that?

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[WITNESS PANEL: Kelly|Staats]

- 1 A. (Staats) I do not recall making that statement, "a
2 global responsibility".
- 3 Q. Because of the rarity of the habitat?
- 4 A. (Staats) Yes, I don't recall making that statement.
5 I'm not saying "I didn't". I don't recall making that
6 statement, unless you -- it had to do with the
7 importance of our habitat for Bicknell's Thrush,
8 perhaps, but --
- 9 Q. It was related to the rare species that were in that
10 area, and that there's a very finite amount of habitat
11 remaining, and you said that "New Hampshire had a

- 12 global responsibility."
- 13 A. (Staats) I don't recall that.
- 14 Q. But I don't want to put words in your mouth.
- 15 A. (Staats) Yes. I don't recall it.
- 16 Q. Okay. Could you make that statement about anything,
- 17 any of the wildlife in the habitat?
- 18 A. (Staats) Well, we made the statement, I believe, in our
- 19 testimony, I'd have to look back here, about the
- 20 importance of Bicknell's thrush habitat, because
- 21 two-thirds of Bicknell's thrush habitat that exist is
- 22 on the White Mountains in New Hampshire, and then
- 23 additional habitat exists, of course, north of the
- 24 White Mountains. So, it's a large -- it's a

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- 1 significant chunk of the global distribution of
- 2 Bicknell's thrush is the point we made.
- 3 Q. So, there is the potential to see a population decline
- 4 of Bicknell's thrush by virtue of this development?
- 5 A. (Staats) Well, that's a potential. I mean, there's all
- 6 kinds of ways that there could be declines of
- 7 Bicknell's thrush. I mean, I know there's a lot of
- 8 concern about Bicknell's thrush wintering habitat as
- 9 well. So, you know, any time you do anything in
- 10 Bicknell's thrush habitat, we're concerned about that,
- 11 because of -- there has been a decline in Bicknell's
- 12 thrush numbers over time anyways. And, exactly what's
- 13 doing that, folks are trying to, you know, assess. So,
- 14 yes, we're concerned about any decline in Bicknell's
- 15 thrush for sure.
- 16 Q. Now, did you see the pictures that I had supplied as

17 part of cross-examination? These would be the two
18 Kibby Mountain roads? Have you seen those?
19 A. (Staats) I don't know as you showed them to me, but I
20 have seen them.
21 Q. Okay.
22 A. (Staats) Yes.
23 Q. I can give you a copy of them?
24 A. (Staats) Yes. Sure.

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1 CHAIRMAN GETZ: Okay. And, let's make
2 sure we're talking about the same pictures, the same
3 exhibits.
4 MR. IACOPI NO: Are you discussing
5 Exhibits IWA-X-23a and 23b?
6 MS. LINOWES: Yes.
7 MR. IACOPI NO: I'll get them for them.
8 (Atty. Iacopi no handing photographs to
9 the witnesses.)
10 WITNESS STAATS: Yes. Lisa, I just want
11 to stand corrected. Those, I've never seen those pictures
12 before.
13 MS. LINOWES: No?
14 WITNESS STAATS: Those two pictures, no.
15 MS. LINOWES: Okay.
16 BY MS. LINOWES:
17 Q. Those roads were taken at Kibby Mountain in Maine, it's
18 a wind energy facility under construction.
19 A. (Staats) Uh-huh.
20 Q. To your knowledge, do you know of any roads like that
21 built through high elevation spruce-fir habitat in New

22 Hampshire?

23 A. (Staats) Yes. We, when I was forester for Champion
24 International, we built a road up Cowan Brook, up onto
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1 what was then called "Blue Mountain". And, it involved
2 some -- some ledge side cuts like this picture, X-23b
3 here, on the exhibit. Not as quite as extensive as
4 that, but some cut-and-fill that was similar to that.

5 Q. When you say "not as extensive", not the 30 plus foot
6 ledge cut?

7 A. (Staats) Yes. It's hard for me to tell from the scale
8 -- well, I guess there's some people standing there,
9 down there. Yes, definitely not that extensive.

10 Q. Okay.

11 A. (Staats) Yes, that's a lot bigger.

12 Q. And also the width of that?

13 A. (Staats) Yes, I can't -- yes, it's hard -- yes,
14 definitely not the width of that, that's right. As far
15 as the total disturbed area, yes.

16 Q. Do you consider a road like that to be a permanent
17 alteration of the landscape?

18 A. (Staats) Sure.

19 Q. So, there was blasting that went on?

20 A. (Staats) Sure. Appears that way.

21 Q. And, based on what you know of the timber roads that
22 are at the Project site, we have been told by the
23 Applicant that 19 miles of the 30 plus miles that will
24 be built, or 19 of those will be upgrades to existing

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1 timber roads. Have you been told that?
2 A. (Staats) Yes.
3 Q. Mr. LaFrance, I don't think you were here when he
4 testified, but he had said, when he looked at those
5 pictures, that it was very possible some portions of
6 the roads would look like what were in those two
7 pictures. Is it your understanding that the timber
8 roads that exist today that will be upgraded are
9 substantially similar to what you're looking at there?
10 A. (Staats) That the timber roads, as they exist today,
11 are similar to these?
12 Q. Substantially similar to those roads -- because we're
13 being told that they will be "upgraded".
14 A. (Staats) Yes.
15 MR. MULHOLLAND: Mr. Chairman, perhaps
16 Ms. Linowes could restate that question. I'm not sure
17 what it is.
18 MS. LINOWES: What the question is?
19 CHAIRMAN GETZ: Yes, I think there may
20 be some potential confusion in the use of the negative in
21 that sentence.
22 MS. LINOWES: Oh.
23 CHAIRMAN GETZ: Could you try and
24 rephrase?

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1 WITNESS STAATS: Yes.

2 MS. LINOWES: Sure.

3 BY MS. LINOWES:

4 Q. It is our understanding that 19 miles of existing
5 timber roads are going to be upgraded --

- 6 A. (Staats) Uh-huh.
- 7 Q. -- to roads that look similar to that. That's our
- 8 understanding.
- 9 A. (Staats) Well, my understanding is there's 19 miles of
- 10 roads that are going to be upgraded. But I'm not sure
- 11 they're going to look like that or like these pictures
- 12 here exactly. I mean, that would be, if there's, for
- 13 instance, the Dummer Pond Road's fairly flat, I mean, I
- 14 wouldn't need to -- you wouldn't need to have that kind
- 15 of cut-and-fill there. So, I'm -- am I reading this
- 16 wrong?

17 CHAIRMAN GETZ: Ms. Linowes, excuse me.

18 Is your question directed to "are there timber roads now

19 or would you expect timber roads to look like the roads in

20 the two exhibits?"

21 MS. LINOWES: Yes. Thank you.

22 BY MS. LINOWES:

- 23 Q. The existing, the timber roads in their current state,
- 24 as they look today, are they substantially similar in
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- 1 appearance to the roads that you see there?
- 2 A. (Staats) No, I would say -- I'd say they are not
- 3 similar to these roads as they appear here. You know,
- 4 at least on the Project area, no.
- 5 Q. Can you describe the timber roads that -- excuse me.
- 6 Let me step back. When you say "not in the Project
- 7 area", do you mean on the peaks?
- 8 A. (Staats) I'm talking about on the GMO property in
- 9 general.
- 10 Q. Okay.

- 11 A. (Staats) The logging roads in general on the GMO
12 property, yes.
- 13 Q. Can you describe what they look like?
- 14 A. (Staats) They look like norm -- they look like --
15 they're very typical of the logging roads that we
16 experience in northern New Hampshire. You know, a lane
17 to a lane and a half wide, dirt, gravel-surfaced road,
18 with ditch lines, you know, that generally aren't wide
19 enough to pass somebody on. That, if you meet a log
20 truck on, you need to find a pull-off. That, you know,
21 some portions are -- can be wider. The main haul
22 roads, what we call the "main haul roads" on the
23 Champion Lands, which are now the Connecticut Lakes
24 Timberlands, in northern New Hampshire, are wide enough

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- 1 for the passage of two tractor-trailer trucks. They
2 were -- because that's a main -- what we call the "main
3 haul road" to move a lot of timber from the property,
4 and you have secondary roads, which are more -- which
5 are smaller.
- 6 Q. The Project site does not have roads like that, like
7 you just described, the double lane?
- 8 A. (Staats) Only -- Generally not, no. That's right.
9 They're fairly narrow. Yes.
- 10 Q. And, is it --
- 11 A. (Staats) The Dummer Pond Road is a little bit wider
12 than some of the roads further up in the property, yes.
- 13 Q. Is it fair to say that there is some semblance in areas
14 of the roads of canopies, perhaps not full cover, but
15 some canopies?

16 A. (Staats) Oh, sure. Canopy encroaches upon the roads in
17 some places, and then eventually they have to beat that
18 back with mechanical devices if it starts growing into
19 the road too much, yes.

20 Q. Now, on Kelsey, unfortunately, on our site walk in
21 October, we did not make it up Kelsey. Is it your
22 understanding that there's a road that goes up to
23 Kelsey now?

24 A. (Staats) A road that goes up? There's a road that goes
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1 to that -- the last large clear-cut that was done
2 recently on Kelsey. But it doesn't go above
3 2,700 feet.

4 Q. So, you can't really drive to the peak, right?

5 A. (Staats) Oh, gosh, no. No.

6 Q. Only by foot?

7 A. (Staats) Yes.

8 Q. And, is it fair to say that the Kelsey ridge top, where
9 the turbines are proposed to be located, do not -- it
10 has not been recently cut?

11 A. (Staats) With the exception of the two met tower sites,
12 that's fair to say, has not been recently timber
13 harvested that has occurred up there. Yes.

14 Q. And, I believe Dr. Publicover, in his testimony,
15 prefiled testimony, characterized Kelsey as a "rare,
16 pristine old-growth subalpine forest." Do you agree
17 with that?

18 A. (Staats) Portions of it appear to be older forest, as
19 Dr. Publicover I think has referred to as "primary
20 forest", appears to be that, portions of it. Portions

21 of it appear not to be as well.

22 Q. Now, those portions that are not are -- that's not
23 because they have been cut?

24 A. (Staats) They were cut at some time, yes.

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[WITNESS PANEL: Kelly|Staats]

1 Q. Do you know when?

2 A. (Staats) Oh, it was in the matter of decades.

3 Q. Okay.

4 A. (Staats) Yes.

5 Q. Now, Mr. Pelletier this morning stated, I thought I
6 heard him say, that "the timber in the area at high
7 elevation is not high quality". Do you remember
8 hearing him say that?

9 A. (Staats) I do.

10 Q. Is that your understanding, too, of that timber?

11 A. (Staats) Well, it depends on the definition of "high
12 quality". You know, generally, you know, in my
13 experience as a forester for an industrial company, and
14 working with foresters in industrial companies, is that
15 trees at the higher elevations tend to be of lower
16 economic value than trees lower. You can have some
17 very valuable timber at higher elevations, depending on
18 what site it's growing on, depending on how long it
19 grows there. So, it's variable, for sure. Sometimes
20 we get situations where the timber is very stunted, the
21 higher you get, it's very short, very stubby, low
22 economic value, marginal economically to harvest. I've
23 operated in places like that myself, have seen those
24 places operated. Dropping down on some small benches,

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[WITNESS PANEL: Kelly|Staats]

- 1 you might find some stuff that's very valuable
2 economically, spruce and fir. So, it depends.
- 3 Q. So, is it fair to say there's no -- with no road up to
4 Kelsey today, I guess the knowledge that forestry up
5 above 2,700 feet is typically not valuable, you may
6 have to work to find it. Is it fair to say the reason
7 Kelsey has not been recently logged is because it may
8 not be worth logging it?
- 9 A. (Staats) No, I don't think that's quite fair to say.
10 There are portions of it that would not be economically
11 viable and there are portions that are. That is why
12 the Company has permitted -- has that current permit
13 for the 223 acres above 2,700. There's some very
14 economically valuable trees on that.
- 15 Q. Okay.
- 16 A. (Staats) So, sure, there are places that are
17 economically viable to harvest.
- 18 Q. And, in that area, is that right on the ridge top or is
19 that on the side slopes?
- 20 A. (Staats) That's on the side slopes, because, through
21 the permit process, I requested that they not cut above
22 3,100 feet. In fact, and there's a fair chunk of that
23 above 3,100 feet that was stunted -- well, I shouldn't
24 say "stunted", but younger balsam fir/spruce mix.

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- 1 Q. Can you explain that? I guess I was not aware of that.
2 That you have made a request of the Coos County
3 Planning Commission not to --

4 A. (Staats) Yes, in the permit that they acquired to log
5 that 223 acres, that has been referred to in the
6 testimony and at other times, they cannot cut above
7 3,100 feet as a result of that permit. That block,
8 they cannot cut above -- there were a number of things
9 in there, a number of conditions that went into that
10 permit when I met with the forester. And, one of them
11 was to not cut above 3,100 feet.

12 CHAIRMAN GETZ: Mr. Mulholland.

13 MR. MULHOLLAND: Mr. Chairman, the
14 permit is part of the record. That might be helpful for
15 the witness, if he wants.

16 CHAIRMAN GETZ: If you want to refer him
17 to it.

18 MS. LINOWES: I wasn't going to refer
19 any further to it.

20 MR. MULHOLLAND: Okay.

21 MS. LINOWES: But, thank you, I didn't
22 realize that.

23 BY MS. LINOWES:

24 Q. So, the landowner agreed to that?

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1 A. (Staats) Oh, yes. Yes.

2 Q. And, there have been a number of assertions throughout
3 this testimony that we're hearing this week that
4 "commercial timbering is more destructive than building
5 the wind facility." And, I have a couple of questions
6 I want to ask you along those lines. To your
7 knowledge, does commercial timbering -- do commercial
8 timbering operations involve building roads comparable

- 9 to what you're seeing in those pictures?
- 10 A. (Staats) Generally not, because it's so expensive.
- 11 Because you have such a low economic -- you can have a
- 12 low economic return for cutting timber at those higher
- 13 elevations that you want to expend as little money as
- 14 possible to get there. We have built some pretty
- 15 extensive roads to higher elevations to get spruce and
- 16 fir off those ridgelines in other locations. But, you
- 17 know, keeping the cost down of those roads is critical.
- 18 But, also, it may involve some, you know, some pretty
- 19 steep cut-and-fill banks to get there. You know, some
- 20 switchback -- what we call "switchback roads", some
- 21 techniques to get up to those higher elevations.
- 22 Q. So, as a matter of course, it's not something you would
- 23 go out of your way to do, unless you're really --
- 24 unless it was really significant returns?

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- 1 A. (Staats) Well, it would depend on the -- you know, with
- 2 some landowners, it was a matter of just providing
- 3 their mill with fiber. It wasn't so much the value of
- 4 the timber, as supplying the mill. So, they felt the
- 5 need to get that. If they have got an obligation to
- 6 supply fiber to their mill or whatever it may be, they
- 7 may have to get there irregardless of the value of
- 8 those trees. So, that has forced our -- you know, when
- 9 I was a forester for a large landowner, that was some
- 10 of the thought process going to get some of that stuff
- 11 at higher elevations.
- 12 Q. I see. But that is not a preferred scenario?
- 13 A. (Staats) Well, it was always difficult to operate in

14 those places. It was certainly not preferred by the
15 contractor.

16 Q. Then, and the other question related, to your knowledge
17 do timbering companies typically make substantial cuts
18 and fills of the road, I guess you're saying, "it
19 happens, it's been known to happen," --

20 A. (Staats) Yes.

21 Q. -- "it's not what you like to do"?

22 A. (Staats) If they have to do that to get to their -- to
23 get to their wood, they will. Yes. I mean, you know,
24 it's all about the cost/benefit of putting a road in

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1 and, you know, we used to do an analysis when we were
2 foresters for Champion.

3 Q. But, in that event, though, would it typically be
4 33 miles of road in one six-month period or would it be
5 something much shorter and very controlled?

6 A. (Staats) Could you say that question again, Lisa?

7 Q. Yes. This project entails 33 miles, plus or minus, of
8 road development. When a timbering company makes a
9 decision to build an expanse of road, although you said
10 it's not quite what you're looking at there, is it
11 typically -- are you typically looking at building 33
12 miles of road in a six-month period or is that
13 something that would be much scaled back from that?

14 A. (Staats) No, roads would be built incrementally as
15 needed. We used to build around 50 miles of road in
16 two states per year for 330,000 acres, that's just as
17 an example. But those roads were anywhere from a
18 quarter mile long to two or three miles long, depending

19 on what we -- but to build 33 miles of road to go to
20 one stand of timber to cut would be cost-prohibitive.
21 So, it would have to be part of a bigger plan.

22 Q. Okay.

23 A. (Staats) Yes, that's --

24 MR. MULHOLLAND: Mr. Chairman, I'm going
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1 to object to this line of questioning. I don't see it
2 particularly relevant.

3 MS. LINOWES: Well, the reason it's
4 relevant, Mr. Chairman, is because there's been so much
5 discussion about comparing the effects of the timbering
6 and the impact of timbering to building this wind project.
7 I'm trying to establish that, in fact, the practices of
8 timbering do not entail anywhere near the scale of
9 development that this wind project is proposing. And, so,
10 I'm just simply trying to get more information on the
11 table that contrasts the two efforts.

