

1 STATE OF NEW HAMPSHIRE  
2 SITE EVALUATION COMMITTEE

3 March 17, 2009 - 10:11 a.m.  
4 Public Utilities Commission DAY 6  
5 21 South Fruit Street  
6 Concord, New Hampshire

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

24 \* \* \*

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

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

1  
2 APPEARANCES:

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4 and Noble Environmental Power:  
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Susan S. Geiger, Esq. (Orr & Reno)  
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Kathlyn Keene, pro se

Jon Odell, pro se

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WITNESS PANEL: WILLIAM STAATS  
JILLIAN KELLY

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P R O C E E D I N G S

CHAIRMAN GETZ: Okay. Good morning, everyone. We'll open the hearing in Site Evaluation Committee Docket 2008-04. I'll note for the record that we have a quorum of the Committee present at the moment. Dr. Kent, from Resources and Economic Development; Mr. Northrop, from the Office of Energy and Planning; Mr. Scott, from Environmental Services; Mr. Harrington, from the PUC; and myself. And, Mr. Janelle, from DOT, and Mr. Normandeau, from Fish & Game, are expected shortly.

Can we take appearances for the record also.

MR. PATCH: Good morning, Mr. Chairman, members of the Committee, Doug Patch and Susan Geiger, for the Applicant.

CHAIRMAN GETZ: Good morning. Could we just take appearances for the record please.

MR. ODELL: Good morning, Mr. Chairman, members of the Committee, Jon Odell, Intervenor.

20

CHAIRMAN GETZ: Good morni ng.

21

MS. KEENE: Good morni ng. Kathl yn

22

Keene, Intervenor.

23

CHAIRMAN GETZ: Good morni ng. Doctor.

24

DR. PUBLI COVER: Davi d Publ i cover, for  
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6

1 the Appal achi an Mountai n Cl ub.

2

CHAIRMAN GETZ: Good morni ng.

3

MR. MULHOLLAND: Good morni ng, Mr.

4

Chai rman. Evan Mul holl and, for the Department of Fi sh &  
5 Game.

6

CHAIRMAN GETZ: Good morni ng.

7

MR. ROTH: Good morni ng, Mr. Chai rman.

8

Peter Roth, counsel for the Publ ic.

9

CHAIRMAN GETZ: Okay. Good morni ng,

10

everyone. Wel l, fi rst order of busi ness today is the

11

di rect testi mony of Ms. Keene. Is there anythi ng we need

12

to address before we turn to that? Ms. Keene.

13

MS. KEENE: Mr. Chair man, I j ust have a

14

questi on. I received yesterday the United States

15

Department of Interior, from Fi sh & Wi ldl i fe Servi ce, a

16

report, gi vi ng thei r opi ni ons of the Appli cati on. Is thi s

17

some thi ng we wi ll di scuss or is it j ust, you know, put in

18

as part of the record? Do I get to speak about thi s?

19

CHAIRMAN GETZ: It is part -- It wi ll be

20

made part of the record. And, in your cl osi ng or in a

21

brief, you can --

22

MS. KEENE: Okay.

23

CHAIRMAN GETZ: -- speak to what you

24

think it means and what you think we shoul d do wi th it.

1 MS. KEENE: Okay. Fine.

2 CHAIRMAN GETZ: But it wouldn't be an  
3 issue as part of your direct testimony.

4 MS. KEENE: Okay. Thank you.

5 MR. MULHOLLAND: Mr. Chairman, would it  
6 be appropriate to start with Mr. Staats and Ms. Kelly?

7 CHAIRMAN GETZ: Well, I think I would  
8 like to hear Ms. Keene's testimony and have the  
9 opportunity for cross for that, and then she would have  
10 her opportunity to cross that, Mr. Staats and Ms. Kelly.

11 MR. MULHOLLAND: Sure.

12 MR. ROTH: Mr. Chairman, I have  
13 volunteered to introduce Ms. Keene. And, in light of her  
14 interest in the Fish & Wildlife report, I would like the  
15 opportunity to have her at least make a statement on the  
16 record as part of her -- let's call it "supplemental  
17 direct testimony" about it, given that she did not have  
18 that report available to her when she submitted her  
19 testimony and her supplemental testimony.

20 CHAIRMAN GETZ: He's referring to the  
21 U.S. Fish & Wildlife letter on the --

22 MR. HARRINGTON: The March 12th letter?

23 CHAIRMAN GETZ: Yes. Well, --

24 MR. ROTH: I'm assuming she's prepared

1 to do that, but -- and I would admonish her to keep it  
2 brief.

3 CHAIRMAN GETZ: Okay. But it still  
Page 6

4 seems to me to be something more in the nature of argument  
5 than testimony. But, I mean, obviously, you haven't had a  
6 chance to talk to her about that. And, she seemed to me  
7 to be agreeing that it's something that she could address  
8 through her closing statements.

9 MR. ROTH: Okay. I will leave it  
10 entirely up to her.

11 CHAIRMAN GETZ: All right. And,  
12 anything else that we need to hear before we proceed?

13 (No verbal response)

14 CHAIRMAN GETZ: Okay. Then, hearing  
15 nothing, Ms. Keene, if you could please come up to the  
16 witness stand.

17 MS. KEENE: Yes.

18 (Whereupon Kathlyn Keene was duly sworn  
19 and cautioned by the Court Reporter.)

20 WITNESS KEENE: Thank you.

21 MR. ROTH: Good morning, Ms. Keene.

22 WITNESS KEENE: Good morning.

23 MR. ROTH: Even though I'm not your  
24 attorney, I am the attorney for all the people in the

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9

[WITNESS: Keene]

1 State of New Hampshire. And, I've been asked --

2 WITNESS KEENE: I feel so important.

3 Thank you.

4 MR. ROTH: I've been given the honor of  
5 introducing your testimony with you.

6 WITNESS KEENE: Oh, good.

7 KATHLYN KEENE, SWORN

8 DIRECT EXAMINATION

- 9 BY MR. ROTH:
- 10 Q. And, I'm going to show you two documents. One is  
11 identified as the prefiled "Testimony of Kathlyn J.  
12 Keene, Intervenor, January 2009". And, I believe it is  
13 dated "January 5th, 2009". The copy I have is  
14 unsigned, it was provided by e-mail. Did you provide a  
15 signed copy to the Committee?
- 16 A. To the original, on January 5th?
- 17 Q. Yes.
- 18 A. Yes, I did. I sent one original and nine copies.
- 19 Q. Okay. And, is this document, which represents an  
20 e-mail from you to various members of the Committee, is  
21 this your initial -- your initial prefiled testimony?
- 22 A. Yes, it is.
- 23 Q. And, did you make that testimony?
- 24 A. Yes.

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10

[WITNESS: Keene]

- 1 Q. Is are anything in that testimony that you wish to  
2 correct or change, errata kind of thing?
- 3 A. There were a few things that I did in my supplemental  
4 testimony, as far as words. Using --
- 5 Q. Okay. We'll get to that.
- 6 A. Okay.
- 7 Q. And, this is a document identified as "Supplemental  
8 Prefiled Testimony of Kathlyn J. Keene, Intervenor,  
9 February 2009". And, the copy I have is not signed or  
10 dated. Did you submit a signed version of this to the  
11 Committee?
- 12 A. Yes, I did.
- 13 Q. Okay. And, is this the testimony that you made in the  
Page 8

14 supplemental testimony in February of 2009?