12 MR. MULHOLLAND: Mr. Chairman, it also
13 goes well beyond the scope of the direct testimony that
14 was prefiled.

15 CHAIRMAN GETZ: I think it's relevant
16 for the issues of entering into the Settlement Agreement,
17 and some of the reasons that have been posed for that.
18 But it does seem that it's getting -- we're getting in
19 repetitive lines of inquiry.

20 MS. LINOWES: Thank you, Mr. Chairman.

21 I'll move on from that then.

22 BY MS. LINOWES:

23 Q. The top of Kelsey is -- would you characterize it as a

24 flat space, just the ridgeline?

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1 A. (Staats) No.

2 Q. And, in the Mitigation Plan, it calls for a 500-foot
3 radius or a 500 -- I don't remember if that's a radius
4 or a diameter, but some fair amount of space around
5 each tower that would be relatively flat for the tower,
6 as well as 150 feet to encompass the road. Do you
7 remember hearing that?

8 A. (Staats) Well, I heard that. I'm not sure I
9 interpreted it that way. I didn't hear it as "500-foot
10 of flat". That's a -- I thought the "500 feet" was
11 part of the so-called "Retained Land", but didn't
12 necessarily mean that was going to be cleared flat.

13 Q. You're right.

14 A. (Staats) Yes.

15 Q. You're exactly right. The pad would be flat and
16 200-foot?

17 A. (Staats) Right.

18 Q. So, to get to that point, I believe there are seven
19 towers on top of Kelsey, so seven times those pads. Do
20 you envision that? You have a clear picture in your
21 mind of what Kelsey looks like. Do you envision those
22 flat areas being relatively easy to achieve?

23 A. (Staats) Well, I'm not an engineer, but it's going to
24 take some work to clear and grade the turbine pad sites

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1 to within 2 percent slope or whatever they need for the
2 turbines. Certainly going to take some work.

- 3 Q. And, are we shallow to bedrock there, right -- do you
4 know?
- 5 A. (Staats) In all likelihood, yes.
- 6 Q. So, there might be blasting going on?
- 7 A. (Staats) Sure.
- 8 Q. And, then, in terms of the quality of the habitat,
9 there's been some discussion, I think Mr. Pelletier
10 talked about it today, that the trees in that area on
11 the high elevations, they grow up, they reach a certain
12 point, they blow down, they may grow back. There's
13 kind of this recycling of the trees. Would that
14 growing, blowdown, growing cycle indicate to you a
15 lesser value habitat?
- 16 A. (Staats) No.
- 17 Q. Okay.
- 18 A. (Staats) No, it's just part of the natural process up
19 there.
- 20 Q. So, the fact that the trees blow down does not mean
21 that it's in any way -- that the habitat itself is not
22 harmed?
- 23 A. (Staats) No, no. That's part of the natural process up
24 there.

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- 1 Q. Okay. So, that, in fact, enhances the habitat perhaps?
- 2 A. (Staats) Sure, it's part of what makes that habitat
3 what it is, is that abundance of coarse, woody debris,
4 those large, or small even, trees that are breaking
5 over, falling down, piling up, etcetera, etcetera.
- 6 Q. Okay. Thank you. And, then, I just have three more
7 questions and I'm done. Is it your -- do you agree

8 with Mr. Pelletier's testimony that "building the
9 Project with the mitigation is better than not building
10 the Project at all"?

11 A. (Staats) Well, you know, we've said to the Applicant
12 from day one that the best thing for wildlife is that
13 the Project was to not happen at all, okay? The fact
14 that we have the mitigation, with the Project, ensures
15 us, however, that we'll have a bunch of land that is
16 protected from timber harvest, is protected from
17 development. So that, you know, that's why we're in
18 agreement with the mitigation package that has been
19 proposed.

20 Q. Okay. But, since we don't -- I don't think we have a
21 good understanding, or maybe you do, have a good
22 understanding of what the edge effects of the road up
23 against the protected forest would be. I mean, do you
24 have a good understanding of how much of that, how much

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1 of the habitat will be retained as high value that
2 which comes within 100-meters of the road itself?

3 MR. MULHOLLAND: I'll object to that
4 question, unless Ms. Linowes explains which species
5 habitat, then the question can't be answered.

6 BY MS. LINOWES:

7 Q. Nesting birds.

8 A. (Staats) It depends on what nesting birds it would be,
9 Lisa. You know, having had no experience with this
10 project of this magnitude, it's difficult to say what
11 those impacts will be in from those edges. We
12 certainly know that we'll have some impacts to the

13 vegetation, as a result of that hard edge that will
14 occur as a result of the footprint. We're
15 acknowledging -- I would know that for sure. And,
16 you know, that's certainly going to get some blowdown.
17 You know, how much desiccation and so forth to the
18 mossy substrate and the ridge soils in from that edge,
19 remains to be seen or remains to be something that we
20 need to monitor and measure, so that we can learn from
21 that is this does go forward, that's for sure.

22 Q. Okay.

23 A. (Staats) I can't say how many feet in, it could be
24 substantial in some places, and not in others,

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1 depending on how the wind hits.

2 Q. And, then, last question, and I'm not sure if you guys
3 are the right people to ask, but I'll ask it anyway.
4 Pelletier and Gravel have stated that migratory birds
5 will be killed at the Project site. And, we also know
6 there might be Canadian Lynx impacted by the Project
7 site by the Project being built. Do you think it would
8 be appropriate for the Applicant to seek a federal
9 Incidental Take Permit on any of these protected
10 species?

11 A. (Staats) I think they would have to talk to the U.S.
12 Fish & Wild Service and sort of get their call on that,
13 Lisa, to tell you the truth.

14 MS. LINOWES: Okay. Fine. Thank you,
15 Mr. Chairman.

16 CHAIRMAN GETZ: Thank you. Mr. Patch or
17 Ms. Geiger.

18 MS. GEIGER: I originally, Mr. Chairman,
19 I had originally indicated that I didn't have any
20 questions, but I would like to ask both witnesses one
21 question.

22 BY MS. GEIGER:

23 Q. Mr. Staats, is it your belief that the provisions of
24 the High-Elevation Mitigation Settlement Agreement

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1 provides sufficient mitigation to compensate for the
2 Project's impacts to the high-elevation ecosystems,
3 habitats, and species, and resolve any and all concerns
4 that you might have had regarding the issue of
5 mitigation?

6 A. (Staats) It is.

7 Q. Ms. Kelly, same question?

8 A. (Kelly) Yes.

9 MS. GEIGER: Thank you. No further
10 questions.

11 CHAIRMAN GETZ: Okay. Questions from
12 the Subcommittee?

13 DR. KENT: Yes, I have a number of
14 questions.

15 CHAIRMAN GETZ: Dr. Kent.

16 DR. KENT: Either one of you, feel free
17 to answer. I have a number of questions, so bear with me.
18 When I refer to an "Agreement", I'm talking about the
19 "High-Elevation Mitigation Agreement".

20 WITNESS STAATS: Yes.

21 BY DR. KENT:

22 Q. The Agreement is subject to Fiscal Committee and

23 Governor and Council approval, is that true?

24 A. (Staats) I would have to defer that to the higher-ups

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1 on that. I would suspect that may well be the case,
2 but I'm not sure.

3 Q. Let's, for a moment, let's assume that that's the case.

4 If the Fiscal Committee or the Governor and Council
5 voided the Agreement, is it your understanding it will
6 revert to the original position, the original
7 mitigation position, or have you discussed an
8 alternative to this Agreement?

9 A. (Staats) What original mitigation position are you
10 referring to?

11 Q. Part of the Application. Part of the Applicant's
12 Application.

13 MR. MULHOLLAND: Mr. Chairman, I could
14 answer that question maybe, if it would be okay to the
15 Commission?

16 CHAIRMAN GETZ: Sure. Or offer of
17 proof.

18 MR. MULHOLLAND: The Agreement
19 contemplates that. And, it says that, if any party
20 withdraws from the Agreement for whatever reason, it
21 remains in effect, because the AMC signed the Agreement.

22 DR. KENT: First, could you show me
23 where that is, so I could catch up with you please.

24 MR. MULHOLLAND: Yes. Fourteen (a), in
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1 Part C.

2 DR. KENT: "Fourteen (a)", you said?

3 CHAIRMAN GETZ: The last sentence of
4 14(a)?

5 MR. MULHOLLAND: That is the sentence I
6 was referring to.

7 CHAIRMAN GETZ: It says "Regardless of
8 whether any party other than Granite Reliable Power
9 withdraws from this Agreement".

10 DR. KENT: And, the intent of that
11 statement is what then, if for some reason Fish & Game
12 cannot proceed?

13 MR. MULHOLLAND: I can read it?

14 CHAIRMAN GETZ: Well, let's get it in
15 the record.

16 MR. MULHOLLAND: The sentence says
17 "Regardless of whether any party other than GRP withdraws
18 from this Agreement, GRP agrees that it will comply with
19 and implement the terms of this Agreement, as long as the
20 Project receives final non-appealable permits with terms
21 and conditions and financial impacts consistent with the
22 Agreement and the GRP Windpark as currently proposed."

23 DR. KENT: So, let me try to get your
24 concurrence on this, one of you. If Fish & Game withdraws

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1 for any reason from this Agreement, Granite Reliable is
2 obligated to continue with the purchase. And, in that
3 case, who are we transferring to? AMC?

4 MR. MULHOLLAND: I believe that would
5 probably have to be dealt with if that were to arise.

6 DR. KENT: Mr. Lyons is asking if he can
7 respond.

8 CHAIRMAN GETZ: Yes, I think it's fair
9 that we get -- it may be helpful to get the Applicant's
10 understanding.

11 MR. LYONS: I hope this isn't out of
12 order, but, in that instance, we would be happy to propose
13 or abide by a condition of the Certificate that an
14 acceptable substitute grantee be identified, and we could
15 transfer to them. As an example, we had discussed earlier
16 on, when we were talking about a potential conservation
17 easement, we talked to Coos County as being a potential
18 backup easement holder, in case they were needed to be
19 one, and they agreed that they could be.

20 DR. KENT: I'm sorry, who?

21 MR. LYONS: Coos County.

22 DR. KENT: Coos County?

23 MR. LYONS: Or DES. So, if in the
24 instance where a State agency was not allowed to be a
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1 grantee for some reason, we would be happy to cooperate in
2 identifying a substitute grantee for the same purpose.

3 DR. KENT: So, there's no mechanism for
4 that in this Agreement, so we would have to work it in as
5 conditions of the Certificate?

6 MR. LYONS: That's correct, sir.

7 DR. KENT: Thank you.

8 MR. IACOPINO: Could I just ask a
9 question on it? Would the Applicant also be amenable to
10 maintaining, actually taking the title and fee itself, and

11 subjecting the property to a conservation easement of the
12 same nature that the lands that will be transferred to the
13 State?

14 MR. LYONS: I think we'd need to look
15 into that. It strikes me that that would involve a lot of
16 administrative commitments going forward. I think what we
17 would prefer to do is to find a mutually acceptable
18 grantee that would abide by deed restrictions.

19 CHAIRMAN GETZ: Dr. Kent.

20 DR. KENT: Thank you, everyone, for
21 chipping in on that answer.

22 BY DR. KENT:

23 Q. Has DES -- Have you had a discussion with DES and they
24 agreed that Fish & Game will accept responsibility for

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1 the wetland mitigation lands?

2 A. (Staats) I'm not aware of -- again, I'd have to defer,
3 Don, to either, you know, to my higher-ups as to if
4 they have had that discussion.

5 MR. MULHOLLAND: Mr. Chairman, we, Fish
6 & Game, had that discussion with DES, and that's
7 acceptable to DES.

8 CHAIRMAN GETZ: Thank you.

9 DR. KENT: Thank you. And, perhaps this
10 is frustrating for you to be asking questions that the
11 panel can't answer, but maybe there's someone missing from
12 the panel who can answer these questions.

13 BY DR. KENT:

14 Q. Will Fish & Game then -- you'll accept responsibilities
15 for monitoring and all the other requirements of DES on

16 the Project Applicant?

17 A. (Staats) Well, --

18 CHAIRMAN GETZ: Well, certainly, I think
19 counsel can make representations based, to the extent he
20 knows, based on his participation in negotiating the
21 Settlement Agreement. But is that something you have
22 knowledge or can relay to us?

23 MR. MULHOLLAND: Mr. Chairman, I guess
24 I'd have to say it depends on what conditions are

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1 required, what monitoring conditions.

2 DR. KENT: Have you discussed this
3 Agreement with the Department of Resources and Economic
4 Development, in light of their interest in forestry and
5 protection of native plants, and the fact that they're a
6 neighbor to much of the mitigation properties?

7 MR. MULHOLLAND: We have not yet, but we
8 intend to, as Fish & Game.

9 DR. KENT: So, it's fair to say that we
10 have some more discussions that will ensue?

11 MR. MULHOLLAND: Yes. This Agreement
12 was signed on Tuesday.

13 DR. KENT: Thank you. I'll try to stick
14 to questions that the panel can answer from here forward.

15 WITNESS STAATS: Apologies for not
16 having all the answers for you.

17 BY DR. KENT:

18 Q. Is Fish & Game willing and able to assume
19 post-construction bird and bat monitoring
20 responsibilities?

21 A. (Staats) We would certainly look at whoever is best
22 qualified to do that. And, if that was something that
23 we felt was better contracted out to a more appropriate
24 party, I would think we would do that. So, we would

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1 have to look at that as we develop that
2 post-construction plan.

3 Q. So, you would be responsible for the contractor's
4 activities in that event?

5 A. (Staats) I would assume so, absolutely.

6 Q. Thank you. In your prefiled testimony, you identified
7 Mount Kelsey and Dixville Peak as especially critical
8 environments. Dixville is not included in this
9 Agreement, and only a part of Kelsey is included. How
10 will this affect marten?

11 A. (Kelly) We included Dixville as an important key piece
12 to that testimony because Dixville provides a link
13 between habitats to the north and habitats to the
14 south, specifically creating a corridor directly south
15 to the White Mountains. So, it kind of links all the
16 habitat through. The mitigation will help to provide
17 compensation that will aid in further conserving some
18 of those habitats, if not buying some of those
19 habitats, to further that process.

20 Q. Do you believe that the Project site will still be used
21 by marten, lynx, Bicknell's thrush, and three-toed
22 woodpecker?

23 A. (Kelly) I believe it will still be used by marten, yes.

24 A. (Staats) Yes. And, I would say that, when you say the

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- 1 "Project site", could you define what you mean by that?
- 2 Q. From the beginning of the string in the north on
- 3 Dixville, down south to the end of the Project string
- 4 in Fishbrook, is that right?
- 5 A. (Staats) Yes, Fishbrook Ridge. Yes. There certainly
- 6 will still be use by some of those species, yes.
- 7 A. (Kelly) I would just add to that, that if it's --
- 8 specifically, the footprint of the Project itself,
- 9 there are potential unknown impacts that may prohibit
- 10 the use by some wildlife species.
- 11 Q. So, at this point, it's difficult to say with any
- 12 certainty to what extent the use by these species will
- 13 be diminished, if at all?
- 14 A. (Staats) Yes, because we haven't had experience with a
- 15 project of this magnitude or of this type in these
- 16 habitats. There's a lot of unknowns. There's no
- 17 question about that. In our professional opinions, we
- 18 know there's going to be impacts, we stand by that.
- 19 The degree of that impact, we're not sure.
- 20 Q. And, in that vein, then we're probably uncertain about
- 21 the extent of what you call the "zone of avoidance" of
- 22 the towers themselves and the roads?
- 23 A. (Staats) Yes. Certainly, that could vary by terrain,
- 24 by individual -- individual of individual species for
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- 1 sure. There could be differences that, should the
- 2 Project move forward, and should we have some -- a good
- 3 rigorous post-construction study, perhaps we can get
- 4 some of those answers.

- 5 Q. And, along those lines, that applies to the lynx,
6 whether that -- the Project site can accommodate lynx
7 and allow it to move along that corridor along the
8 ridge?
- 9 A. (Staats) Yes, along those same lines, that would be the
10 case, too.
- 11 Q. Okay. Thank you. In your prefiled testimony, you
12 talked about the full impact extends to 3,747 acres,
13 mitigation parcel is 1,700 acres. If we were going to
14 be simplistic about this, we would be about 2,000
15 short. So, obviously, there's more to this.
- 16 A. (Witness Staats nodding affirmatively).
- 17 Q. Are you comfortable that the acquisitions will fully
18 compensate impacts to the Project site when we're
19 talking about wildlife species?
- 20 A. (Staats) Yes, we hope so. You know, that's the reason
21 for the cash, if you will, portion of the compensation
22 package. Because we know it's -- first off, we had no
23 template to work off from what mitigation should be for
24 high elevation. All kinds of acres and ratios being

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- 1 thrown around. But that cash payment, the one-time
2 payment that's been described in the Agreement, we hope
3 compensates for that, the shortage of acres that you're
4 describing there. And, that we can use that, as Jill
5 has alluded to, purchasing either easements or in fee
6 other comparable high-elevation areas that are
7 currently unprotected to make up for that.
- 8 Q. When we're speaking just about high elevation, these
9 parcels would seem discontinuous with the acquisition

10 parcels, compared to the ridgeline that we have the
11 Project on. Do you feel that the acquisition areas are
12 connected by wildlife corridors that will allow
13 movement?

14 A. (Staats) As long as that, you know, the forests, the
15 state of the forest in between those parcels are in
16 various shape, in regards to the amount of timber
17 harvest that's occurred and so forth. But it's
18 forested, so it's allowing some linkage there for sure.
19 For some species that can fly, it's not as big a deal
20 as for some species that have to walk. So, it's, you
21 know, certainly something that we're -- certainly
22 something that we've looked at and are aware of.

23 Q. For at least some of these species, like the lynx,
24 perhaps the marten, and you can make that assertion

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1 before than I will, they probably won't -- well, there
2 will be some self-sustaining support for populations of
3 some species on each of these high elevation parcels
4 themselves for some species. But we get into lynx
5 particularly, who really rely on corridors, is that
6 correct?

7 A. (Staats) Perhaps for the most part, but a high
8 elevation -- a parcel of high elevation, be it
9 100 acres or a 1,000 acres, could be part and parcel to
10 a larger piece of the lynx's home range if they chose
11 to occupy the area.

12 Q. And, in your prefiled testimony you talked about "not
13 taking any chances with the Bicknell's thrush". Are
14 you fairly comfortable that the acquisitions are going

15 to provide adequate Bicknell's thrush habitat and have
16 you -- and how have you come to that conclusion? Have
17 you confirmed it in the field or are you predicting it
18 based on the habitat?

19 A. (Staats) We're predicting it based on the habitat.

20 Q. Baldhead Mountain, I think I need to clear something up
21 here. Could you just point out Baldhead Mountain on
22 that map, if you would please?

23 A. (Staats) Right up here (indicating).

24 Q. Who owns that land?

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1 A. (Staats) I believe that Baldhead Mountain itself, the
2 actual summit's owned by the Foss family in Columbia.

3 Q. And, so, the -- let me get the number right for you.

4 A. (Staats) But, like so many of these mountain ridges
5 that are referred to in the Mitigation Plan, there are
6 multiple owners in that, you know, like Nash Stream
7 splits Whitcomb, for instance, splits Long Mountain.

8 Q. So, the 174 acres refers to the privately owned portion
9 of that?

10 A. (Staats) It refers to the GMO portion of Bald Mountain.
11 That is owned by GMO, in the Mitigation Plan.

12 Q. Right. Part of my confusion is the Agreement talks
13 about it being included in the "wetland Mitigation
14 Parcel"?

15 A. (Staats) Correct.

16 Q. And, I'm having -- I must be confusing where the
17 Wetland Mitigation Parcel is. It seems that Baldhead
18 butts up against Nash Stream State Forest, and not the
19 Wetland Mitigation Parcel. So, maybe you could help me

20 out?

21 A. (Staats) Yes. The mitigation -- yes, as Jill just
22 mentioned, the Mitigation Parcel is inclusive of the
23 Wetlands Parcel. So, the Wetlands Parcel took in some
24 high-elevation land, and of which is found on Baldhead
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1 -- of which that portion is found on Baldhead. The
2 Hedgehog Brook section, I think it doesn't show, but
3 Annis Brook is another brook in there, part of the
4 Wetlands Mitigation Package, and then it climbs up the
5 ridge line up onto Baldhead. So, it's shown on Exhibit
6 B1 here, "High Elevation Mitigation Areas" in the
7 Mitigation Agreement.

8 Q. Yes, I may need some help during the break then,
9 because I'm looking at where that Mitigation Parcel is
10 illustrated on Exhibit B1, and that's next to Ervings
11 Location. And, then, it looks like Baldhead is to the
12 northwest from there.

13 A. (Staats) Correct.

14 Q. And, you to cross through Nash Stream State Forest to
15 get there?

16 A. (Staats) Not from the -- Not from the maps that we have
17 here. We're not -- It's not broken off by Nash Stream
18 State Forest.

19 A. (Kelly) It looks as though an arm of Baldhead is
20 actually on Nash Stream, and the peak is most likely
21 owned by the Foss's, and another arm is probably on GMO
22 property.

23 Q. Right. And, I saw that the depiction of the wetlands
24 area was much further to the southeast?

[WITNESS PANEL: Kelly|Staats]

1 A. (Staats) Yes mit's all part of that, it's all sort of
2 contiguous.

3 DR. KENT: All right. I won't tie
4 anybody up.

5 WITNESS STAATS: Yes.

6 DR. KENT: We can straighten it out
7 later then. Thank you. That's my questions.

8 CHAIRMAN GETZ: Okay. Mr. Scott.

9 DIR. SCOTT: Good afternoon.

10 BY DIR. SCOTT:

11 Q. A quick question regarding, on the mitigation package,
12 regarding the \$750,000 -- I'm sorry.

13 A. (Staats) I was looking for the disembodied voice there.

14 Q. I'm hiding behind the transcriptionist now. Who's
15 doing a great job, by the way. I was just wondering if
16 you could characterize the opportunity, with that
17 money, obviously, the wording of the Mitigation
18 Settlement implies that the preference would be for
19 high elevation conservation in Coos County. And, I was
20 just curious if you could kind of give me an idea, I'm
21 not in the business that you are in, would you
22 characterize this as a lot of opportunities? There's
23 limited? Some?

24 A. (Staats) There are some opportunities, yes. Yes, there

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1 certainly are some opportunities. In fact, in that --
2 in that very drainage, the Phillips Brook drainage,

3 there are a couple of smaller -- well, actually, three
4 smaller opportunities of high elevation land that, I'm
5 not saying they're available for sale, but, in all
6 likelihood, two of them -- all three of them have had
7 timber harvest occur on them, so they may be available.
8 It's going to be long time before they cut them again.

9 Q. And, I have an assumption that this money is being
10 paid, and you could correct me if I'm wrong, rather
11 than just the Applicant has gone out and done it
12 already, because of a time concern, I mean, obviously
13 you have to negotiate these fund sites, etcetera, is
14 that why the money is being given to do this?

15 A. (Staats) Sure. I think that's correct. Yes, you're
16 absolutely right. It would take some time. And, we
17 would have to look for willing buyers, identify the
18 parcels. It would be -- certainly take some time to
19 look, to birddog those out, sure.

20 DIR. SCOTT: Thank you.

21 CHAIRMAN GETZ: Mr. Northrop.

22 BY MR. NORTHROP:

23 Q. It's interesting, I actually had a follow-up question
24 very similar to Mr. Scott's, but it's along the lines

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1 of that \$750,000 for the permanent conservation of the
2 comparable habitat outside the Project area. Can you
3 give an estimate or, just for my own use, about, for
4 \$750,000, is there any way to estimate the amount of
5 acreage that that could either -- protect either
6 through easement or through fee simple acquisition? Is
7 there any kind of ballpark numbers of --

- 8 A. (Staats) Well, that's -- it's a little bit all over the
9 board for that.
- 10 Q. All right.
- 11 A. (Staats) I mean, you know, we certainly know that
12 easements have cost us more and more over time. In
13 fact, some would say it's just as easy to buy something
14 fee simple than it is to do the easements, with all the
15 stuff that you've got to do. Typically, you've got
16 more land with an easement with the precious dollars
17 that you had. The complicating factor in this is that
18 there may be landowners that now look at their high
19 elevation lands, which are marginally economic
20 timber-wise that we all discussed here before, as being
21 valuable for a wind resource. So, suddenly the price
22 may be driven up by that prospect. I don't know if
23 that's going to be the case with the places that we
24 look, but that's a possibility. So, what you might

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1 have got for \$250 an acre or \$300 an acre four or five
2 years ago, suddenly may have gone through the roof,
3 depending on the appraiser, you know, depending on the
4 appraisals that are done, what's avail -- you know how
5 that is. So, it's hard to say.

- 6 Q. So, it's hard to put a number, hard to get an --
- 7 A. (Staats) The acres we would get for that, right. It's
8 kind of hard to do that.

9 MR. NORTHROP: Okay. Thanks.

10 CHAIRMAN GETZ: Mr. Normandeau.

- 11 DIR. NORMANDEAU: Will, I got a question
12 for either one of you.

13 BY DIR. NORMANDEAU:

14 Q. As Ms. Linowes has suggested, the trip we made in there
15 that one day had some visibility issues associated with
16 it. And, for the most part, that's the only time I've
17 ever been in that area extensively. Given what I saw
18 for logging practices in that area, if you can call
19 them that, the tops that we're talking about here, how
20 -- are they contiguous to some extent now or are they
21 somewhat isolated based on everything I saw running up
22 those hillsides essentially being cut to dirt?

23 A. (Staats) Yes. It depends on the location, Glenn.
24 There are -- There are linkages that are still forested
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1 now between some of those patches, between those
2 different high elevation areas, if you will, there are
3 still linkages between those. I can think of, for
4 instance, between Kelsey -- Kelsey and Dixville Peak,
5 for instance, heavily forested in that basin in
6 between, Jill and I have snowmobiled through that
7 recently. So, that remains a linkage there, as well as
8 some of the other areas. You know, I'd have to -- I'd
9 have to think a little longer about the connections
10 between. But, by and large, there are still forested
11 linkages between those islands.

12 Q. And, Jill, just out, again, my own personal lack of
13 knowledge, when those -- when things get cut as bad as
14 that looked to me, what -- do you have any kind of idea
15 the timeline for it to become, you know, adequate
16 ground again for marten or, for that matter, lynx? I
17 mean, it must be kind of a -- I recognize, you know,

18 within a few years there's plenty of sprouts for moose
19 grazing and all. But what kind of timeline does it
20 take to bring that back to --

21 A. (Kelly) Sure. A marten will actually tolerate about 20
22 percent of their home range having that type of habitat
23 within it. But, to get back to the stand
24 characteristics that they would usually utilize the

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1 most within their home range, you're probably looking
2 at, I would say, 20 to 30 years at lower elevations,
3 where a lot of that harvesting has occurred. And,
4 that's primarily to attain a size class, but it's to
5 get canopy cover again, because they like to have
6 canopy closure over their heads, and to get to certain
7 size classes that they like to have for denning
8 purposes.

9 DIR. NORMANDEAU: Thanks.

10 WITNESS KELLY: Yes.

11 CHAIRMAN GETZ: Mr. Harrington.

12 MR. HARRINGTON: Yes.

13 BY MR. HARRINGTON:

14 Q. Starting with the -- I guess we're calling it the
15 "Settlement Agreement", on the first condition there,
16 A.1, it says that a "permanent conservation shall be
17 secured". What exactly does a "permanent conservation"
18 imply? What does that mean? Like, for example, let's
19 start with, is the land open to the public?

20 A. (Staats) Oh, sure. If it's Fish & Game land, it will
21 be open to the public. As the Agreement infers,
22 non-motorized, because we don't want to see motorized

23 vehicles, except for research purposes and personnel
24 purposes up to those elevations. But, yes, it will be
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1 open to the public. Hunting, fishing, trapping is part
2 of what we do.

3 Q. But what exactly then does "permanent conservation"
4 imply?

5 A. (Staats) It implies that the land will not be developed
6 permanently.

7 Q. So, no roads?

8 A. (Staats) Right.

9 Q. Hiking trails?

10 A. (Staats) We would rather see no other further
11 development on those properties, yes.

12 Q. In this case, it means "no further development"?

13 A. (Staats) That's right.

14 Q. Okay. It looks like the Fish & Game is going to be
15 acquiring quite a bit of land here, the 1,735 acres
16 mentioned here, plus I think it was 620 acres through
17 the mitigation through the wetlands. So, that's well
18 over 2,000 acres of land. Is there going to be any
19 cost that Fish & Game will have to absorb in order to
20 manage this new fairly large parcels of land?

21 A. (Staats) Well, whenever you get a piece of land,
22 there's always cost. Whether it's staff time or
23 monitoring time or what have you. So, sure, I don't
24 have a number for you, but we do own nearly somewhere

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1 on the order of 50,000 acres of land in this state.

2 So, we're well aware of those kinds of costs that go
3 along with the -- I don't want to say the "burden of
4 landownership", but it's, you know, it's a cost.

5 Q. So, to some extent, this represents an unfunded
6 liability to the State of New Hampshire?

7 MR. MULHOLLAND: Mr. Chairman, maybe
8 it's not appropriate for Mr. Staats to answer that.

9 MR. HARRINGTON: Whoever is most
10 appropriate.

11 MR. MULHOLLAND: I mean, as Mr. Staats
12 said, the Fish & Game Department owns over 50,000 acres,
13 53,000 acres, and Fish & Game has staff -- certainly more
14 than 50,000 acres, and Fish & Game has staff, and that's
15 their job, it's part of their job anyway, to --

16 MR. HARRINGTON: So, now they're just
17 going to work much harder and more efficient, is that what
18 you're trying to imply?

19 MR. IACOPI NO: We know their lawyer
20 will.

21 BY MR. HARRINGTON:

22 Q. Anyway, I guess, there obviously will be some costs
23 that go with that?

24 A. (Staats) Sure.

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1 Q. Getting back to my first questions about the -- now it
2 would be available for the public to go in for
3 whatever, any lawful purposes, let's say. There's this
4 question of this "avoidance zone", which is not to be
5 confused with the -- whatever we called it here,
6 "exclusion zone" or something. This is where the wind

- 7 -- the turbine manufacturer recommends that you stay
8 away from when at all possible when the turbines are
9 operating.
- 10 A. (Staats) Sure.
- 11 Q. And, they stated -- it was stated earlier, it was
12 1,300-foot radius from the turbines. Now, since the
13 Fish & Game is going to pick up at about 500 feet.
14 That leaves an 800 -- a 508 foot -- a 500 to 1,300 foot
15 area radius around the turbines, which is a substantial
16 piece of land, that people are going to be allowed to
17 be into, other than you take some methods to prevent
18 them from being there. So, I guess, what are you going
19 to do to prevent people from being in that particular
20 area?
- 21 A. (Staats) Well, I'm not entirely sure, and I probably am
22 not the best person to answer this, for one, you know,
23 I'm not sure -- I'm not -- it seemed like there were
24 several distances given regarding the distances that

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- 1 are so-called safe from the turbines. But -- And, I'm
2 not sure that it's at all times of the year, either.
3 You know, that certainly the wind -- the ice throw
4 would be a concern. I'm not sure, again, this is --
5 these are details that we're going to have to work out,
6 but I'm not sure that we would want to preclude people
7 entirely from that zone, short of having some
8 informational signs there that would inform them of the
9 risk, I guess. But I'm -- you know, lawyers and the
10 folks that have to deal with that stuff at a little
11 higher level would probably going to have to make the

12 call on that.

13 Q. Maybe I could make a suggestion that you would work
14 with the owners, since they're going to retain the
15 liability for the zone, they probably would have a big
16 interest in making sure no one got hurt.

17 A. (Staats) Sure. Yes. And, they inferred today some
18 signage that they might use as appropriate would be
19 good.

20 Q. I think you've already answered this one, but kind of a
21 pet peeve of mine. In 3(b), you talk about prohibition
22 on "motorized recreational activities". I hope that
23 doesn't mean that Fish & Game can't use a snowmobile to
24 get to these places to do their studies or whatever?

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1 A. (Staats) I hope that doesn't mean that, too.

2 Q. I always --

3 A. (Staats) Although, I'm a snowshoe guy. I'd just as
4 soon walk as ride.

5 Q. I always look back at the previous ice storm, not this
6 last one, but of a few before that, and seeing National
7 Forest Service personnel cutting miles and miles of
8 trail with handsaws.

9 A. (Staats) oh, sure.

10 Q. Well, what they took weeks to do, they could have done
11 in a half a day with a chainsaw, but it wasn't allowed.

12 A. (Staats) Right.

13 Q. So, I hope we don't get quite so crazy.

14 A. (Staats) Well, this isn't designated "wilderness".

15 Q. Okay. On Paragraph 8, it's on the bottom of that page,
16 and extends over on the top of the next page. And, I'm

17 just a little curious as to the intent of this, where
18 it says "This is not intended to substitute for the
19 need on the part of GRP to conduct any bird or bat
20 post-construction monitoring studies that might be
21 required through this or any other permitting process."
22 I just want to make sure that it doesn't -- doesn't
23 prevent them from taking advantage of your studies,
24 should coincidentally you have information in them that

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1 they could use.
2 A. (Staats) Yes.
3 Q. What I'm trying to say, it doesn't require them to go
4 out and duplicate a study that was already done by you,
5 not for the purposes of meeting their permit
6 requirements, but because you decided it was a study
7 that needed to be done.
8 A. (Staats) Yes. I don't think that's our intent at all.
9 I mean, I think --
10 Q. Don't want to waste money on anyone's part there.
11 Okay. On Item 10, this is still A.10 in the Settlement
12 Agreement, there's a line here that says "Funds shall
13 be expended on one or more projects approved by the
14 NHFG after consultation with the AMC." And, I'm just
15 curious, why did you pick out a singular private
16 organization? We've had the Audubon Society --

17 MR. MULHOLLAND: Mr. Chairman, may I
18 just answer that? The AMC is a signatory to this
19 Agreement. That's the reason.