15 A. Yes, it is.

16 Q. Are you the same "Kathleen" J. Keene?

17 A. Yes, I am. Or, I'm "Kathlyn".

18 Q. "Kathlyn", I'm sorry. Pronunciation counts, I know.

19 Is there anything in your supplemental prefiled  
20 testimony, by way of changes or omissions, that you'd  
21 like to correct on the record right now?

22 A. No.

23 MR. ROTH: Okay. Thank you. The  
24 witness is available for cross-examination.

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11

[WITNESS: Keene]

1 CHAIRMAN GETZ: Thank you, Mr. Roth.

2 Dr. Publicover, do you have --

3 DR. PUBLICOVER: No questions.

4 CHAIRMAN GETZ: Mr. Mulholland?

5 MR. MULHOLLAND: No, Mr. Chairman.

6 Thank you.

7 CHAIRMAN GETZ: Mr. Roth?

8 MR. ROTH: Yes, I have a few questions.

9 BY MR. ROTH:

10 Q. I guess I'll start with this one. And, in your  
11 testimony, and, honestly, I can't remember whether it  
12 was your initial testimony or your supplemental, you  
13 identified the working landscape of Coos County as "for  
14 marketable resources". And, I assume in that you are  
15 referring to agricultural and what, and forestry  
16 resources, is that correct?

17 A. No, there would be another category, of tourism.

18 Q. Tourism. So, you consider the scenic potential for  
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19 tourists a resource of the North Country?  
20 A. I don't think it's just scenic.  
21 Q. Okay.  
22 A. There's more to it than that. There's activity, such  
23 as hiking, canoeing, hunting, you know, the list goes  
24 on. So, the people come to see the Mount Washington as  
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12

[WITNESS: Keene]

1 a "scenic", you know, pristine thing to look at. But,  
2 I think, when they go to this particular area, they're  
3 seeking adventure and wilderness. And, they tend to be  
4 people that, you know, are getting away to get to  
5 nature, --  
6 Q. Okay.  
7 A. -- and see things that they normally wouldn't in other  
8 places.  
9 Q. Would you consider the drive up Route 16, from the  
10 Pontook Reservoir, towards Errol, to be a wilderness  
11 experience or a scenic experience or both?  
12 A. In that particular stretch, it would be both.  
13 Q. Okay. And, are there opportunities along that route to  
14 see wildlife?  
15 A. Oh, yes. Abundantly.  
16 Q. Okay. What kind of wildlife would you see along the  
17 Route 16 stretch there?  
18 A. Actually, there's an awful lot of money that's derived  
19 from that stretch by our local motels and businesses  
20 that actually have buses and bus tours, that they bus  
21 them up there so that they can see the moose.  
22 Unfortunately, living there, moose isn't probably, you  
23 know, it's something that we like to avoid, and we

24 personally don't like to see. But tourists are  
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13

[WITNESS: Keene]

1 actually fascinated by them, more so than others,  
2 because deer and other things are available where they  
3 live. So, most of the traffic flow, if you go up there  
4 at dusk, you're lucky if you can even get by. And,  
5 it's just a tremendous draw to our area. And, if you  
6 go onto the website to a lot of our motels, hotels, you  
7 will see them actually advertising that they have moose  
8 tours.

9 Q. Okay. What is that stretch of road known as?

10 A. That stretch of road we call "13 Mile Woods".

11 Q. Okay. And, would -- in your mind, does that signify  
12 something? Does that title signify something about  
13 that stretch that's unusual? Would it be fair to say  
14 that the title "13 Mile Woods", --

15 A. Uh-huh.

16 Q. -- suggests that, for 13 miles, there's nothing but  
17 woods?

18 A. Yes.

19 Q. Okay. Now, were you here when the Applicant's  
20 aesthetic consultant, Jean Vissering, testified?

21 A. Yes.

22 Q. Do you recall her testimony about "not liking the view  
23 of silos on ridgelines"?

24 A. Yes.

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14

[WITNESS: Keene]

1 Q. Okay. And, isn't it true that what's a "working

- 2           landscape" is a matter of context and consistency, I  
3           guess?
- 4    A.    I'm not quite sure.
- 5    Q.    Well, in a "working landscape", --
- 6    A.    Uh-huh.
- 7    Q.    -- that's predominated by forestry, agriculture and  
8           tourism, seeing a barn and a silo on a ridgeline isn't  
9           unusual, is it?
- 10   A.    No.
- 11   Q.    But seeing, for example, a cellphone tower or a wind  
12           turbine on that would be unusual, wouldn't it?
- 13   A.    Yes.
- 14   Q.    Okay. Now, have you driven from Errol to Colebrook on  
15           Route 26?
- 16   A.    Yes.
- 17   Q.    And, what does that drive take you through?
- 18   A.    It's just part of a scenic route, that takes you  
19           through some homes, not many. And, there are some  
20           historical values, in terms of -- that particular area  
21           of Route 26 was the beginning of the White Man  
22           actually, you know, setting roots down. Of course, the  
23           Indians were there long before, before them. So, there  
24           are some interesting places that you can go visit and

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15

[WITNESS: Keene]

- 1           see on that particular stretch.
- 2    Q.    I'm trying to focus on what's actual -- what are the  
3           scenic values of Route 26, between Errol and Colebrook.  
4           Isn't the Balsams along there?
- 5    A.    Yes.
- 6    Q.    Okay. And, isn't there a rather dramatic scenic area,

- 7 the Dixville Notch, isn't that along there?
- 8 A. Yes.
- 9 Q. Okay. And, isn't Dixville Peak visible along there?
- 10 A. It is.
- 11 Q. Okay. And, do you think that the presence of wind  
12 turbines on Dixville Peak, as you drive past the  
13 Balsams, through the Notch, going either direction, is  
14 going to affect, in a substantial way, the scenic value  
15 of the drive, from Errol to Colebrook and back?
- 16 A. It's not just going to affect the drive for the scenic  
17 aspect, it's going to have an impact on tourism. It's  
18 going to have an impact, I mean, when I was four years  
19 old, I was staying at the Balsams, and have done so  
20 most of my life. And, the fact of staying there and  
21 looking at wind turbines does not excite me at all.  
22 And, a lot of the people that are attracted to that  
23 particular type of area is there for the very reason of  
24 the way it exists. And, just to give you an idea, and,

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16

[WITNESS: Keene]

- 1 if I'm elaborating, I'm sorry, but it might help the  
2 Committee to understand.