20 MR. HARRINGTON: Okay. I'm just a
21 little confused. Being a signatory to this Agreement

22 gives them access to how State funds are going to be
23 spent?

24 MR. MULHOLLAND: No. No, Mr. Chairman.

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1 What that is intended to do is that we're going to share
2 information about what lands are available and what might
3 be appropriate. AMC has a lot of knowledge about some of
4 the lands in northern Coos.

5 MR. HARRINGTON: But, again, I would say
6 so would Ms. Linowes' organization, so would the Audubon
7 Society, and the New Hampshire Society of Conservation of
8 Woods or whatever.

9 MR. MULHOLLAND: The State would accept
10 comment from anybody.

11 MR. HARRINGTON: I'm just -- It just
12 strikes me as odd that you'd pick a singular private
13 organization to say they have conclusive consulting rights
14 with the State on this. I would have a problem with that,
15 is all I'm saying.

16 BY MR. HARRINGTON:

17 Q. Okay. Getting on to -- Getting off that Agreement and
18 going to the testimony. And, I'm trying not to stretch
19 things out here. There's a lot of different statements
20 in here that you've made about, in the bottom of
21 Page 9, for example, "We believe it will be exceedingly
22 difficult, if not impossible, to limit human access to
23 the ridgelines once developed with an extensive road
24 system. This increased human activity has the

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1 potential to alter wildlife", etcetera. And, then, on
2 Page -- on Page 15, you say that "As a result, the
3 Department considers Mount Kelsey the best marten
4 habitat within the protected area." On Page 17, it
5 says "Given the extremely limited global distribution
6 of this species," and you're talking about the
7 Bicknell's thrush, "we cannot afford to take any
8 changes with this extremely rare bird species." And,
9 on Page 19, again talking about the Bicknell's thrush,
10 it says "Our Department has a long history of
11 protecting high elevation habitat and remains convinced
12 that it is in the best long-term interest of the
13 wildlife resource and the public to vigorously protect
14 these areas."

15 So, I guess, putting all that together,
16 how did you go about going from this position where
17 it's sort of like "it's okay with the Mitigation
18 Agreement." Is the Mitigation Agreement that
19 encompassing that it allays all of those concerns?

20 A. (Staats) Well, as I said earlier during my -- during
21 this process, there are still going to be impacts. The
22 mitigation doesn't eliminate the impacts. But, with
23 the package that we've arrived at with the Applicant
24 and with AMC, we feel confident that we'll afford

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1 enough of that high-elevation habitat protection that
2 we can mitigate some of those potential impacts that we
3 described here. When we wrote this testimony, of
4 course, it was in the absence of any agreement and

5 absence of any long-term protection for any of this
6 high-elevation habitat. So, you know, certainly we
7 were very concerned.

8 Q. Just a couple of more questions, and these are going to
9 kind of jump around in different areas. First, maybe
10 we can resolve the great mystery. Are there really
11 caves on Mount Kelsey? We've heard all this talk about
12 it, no one seems to know if they're really there. Can
13 you say if there's such a thing?

14 A. (Staats) Can't say definitively, unless I -- but I sure
15 would love to be up there now looking for them.

16 [Laughter]

17 (Multiple parties talking at the same
18 time.)

19 WITNESS STAATS: Maybe I'll go Tuesday.

20 BY MR. HARRINGTON:

21 Q. There was a lot of discussion on how we -- how the
22 edges of the road are returned to their natural
23 environment. We heard previously that there was going
24 to be various type of grasses put down, I assume with

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1 the idea of preventing erosion. Today, you had said, I
2 think in response to a question from Mr. Roth that
3 "planting seedlings would have been better." And, I
4 guess the long-term goal here is to try to restore that
5 as close to back to the way it was before cutting was
6 -- before cutting occurred. Would either of these
7 approaches tend to do that? Would the grasses in the
8 short term help mitigate erosion over -- until the
9 plants and the trees could get big enough?

10 A. (Staats) Well, you know, Jill had mentioned earlier
11 during this session that the concern we have about
12 grass is it can suppress the ability for trees to
13 become established, if you get a strong, thick grass
14 mat. And, then, you can also get some invasion of that
15 grasses out into the forested landscape. And, we had
16 that similar experience when we seeded log landings and
17 ditches on the Champion lands that I worked on, that
18 stuck -- that grass crept way out into the
19 clear-cuts, and suppressed the ability of those areas
20 to revegetate to trees. So, you know, you got two
21 issues there. One is, that you got to control erosion.
22 And, I'm sure DES is going to be watching that very
23 closely. So, you've got to take measures to do that.
24 And, then, secondly, we want to see that natural

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1 vegetation return. So, it's going to take a little
2 finesse, frankly.
3 Q. So, there's good singular solution it sounds like?
4 A. (Staats) Well, if you go to grasses, you've got to look
5 at native grasses that won't be -- that won't prove to
6 be an invasive, and that perhaps are short-lived, yet
7 stabilize the soil.
8 Q. Something that was an annual, --
9 A. Yes. Exactly.
10 Q. -- something like that?
11 A. (Staats) Exactly. And, then, you know, hope for this
12 long-term return of the tree species that are native to
13 that area.
14 Q. And, there was also a discussion on that, that the

15 trees would n't -- basically, they would re-establish
16 themselves, just through, you know, the natural seeds
17 following off in the associated areas. And, one of you
18 mentioned today earlier about planting seedlings.

19 A. (Staats) Uh-huh.

20 Q. Would that be an acceptable thing, short-term grass
21 use, and then waiting for it to naturally re-establish
22 itself or is that just going to take too long?

23 A. It may, it depends on the substrate that you've got
24 there, it may take an awful long time, really, to

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1 naturally revegetate the trees, depending on what that
2 substrate is. You know, I look at these pictures with
3 the heavy ledge cut and so forth. But, of course,
4 there's no -- there's been no organic material put back
5 on there. Put some organic material back on there.
6 The likelihood of those trees being established are
7 better. Spruce establish themselves better on bare
8 mineral soil, actually. So, it depends.

9 Q. And, referring to Page 11 of your testimony, and you
10 may want to look at this, starting with the bottom of
11 the page, around -- well, let me start around Line 19,
12 it's talking about the recent impacts of harvest on
13 high-elevation lands, and it talks about there was -- I
14 guess an analysis was done of 41 north country
15 municipalities revealed the following: " And, this is
16 where I wanted to consider. "One unexpected finding of
17 this project is that considerable timber harvest has
18 been occurring above the 2,700-foot during all three
19 periods", and continues and goes on and gives a little

20 more detail about that. And, I'm explicitly talking
21 about the term "one unexpected finding". Should that
22 be interpreted to say that these were timber harvests
23 that were -- did not get all the need approvals and
24 that's why they were unexpected or --

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1 A. (Staats) I'm not sure why they chose that wording, you
2 know, the authors of that particular report. I think
3 that they probably may have been surprised that,
4 despite the High Elevation MOU we had in existence with
5 the landowners, that a lot of timber harvests had
6 occurred up at those high elevations. But I think if
7 you look -- you also have to look closely at that
8 report in that a good share of those harvests occurred
9 before the High Elevation MOU went into effect.
10 Because, subsequent to the MOU, once the MOU went into
11 effect, --

12 Q. Excuse me, what year was that?

13 A. (Staats) 1996.

14 Q. Okay.

15 A. (Staats) We reviewed every high elevation timber
16 harvest that occurred on the properties of who were
17 signatory to that agreement. So, they didn't happen --
18 anybody that was a signatory to the agreement, we
19 looked at those harvests above that, above 2,700 feet.

20 Q. So, prior to that time, maybe you expected --

21 A. (Staats) Yes, there were some big harvests. Sure,
22 there were some big harvests above 2,700 feet prior to
23 that time, for sure.

24 Q. And, I guess this whole, if you will, the \$64,000

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1 question here is, you know, how much better off or
2 worse off this area is going to be with or without the
3 Wind Project? And, we've had various people make
4 various statements on this. I guess I'm trying to get
5 what your conclusion is. And, I'd like you to do that
6 with the idea that, if the Wind Project is built, with
7 the mitigation lands and the fact that, you know,
8 you'll have that in place, as well as the controls,
9 whatever the controls are over the -- that are implied
10 or the roads and so forth and so on.

11 And, then, the option would be, we
12 continue to forest it, like we have been, and that
13 would be cumulative over, let's say, for the next 25
14 years, because, presumably, if the wind farms do get
15 permitted, they would be there for at least that long.
16 The cumulative effect of both projects, would they be
17 -- how does that work out?

18 A. (Staats) Well, you know, logging is not the same as a
19 permanent development. That's what you have to
20 understand. I mean, these forests have been logged
21 multiple --some of them have been logged multiple times
22 for over the last 100 years. And, they do grow back.
23 And, that's different than putting a permanent road up
24 there and structures that we're not entirely sure what

[WITNESS PANEL: Kelly|Staats]

1 the long range implications of those are. So, we're
2 happy that, so far that we've got the Agreement that we
3 have in that it does insure us some long-term

4 protection for 2,000 some odd acres there, and gives us
5 the opportunity to buy some more or ease some more
6 acres long term. So, you know, that's a benefit.
7 There's trade-offs here. That's for sure.

8 But, I mean, timber harvesting, in and
9 of itself, may or may not be an extremely harmful thing
10 at those high elevations, depending on how you do it.
11 When we did it under the auspices of the MOU, it was
12 certainly done better than it was done prior to that.
13 And, you can still have those species that you had
14 before. I don't know if I totally answered your
15 question, but, I mean, it's --

16 Q. No, I think the answer is that it's -- one can.

17 A. (Staats) Yes.

18 MR. HARRINGTON: Thank you. That's all
19 I have.

20 CHAIRMAN GETZ: Mr. Mulholland, do you
21 have redirect for your witnesses?

22 MR. IACOPI NO: I have a question or a
23 couple questions.

24 CHAIRMAN GETZ: Mr. Iacopi no.

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[WITNESS PANEL: Kelly|Staats]

1 BY MR. IACOPI NO:

2 Q. Mr. Staats, when there's a "forest legacy easement", I
3 think that's what you called it, --

4 A. (Staats) Uh-huh.

5 Q. -- is timber harvesting permitted in that type of area?

6 A. (Staats) Absolutely. Yes. Oh, yes. It's encouraged.
7 I mean, forest legacy is intended to preserve working
8 forests as much as anything, yes.

9 Q. And, this Memo of Understanding with the landowners and
10 the County I think are the signatories to it?

11 A. (Staats) Just the landowners. The County deals with
12 the permitting process of harvest above 2,700 feet.
13 That the MOU was something that was between Fish &
14 Game, AMC, and the landowners.

15 Q. Is it still in effect?

16 A. (Staats) It is not in -- It was re-upped by a number of
17 the landowners after the first five years, and a second
18 five years, most of them, if not all of them, had
19 changed hands once or twice. And, despite some
20 overtures towards some of them, they did not choose to
21 re-up that agreement.

22 Q. So, if I understand the process then for permitting for
23 timber harvesting there, an application is made to the
24 Coos County Planning Board for a permit, is that

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[WITNESS PANEL: Kelly|Staats]

1 correct?

2 A. (Staats) That's correct. Yes. For the unorganized
3 towns, yes.

4 Q. And, then, -- And, that's where most of this high
5 elevation is, correct, in the unorganized towns?

6 A. (Staats) Not most of it, but the stuff that we're
7 talking about is, sure. Yes.

8 Q. And, as I understand it, sort of informal that the
9 Planning Board refers them to you, and then you go up
10 and take a look at them?

11 A. (Staats) You're entirely right. There's no language in
12 the Zoning Ordinance that requires the County to ask
13 our expertise. They just have -- It's a traditional

- 14 or, you know, a working relationship that we've
15 developed over the last close to 20 years.
- 16 Q. Is that working relationship sort of a personal one
17 that you have or is it with other members of the Fish &
18 Game Department as well?
- 19 A. (Staats) I happen to be the point person, because I'm
20 the regional biologist up there. And, certainly, well,
21 obviously, Jill has been on those harvest reviews with
22 me. And, for a short while, some of the DRED foresters
23 were as well. But that was more when the MOU was in
24 effect.

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[WITNESS PANEL: Kelly|Staats]

- 1 Q. Has the County granted any timber harvests at high
2 elevation over 2,700 feet without informally involving
3 you in the process recently?
- 4 A. (Staats) No, not to my knowledge. You never know.
- 5 Q. And, my last question is, is it true that, if anybody
6 would know if there were bat caves on Mount Kelsey, it
7 would be you?

8 MR. ROTH: I object to that question.

9 [Laughter]

10 BY THE WITNESS:

- 11 A. Well, maybe someone else has stumbled into them, I
12 don't know.

13 CHAIRMAN GETZ: Mr. Mulholland.

- 14 MR. MULHOLLAND: Could we possibly have
15 maybe a ten minute break before we go into any redirect?

- 16 CHAIRMAN GETZ: All right. Yes, let's
17 take 15 minutes. And, then, I guess my fervent hope is we
18 will, of course, I'm expecting it's going to be very brief

19 redi rect, --

20 MR. MULHOLLAND: Absol utel y.

21 CHAIRMAN GETZ: -- I really would like
22 to complete the examination of Dr. Publi cover today. And,
23 then, of course, this panel is subject to recall to try to
24 accommodate Ms. Keene, most likely on Tuesday.

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[WITNESS PANEL: Kelly|Staats]

1 MR. MULHOLLAND: Mr. Chair man, I'd make
2 a formal objection to that. Ms. Keene isn't here, the
3 panel is.

4 MR. ROTH: She's sick.

5 CHAIRMAN GETZ: I understand that. So,
6 let's take a recess, and then we'll have the redirect.

7 (Whereupon a recess was taken at 3:49
8 p.m. and the hearing reconvened at 4:11
9 p.m.)

10 CHAIRMAN GETZ: Okay. We're back on the
11 record in the Site Evaluation docket 2008-04. Turning to
12 redirect by Mr. Mul holl and of the Fish & Game witnesses.

13 MR. MULHOLLAND: Thank you, Mr.
14 Chair man.

15 REDIRECT EXAMINATION

16 BY MR. MULHOLLAND:

17 Q. Mr. Staats and Ms. Kelly, can you look at Paragraph 8
18 of the Settlement Agreement. Paragraph A. 8.

19 A. (Staats) Yes.

20 Q. What is that \$200,000 amount intended to fund?

21 A. (Staats) That payment is intended to fund pretty much
22 what it says right there, Evan, regarding -- it gives
23 us the ability to research, investigate the impacts of

24 the product -- of the project to wildlife and wildlife
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[WITNESS PANEL: Kelly|Staats]

1 habitats with this funding.

2 Q. If the site and facility permit for this project were
3 to include a condition that a migratory bird and bat
4 post-construction mortality survey were to be required,
5 would that be separate from this?

6 A. (Staats) That would be separate, absolutely. I think
7 that -- I think that's what is intended by turning to
8 the next page, that paragraph at the top of the page,
9 yes, says what it means. That that \$200,000 and the
10 studies that we might design, is not intended to
11 substitute for a post-construction bird and bat
12 mortality study.

13 Q. That said, do you see Fish & Game having a role in that
14 migratory bird and bat post-construction mortality
15 study?

16 A. (Staats) We might have a role. It might be best
17 handled through a technical committee of folks that
18 have a much greater understanding of how that process
19 would occur, having had no experience with that
20 whatsoever.

21 MR. MULHOLLAND: Thank you. That's it.

22 CHAIRMAN GETZ: Okay. Any other

23 questions for the panel?

24 (No verbal response)

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[WITNESS PANEL: Kelly|Staats]

1 CHAIRMAN GETZ: Hearing nothing, then

2 the witnesses are excused, subject to recall. And, I
3 understand your -- not right this minute. You're excused
4 for the day. Thank you.

5 WITNESS KELLY: Thanks.

6 CHAIRMAN GETZ: Mr. Mulholland, I
7 understand you had, before we recessed, you expressed an
8 objection to recalling the witnesses in the event that
9 Ms. Keene is available on Tuesday. Did you want to say
10 something more about that?

11 MR. MULHOLLAND: No, I'll just stand by
12 my objection.

13 CHAIRMAN GETZ: Okay. Was there
14 something else?

15 MR. MULHOLLAND: I just have another
16 issue that's come up. There's been some discussion today
17 about this contract "being accepted by Governor and
18 Council", because it's a State contract. Myself and
19 counsel for the Applicant and AMC are going to talk about
20 that and try to come up with a contingency plan that is
21 acceptable to all three, but we haven't done that yet.

22 CHAIRMAN GETZ: A contingency plan, in
23 the event it were rejected by Governor and Council, is
24 that what you're saying?

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1 MR. MULHOLLAND: Correct.

2 MR. IACOPI NO: Mr. Chairman? Evan, are
3 you satisfied that it has to accepted by Governor and
4 Council or has that actually been established yet?

5 MR. MULHOLLAND: I'm pretty certain.
6 I'm not positive, but I'm pretty certain.

7 CHAIRMAN GETZ: Would you like to
8 testify, Mr. Normandeau?

9 DIR. NORMANDEAU: I really wouldn't care
10 to testify, but all I can say is that my experience to
11 date is that any time Fish & Game accepts property, it
12 would need to go to the G&C. And, any time we accept and
13 expend monies, we would need to go to Fiscal committee and
14 G&C.

15 CHAIRMAN GETZ: But, I guess, for
16 purposes of this issue, under the assumption it had to go
17 to G&C, and under the assumption that it were rejected at
18 that point, then the representation is that the parties
19 will work to develop an alternative means for addressing
20 the substantive issues that are contained within the
21 Settlement Agreement?

22 MR. MULHOLLAND: Yes. We'll discuss
23 this, and hopefully have something for the Committee soon.

24 CHAIRMAN GETZ: Okay. Thank you. Well,
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[WITNESS: Publi cover]

1 Iet's call Dr. Publi cover to testify please.

2 MR. PATCH: Mr. Chairman, could I just
3 ask, I don't know what your order is for
4 cross-examination, but if there was any way that we could
5 go first on cross-examination, it would help with a
6 scheduling problem that we have.

7 CHAIRMAN GETZ: Well, yes, I think,
8 actually, inasmuch as it's the parties to the Settlement
9 Agreement probably go first, in terms of the normal nature
10 of friendly cross.

11 MR. PATCH: Okay.

12 (Whereupon David Publi cover was duly
13 sworn and cautioned by the Court
14 Reporter.)

15 MR. IACOPI NO: Would you like me to
16 present him?

17 CHAIRMAN GETZ: Please.

18 MR. KIMBALL: I was going to. I've
19 prepared.

20 MR. IACOPI NO: Oh, I'm sorry. Great.
21 That's excellent.

22 MR. KIMBALL: That's why I drove down
23 here anyways.

24 DAVID PUBLI COVER, SWORN
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[WITNESS: Publi cover]

1 DIRECT EXAMINATION

2 BY MR. KIMBALL:

3 Q. Would you please introduce yourself and state your name
4 for the record.

5 A. David Publi cover.

6 Q. And, by whom are you employed and in what capacity?

7 A. I'm employed by the Appalachian Mountain Club as a
8 Senior Staff Scientist in Gorham, New Hampshire, where
9 I've been employed since 1992.

10 Q. And, can you briefly describe your qualifications?

11 A. I've been a forester for over 30 years. I have a
12 Doctorate in Forest Ecology from the Yale School of
13 Forestry. In my time at AMC, I've been involved in
14 numerous working groups and technical committees on
15 areas of sustainable forestry, ecological reserve
16 design, and wind power siting and policy, including

17 membership in the Governor's Task Force on Wind Power
18 Siting in Maine, and working with a stakeholders group
19 to develop draft wind power siting guidelines for New
20 Hampshire that were presented to the legislatively
21 established Governor's Energy Policy Commission. And,
22 I have represented AMC at three previous interventions
23 in commercial wind power permitting applications all in
24 the State of Maine.

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[WITNESS: Publi cover]

- 1 Q. For the record, are you the same Dr. Publi cover as the
2 prefilled and supplemental testimony filed under your
3 name?
4 A. I am.
5 Q. Do you have any corrections or updates to your prefilled
6 supplemental testimony?
7 A. I have no corrects. I do have an update. And, I will
8 submit this in written form to the Committee to be
9 entered as "AMC Exhibit 15". I will submit that
10 electronically to Mr. Iacopino.

11 WITNESS PUBLI COVER: And, with the
12 Chair's permission, I'd like to read this into the record?

13 CHAIRMAN GETZ: Okay.

14 WITNESS PUBLI COVER: Thank you.

15 BY THE WITNESS:

- 16 A. As set forth by Mr. Mark Lyons during the SEC's public
17 hearing on March 11th, 2009, the New Hampshire Fish &
18 Game Department and the AMC reached a Settlement
19 Agreement with the Applicant to more appropriately
20 mitigate for the impacts of the proposed Project to
21 high elevation ecosystems than was originally proposed

22 in the Applicant's Appendix 40. The permanent
23 conservation of the areas specified in the Agreement,
24 in particular the restriction on commercial timber
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[WITNESS: Publi cover]

1 harvesting and the funding of -- funding of
2 conservation of additional lands outside the Project
3 area will provide lasting ecological benefit and
4 enhance the habitat value of the conserved lands.

5 It is my professional opinion that the
6 provisions of the Agreement provide sufficient
7 mitigation to compensate for Project impacts to high
8 elevation ecosystems, habitats, and species, and
9 resolves any and all concerns regarding the issue of
10 high-elevation mitigation. It is also my professional
11 opinion that, with the inclusion of the enhanced
12 mitigation set forth in the Agreement, the proposed
13 development does not constitute an unreasonable adverse
14 effect on the natural environment as understood by RSA
15 162-H.

16 AMC believes it is paramount that the
17 SEC include the provisions of the Agreement as a
18 condition of the Certificate of Site and Facility,
19 should one be issued, to meet the requirements of New
20 Hampshire RSA 162-H:16-c, that requires the Committee
21 to find that the Project will not have an unreasonable
22 adverse effect on aesthetics, historic sites, air and
23 water quality, the natural environment, and public
24 health and safety. There is ample evidence in the
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[WITNESS: Publi cover]
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1 record that the Project will have significant impacts
2 on rare high elevation ecosystems and species and,
3 without appropriate mitigation of this magnitude, the
4 Committee would fail to meet this requirement. And,
5 I'd like to explain how we reached this agreement and
6 our current position, in light of our original
7 testimony.

8 In our prefiled testimony, I presented
9 evidence that the high-elevation ridgeline of Mount
10 Kelsey and, to a lesser extent, Dixville Peak encompass
11 natural ecosystems of high ecological value. The
12 development would impact primary old-growth forest that
13 provides high quality habitat for several species of
14 high conservation concern, primarily American marten,
15 Bicknell's thrush, and three-toed woodpecker. These
16 areas also have important adaptive value in the face of
17 future climate change by maintaining spruce-fir habitat
18 in periods of warmer climate when this habitat is
19 greatly reduced or eliminated at lower elevations.
20 And, similar concerns were expressed by New Hampshire
21 Fish & Game and witnesses for the Counsel to the
22 Public.

23 We also stated our strong professional
24 opinion that the mitigation originally proposed by the
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[WITNESS: Publicover]

1 Applicant was insufficient to compensate for the
2 impacts to these areas, an opinion shared by New
3 Hampshire Fish & Game and the New Hampshire Natural
4 Heritage Bureau.

5 At the February 2nd, 2009 technical
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6 session, the Applicant proposed an expanded
7 High-Elevation Mitigation Plan that included
8 conservation of all land above 2,700 feet on Mount
9 Kelsey outside of the Project footprint. The Applicant
10 also proposed to provide funding to New Hampshire Fish
11 & Game, to conduct studies on the impact of the
12 development on species of concerns, and to forgo future
13 development of wind power on ridges adjacent to Nash
14 Stream State Forest for the duration of their lease.

15 In subsequent meetings and
16 conversations, we, and others with expertise on high
17 elevation ecosystems, expressed our professional
18 opinion that the mitigation proposal still was not
19 sufficient. In part, because the ecological value of
20 the Mount Kelsey mitigation area was compromised by the
21 fragmenting presence of the development, and because
22 the relinquishment of development rights adjacent to
23 Nash Stream could not be made permanent. Our
24 professional opinion was that the proposal was

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[WITNESS: Publi cover]

1 sufficient to mitigate for the ecological impacts to
2 Dixville Peak, but not to both Dixville and Kelsey.

3 AMC and others recommended to the
4 Applicant what we considered to be an appropriate
5 mitigation. This proposal included the Mount Kelsey
6 area and the funding for wildlife studies, as
7 originally proposed. But also included permanent
8 protection of high-elevation land in four areas
9 adjacent to Nash Stream State Forest: Long, Whittcomb,
10 Mui se, and Baldhead Mountains, as well as another area

11 that was never identified in any publicly available
12 material. The lands adjacent to Nash Stream were of
13 particular interest, because they would complete the
14 protection of several large blocks of high-elevation
15 land that are partially contained within the State
16 Forest.

17 The Applicant subsequently indicated
18 that they could not secure conservation of the lands on
19 Whittcomb Mountain or the additional unidentified area
20 from the landowners. The inability to protect Whittcomb
21 Mountain was of particular concern, as this site had
22 been identified as an area of high ecological value in
23 the breeding bird studies conducted by the Audubon
24 Society of New Hampshire, and had been identified as a

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[WITNESS: Publi cover]

1 valuable potential mitigation area in the Applicant's
2 Natural Community Characterization. The southern most
3 portion of the Mount Kelsey area was also eliminated
4 from the proposal.

5 In return for these losses, we accepted
6 a one-time payment of \$750,000 to New Hampshire Fish &
7 Game, to be used for the conservation of additional
8 lands outside the Project area, with a preference given
9 to high-elevation lands in Coos County. We also
10 included a provision that will effectively preclude
11 wind power development on Whittcomb Mountain as long as
12 the Project is operational.

13 The final agreement will permanently
14 conserve approximately 1,735 acres of high-elevation
15 land, supplemented by additional land conservation

16 through the \$750,000 Land Conservation Fund.

17 The prohibition on timber harvesting on
18 a considerable area of high-elevation lands will
19 maintain existing, mature and old-growth spruce-fir
20 forest and will allow for the restoration of natural
21 habitat conditions in other areas that have undergone
22 recent harvesting, thus enhancing their ecological
23 value over the status quo. Current New Hampshire
24 timber harvesting regulations and the Zoning Ordinances
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[WITNESS: Publi cover]

1 for Coos County unincorporated places provide very
2 little protection for high-elevation habitats.

3 The terms of the Agreement reflects the
4 preference of the Biologists Advisory Group that
5 informed the development of the High-Elevation
6 Memorandum of Understanding in the 1990s that there be
7 no harvesting above 2,700 feet.

8 I concur with the Supplemental Testimony
9 of Steve Pelletier and Adam Gravel regarding the
10 benefits of the proposed mitigation proposal. It is my
11 professional opinion that these benefits balance the
12 impacts created by the development. This is the basis
13 for our current position that the development, in
14 combination with the mitigation provided for by the
15 Agreement, does not constitute an unreasonable adverse
16 effect on the natural environment. I would note that
17 the value of this High-Elevation Mitigation Proposal
18 estimated by the Applicant at \$2.4 million represents
19 less than 1 percent of the estimated Project cost of
20 \$275 million. It is AMC's opinion that this does not

21 create an excessive financial burden on the Project,
22 and its implementation is absolutely necessary to
23 satisfy the "no unreasonable adverse effect" on the
24 natural environment criteria of New Hampshire 162-H
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[WITNESS: Publi cover]

1 relative to high elevation ecosystems.

2 Q. Other than the material related to this update, would
3 your answers under oath be the same as your prefilled
4 and supplementary testimony?

5 A. They would.

6 MR. KIMBALL: The witness is available
7 for cross-examine.

8 CHAIRMAN GETZ: Mr. Patch.

9 MR. PATCH: Okay. Thank you.

10 CROSS-EXAMINATION

11 BY MR. PATCH:

12 Q. Dr. Publi cover, as I believe you've just indicated, AMC
13 has signed onto this High-Elevation Mitigation Plan,
14 and, as I understand it also, it has alleviated a
15 number of your concerns about the Project that were
16 expressed in your January testimony, which has been
17 marked as "AMC-1", is that correct?

18 A. Yes.

19 Q. The concerns that this plan does not address, if I
20 understand your supplemental testimony that's been
21 marked as "AMC-2", are decommissioning and road
22 construction techniques in the high-elevation areas, is
23 that correct?

24 A. Yes.

[WITNESS: Publi cover]

- 1 Q. Insofar as decommissioning is concerned, on Page 17 of
2 your January prefiled testimony, you said, and I'm
3 quoting here, "Funds sufficient to accomplish these
4 goals should be in hand prior to the commencement of
5 construction." Do you recall that statement?
6 A. Yes. Yes.
7 Q. Now, you had three exhibits that you had marked with
8 information about decommissioning by Lempster, I
9 believe at Stetson, and at Kibby, is that correct?
10 A. Yes.
11 Q. AMC-3 is your exhibit that includes the decommissioning
12 conditions that relate to Lempster. And, I would ask
13 you if you could take a look at 14.2.1. It has a page
14 number of "35" at the bottom and "14" over in the
15 corner. But it's basically the third page of your
16 Exhibit Number 3.
17 A. Okay. And, what was the number again?
18 Q. 14.2.1.
19 A. Uh-huh.
20 Q. And, tell me if I'm reading that first sentence there
21 correctly, or at least the first part of it: "The
22 Owner shall provide funding assurance for the complete
23 decommissioning of the Wind Park". Is that correct?
24 A. That's what it says.

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[WITNESS: Publi cover]

- 1 Q. And, is, in your opinion, "funding assurance" the same
2 as "funds sufficient to accomplish decommissioning"?
3 A. I assume they meant the same thing.

- 4 Q. So, you don't see a difference between some form of
5 funding assurance and the actual funds being set aside?
- 6 A. The form of the insurance is less important to me than
7 the fact that they should be available in a timely
8 manner.
- 9 Q. So, I mean, as an example then, if you look at AMC-4,
10 which involves Stetson, in Maine, and if you look at I
11 believe it's the second page of that exhibit, it begins
12 with a number of "13" on "Decommissioning", and then if
13 you look over at the top of the next page it says "47
14 of 68". And, if you look at D, it says "The permittee
15 shall initially secure the letter of credit". So, I
16 mean, again, that's not "funds sufficient to
17 decommission", that's a letter of credit that provides
18 assurance. Are you saying that's an acceptable form?
- 19 A. I believe so. I'm not a financial expert, so I'm not
20 totally versed in the differences between these various
21 forms of assurance.
- 22 Q. And, if I read that particular condition correctly,
23 it's not as if there's an assurance of decommissioning
24 funding that has to be provided in full up front. It
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[WITNESS: Publi cover]

- 1 looks as though it involves -- it's says "in an amount
2 no less than \$76,000", and then it goes on to say "by
3 an additional \$76,000 each year until the end of year
4 seven". Is that correct?
- 5 A. Yes.
- 6 Q. And, would you say that the -- that the Stetson
7 Decommissioning Plan is one that's acceptable to you as
8 well?

9 A. It is. And, I will specify now that, you know, we are
10 willing to state that, you know, we are open to
11 consideration of how the Project is funding -- is
12 funded. I think something other than "all funds
13 available prior to decommissioning" could be
14 acceptable. But we just think that the plan currently
15 on the table has a more delayed payment schedule than
16 any of the other commercial projects, I'm not aware of
17 what they did on Mars Hill, but something that we might
18 -- we could potentially be amenable to something that
19 involved annual payments in years one through ten, but
20 we think it's inappropriate to wait until year 11 to
21 start building up the fund.

22 Q. Okay. And, then, similarly, just to point out, with
23 regard to Kibby, in Exhibit AMC-5, I believe it's over
24 on Page 63, it's not the 63rd page of your exhibit, --
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[WITNESS: Publi cover]

1 A. No.
2 Q. -- it's the fourth page of your exhibit. And, if you
3 look down at the paragraph numbered or lettered "D", it
4 refers to "On or before December 31st of the first year
5 of operation or partial operation... the permittee shall
6 secure a signed parental guarantee... or an irrevocable
7 standby letter of credit". And, then, I think, if you
8 look down at "E", "in an amount no less than 50 percent
9 of the approved estimated decommissioning costs, by
10 December 31st of the tenth year". And, "100 percent"
11 -- "shall be increased to 100 percent", that's actually
12 the tenth year where it's increased to 100 percent, if
13 I understand that correctly?

14 A. Yes.

15 Q. And, again, you're not suggesting that, in this case
16 something sort of different than that would be
17 acceptable to AMC?

18 A. No. I think that would be acceptable.

19 Q. Okay. Now, you're second concern, subsequent to the
20 finding -- the filling of and the signing of the
21 High-Elevation Mitigation Plan, if I understand
22 correctly, is the road construction techniques in high
23 elevation. And, tell me if I'm wrong, but I believe
24 they fall into two categories: One of them being "are
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[WITNESS: Publi cover]

1 designed to accommodate rainfall intensity". And,
2 then, secondly, "techniques that maintain natural
3 hydrologic flows". Do I have that correct?

4 A. Yes.

5 Q. Now, it was your recommendation, in terms of hydrologic
6 flows, and also I believe Dr. Sanford's, that led Mr.
7 LaFrance, and, you know, on behalf of the Applicant, to
8 modify the plans to include rock sandwiches, if I
9 understood what Mr. LaFrance testified to, I believe
10 under cross from you the other day.

11 A. Yes.

12 Q. And, obviously, the use of those rock sandwiches is
13 intended to try to maintain natural hydrologic flows,
14 is that correct?

15 A. Yes.

16 Q. And, is it fair to say that that modification has
17 addressed your concern about hydrologic flows?

18 A. I believe it probably has. I still want to ask a

19 couple questions of Mr. Sanford to see if he concurs
20 that it's adequate. But, if he concurs, I would say it
21 addresses our concerns.