- 3 When I was five years old, we would  
4 travel that route, because we were going to visit  
5 relatives in Canada, at Lake Memphramagog. And, we had  
6 family -- property on Lake Winnepesaukee where we would  
7 spend our summers. And, most people would say "well,  
8 you know, this is the Lakes Region, and lakes are  
9 wonderful." And, you know, "You're so fortunate to own  
10 properties in such beautiful areas." Well, they are,  
11 but, if it's not in your heart, it's not. And, as I

12 became older, my father used to bring me up to the  
13 Balsams. And, we would stay a week. And, he would  
14 take me in to this property. And, I can remember, when  
15 I was five, saying "Dad, I don't want to go into this  
16 property. There's bears and there's things that are  
17 going to hurt me." And, he said "This is nature, this  
18 is wildlife, and you need to respect it." And, he said  
19 "For many, many years I traveled this road to visit our  
20 relatives. And, you need to realize that a lot of your  
21 relatives have originated from New Hampshire, and have  
22 tried to protect certain areas. If anything ever  
23 happens that is going to destroy environmentally or  
24 ruin this area, would you please speak up." So, that's  
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17

[WITNESS: Keene]

1 where I'm coming from on this.  
2 Yes, 26 and 16 are scenic roads. I have  
3 given the Committee a report on the travel. And, in my  
4 supplemental, I go into it a little bit further, where  
5 there's a thousand vehicles on an average day that  
6 travel on 16 and 26. I have excluded the potential of  
7 commercial or industrial use that it may be. And, I  
8 have -- I actually, because the population is so minute  
9 in the areas around that, that you could extract  
10 everybody, the whole population, even children, and  
11 assume they were driving, and take those numbers out,  
12 and you're left with 700. So, that tells you that's  
13 the average daily traffic that is going on 16 and 26.  
14 I think that's insurmountable. And, it's in a  
15 wilderness area that brings you to more wilderness  
16 right to the Canadian border. And, --

17 Q. Okay, I will ask you --  
18 A. I'm elaborating. Sorry.  
19 Q. -- some questions about wilderness. But I wanted to  
20 get you to focus again on the question that I asked.  
21 A. Okay.  
22 Q. Which is, do you think that the presence of wind  
23 turbines on Dixville Peak will have a substantial  
24 adverse impact on the scenic value of the drive between  
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18

[WITNESS: Keene]

1 Errol and Colebrook and Colebrook and Errol?  
2 A. Yes.  
3 Q. Okay. And, do you think that the presence of wind  
4 turbines that will be visible from Route 16 will have a  
5 substantial adverse impact on the scenic value of the  
6 drive along the 13 Mile Woods?  
7 A. Most definitely.  
8 Q. Okay. Now, you may have heard some testimony about the  
9 visibility of the wind turbines from Lake Umbagog?  
10 A. Yes.  
11 Q. Okay. Or is it "Umbagog Lake"? I'm not sure. What is  
12 the proper way to --  
13 A. "Umbagog Lake".  
14 Q. "Umbagog Lake". Thank you. And, there at quite a  
15 distance, aren't they?  
16 A. Yes.  
17 Q. Okay. Have you been on Umbagog Lake?  
18 A. Yes.  
19 Q. Okay. Have you been on the northern reaches of Umbagog  
20 Lake?  
21 A. Yes.

22 Q. Have you frequented any of the wilderness campsites on  
23 Umbagog Lake?

24 A. No.

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[WITNESS: Keene]

1 Q. Okay. And, what would you -- what were you doing when  
2 you were on Umbagog Lake in the northern reaches?

3 A. Well, several times I went there just -- just to be  
4 there. It's probably hard to describe, but I would  
5 have a canoe, and I would go out and I would just, you  
6 know, spend the day, sometimes just on the lake, and,  
7 you know, watching the -- watching nature.

8 Q. Is it possible to drive a car to those areas in the  
9 northern reaches of Umbagog Lake?

10 A. If you have the right vehicle.

11 Q. Okay. What do you mean by the "right vehicle"?

12 A. Four-wheel drive, and don't go through mud season.

13 Q. Okay. And, would you need access behind locked gates?

14 A. I'm sorry?

15 Q. Would you need access behind locked gates?

16 A. I'm not sure.

17 Q. Okay. Are there numerous homes in the northern reaches  
18 of Umbagog Lake, to your knowledge?

19 A. No.

20 Q. So, are there any?

21 A. Some.

22 Q. Okay. And, this question, I'm not sure I know the  
23 answer to it myself, maybe you do. Are you familiar  
24 with a book entitled "We Took to the Woods"?

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[WITNESS: Keene]

- 1 A. No.
- 2 Q. Okay. Do you believe that the visibility of wind  
3 turbines from the northern reaches of Umbagog Lake  
4 would constitute a substantial adverse impact on the  
5 scenic value of that place?
- 6 A. I'd like to answer this in two ways. One, as a retired  
7 real estate appraiser, and the other just me  
8 personally. It would. It would be dramatic.
- 9 Q. Okay. Are you familiar with Millsfield Pond?
- 10 A. Yes, I am.
- 11 Q. Okay. Have you seen the illustrations in the  
12 Application showing the presence, the photo simulation  
13 of the turbines visible from Millsfield Pond?
- 14 A. Yes.
- 15 Q. Okay. That's pretty dramatic, isn't it?
- 16 A. It's dramatic.
- 17 Q. Do you think that the presence of the wind turbines  
18 visible from Millsfield Pond constitutes a substantial  
19 adverse impact on the scenic value of Millsfield Pond?
- 20 A. Yes.
- 21 Q. Okay. And, have you seen the report's description of  
22 the presence of high-voltage lines and poles along  
23 Dummer Pond?
- 24 A. Yes.

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[WITNESS: Keene]

- 1 Q. Do you believe that, notwithstanding the mitigation  
2 that they're planning, that the presence of those poles  
3 and wires will constitute a substantial adverse impact  
4 on the scenic value of Dummer Pond?
- 5 A. Yes.

6 Q. And, I guess, similarly, Phillips Pond, will that also  
7 have a substantial adverse impact from wires and poles?

8 A. Yes.

9 Q. Okay. Now, you perhaps remember from Ms. Vissering's  
10 testimony where she said that "wind turbines" -- that  
11 there was a study that showed that "wind turbines  
12 looked better to most people when they're in motion."  
13 Do you agree with that?

14 A. At the time, I kept an open mind. And, I visited  
15 another wind turbine. I went to Lempster. And, I  
16 stayed there for almost the whole day. And, it was a  
17 wind -- I was a strange day. It was windy. It was  
18 snowy. Then, it would rain. And, I think it was that  
19 that really brought it forward to me how obtrusive they  
20 are. I just -- I could see nothing nice about them.

21 Q. Even -- were the blades moving at time?

22 A. They were moving.

23 Q. Okay.

24 A. It was a windy day and they were moving. I don't know  
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22

[WITNESS: Keene]

1 if they were operating, because I hadn't heard whether  
2 they had connected up. But the blades were busy. They  
3 were busy.