22 Q. Okay. And, if you had any concerns, would you think
23 they would be in terms of what the number of rock
24 sandwiches or the size of rock sandwiches or what?

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1 A. I think I would want confirmation from Mr. Sanford that
2 the design, as set forth in the plans, accomplishes
3 what he thinks it should accomplish.

4 Q. Okay. Now, in terms of the other issue related to road
5 construction, which I understand to be rainfall
6 intensity, Mr. LaFrance, I believe again in response to
7 questions from you on cross-examination, had questioned
8 whether there really are any good studies or references
9 to support the fact that rainfall intensity, not annual
10 total rainfall, but rainfall intensity increases with
11 elevation. Is that correct?

12 A. Yes.

13 Q. And, nevertheless, if I understood him correctly, he
14 had indicated that Horizons had used a rainfall
15 intensity figure of 3.9 inches in a 24-hour period,
16 which is a higher figure than the model that, in fact,
17 you had used or recommended be used, which I think was
18 2.7 inches. Now, do I have that correct?

19 A. Well, we hadn't recommended any particular --
20 particular value.

21 Q. Okay.

22 A. But we just wanted to know, be assured that the culvert
23 sizing calculations they used took recognition of the

24 fact that high-elevation areas may have, you know,
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[WITNESS: Publi cover]

1 higher run-off values.

2 Q. And, I mean, again, if I understood Mr. LaFrance
3 correctly, then the design of the Project that he has
4 now incorporated uses a figure, a rainfall figure that
5 is actually, from his perspective at least,
6 conservative, and, in effect, more than the model that
7 at least you had made reference to. And, didn't you
8 agree with that?

9 A. Yes.

10 Q. Okay. So, are you satisfied then, in terms of the
11 design?

12 A. I think Mr. LaFrance's answers yesterday went a long
13 way to allaying our concerns. I will say he gave an
14 answer to another question that raised a new concern on
15 my part.

16 Q. Would you like to tell us what that is?

17 A. Well, regards to the Environmental Monitor, and their
18 independence from the Field Engineer, I think that's an
19 issue which we might have some concern. I think the
20 Environmental Monitor should be essentially independent
21 of the people doing the road construction, and should
22 essentially be responsive to DES and not to the
23 Applicant.

24 Q. If I understood his response to that question

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1 correctly, you know, his point was that he would not be
2 the construction company, and so they would be

3 independent of the company --

4 MR. ROTH: Mr. Chairman, I would object
5 to Mr. Patch testifying as to what Mr. LaFrance said
6 yesterday.

7 MR. PATCH: It's the basis for a
8 question, Mr. Chairman. I'm not testifying, I'm just
9 trying to ask a question.

10 CHAIRMAN GETZ: Yes, I think he's fairly
11 laying a basis, a premise for the question.

12 BY MR. PATCH:

13 Q. And, I'll ask you if you agree with me or not. But, if
14 I understood what Mr. LaFrance said correctly, his
15 point was that -- that his company, if it were
16 involved, would be different from the company that was
17 involved in the construction, and, therefore, there
18 would be some independence between the two of them. Is
19 that how you understood his response?

20 A. I'd have to review the transcript. I don't recall
21 exactly how he described it.

22 MR. PATCH: Okay. Okay, thank you.

23 CHAIRMAN GETZ: Mr. Mulholland.

24 MR. MULHOLLAND: No, Mr. Chairman.

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1 Thank you.

2 CHAIRMAN GETZ: Mr. Roth.

3 MR. ROTH: I'm happy to go next, but --

4 CHAIRMAN GETZ: Well, it just seems that
5 Ms. Linowes was the most likely party that could be
6 adverse to this witness, --

7 MR. ROTH: Oh. Okay. That's fine.

8 CHAIRMAN GETZ: So that she would go
9 last. I assume we're operating on the same premises that
10 this is a Settlement Agreement, that Mr. Publicover is
11 significantly in the same shoes as Fish & Game. So,
12 that's why I turned to you, and then to her.

13 MR. ROTH: That's fine.

14 BY MR. ROTH:

15 Q. I wanted to go over a couple of questions that Attorney
16 Patch just asked you, and then -- and see what was
17 intended with your answers. And, Mr. Patch talked of
18 "fund assurances" and "letters of credit", and he
19 referred to a signed "parental guarantee". Do you know
20 what a "parental guarantee" is, in the context of a
21 case like this?

22 A. No, I don't.

23 Q. And, didn't you, in fact, testify that you didn't feel
24 like you had the financial expertise to determine

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[WITNESS: Publicover]

1 whether a particular if funding assurance was adequate
2 or not adequate?

3 A. I really don't know what all the different forms mean.
4 I think that our interest is that it accomplishes what
5 we intend. And, the actual forms, you know, I would
6 leave it to somebody else to determine whether the
7 actual form accomplishes what we wanted to accomplish.

8 Q. And, if we look at this from a basic common sense point
9 of view, a "parental guarantee", if you think about it
10 in a very familiar way, that your father promises to
11 "pay your bills", wouldn't it matter whether your
12 father had any money?

- 13 A. Yes, it would.
- 14 Q. Yes. And, wouldn't one person's father have a
15 different ability than another person's father?
- 16 A. I would assume so.
- 17 Q. Yes. So, the circumstances could be very different
18 between, say, the parent of the Stetson company, and I
19 don't know anything about them, and the parent of this
20 the company, correct?
- 21 A. They could.
- 22 Q. Okay. And, isn't it essentially the case that you
23 would want someone with some more financial experience
24 to evaluate the financial assurance mechanism?

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[WITNESS: Publi cover]

- 1 A. Yes, we would.
- 2 Q. Okay. And, the basic goal is to make sure that there's
3 money or insurance of some kind that's sufficient to
4 decommission the Project, if it needs decommissioning?
- 5 A. Yes.
- 6 Q. Okay. In terms of the wetlands impacts of the roads,
7 and I believe you were here the other day when I was
8 questioning Mr. LaFrance about the various wetlands
9 impacts that were shown on the plans. Were you here
10 for that?
- 11 A. Yes, I was.
- 12 Q. And, do you believe that the project could do more to
13 sort of fine-tune the plans, review things more
14 carefully, and adjust their design to eliminate and
15 avoid more wetlands impacts?
- 16 A. I really can't answer that. I'm not a civil engineer.
17 I haven't examined the plans, you know, in detail, to

18 see how things might be adjusted. I know there's
19 always trade-offs. You know, we probably -- you could
20 go eliminate some wetland impacts, but the expense of
21 having, you know, a greater disturbance area, greater
22 cut-and-fill of uplands. And, again, I'm not -- I have
23 no way of answering whether they could be minimized
24 further.

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1 Q. Do you believe that -- let me ask you, did you review
2 the Wetlands Bureau's report that was filed back in
3 November?
4 A. Not in detail. Other than the high-elevation areas,
5 the overall issue of wetlands, wetlands impacts was not
6 one we focused on.
7 Q. Okay.
8 A. I reviewed their proposed conditions for the three
9 different permits.
10 Q. Do you recall that the reports mentioning that the
11 Applicant's plan had placed a power pole in a vernal
12 pool?
13 A. I don't recall that. I will take your word for it.
14 Q. Okay. I'm not going to ask you any further about it
15 then. There was some questioning about the
16 "Environmental Monitor". And, is it your opinion that
17 the Environmental Monitor should have the power to stop
18 the work, if, in fact, an environmental violation is
19 taking place?
20 A. If -- I think they probably should. I think they
21 should be -- essentially be responsive to and an agent
22 of DES. And, if a violation is occurring, they should

23 have -- you know, if they can't stop it, they should
24 have the authority to immediately notify DES, who may
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[WITNESS: Publi cover]

1 have the authority.
2 Q. Okay. Now, turning your attention to the Wetlands
3 Mitigation Agreement -- or, I'm sorry, not the
4 "Wetlands Mit" -- the High-Elevation Mitigation
5 Agreement, is it fair to say that the Agreement itself
6 provides very little by way of addressing the condition
7 of the environment immediately adjacent to the roads
8 and the turbine pads?
9 A. Yes, it does not address the construction techniques or
10 the actual development itself.
11 Q. Okay. And, that the only provision in that Agreement
12 that concerns "restoration" is Paragraph 12, which says
13 they're going to "revegetate" -- or, not "Paragraph
14 12", I don't know what paragraph it is, but the
15 paragraph that says they're going to "revegetate"?
16 A. I believe that's correct.
17 Q. And, is there a -- are you familiar with the
18 Applicant's Restoration Program, that the Applicant
19 intends to do to get the road back to 12 feet?
20 A. I haven't read it, no.
21 Q. Does one exist?
22 A. I don't know.
23 Q. You haven't seen one?
24 A. I haven't looked for one. Again, I have not -- we were
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1 not focused on, again, the substantive -- other than
2 the sort of wetlands and the high elevation hydrology
3 issue. Sort of construction techniques and the
4 restoration are not something we focused on. Again, I
5 think DES -- we sort of trusted that DES, the State
6 agency, to deal with those issues.

7 Q. So, now, in your testimony, you identified the
8 high-elevation habitat, in paragraph or at Page -- I
9 think it's Page 4 and 5, and you provided a fair amount
10 of detail about this high-elevation habitat with
11 impression citations. And, do you believe that the
12 construction of the road and the turbine pads will have
13 substantial impact on that habitat, sort of on the
14 edges of the road and the turbine pads?

15 A. It will have impact. You know, "substantial" is a
16 subjective term. But, yes, clearly, there will be
17 impacts beyond the actual footprint of the
18 construction.

19 Q. Would you like to see a restoration plan proposed as a
20 condition that restores those areas to its natural
21 condition?

22 A. I don't think, once you, you know, carved a road down
23 to bedrock or taken the substrate out, I don't think
24 you can restore those to natural conditions. I think,

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1 you know, you're talking about bringing the road back
2 to 12 feet and such, --

3 Q. Yes.

4 A. -- and the cut slopes. I think that's a heavily
5 disturbed area. I think, you know, the only thing that

6 can really bring it back to a natural condition is a
7 long period of time, you know, a century or more. I
8 think you could advance that along, I think, on the,
9 say, on the cut slopes and stuff and, you know, in
10 areas like that, not the actual road surface. I think
11 planting of trees would have some habitat value, as
12 opposed to just seed, you know, having a grassy slope.
13 But I don't think we should have any -- any illusions
14 that it's going to be restored to anything resembling a
15 natural habitat.

16 Q. Okay. And, do you believe that a restoration plan like
17 that should exist for both Dixville and Kelsey?

18 A. Yes.

19 MR. ROTH: Okay. That's all I have.

20 Thank you.

21 CHAIRMAN GETZ: All right. Thank you.

22 Ms. Linowes.

23 MS. LINOWES: Yes, Mr. Chairman. I have
24 a few exhibits that I've distributed to everyone but the
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1 Committee, if I may?

2 CHAIRMAN GETZ: Please.

3 (Ms. Linowes distributing documents to
4 the Subcommittee members.)

5 MS. LINOWES: Do you have your exhibits?

6 WITNESS PUBLI COVER: I didn't bring up
7 my copies for this.

8 MS. LINOWES: Thank you, Mr. Chairman.

9 And, good afternoon, Dr. Publi cover.

10 WITNESS PUBLI COVER: Good afternoon.

11 BY MS. LINOWES:

12 Q. I have a number of questions for you. I believe in
13 your testimony you stated you were, and you said it
14 also today, that you've been an intervenor in several
15 wind projects? Is that true? Is that the case?

16 A. Yes.

17 Q. And, you consider yourself rather knowledgeable in
18 siting of wind energy facilities?

19 A. Reasonably knowledgeable, yes.

20 Q. And, your testimony, on Page 2, at the bottom of the
21 page of your prefilled testimony, you state that "we
22 believe that not all areas are suitable for
23 development, and that areas of particularly high value
24 should be protected." Do you recall that sentence?

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[WITNESS: Publi cover]

1 A. Yes.

2 Q. And, then you go onto say, within your prefilled
3 testimony, you put forth a very strong argument to
4 suggest, if there is any place not to put a wind energy
5 facility, this would be one of them?

6 A. We had very strong concerns -- well, with not the whole
7 project. Again, we thought that the Fishbrook and the
8 Owlhead strings were suitable sites for wind power
9 development. We thought that Dixville was potentially
10 suitable, if mitigated. And, in our original
11 testimony, we expressed strong reservations about
12 Kelsey.

13 Q. And, in fact, didn't you describe Kelsey as
14 "unmitigatable"?

15 A. I don't believe I used that word. If you can find it,

16 --

17 Q. If you give me a second, I will --

18 CHAIRMAN GETZ: And, Ms. Linowes, your
19 pointing to the testimony from January 5, 2009?

20 MS. LINOWES: That is correct. Yes, Mr.
21 Chairman. Thank you.

22 BY MS. LINOWES:

23 Q. And, if you bear with me, there is a section where you
24 state that it is --

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1 CHAIRMAN GETZ: On Page 3 perhaps,
2 there's a bullet about Kelsey.

3 MS. LINOWES: On Page 3? That might do
4 it. Thank you.

5 BY MS. LINOWES:

6 Q. "We strongly oppose construction of the Mount Kelsey
7 turbine string under any circumstances. We believe
8 that the impacts of this development on undisturbed
9 old-growth forest and critical wildlife habitat for
10 several rare species constitute an unreasonable adverse
11 impact on the natural environment." So, I guess I read
12 the words "under any circumstances" as "unmitigatable".
13 Am I misreading that?

14 A. No, I don't think so.

15 Q. But, today, you do think it is mitigatable?

16 A. We have reconsidered that position, yes.

17 Q. Now, I don't know if the paragraphs of the roads from
18 Kibby Mountain are there still?

19 A. Yes, they are.

20 Q. Okay. Great. Now, Kibby Mountain was a project that

21 you did support, is that not true?

22 A. That is true.

23 Q. And, Mr. LaFrance, do you recall his confirming that
24 some portions of the road that will be built at that

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1 site, on the Project site, will resemble what is
2 depicted in those pictures?

3 A. Yes.

4 Q. For the record, since you are now on the stand, can you
5 tell us the elevations of Kibby Mountain, where the
6 turbines were to be sited?

7 A. Of the entire project, I think the turbine elevations
8 ranged from about 24, maybe 2,500 feet, up to about
9 3,200, a little bit more.

10 Q. So, we were crossing into the 2,700-foot elevation?

11 A. Yes. I think, probably, of the 44 turbines, my
12 recollection is that maybe 12 of them were located
13 below 2,700 feet, which would leave about 32 above
14 2,700 feet.

15 Q. Okay. And, you know, we've heard so much talk about
16 the "2,700 feet". Could you just take 30 seconds and
17 explain the importance of the 2,700-foot elevation
18 demarcation?

19 A. "2,700 feet" is generally considered to be the
20 approximate line between the mixed hardwood/coniferous
21 forests at lower elevation, to the more purely
22 coniferous forests at higher elevation. And, it's
23 related to, basically, the level of cloud -- cloud
24 cover. Above 2,700 feet, these areas are encased in

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1 clouds a sufficient period of the time that it creates
2 cooler conditions, much moister conditions, shorter
3 growing seasons, more acidic conditions, and that
4 essentially precludes the growth of hardwood species,
5 except for white birch. And that, because of the
6 greater sensitivity of lands above 2,700 feet, you
7 know, the soils are different, and other factors, it's
8 used as also a zoning boundary in both the
9 unincorporated places of Maine and in the
10 unincorporated places of Coos County. But it is an
11 approximation. As you go farther north, that sort of
12 ecological boundary will come -- will be lower in
13 elevation. As you go farther south, it will be higher.

14 Q. Thank you. That was very helpful. Now, I want to read
15 a sentence out of this, again, the New Hampshire
16 Audubon letter filed with the Site Evaluation
17 Committee. I know you probably don't have it in front
18 of you.

19 A. Actually, I may.

20 Q. It's on the second page, or, actually, they talk a
21 little bit, beginning at the bottom of the first page,
22 they talk a little bit about the 2,700-foot, and the
23 purpose, and why that's important. And, on the second
24 page, it starts "The shallow soil, steep slopes, and

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1 high precipitation also create a high risk of erosion
2 when vegetation is removed." Do you agree with that?

3 A. Yes, I do.

4 Q. And, it goes onto say "It is these conditions that

5 qual ify high-el evati on spruce-fir forests as sensi ti ve
6 habi tat and have led the State of New Hampshi re to
7 engage i ndustri al forest l andowners of hi gh-el evati on
8 spruce-fir forests i n speci al management agreements. "
9 Do you agree wi th that?

10 A. Yes.

11 Q. Now, that project, the Kibby Mountain Project, does
12 that -- were you aware, after that, after you agreed to
13 support that project, I believe there was a Mi ti gati on
14 Plan that you had supported as well ?

15 A. Yes.

16 Q. Were you i ni ti al ly opposed to the project?

17 A. No. But we felt that mi ti gati on was necessary for us
18 to give it our full support.

19 Q. So, you had reservati ons. Woul d you characterize your
20 reservati ons about Kibby Mountain equal to your
21 reservati ons about thi s Project si te?