4 Q. Okay. When do most people visit the Project area? Is  
5 it summertime or wintertime?

6 A. What Project area?

7 Q. Not Lempster.

8 A. Oh, you mean Phillips and --

9 Q. Yes, the Phillips Brook, Colebrook, Errol, those areas.  
10 Are the visitors to those areas more frequent in the

- 11 summertime or the wintertime?
- 12 A. I don't think I can really answer that, because I don't
- 13 know the answer about the winter, because I don't go
- 14 there that often in the winter. But that's me
- 15 personally. So, I really don't have an answer to that.
- 16 Q. Okay. Now, in your testimony, you mentioned that --
- 17 you spoke of the New York Attorney General's Office
- 18 investigation. Were you here when Mr. Lyons testified
- 19 about that?
- 20 A. I was here when he did speak about some of that. But I
- 21 didn't feel that I had an answer.
- 22 Q. Okay. I'm not asking if you had an answer.
- 23 A. Okay.
- 24 Q. I just wanted to know if you were here when he

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23

[WITNESS: Keene]

- 1 testified about it?
- 2 A. Yes.
- 3 Q. Do you remember his suggestion that "the subpoenas
- 4 didn't really identify to them what it was that was
- 5 being investigated"?
- 6 A. No, I do not remember that.
- 7 Q. Okay. Now, in your testimony, you include a copy of a
- 8 newspaper article from the New York Times from August
- 9 of last year, correct?
- 10 A. Uh-huh.
- 11 Q. Can you provide some information about, from that
- 12 article or from other places, that -- do you have any
- 13 information about what the Attorney General in New York
- 14 was investigating?
- 15 A. From the articles, what I was deriving, from a lot of

16 articles that I read from the -- on the internet, was  
17 improprieties with public officials, and actual  
18 payments being made, cash payments being made. And, it  
19 even went into easements being granted on public  
20 official's land, and then they discussed how some  
21 people on different committees and boards were actually  
22 -- they didn't recuse themselves of, you know, voting  
23 on this, and they actually -- their land was affected  
24 by it. They were going to be receiving income from it.

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24

[WITNESS: Keene]

1 And, it were those kinds of things that bothered me,  
2 because Coos County officials bother me.

3 Q. Okay. And, you also attached to your testimony a copy  
4 of the ethics rules that were signed by the Applicant.  
5 And, did you notice that the ethics rules were also  
6 signed by the Attorney General of the State of New  
7 York?

8 A. Yes.

9 Q. Okay. And, do you believe that the Applicant has  
10 conducted itself in Coos County in any way that would  
11 violate the ethics programs that they signed if they  
12 applied here?

13 A. I cannot say that with saying, you know, I sat across  
14 the table with them and literally saw them doing  
15 things. It's articles in the newspaper. And, what  
16 concerned me the most was visiting Coos County Planning  
17 Board and, you know, the attorney that was reviewing  
18 the agreements, the Payment-in-Lieu-of-Tax Agreement,  
19 was Mr. Fazel, and he sat on the Coos County Planning  
20 Board. And, there's connections there that I would

21 have felt better, Mr. Tillotson is also on the Coos  
22 County Planning Board, and I felt very uncomfortable,  
23 because he was going to gain from this venture. So,  
24 when I see things such as this, and they're not really

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25

[WITNESS: Keene]

1 bringing it out on the table, and, you know, laying,  
2 you know, having disclosure and let everybody know  
3 about it, that's what bothers me.

4 Q. Are you aware that the Applicant has made cash  
5 donations to a variety of civic organizations, clubs,  
6 teams?

7 A. Yes.

8 Q. And, how do you feel about that kind of thing?

9 A. It was one of my data requests. I did it also for Orr  
10 & Reno. Because what I was doing, when I became an  
11 intervenor at the beginning, is I was trying to look  
12 for sources, through conservationists, of how to gather  
13 data that might be helpful for the Committee. And,  
14 every door I tried to open it was being closed on me.  
15 And, the first place I went to was the Society for the  
16 Protection of New Hampshire Forests. And, I had been a  
17 member of that organization for a long time, and my  
18 husband had been, and donations have been given. But I  
19 also receive the magazine, and in it it had "Orr & Reno  
20 \$5,000" and "Noble Environmental Services" money. And,  
21 when I saw that, I said "I'm going to have a data  
22 request, and I want to know who they have donated to."  
23 So, the doors were being closed to me because nobody  
24 wanted to cause waves. That's where it upset me. I

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[WITNESS: Keene]

1 should be able to go to organizations that I've donated  
2 to, and not ask anything in return, if I have  
3 questions. Now, Will Abbott, which I don't know well,  
4 but know from telephone conversations, I asked him if  
5 he would send me some data, because this property was  
6 slated by Governor Shaheen to be protected, and they  
7 were raising money to actually buy these parcels. So,  
8 I had that in the back of my head. And, when I called  
9 him I said "you know, this was close to an easement  
10 being granted on these properties, and all of a sudden  
11 it just fell through. Could you give me a plan so that  
12 I could visually see where this easement was actually  
13 going to exist, how many acres was involved in it?"  
14 And, he said "Okay, I'll get back to you." And, I was  
15 brought up in the old school that, when you gave your  
16 word that you were going to get back to a person, you  
17 got back to them, and you did what you said you were  
18 going to do. And, I just wasn't getting any answers or  
19 any call-backs. And, sometimes I think people are  
20 annoyed with me, because, if you don't get back to me,  
21 I will be there until you do. And, that's what I did  
22 with Will.

23 And, he was honest that Orr & Reno had  
24 made, not cash donations, but actually services. They

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[WITNESS: Keene]

1 had given legal services to them. And, that he wasn't  
2 against wind, and either am I. But I told him "where  
3 it's sited is vitally important, and we have to try to

4 save something that could be lost forever." And, he  
5 said "I know that tract, I understand where you're  
6 coming from, but it's a very controversial issue."  
7 Well, I'm sure, you know, maybe my, you know, head  
8 understands why these people are doing it, but my heart  
9 doesn't, because this is something that should be saved  
10 for the next generation.

11 So, when I saw the Audubon Society was,  
12 you know, involved with being a consultant for Noble, I  
13 was discouraged. And, the Nature Conservancy has land  
14 that abuts this property, and they do have concerns.  
15 And, I think they feel pretty much the way I do; that  
16 Mount Kelsey shouldn't be touched. So, in this whole  
17 process, I feel like we've been -- it's been a  
18 locomotive. We have skipped over processes that we  
19 shouldn't have. I also think that the disheartening  
20 part of it for me was to find out all of these things,  
21 you know, that donations actually can have power.  
22 Lobbying. Mr. Patch lobbies for Noble. Maybe not --  
23 maybe he doesn't do it now, but there was a year that  
24 he was, you know, signed in as a lobbyist for Noble.

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[WITNESS: Keene]

1 These are the things that concern me, because I believe  
2 in New Hampshire. I believe in "Live Free or Die".  
3 But I also believed in this state to be honest,  
4 credible, and that this Application would be decided on  
5 whether it should be built or not be built for  
6 environmental reasons, for financial reasons, for all  
7 the reasons that are significant and important. And,  
8 so, those donations played a big role in how I felt

9 about this.

10 Q. Okay. Thank you. I want -- Your testimony was -- made  
11 some powerful statements about the intrinsic value of  
12 wilderness.

13 A. Uh-huh.

14 Q. Do you remember that? I'm going to ask you -- I'm  
15 going to read a couple of quotes to you --

16 A. Okay.

17 Q. -- that I've found from people who have said  
18 interesting things about wilderness, and I'm just going  
19 to ask you if you agree with them.

20 A. Okay.

21 Q. There was a guy by the name of Edward Abbey, who wrote  
22 a book called "Desert Solitaire". And, I don't know if  
23 you've ever read the book, but he said "Wilderness is  
24 not a luxury, but a necessity of the human spirit, and  
{SEC 2008-04} [Day 6] {03-17-09}

29

[WITNESS: Keene]

1 as vital to our lives as water and good bread." Do you  
2 agree with that statement?

3 A. Yes, I do.

4 Q. Okay. And, Mr. Abbey also said in the same work, "We  
5 need wilderness whether or not we ever set foot on it.  
6 We need a refuge even though we may not ever need to go  
7 there." Do you agree with that?

8 A. Yes.

9 Q. Okay. And, now, you probably, whether or not you've  
10 heard of Mr. Abbey, you've probably heard of Henry  
11 David Thoreau?

12 A. Yes.

13 Q. And, he said, "In wilderness -- no, I'm sorry, it's

14 frequently misquoted. "In wilderness is the preservation  
15 of the world."

16 A. Right.

17 Q. Do you agree with that?

18 A. Yes.

19 MR. ROTH: Okay. Thank you. That's  
20 all.

21 CHAIRMAN GETZ: Ms. Linowes, did you  
22 have questions for Ms. Keene?

23 MS. LINOWES: I do not. I do not, Mr.  
24 Chairman.

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[WITNESS: Keene]

1 CHAIRMAN GETZ: Okay. Thank you.

2 Mr. Patch.

3 MR. PATCH: Okay. Good morning.

4 WITNESS KEENE: Mr. Patch, you look  
5 dapper this morning.

6 MR. PATCH: Thank you.

7 WITNESS KEENE: Be kind.

8 [Laughter]

9 MR. PATCH: I'm not a mean person.

10 BY MR. PATCH:

11 Q. Ms. Keene, could you tell the Committee where you live?

12 A. Where do I live?

13 Q. Yes.

14 A. Year-round?

15 Q. Well, if you have a couple of places you live, I'd be  
16 interested in that, too.

17 A. Well, I think I can tell you that I spend the majority  
18 of my time on the North Road.

- 19 Q. No, but in terms of your --  
20 A. In Jefferson.  
21 Q. Okay. Your residence is in Jefferson, is that correct?  
22 A. Yes. Yes.  
23 Q. About how far of a drive is it from there, up to  
24 Dummer, say?

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[WITNESS: Keene]

- 1 A. To Dummer? Probably about 25 miles.  
2 Q. Now, I mean, you were talking about "visual impact". I  
3 wonder if you had a chance to review the testimony that  
4 Jean Vissering had submitted in this docket?  
5 A. Yes, I did.  
6 Q. Okay. And, I'm looking at her testimony from last  
7 July. I'm looking at Page 5 of that testimony. And,  
8 I'm going to read you what she put in that testimony.  
9 A. Okay.  
10 Q. And, if you could tell me whether or not you agree with  
11 it.

12 MR. ROTH: Excuse me. Can we give the  
13 witness the testimony that's being read from?

14 MR. PATCH: Sure.

15 MR. ROTH: I'll give her mine, so you  
16 can read from your own.

17 (Atty. Roth handing document to the  
18 witness.)

19 WITNESS KEENE: Thank you.

20 MR. IACOPI NO: Is this the supplemental?

21 MR. PATCH: No, this is the July  
22 testimony.

23 MR. IACOPI NO: That would be in

24 Volume 1.

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[WITNESS: Keene]

1 MR. PATCH: That would be Volume 1.

2 MR. IACOPI NO: Exhibit 1.1.

3 MR. ROTH: Tab (g).

4 WITNESS KEENE: Okay.

5 BY MR. PATCH:

6 Q. And, I'm going to start on Line 9. If there's any  
7 other portion of it you'd like to read, then feel free  
8 to do so.

9 A. Okay.

10 Q. But it says "The Project would not be visible from two  
11 of the most significant scenic resources in the area,  
12 Dixville Notch and the Androscoggin River. It would  
13 also not be visible from any of the state parks within  
14 the study area, the Connecticut River, Route 3, or  
15 Route 110. Visibility from Route 16 is extremely  
16 limited." Is that what it says?

17 A. Yes.

18 Q. Okay. And, then, with regard to Lake Umbagog, --

19 MR. ROTH: Umbagog Lake.

20 MR. PATCH: Pardon?

21 MR. ROTH: Umbagog Lake.

22 BY MR. PATCH:

23 Q. Okay, Umbagog Lake. I'm going to show you a portion of  
24 her testimony from February.

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[WITNESS: Keene]

1 MR. IACOPI NO: Her February testimony is  
2 contained in Application Volume 6, which is marked

3 "Petitioner 2.2". I believe it's Tab (g).

4 BY MR. PATCH:

5 Q. And, I'm looking at Page 4 of 5, --

6 MR. ROTH: It's in 1a, Mike.

7 BY MR. PATCH:

8 Q. And, I'm looking at Line 10. And, I'm going to read it  
9 to you: "Due to the significant distance of the  
10 project from Lake Umbagog", and then in parentheses it  
11 says "10 to 15 miles", "the turbines would appear very  
12 small. Turbines would be visible only in the northern  
13 portion of the lake with approximately 15 turbines  
14 potentially visible along Dixville Peak and Mount  
15 Kelsey. The project ridges occupy only a small portion  
16 of views around the lake and are not focal points  
17 within the view." Is that what it says?

18 A. Uh-huh.

19 Q. Okay. On Page 2 of your January prefiled testimony,  
20 near the middle of the page, you say, and I'm quoting,  
21 "These parcels are located in the last unfragmented  
22 forests in New Hampshire." Do you remember making that  
23 statement in your testimony?

24 A. Uh-huh.

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[WITNESS: Keene]

1 Q. Could you please explain why you consider these forests  
2 to be "unfragmented", given the logging activities and  
3 associated roads that have occurred here for a  
4 substantial period of time?

5 A. Mr. Patch, I don't know how quite to answer that, in  
6 terms of, when you live in the North Country, in Coos  
7 County, logging is a way of living. People earn their

8 living from logging. And, it's temporary. It's not  
9 permanent. And, it doesn't disrupt the usage of  
10 tourism that we derive -- probably is the second, the  
11 first would be logging, the second would be tourism.  
12 So, I know it's hard for you to understand that, and,  
13 if I could just elaborate for a little bit, so that you  
14 can understand where I'm coming from. The Site  
15 Evaluation Committee members went on October 3rd of  
16 2009 [2008?] to go view the site. It was a rainy day.  
17 And, it wasn't a comfortable day for them to do that,  
18 and I appreciate that they did that. Probably the  
19 first reaction that they would have, not living in the  
20 North Country, is if they passed a clear-cutting and  
21 they saw it visually. And, when you don't live in that  
22 area, and you first see it, it looks like a war zone.  
23 And, it's like "oh, my gosh, what have these people  
24 done to this property." Which is your first reaction,  
{SEC 2008-04} [Day 6] {03-17-09}

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[WITNESS: Keene]

1 because you're visually seeing it and you're being  
2 impacted by it. But, in actuality, it's helping  
3 wildlife. It's not destroying the environment. It --  
4 After the clear-cut is done, about a year later, there  
5 are plants and so forth that grow up, that the moose  
6 love. So, it's a natural process that works together  
7 with what we have. So, I think, probably I can see  
8 where that would confuse you. But, to us, in the North  
9 Country, logging hasn't caused damage. Does that  
10 answer your question?  
11 Q. That's fine.  
12 A. Okay.