22 A. I think we had l ess si gni fi cant reservati ons about
23 Kibby. And, I also say, on Kibby, we worked out the
24 Settlement Agreement wi th the Appli cant before any

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1 testi mony was fi led, before any hearing process
2 started.

3 Q. Okay. Now, i n that project si te, it was si mi lar i n
4 scale, woul d you say, i n terms of the number of mi les
5 of road, not the el evati on?

6 A. It was about a thi rd bi gger. It had 44 turbi nes,
7 i nstead of 33. So, probabl y, a proporti onal ly --
8 proporti onal ly equi val ent l arger amount of road.

9 Q. The i nformati on I was abl e to glean was that there wi ll
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- 10 be 17 miles of new road and 20 miles of upgrades to
11 existing timber roads. Does that sound about right?
12 A. I don't recall. I'll trust you on it. But I can't
13 confirm it.
14 Q. And, Bicknell's thrush habitat was a factor in that?
15 A. No, this project was located outside of any significant
16 Bicknell's thrush habitat.
17 Q. Okay. How about Canadian Lynx?
18 A. It's within the general area of Canadian Lynx, but it's
19 not -- Canada Lynx was not raised as a concern in this
20 project.
21 Q. So, in terms of wildlife or species of special concern,
22 endangered or whatever, Kibby, compared to this
23 Project, this Project has a higher concern?
24 A. Yes.

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- 1 Q. Okay. Did you anticipate seeing that level of
2 cut-and-fill that you see there for Kibby?
3 A. I knew that large roads are required to construct these
4 projects. So, no, it's not surprising to me.
5 Q. So, that degree of ledge cut didn't surprise you?
6 A. I knew there were going to be some ledge cuts.
7 Q. Now, I want to direct your attention to -- this will be
8 Petitioner Number 23, these are a series of maps, that
9 I believe you asked the Applicant to produce.
10 A. Are these at the end of Pelletier and Gravel's -- oh,
11 no. These are from our --

MS. LINOWES: Do you have these?

CHAIRMAN GETZ: What are these?

MS. LINOWES: Petitioner's Number 23.

15 WITNESS PUBLICOVER: I know what she's
16 referring to. They're maps that were provided as a
17 request to our original data requests.

18 CHAIRMAN GETZ: Yes, we don't have
19 individual copies, but we have the discovery copies.

20 MR. IACOPI NO: Ms. Linowes, do you know
21 which?

22 MS. LINOWES: The exhibit number is
23 "Petitioner 23", that's off of your index. It's the GRP
24 responses to AMC. I only need a couple to look at. I

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[WITNESS: Publicover]

1 could I leave you with these?

2 CHAIRMAN GETZ: Please.

3 WITNESS PUBLICOVER: I also have the
4 originals provided by the Applicant.

5 CHAIRMAN GETZ: Ms. Linowes, this is one
6 set?

7 MS. LINOWES: Yes. Those are all
8 different, but representing different locations within the
9 Project site. I merely want to explain -- help, rather,
10 have Dr. Publicover explain them.

11 BY MS. LINOWES:

12 Q. Now, Dr. Publicover, you had asked the Applicant to
13 identify the various steep slopes in the Project site,
14 is that correct?

15 A. Yes.

16 Q. And, the steep slopes, if I could read this, range from
17 zero to 100 percent?

18 A. Yes. The highest, the highest zone is 35 to 100
19 percent. I think there's probably very few that are

20 100 percent, because, essentially, it's very difficult
21 to stand on. It's a 45, 100 percent is a 45-degree
22 angle.

23 Q. So, as you were getting -- and the particular slide I
24 have here is not too steep, but would you agree that
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1 there are some fairly significant steep slopes where
2 the roads will be going through?

3 A. There are some areas, some extensive areas of slope
4 above 25 and even 35 percent, yes.

5 Q. And, Mr. LaFrance I believe testified that he, and also
6 Mr. Staats today, the concept of switchback that would
7 have to be put into place. Can you explain a little
8 bit about that and how, I realize you're not a civil
9 engineer, but what we might be expecting, in terms of
10 cuts, when you start getting into those steep slopes?

11 A. Well, if you're doing, I'm trying to think, I mean,
12 there are some certain places, if I can find an
13 example. This would be, say, for example, this would
14 be Sheet 2 of 4, "Proposed Road Slope Analysis Exhibit
15 Owl head/Mount Kelsey Ridgeline". It looks like this
16 (indicating). There are some areas where you have
17 roadside hillling on 25, 25 to 35 percent slopes. And,
18 those are the types of areas where you would have the
19 most significant road cut/fill. I would have to look
20 at the engineering plans to actually see how high those
21 road cut/fills are. But, I think, from looking at
22 these, there were some cut slopes that were, you know,
23 50 feet, 50 feet high.

24 Q. Really.

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- 1 A. I believe so. I'd have to look at the plans to confirm
2 that, but that's my memory.
- 3 Q. So, if I understand you correctly, we're cutting
4 significant -- significantly into the edge of a
5 mountainside. Is that correct? Is that the way to
6 characterize it?
- 7 A. Yes. On those steeper slope roads, again, not being a
8 civil engineer, but I think they, for the weight of the
9 vehicles they have to carry, they would want to be what
10 would be called "full bench roads", which, essentially,
11 the travel surface is built on the cut into the
12 mountain, rather than the looser fill. You know, so, a
13 road that carries less weight, you're going to have
14 part of the road surface on the fill. But, I assume on
15 these, and, again, I haven't looked at them in detail,
16 but I assume most of the travel surface would be on,
17 you know, cutting into the -- into the bedrock.
- 18 Q. So, and that was your goad in asking for these maps to
19 be produced, was to get a pretty good understanding of
20 how much they were going to cut up the mountain with
21 roads, is that correct?
- 22 A. Yes.
- 23 Q. Do you think it's substantial?
- 24 A. I think it's -- I think, you know, there is going to be

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- 1 a large amount of cut-and-fill. I think that is an
2 inevitable consequence. If you're opposed to that type

3 of impact totally, you're going to be opposed to any
4 wind power development on almost any mountain.
5 Q. Or at least above 2,700 feet perhaps?
6 A. The slopes on higher elevation mountains tend to be
7 steeper than on something such as Lempster or Stetson,
8 which are more gentle lower elevation ridges.
9 Q. Now, we talked a bit about edge effects, and I won't go
10 into a lot of that, but I do have a question that has
11 been bothering me. The testimony from Fish & Game is
12 that there will be somewhere in the range of 3,700
13 acres of impact at the upper elevations, at the higher,
14 above 2,700 feet. And, we've also heard from the
15 Applicant that there's a substantial payment back, for
16 every acre taken in Kelsey, we're repaying it back by
17 1,700 acres of this other mitigation land. Okay. Have
18 you performed any kind of analysis where you attempted
19 to look at all of the acreage taken, attempted to
20 consider the forest interior habitat lost, as in the
21 hedge effects, and how far they travel into the forest,
22 and calculate the true impact of that Project and
23 whether we're getting, in return, better than -- at
24 least a quantitative number? Have you attempted to put

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1 a quantitative value to it?
2 A. Yes. Actually, I did while I was sitting there earlier
3 today, some of it. In terms of the edge effects, you
4 know, there's really two types of effects. There's the
5 -- sort of the direct edge effects, which is where the
6 presence of the opening actually creates a change in
7 the physical environment into the forest. And, that

8 would include things like blowdown and microclimate
9 changes. And, then, there were more indirect effects
10 that would essentially be, you know, whether wildlife
11 are avoiding, you know, avoiding the development at a
12 greater distance. Now, in terms of calculating the
13 direct effects, you know, it's kind of a -- it's tough,
14 because different ones travel different distances, and
15 it's going to be affected by topography. But a general
16 rule of thumb --

17 Q. Okay. What do mean by "different ones"? Different --

18 A. Well, -- yes. Again, depending on, you know, blowdown
19 is going to be different depending on which side, it's
20 going to go farther on one side of the opening than it
21 is, you know, on the more protected side. Microclimate
22 changes are going to be depending on whether sunshine
23 is shining into the cut edge or not, things like that.
24 But a general rule of thumb that's often used in

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1 fragmentation analysis, you know, for a road of this
2 magnitude, direct edge effects are often calculated
3 based on 100 meters. That's a value that was used in
4 sort of the calculation of, you know, the forest --
5 bought and fragmented forest blocks in the New
6 Hampshire Wildlife Action Plan. It's been used in --
7 by TMC in a forest block analysis in Maine -- I mean,
8 in Massachusetts. They did use large -- for interstate
9 highways, I think they used a thousand meters. And,
10 for around developed zones, like housing subdivisions,
11 I think it's 300 meters. But, for local roads, they
12 used 100 meters as an estimate of the impact area.

13 And, again, that's what was used in the New Hampshire
14 wildlife Action Plan. And, I calculated that, I took
15 an estimate of how long the disturbance area is on
16 Kelsey. And, you know, multiplied that length by
17 100 meters. And, I came up with about -- an estimate
18 of about 75 or 80 acres of disturbance, you know, of
19 sort of edge effect area on Kelsey. And, you know,
20 since Dixville has approximately the same number of
21 turbines, you can assume it might be the same. So, if
22 I had to make a rough back-of-the-envelope guess, I'd
23 say potentially 150 acres of direct immediately
24 adjacent impact area, which is about twice the actual

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1 -- actual disturbance area.

2 In terms of the more indirect zones,
3 which -- more indirect impacts, which, you know, which
4 is what Fish & Game is talking about, when they
5 essentially say the entire impact area is impacted.
6 You know, I think, you know, they're again talking more
7 about wildlife avoidance, that marten, half a mile from
8 the Project area, may be exhibiting some avoidance
9 behavior. And, I don't know whether that's true or
10 not.

11 Q. What's interesting to me, Dr. Publi cover, is that you
12 didn't do this before you came up with the mitigation
13 numbers?

14 A. No. I don't think -- we knew those edge effects were
15 there. We knew approximately what they were. I don't
16 -- we weren't basing our mitigation on any specific,
17 you know, mitigation acreage ratio. It was more

18 thinking about what types of areas we wanted to protect
19 and what would be appropriate.

20 Q. And, what you thought you could get away with?

21 A. You know, we were certainly trying to get at least as
22 much as we thought would be appropriate and sufficient.
23 If we were not able to secure what we thought was
24 sufficient, we would have continued to oppose the

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1 developments on Kelsey and Dixville.

2 MR. KIMBALL: Mr. Chair, I object to the
3 term "what you could get away with". There was a fair
4 amount of thought process that went into. It's not
5 entirely quantitative, but, to characterize it the way it
6 was just characterized, is inappropriate.

7 MS. LINOWES: My apologies. I'll
8 withdraw it.

9 BY MS. LINOWES:

10 Q. Dr. Publi cover, did you visit the mitigation land and
11 determine in any way or evaluate their quality?

12 A. I have been on part of the Kelsey mitigation lands. I
13 have not been on the others.

14 Q. So, it was purely from maps?

15 A. Some of it was from maps. Certainly, we knew we had
16 some information from the Audubon Society breeding bird
17 information. You know, it was reason we were
18 disappointed we weren't able to secure the conservation
19 of Whittcomb Mountain.

20 Q. Now, I will just go down another line of questioning.
21 When I talked about -- When I read that section out of
22 the New Hampshire Audubon's letter, and let me just

23 reiterate, just state it really quickly again. They
24 said "The shallow soil, steep slopes and high
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1 precipitati on create a high risk of erosi on when
2 vegetati on is removed." And, you would characterize
3 this Project site as having "shallow soil, steep slopes
4 and high precipitati on", correct? I think you agreed
5 with that sentence?

6 A. Yes.

7 Q. I want to draw your attention to the three exhibits,
8 which are IWA-X-31, 32, and 33, consisting of two
9 photographs, and then an e-mail with a report behind
10 it. Do you see those?

11 A. I see the three photos.

12 Q. Two photos, and then there's a --

13 A. And, there's a -- okay. There you go.

14 MS. GEIGER: Mr. Chairman, I'm going to
15 object to any questions about these photographs. As the
16 Committee is aware, Ms. Linowes did not attend the final
17 prehearing conference, at which all of the other parties
18 were present and premarked their exhibits. In addition, I
19 don't know what these are and what they're -- what she's
20 going to use them for. So, at this point, I would object
21 to having them marked.

22 MS. LINOWES: Mr. Chairman, I apologize
23 I was not able to attend the prehearing conference. And,
24 I had -- there was a lot of preparation in coming to these
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1 hearings. My hope was to allow for these, these exhibits
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2 to come forward, as long as they were not in a disruptive
3 way or to interfere with the orderly proceeding.

4 CHAIRMAN GETZ: Well, I think it's
5 essentially an issue of "for what purpose?" Obviously, it
6 can't be submitted as direct evidence. You can ask --
7 I'll allow them for purposes of cross if the witness -- I
8 assume you're going to ask the witness whether he
9 recognizes these, --

10 MS. LINOWES: Yes, that's correct?

11 CHAIRMAN GETZ: -- photos or where these
12 come from, and we'll see where it goes from there.

13 BY MS. LINOWES:

14 Q. Dr. Publicover, do you recognize the photograph with
15 the mudslide?

16 A. I'm not sure if I recognize these specific photos. But
17 I have seen other photos of this event.

18 Q. So, you know where these were taken from?

19 A. I have a good idea. I think you could possibly find a
20 similar photo from someplace else, but I think it's
21 unlikely. These are very similar to the photos I've
22 seen.

23 Q. From Kibby Mountain?

24 A. From Kibby Mountain.

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1 Q. Thank you.

2 CHAIRMAN GETZ: And, again, let's get
3 back to an issue raised earlier. And, I mean, what we did
4 not know is who took these pictures when. But I take it
5 what you're saying, Dr. Publicover, at this point is, this
6 appears from your experience to represent what was a

7 mudslide incident?

8 WITNESS PUBLICOVER: It was a mudslide.
9 I've seen photos in news reports of this slide. And, I
10 think even on the Land Use Regulation Committee reports.
11 So, I don't question that they come from the Kibby
12 mudslide event.

13 CHAIRMAN GETZ: And, when was that?

14 WITNESS PUBLICOVER: I believe it was
15 November. It was this winter sometime, I believe last --
16 late last fall.

17 CHAIRMAN GETZ: Okay.

18 MS. LINOWES: Thank you, Mr. Chairman.

19 BY MS. LINOWES:

20 Q. Actually, the e-mail that's in the IWA-X-31 is
21 October 27, 2008, and it was written to Marcia
22 Spencer-Famous. Do you know who she is?

23 A. Yes, I do.

24 Q. And, David Rocque?

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1 A. I know David Rocque, yes.

2 Q. Okay. And, they are -- Ms. Spencer-Famous is with the
3 Maine LURC?

4 A. She's a staff person for LURC.

5 Q. Which is the Land Use Regulatory Commission that
6 approved the Kibby Mountain Project?

7 A. Yes.

8 Q. Okay. And, David Rocque is the State Soil Scientist?

9 A. Yes.

10 Q. This first sentence in the memo says "Copy and paste
11 the link below to see the video...one of many of the

12 mud flows coming from the skidder access road leading
13 to the B17 tower." That would be the wind tower at
14 Kibby Mountain. So, the reason I'm showing these, and
15 the attached report, you see that, it's called "Kibby
16 Wind Power Project Erosion Control Item Summary", you
17 see that?

18 A. Yes.

19 Q. And, then, it has a list of violations, "no erosion
20 control devices", etcetera. Would you consider this a
21 disaster?

22 A. I would consider it a very serious erosional event.
23 Though, not to excuse it, my understanding is that none
24 of the mud reached a water course, but that may just be

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1 a matter of luck. I don't think -- I think it's a
2 matter of it ran out on a flat landing. I don't think
3 it's a matter of they had sufficient prevention control
4 devices to keep it from reaching a brook.

5 Q. And, does it worry you that this project, which you've
6 testified will have -- has higher habitat concerns, and
7 is steeper, potentially steeper -- I don't know if it's
8 steeper, we know it's higher elevations, and the
9 potential for this kind of thing occurring, it happened
10 once, it could happen again, correct?

11 A. It could.

12 Q. Do you know of any other wind projects that are above
13 30 -- 2,700 feet.

14 A. No, I don't believe there are any.

15 Q. So, Kibby may be the first one you know of, this one
16 might be the second?

17 A. Yes.

18 Q. So, the potential, given that there's thin soils, as
19 New Hampshire Audubon spoke about, and the steep
20 slopes, the potential for this may be higher than what
21 we would find on Lempster Mountain?

22 A. It may be higher, but I would say I don't know that
23 this mudslide occurred above 2,700 feet. Looking at
24 the vegetation, I would guess that it didn't.

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1 Q. Okay. So -- and, thank you, that's all I have for
2 those pictures.

3 MS. LINOWES: And, Mr. Chairman, I'm
4 almost done, I promise.

5 BY MS. LINOWES:

6 Q. In -- or, rather, the other day, when I was asking Mr.
7 Lobdell, I was asking him some questions about
8 Stantec's Natural Community Characterization Survey.
9 And, he had said at the time that he was "predominantly
10 focused on the wetlands". Do you remember that?