- 13 Q. In your testimony, you go to some length to explain  
14 what you mean by the term "pristine", and I think we  
15 asked you about that during the technical -- one of the  
16 technical sessions. Could you tell the Committee what  
17 your understanding is of what the word "pristine" means  
18 and how that relates to this section of New Hampshire?
- 19 A. Well, I think, when you asked it in the tech session,  
20 it was -- I think you were thinking about "unspoiled",  
21 and just thinking there and stopping. And, you know,  
22 maybe it's not right of me to think of it in different  
23 terms. But, I think, when you're describing something,  
24 and you give the person a definition, and it's in

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[WITNESS: Keene]

- 1 writing, and you read the definition of what I am  
2 trying to define for when I explain it in my testimony,  
3 then it should be self-explanatory. Did I answer your  
4 question?
- 5 Q. I mean, that's fine. I'm just asking you. If you feel  
6 you've answered it, that's fine.
- 7 A. Okay.
- 8 Q. At the bottom of Page 2 of your supplemental testimony,  
9 you say "Pristine and logging operations can co-exist."  
10 Do you remember making that statement?
- 11 A. Uh-huh.
- 12 Q. If this is the case, why couldn't the same be true for  
13 "pristine and a windpark"?
- 14 A. Logging is temporary, Mr. Patch. It will grow back.  
15 410 turbines on an acre of concrete is destruction.  
16 50-foot, and correct me if I'm wrong, if you go to  
17 Mount Kelsey, and you put eight turbines, and you cut

18 in 50 feet into the bedrock to anchor these 410  
19 monsters, what do you think that will do? Is that  
20 still pristine now? I don't think so. Is a temporary  
21 logging operation that, you know, in a few years will  
22 be back? They're not synonymous.  
23 Q. Is it your understanding that the windpark will be  
24 there forever?

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[WITNESS: Keene]

1 A. In my lifetime, yes. And, my son's lifetime, yes.  
2 Q. How long does it take for some of the trees that have  
3 been cut down to grow back?  
4 A. It depends on the type of tree that is growing back,  
5 but I'm not an expert. So, I guess I really shouldn't  
6 answer that.  
7 Q. You've made some statements about the New Hampshire  
8 Forest Society and contributions that --  
9 A. Yes.  
10 Q. -- my law firm, Orr & Reno, has made to New Hampshire  
11 Forest Society. Is the New Hampshire Forest Society in  
12 any way involved in this proceeding, to your knowledge?  
13 A. I would have to say "no", as far as my knowledge goes.  
14 Q. Now, in your testimony, and I believe it's, when I  
15 printed it out, it was Page 8, and this is your January  
16 testimony. But I think it's near the bottom of Page 7,  
17 at least --  
18 A. I'm sorry. Yes, I should have been better. It's at  
19 the bottom of 7, you said?  
20 Q. I think it's near the bottom of Page 7, at least as you  
21 have the numbers in the text there. There's a  
22 statement, I'm quoting, it says: "As an intervenor, I  
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23 have not seen one study done or report that came from a  
24 professional firm showing the impacts that this

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[WITNESS: Keene]

1 facility would have on our current economic base." Do  
2 you remember making that statement?

3 A. Yes, I do.

4 Q. Have you had a chance to review the Gittell report that  
5 is Appendix 56, in Volume 6?

6 A. Yes.

7 Q. So, do you recall him making a statement, and this is  
8 in the Executive Summary, on Page 3, --

9 A. Uh-huh.

10 Q. That this "project represents a potential economic  
11 bright spot in an area of New Hampshire, Coos County,  
12 that has been struggling."

13 A. Well, I think, if you just take that one sentence, I  
14 think, truly, this particular -- are you talking about  
15 this particular wind farm bringing in some money and  
16 revenue into Coos County? If that's what you're  
17 talking about, its construction jobs that are  
18 temporary. You know, it will only bring in about six  
19 full-time positions, that probably will be sought  
20 outside of our area, because, if there's no expertise  
21 on wind farms, then you would have to outsource.

22 That you can put as many numbers as you  
23 want in a report. I have seen no report to date to  
24 this day today that has indicated the impact, and this

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[WITNESS: Keene]

1 is what I meant, Mr. Patch, the impact that it's going  
2 to have on our economy, our existing economy, for our  
3 scenic tourism, in particular. I can speak a little  
4 bit about that, because my husband is a sales rep in  
5 the North Country, born, brought up in the North  
6 Country, and has been a sales rep in the area, well,  
7 he's nearing retirement, so it's been a long time. He  
8 knows, selling janitorial products, paper products and  
9 so forth, that, without tourism, he'll be affected.  
10 And, he's not the only one.

11 I'm sorry, Mr. Patch, should I not speak  
12 while you converse?

13 Q. No, I'm just trying to prepare my cross as we go along.  
14 I have to react to things that you say, so --

15 A. Okay. So, the point I'm trying to make is there are --  
16 there is a large segment of individuals living in the  
17 North Country that put food on their tables for their  
18 families with what we have for tourism, and it's a  
19 large percentage of our employment. So, your temporary  
20 jobs cutting in to our tourism is devastating. And,  
21 they have also, in New Hampshire, I don't happen to  
22 have the article with me, and forgive me if I'm not  
23 being exact, but they were trying to come up with some  
24 kind of a marketing plan for our grand hotels, which

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[WITNESS: Keene]

1 the Balsams is one, Mountainview. And, if we go down  
2 that road, and we are trying to seek more tourism for  
3 what we have, then how can this help us?

4 Tara Bamford, from the Coos -- North  
5 Country Council, touched on it lightly of her concern

6 about this impact on the existing economic base that we  
7 have. We have Peter Riviere, which was on the CEDC, I  
8 think Mark probably knows him, and he made a statement  
9 that he was concerned about this happening, the upgrade  
10 of the Coos County Loop, the wind farm. You know,  
11 "Coos County was going to turn into the, you know,  
12 electricity mecca for all of New England." And, he  
13 happened to make a report to his bosses that said "I  
14 really think community heating systems in Berlin,  
15 biomass plants, and so forth, is the way to go. And,  
16 we don't even have to upgrade the grid. And, we can  
17 solve this electricity problem. What are we doing?  
18 Are we thinking of Coos? Or, is this much bigger than  
19 us?" They pulled his whole budget from him. Guess  
20 what? He doesn't have a job now. So, it's already  
21 impacting our economy, Mr. Patch.

22 Q. I'm going to read to you a couple of sentences from  
23 Mr. Gittel's report. I'm looking at Page 17, near the  
24 bottom.

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[WITNESS: Keene]

1 A. I'm sorry, Page 17?  
2 Q. Seventeen, near the bottom. I think, in order for you  
3 to look at it, I'm going to have to get you Volume 6,  
4 --  
5 A. Oh, I'm sorry.  
6 Q. -- Appendix 56.  
7 A. Yes.  
8 Q. Under Section 4.4, it says "Economic costs include  
9 potential property value decline and opportunity  
10 costs."

11 A. Uh-huh.

12 Q. "In terms of property value decline, the turbines are  
13 to be sited in remote, unincorporated regions of New  
14 Hampshire with a limited population. As such, the  
15 turbines would not be expected to impact property  
16 values negatively due to any "view" changes. In fact,  
17 previous studies have not found evidence supporting the  
18 claim that wind turbines negatively impact property  
19 values. In fact, the turbines may attract some degree  
20 of "green tourism" which would even further add to the  
21 economic benefits of the wind project beyond what is  
22 stated in this report. This appears to be the case  
23 with the new 24 megawatt wind power project in  
24 Lempster, New Hampshire." Did I read that correctly?

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[WITNESS: Keene]

1 A. Yes.

2 MS. LINOWES: Excuse me, Mr. Chairman.  
3 I just want to remind Mr. Patch that this report has been  
4 entered in as public comment only, and has not been vetted  
5 through cross-examination.

6 MR. PATCH: My understanding --

7 CHAIRMAN GETZ: Are you reminding him or  
8 reminding us or making an objection, but that is a ruling  
9 that we made previously in this proceeding.

10 MS. LINOWES: Thank you.

11 BY MR. PATCH:

12 Q. And, Ms. Keene, I'm going to read you another sentence  
13 from the Gittell report, and this is on Page 3. It  
14 says "The economic benefits for Coos County and the  
15 surrounding area of northern New Hampshire and parts of

16 northern Maine and Vermont from the GRP wind power  
17 project can be significant." That's on Page 3 in the  
18 Executive Summary. And, so, I take it you disagree  
19 with that, from the statements that you've made?  
20 A. Would you read it to me again please.  
21 Q. "The economic benefits for Coos County and the  
22 surrounding area of northern New Hampshire and parts of  
23 northern Maine and Vermont from the GRP wind power  
24 project can be significant."

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[WITNESS: Keene]

1 CHAIRMAN GETZ: I think the outstanding  
2 question is "do you agree or disagree with that  
3 statement?"

4 BY THE WITNESS:

5 A. I disagree.

6 BY MR. PATCH:

7 Q. Well, and he also quantifies those benefits, again on  
8 Page 3, where he said that the "Total benefits" --

9 MR. ROTH: I'm going to object to this,  
10 because now he's either reading the report into the  
11 transcript or he's going to ask her to somehow validate  
12 Mr. Gittell's modeling method. And, there's no evidence  
13 that Mr. Gittell's modeling method or his statistical  
14 analysis has any validity or any value whatsoever. And,  
15 asking this witness to try to confirm it is, I think, not  
16 a good idea and unfair.

17 CHAIRMAN GETZ: Well, I want to hear the  
18 question. Because there's been -- this hearing so far has  
19 been replete with asking witnesses about statements other  
20 people have made, about newspaper reports, substantiated

21 or unsubstantiated. Let's get the question on the -- the  
22 full question on the record, Mr. Patch, before I make a  
23 ruling.

24 BY MR. PATCH:

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[WITNESS: Keene]

1 Q. In the report, Mr. Gittell said that the "Total  
2 benefits, including direct, indirect, and induced, to  
3 the local economy from the GRP wind power project are  
4 expected to be \$122 million or \$1.2 million per  
5 megawatt over a 20-year period." Now, I know you had  
6 indicated that you didn't think there would be any  
7 benefits to northern New Hampshire as a result of this  
8 project. So, I guess I'm asking whether you dispute  
9 that? Whether you agree with that?

10 A. Are you talking about the payment-in-lieu-of-tax?

11 Q. No. I'm talking about the economic benefits that  
12 Mr. Gittell believes would be provided to the local  
13 economy.

14 CHAIRMAN GETZ: Well, I'm going to allow  
15 the question. I think you've asked in a general sense  
16 once already, but now you're asking in a more specific  
17 sense "whether you agree with his conclusion that there  
18 could be over \$100 million in net economic benefits?"

19 MR. PATCH: Yes.

20 CHAIRMAN GETZ: Okay. Do you agree with  
21 that conclusion or not agree with it?

22 WITNESS KEENE: I don't think I have the  
23 expertise, in terms of, you know, elaborating on this  
24 whole report. So, I feel uncomfortable being put in a

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1 position to answer a question that's going in on the  
2 record that might not be proper.

3 CHAIRMAN GETZ: Well, let's move along  
4 to another subject.

5 BY MR. PATCH:

6 Q. I believe, when you were testifying in  
7 cross-examination by Mr. Roth, that you had referred to  
8 the process as being "locomotive" and you said that it  
9 had "skipped over processes".

10 A. Uh-huh.

11 Q. I'm trying to understand what you meant by that?

12 A. Okay.

13 WITNESS KEENE: I don't think I have my  
14 folder with me, but if I could get it?

15 CHAIRMAN GETZ: Please.

16 WITNESS KEENE: Could you just repeat  
17 that question to me one more time.

18 BY MR. PATCH:

19 Q. Well, as I recall, in response to a question from  
20 Mr. Roth, you had said that you felt this proceeding  
21 was -- you used the word "locomotive", and you said --  
22 you made reference to the fact that we had "skipped  
23 over processes".

24 A. Uh-huh.

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1 Q. And, so, I just wanted to make sure I understood what  
2 you meant by that?

3 A. Well, being a lay person in this whole process, and  
4 trying to understand, you know, in the format in which

5 you were to follow, I can refer to one thing. Would an  
6 example be good? I feel that Fish & Game and AMC went  
7 into mitigation with GRP, and went to the last step,  
8 mitigation. And, there are three steps, don't happen  
9 to have them in front of me, and I cannot quote them at  
10 this time, but I know there's a process for each  
11 category that you must follow. The last is mitigation.  
12 Do you understand? Because I can go and try to find my  
13 paperwork on that?

14 Q. No. I'm just trying to understand what you meant by  
15 that. And, so, I mean, whatever you would want to say  
16 on the record about what you meant by that is fine, I'm  
17 not -- that's your choice. Okay. Is that your answer?

18 A. No, I don't feel that I've explained it fully.

19 Q. Okay. Well, I'll move on then, if you --

20 A. Okay.

21 Q. Unless there's more you want to say?

22 A. No.

23 Q. I think you made some reference to the impact that this  
24 Project would have on recreational activities. And, is

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1 it your understanding that this project would in any  
2 way interfere with hunting or hiking or snowmobiling or  
3 other recreational activities that take place in the  
4 area of this Project at this point in time?

5 A. I believe that the area where the turbines will be  
6 located will be gated. And, it will cease in that area  
7 where the turbines are.

8 Q. Isn't the High-Elevation Mitigation Plan, though, going  
9 to set aside a significant number of acres that would

10 be, at least as I use the word, "pristine" forest? I  
11 mean, it would not be logged, it would not be used by  
12 others --

13 A. I disagree.

14 MS. LINOWES: Mr. Chairman?

15 BY MR. PATCH:

16 Q. Could you explain that please?

17 MS. LINOWES: Mr. Chairman, if I may?

18 Mr. Patch is entering into the record evidence that has  
19 not been confirmed, the fact that those acres are  
20 "pristine". That has not been attested to. Thank you.

21 MR. ROTH: I would agree. There's no  
22 testimony to that effect to the condition of any of that  
23 land.

24 CHAIRMAN GETZ: Can you rephrase?

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1 MR. PATCH: Pardon?