11 A. Not specifically.

12 Q. Okay. But you then cite in your prefiled testimony
13 that Stantec undertook its survey at a time when there
14 were several feet of snow on the ground. Do you
15 remember mentioning that in your --

16 A. Yes.

17 Q. Okay. And, isn't it true, in fact, that that survey
18 was done in March 2008, and there was three and a half
19 feet of snow on the ground?

20 A. I believe that's what they said.

21 Q. Is that how you would conduct -- well, you're a

22 forester and a botanist?

23 A. Yes.

24 Q. Is that how you would conduct a natural community

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1 characteri zati on survey?

2 A. It could be, you know, a preliminary survey. But, if
3 you were interested in the detailed information, I
4 think, you know, certainly, looking at the tree
5 vegetati on, you could probably disti ngui sh between the
6 major forested types, whether it was a high-el evati on
7 bals am fir forest, you know, a high-el evati on
8 spruce-fir forest, a mixed forest. But you woul dn' t be
9 able to pick up a lot of the indicators as to sort of
10 the quality of it. You woul dn' t be able to see stumps
11 or ski d roads, so you woul dn' t be able to pick up
12 evidence of whether it had been harvested or not. You
13 certain ly woul dn' t be able to see the evidence of the
14 aci di c sphagnum seeps, whi ch woul d probabl y be covered
15 wi th snow. So, they probabl y woul dn' t want it. If I
16 was doi ng somethi ng, that woul dn' t be the only survey I
17 di d.

18 Q. Okay. Thank you. And, is it fair to say that the Site
19 Evaluati on Commi ttee and the other parties involved in
20 these proceedi ngs do not have a comprehensi ve
21 understandi ng of the natural communi ties resident in
22 the Project site on the basis of the studies conducted
23 by Stantec?

24 A. I think they have -- I think that the studies conducted

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1 by Stantec were sufficient to detail, you know, the
2 distinguishing between the basic different forested
3 types. I think, you know, they admitted, and I assume
4 this came from, you know, other information outside
5 that one visit in the winter, that many of these areas
6 were pristine, I don't think -- and potentially old
7 growth, I don't think anybody is questioning that.

8 You know, picking up the wetlands, was
9 obviously done at a different time. They have -- I
10 don't know that they have characterized the wetlands as
11 to their National Wetlands Inventory status. They have
12 not characterized the wetlands as to their natural
13 community type, you know, which I think would have
14 been, you know, one interesting piece of information.
15 But I doubt that there's any -- none of the wetlands
16 that they would have encountered would have been -- I
17 doubt any of them would have been a rare wetland type.
18 So, while I think they could have provided more
19 information, and I think that the information that I
20 requested and Audubon requested was a more, you know,
21 comprehensive mapping of the extent of old-growth and
22 primary forests across the region, rather than just
23 saying "there's some there." I think it would have
24 been good to see a map that said "this is, you know,

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1 the area of old-growth and primary forests that would
2 have been impacted." That's the one piece of
3 information that I think would have been pretty --
4 would have been very -- very useful. But, in terms of

- 5 characterizing what natural communities are there, I
6 think the information in the record is sufficient.
- 7 Q. Now, I may be expecting more out of a characterization
8 -- a natural communities characterization than what's
9 expected. But Mr. Roth had referred to a rare plant
10 called the "Mountain Cicely", I believe that's what
11 it's called?
- 12 A. Yes.
- 13 Q. And, would you conclude from the effort that was
14 undertaken by Stantec that we know that there are no
15 other rare plants on that site?
- 16 A. You know, unless you look at every acre multiple times
17 during the year, you're never going to have 100 percent
18 certainty. The way these things are usually done is
19 to, you know, do a general preliminary survey, identify
20 those areas and types of habitats that are likely to
21 contain rare plants, and then do, you know, do a more
22 thorough survey of those particular -- particular
23 areas. And, you know, those might include certain
24 wetland types, it might include enriched forests.

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- 1 There are not a lot, and I'm not sure I'm aware of any,
2 rare herbaceous plants associated with high-elevation
3 balsam fir forests. There may be some -- There may be
4 some rare orchids associated with some of the sort of
5 the sphagnum bog type of areas up there, you know,
6 orchids and such. But, even up there, those I think
7 are more commonly found in somewhat -- somewhat lower
8 elevation.
- 9 Q. But we don't really --

10 A. So, I don't have a high worry that there are rare
11 plants in these high-elevation balsam fir forests that
12 they haven't discovered.

13 Q. Okay. All right. And, now, I want to go onto the
14 bird/bat, I just have a couple of questions for you on
15 that. Do you consider yourself a bird or bat expert?

16 A. No, I do not.

17 Q. Okay. Did you review the radar studies or do you have
18 any experience evaluating protocols for conducting
19 migratory bird pre-construction studies or bat
20 construction -- bat pre-construction studies?

21 A. Yes, I've had limited exposure to information about
22 those things through my work with some wind power and
23 wildlife working groups, primarily in Maine, and I've
24 had a little more exposure through working with Maine

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1 Audubon on some of our interventions in Maine. But,
2 during those interventions, that issue was being
3 addressed by Maine Audubon. So, you know, radar survey
4 protocols is not something I'm qualified to address.

5 Q. Okay. So, it's fair to say that the Mitigation Plan,
6 and we know it's been said here today already, does
7 address risk to migrating species, flying or resident?

8 A. It is not intended to address risks to migrating
9 species.

10 Q. Okay. But that doesn't mean -- it doesn't mean you
11 think there's a low risk or a high risk, it just
12 doesn't mean anything, in terms of your assessment of
13 risk, correct?

14 A. You know, I don't think any amount of land protection

15 is going to address, you know, any risks that might
16 result from migrating birds. You know, that has to be
17 addressed through some other, you know, through some
18 other means. And, again, I will say, though, again I'm
19 not an expert in this, I do tend to agree with
20 Mr. Pelletier's testimony that, you know, wind turbines
21 are going to cause some mortality to migrating birds.
22 But, I think the more we learn, the more we realize
23 that those risks are not as severe as we might have
24 originally thought. So, --

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- 1 Q. Actually, can I -- I appreciate you're saying that, but
2 I think the record, there are other -- before you go
3 down --
- 4 A. Okay.
- 5 Q. Okay. I want to make sure I'm clear on something. Mr.
6 Lyons has stated that he thought the invasives issue
7 was dealt with the wetlands permit. Mr. Pelletier
8 seemed to correct that by saying "invasives, in terms
9 of plants, was related to invasives in wetlands." I
10 just want to confirm, if you know the answer to this
11 question. The invasives that we were talking about, in
12 terms of edge effects on the roads, are independent of
13 those that have to do with what's been detailed in the
14 Wetlands Permit, is that correct?
- 15 A. I'm not sure what you're asking.
- 16 Q. There was a suggestion earlier today by Mr. Lyons that
17 a Invasive Species Prevention Plan or something like
18 that was a permit condition on the Wetlands Permit from
19 DES, do you remember hearing that?

20 A. I believe I remember him saying that.

21 Q. But it sounded like at the time that he was referring
22 to all invasive species, plant species along the road,
23 not specific to those in the wetlands?

24 A. I can't recall what his meaning was.

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1 Q. Okay. Well, what is your understanding of the plant --
2 the Wetlands Permit requirement for invasives?

3 A. Oh, I'd have to review it. Off the top of my head, I
4 can't say.

5 Q. Would you say they're specific to wetlands?

6 A. I don't know.

7 Q. Okay. And, last question. Do you think it's
8 appropriate for a project like this to have a Technical
9 Advisory Committee that is independent of the Project
10 developer overseeing the construction and the -- or at
11 least the post-construction studies?

12 A. You know, I think, if there are going to be
13 post-construction studies, that it would be good to
14 have a number of knowledgeable people advising. So,
15 yes, I think that might be appropriate.

16 MS. LINOWES: Okay. Thank you. No more
17 questions, Mr. Chairman.

18 CHAIRMAN GETZ: Questions from the
19 Committee? Mr. Harrington.

20 MR. HARRINGTON: Yes.

21 BY MR. HARRINGTON:

22 Q. You were going pretty fast there at the beginning when
23 you were giving your revised statement, and just a
24 couple of things I'm trying to make sure I got

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1 straight. You said something about the "New Hampshire
2 Society of something" that agreed with your position,
3 and I didn't get what the society was. It was at the
4 beginning of your statement. I think it had to do with
5 where you stood pre-Mitigation Plan.

6 A. Oh, I was saying that in terms of our testimony on the
7 impacts, that similar concerns were expressed by New
8 Hampshire Fish & Game and the witness for the Public
9 Counsel, primarily, I think Mr. Trevor Jones [Evans?].
10 And, that, in terms of the sufficiency of the original
11 mitigation, that similar concerns were expressed by New
12 Hampshire Fish & Game and the New Hampshire Natural
13 Heritage Bureau.

14 Q. Okay. Then, maybe I was wrong, maybe it was the New
15 Hampshire Natural Heritage Bureau. I thought it was
16 something else. Now, has the New Hampshire Natural
17 Heritage Bureau, have their fears been allayed by --
18 concerns been allayed by the Mitigation Plan, do you
19 know?

20 A. I can't speak for them.

21 Q. Okay. You just don't know one way or the other?

22 A. No.

23 Q. Okay. You've made another statement that it seemed a
24 little confusing to me. When you were talking about

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1 Mount Whittcomb, --

2 A. Yes.

3 Q. -- and you said something about that the wind -- "the

4 plan prevented wind development for the life of the
5 Project", --
6 A. Yes.
7 Q. -- or something like that? Is that pretty much a quote
8 of what you said?
9 A. Yes.
10 Q. Because I think what my understanding was that, as long
11 as the Project, Noble or Granite, had a -- kept their
12 easement on there, they would not allow wind
13 development. But, if they dropped their easement, it
14 wouldn't -- and this Project, they could drop their
15 easement two years from now, and this Project could go
16 on for another 25, and that wouldn't prevent
17 development of Whittcomb Mountain, it would only prevent
18 someone from tying into their electrical system.
19 A. Yes. Well, that's why we -- and this is not a
20 bomb-proof provision. And, again, that was our
21 concern, you know, "how do we protect Whittcomb Mountain
22 to the best we can?" And, they can do that as long as
23 they have their lease. But the concern was that, when
24 their original lease runs out, the landowner may renew

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1 it -- they may get a renewed lease, for the area that
2 they have developed, but, if they haven't developed the
3 other place, you know, the landowner may want to not
4 include that in a future lease. And, we knew we could
5 not -- we could not prevent that. And, we wanted to
6 avoid the situation where we still had the turbines on
7 Kelsey, but we also ended up with turbines on Whittcomb.
8 And, the best solution we could come up with was that,

9 as long as there's turbines on Kelsey, there's going to
10 be a transmission line. And, by preventing any tie
11 into that transmission line from Whitcomb, we thought
12 that was a pretty strong assurance that it wouldn't be
13 feasible to build over there. They could still --
14 somebody, you know, in the future, with a different
15 lease, could still build turbines on Whitcomb and build
16 an entirely separate and parallel transmission line.
17 But, I think, given the number of turbines you could
18 put up there, that's probably unlikely.

19 Q. Okay. And, that's what I thought my understanding was,
20 but I just wanted to make sure. You were talking about
21 "disturbance areas" or impact area back from the edge
22 of the roads. And, if I was following this correctly,
23 you've started out with different standards, and you
24 mentioned the standard for interstate highways was

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1 1,000 meters back, and that, for local roads, it was
2 100 meters back?

3 A. Yes.

4 Q. So, I'm assuming that has something to do with the
5 volume and the speed of the traffic on the roads?

6 A. Yes. The interstate has probably a lot to do with
7 volume. You know, the larger zone around developed
8 areas probably has to do with the fact that you've got
9 house cats wondering into the woods, you know, eating
10 up birds and things like that. But 100 meters, just in
11 terms of the physical change to the adjacent
12 environment from the road is a pretty standardly used
13 rule of thumb.

14 Q. I guess my -- excuse me.

15 A. Yes.

16 Q. My question would be is, if you were do local roads
17 and, again, I don't know anything about this, so I'm
18 just asking the question, a local road strikes me as
19 something that's going to have more or less constant
20 traffic during the day and on-and-off traffic during
21 the night, every day. Whereas the roads we're talking
22 about here, which was testified earlier, there would be
23 very limited traffic, maybe once, maybe twice a week at
24 best, and the speeds are going to be, just given the

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1 fact that they're mountain gravel roads, would be very
2 slow.

3 A. Yes.

4 Q. So, if volume and speed have anything to do with it, I
5 would think the disturbance area would be less?

6 A. It really doesn't.

7 Q. Okay.

8 A. You know, that 100 meter sort of edge effect zone is
9 related to the fact of a physical opening in the
10 forest. Not so much how much traffic is using the
11 road.

12 Q. Okay. Thank you. And, just one last thing. You know,
13 in going through the testimony here, one of the things
14 that struck me about yours the most was the very
15 definitive nature of your statement. "We strongly
16 oppose construction of the Mount Kelsey turbine sting
17 under any circumstances." I looked at what Fish & Game
18 wrote and various other people, and a lot of them said

19 "we don't like this" and "we don't like that", but it
20 was always kind of with an opening. This one comes
21 out, and I don't see it could be any more definitive.
22 I mean, you don't say "under any foreseeable future" --
23 "any foreseeable circumstances" or "after discussion
24 with Granite, we don't see that there was any possible

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1 mitigation plan that could be addressed." It's just
2 like "absolutely, there isn't any." And, now you say
3 sort of "never mind, we changed our mind." I mean,
4 what happened?
5 A. Well, there's no question that we have in our mind,
6 through a long period of evaluating where we think wind
7 should and shouldn't go. And, we have kind of a line
8 in our mind as to, you know, on one side we think are
9 appropriate sites, and on the other side are
10 inappropriate sites. And, there's no question, when we
11 initially evaluated this based on the evidence, that
12 Mount Kelsey fell on the inappropriate side of the
13 line. The kind of place that, you know, in a perfect
14 world, we would not want to see development.

15 When the Applicant came forward, and
16 there was an opportunity to enter into discussions
17 about increasing the amount of mitigation, we had a
18 decision to make. We could continue that, you know,
19 original position of opposition, with the risk being
20 that, in the end, we end up with turbines on Kelsey and
21 very limited mitigation. That was -- We thought that
22 was a very real risk. Or, we could, you know,
23 reconsider our position, enter into discussions, and

24 try to develop a mitigation package that we thought,
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[WITNESS: Publi cover]

1 you know, even if, in the ideal world, we don't want to
2 see turbines on Kelsey, we can develop a mitigation
3 package that we thought, if there are going to be
4 turbines on Kelsey, it would be adequate to make up for
5 that impact. And, that's the course we took.

6 MR. HARRINGTON: That addresses my
7 questions. Thank you. That's all I have, Mr. Chairman.

8 CHAIRMAN GETZ: Other questions?

9 Mr. Iacopino.

10 BY MR. IACOPI NO:

11 Q. Dr. Publi cover, the photographs that were shown to you
12 marked as IWA Exhibit 33, the mudslide?

13 A. Uh-huh.

14 Q. The paperwork that went with that, the e-mail suggested
15 that's a skidder road. Is that what that depicts?

16 A. Well, I know it was a road that was being used to
17 access clearing for the turbine strings. I don't know
18 if this skidder trail is being cleared to be used as an
19 access road pathway.

20 MR. IACOPI NO: Okay. That was my only
21 question. Thank you.

22 WITNESS PUBLI COVER: I don't know that.

23 CHAIRMAN GETZ: Other questions?

24 (No verbal response)

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[WITNESS: Publi cover]

1 CHAIRMAN GETZ: Okay. Hearing nothing,

2 redi rect, Mr. Kimball?

3 MR. KIMBALL: I do not have any other
4 questi ons.

5 CHAIRMAN GETZ: Okay. Thank you. Then,
6 the witness is excused. Thank you, Dr. Publi cover. Okay.
7 Thank you everyone for hanging in on both sides of the
8 bench for a long week. I think -- Well, Monday my
9 expectati on is we'll start with the Lowe and Wood panel on
10 fi nanci al capabi liti es, and then we'll hear from Mr.
11 Sundstrom. And, my hope is that we'll get through
12 fi nanci al i ssues on Monday. And, then, I've asked counsel
13 to try to contact Ms. Keene to find out if she's going to
14 be able to come on Tuesday to do her di rect testi mony.
15 And, then, see if Mr. Staats and Ms. Kelly are avail able
16 to be crossed by her that day. And, then, to turn to the
17 Mari ani /Sanford panel , and hopefully we'll get through
18 them on Tuesday.

19 Di d you have something else, Mr.
20 Mul hol l and?

21 MR. MULHOLLAND: I assumi ng, by what you
22 sai d, you're denyi ng my moti on.

23 CHAIRMAN GETZ: I am doing that. Any
24 other i ssues that we need to address before we recess for

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1 the weekend?

2 (No verbal response)

3 CHAIRMAN GETZ: Heari ng nothi ng, then
4 thank you very much, everyone.

5 (Whereupon the hearing was adjourned at
6 5:34 p.m. and the hearing to reconvened

7 GRP-DAY4.txt
on March 16, 2009, to commence at 10:00
8 a.m.)
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