2 CHAIRMAN GETZ: Can you rephrase?

3 MR. PATCH: Okay. Well, that's fine.

4 BY MR. PATCH:

5 Q. Have you had a chance to look at the High-Elevation  
6 Mitigation Plan?

7 A. Yes.

8 Q. And, so, is it your understanding that a significant  
9 number of acres will be set aside and preserved?

10 WITNESS KEENE: What if you don't like  
11 the question?

12 CHAIRMAN GETZ: We get that a lot.

13 [Laughter]

14 BY THE WITNESS:

15 A. Mr. Patch, let me put it this way. I don't think there  
16 is any land that has shown on this Mitigation  
17 Settlement that could even come close to a substitution  
18 of the impact that this is going to have. Does that  
19 answer your question?

20 MR. PATCH: It's not up to me to decide  
21 whether or not you've answered my question. But, anyway,  
22 I appreciate your responses. And, that's all the  
23 questions I have. Thank you.

24 WITNESS KEENE: Thank you, Mr. Patch.

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1 You were really dapper today.

2 MR. PATCH: Thank you.

3 CHAIRMAN GETZ: Any questions from the  
4 Subcommittee? Mr. Iacopino.

5 MR. IACOPI NO: Just one.

6 BY MR. IACOPI NO:

7 Q. Ms. Keene, could you just identify for the record who  
8 Mr. LeRiviere [Riviere?] is, I believe, because you  
9 didn't give us his title --

10 A. Oh, I'm sorry. He's the Director of the --

11 Q. Let me finish my question first.

12 A. Okay. I'm sorry.

13 Q. -- you didn't give us his title or who he works for?

14 A. Okay. His title is "Director", and he works for the  
15 CEDC.

16 Q. And, could you just tell us what the "CEDC" is?

17 A. I knew you were going to do that to me. Coos Economic  
18 --

19 Q. Development --

20 A. -- Development Commission.

21 MR. IACOPI NO: Thank you.

22 WITNESS KEENE: Okay?

23 CHAIRMAN GETZ: Okay. Other questions

24 from the -- Dr. Kent.

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[WITNESS: Keene]

1 DR. KENT: Just one please.

2 BY DR. KENT:

3 Q. Are you familiar with any studies that have shown a  
4 decrease in economic impact, particularly to real  
5 estate and tourism, from wind projects?

6 A. That's a really good question, and it's a hard  
7 question. I have read some of the reports that have  
8 come out on the real estate issues, saying that, you  
9 know, there's two things that are being said: "It  
10 doesn't have any impact whatsoever", "It hasn't shown  
11 any impact whatsoever." Which, as a retired real  
12 estate appraiser, I can give you this example: If you  
13 live next to a mom-and-pop pizza place, seems pretty  
14 minor, it emanates the worst odors you could ever  
15 imagine. And, it's interesting when you do the study,  
16 because, you know, when you drive by it, and you  
17 visually look at, you know, "well, this probably  
18 doesn't impact the area much", but you then discover,  
19 when you go to study your sales, that there aren't  
20 many. And, then, you look at the radius of how far,  
21 you know, it's impacting that area.

22 This is a very interesting subject,  
23 because it's just as jets fly over, they have a flight  
24 path, and I can give you this as another example. I

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1 live in the North Country. You would think that would  
2 be relatively quiet. The Manchester Airport opened,  
3 and, when they opened, it meant more travel. And, the  
4 flight path goes right over my house. And, they're  
5 going to Europe daily.

6 So, when I sit in solitude in my  
7 backyard, and I'm saying to myself "I came here for  
8 what?" And, you know, they come down, they have a  
9 flight elevation that they must stay at, but they can  
10 see the Presidentials. And, if it's a really good day,  
11 they try to do that flight pattern within their  
12 structure so that they can see those mountains. That  
13 impacts my value. It may seem like it wouldn't in the  
14 North Country, but it would if you lived in Boston, you  
15 know, with them visually right there, going in and out,  
16 going in and out, but it does. Because it's annoyance,  
17 because a flight pattern is all day.

18 DR. KENT: Thank you.

19 WITNESS KEENE: You're welcome.

20 CHAIRMAN GETZ: Other questions from the  
21 Subcommittee?

22 (No verbal response)

23 CHAIRMAN GETZ: Well, this is when we  
24 typically have an opportunity for redirect. I don't know

[WITNESS: Keene]

1 if, Mr. Roth or Mr. Odell, you want to take a few minutes  
2 with the witness to have an opportunity for redirect?

3 MR. ROTH: I guess I would like to have  
4 that opportunity for a moment.

5 CHAIRMAN GETZ: Okay. Let's take a  
6 brief recess. And, then, this is an opportunity, for  
7 redirect, is last opportunity for the witness, and then to  
8 direct some smaller number of questions that were raised  
9 for the first time on cross.

10 WITNESS KEENE: Okay.

11 CHAIRMAN GETZ: And, then, we'll take a  
12 brief recess, do that, and then we'll, after redirect is  
13 done, we'll ask Mr. Staats and Ms. Kelly to come back to  
14 the stand, so you have an opportunity to cross.

15 WITNESS KEENE: Okay.

16 CHAIRMAN GETZ: So, let's take a brief  
17 recess.

18 (Whereupon a recess was taken at 11:17  
19 a.m. and the hearing reconvened at 11:30  
20 a.m.)

21 CHAIRMAN GETZ: Okay. We're back on the  
22 record, and turning to redirect for Ms. Keene.

23 MR. ROTH: Yes, I have two questions for  
24 her.

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1 REDIRECT EXAMINATION

2 BY MR. ROTH:

3 Q. Ms. Keene, during your cross-examination, you were  
4 asked about the impact that the presence or that the  
5 windpark would have on recreational activities, such as  
6 canoeing and hiking and wildlife viewing. And, your  
7 answer was that you thought that "the presence of gates

8 would deter people from using these facilities." Are  
9 there other impacts that you would like to add to your  
10 answer?

11 A. The impacts that I had mentioned would be our tourism,  
12 and what brings people there are hiking, snowmobiling,  
13 bird watching, wildlife watching. I think one of the  
14 points I'd like to bring out that I didn't, that's  
15 really important, is the Cohos Hiking Trail. And, I  
16 remember there was a lot of hoopla about extending and  
17 expanding to the Cohos Trail. And, I remember sitting  
18 at home and saying to myself "Wow, these are  
19 conservationists, because they don't even want a hiking  
20 trail, you know, to go into our wilderness. And,  
21 they're being very careful." And, then, when I heard  
22 about this wind facility, and then I heard about  
23 "mitigation", I said "There isn't any similarities  
24 between the two. How can we be so careful about a

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[WITNESS: Keene]

1 Cohos Hiking Trail going through high elevation and a  
2 wind facility that is going to do major destruction?"  
3 I'm sorry, I'm lost.

4 Q. That's okay. I guess, to rephrase the question, are  
5 you concerned that the wind power plant will cause  
6 tourists, who come for canoeing, hiking, moose  
7 watching, those kinds of activities, will make  
8 different choices about where to go?

9 A. Oh, definitely.

10 Q. And, what kind of choices will they make?

11 A. Well, they'll probably leave New Hampshire and go to  
12 Maine or Vermont.

13 Q. Okay.

14 A. And, Coos County will have an economic loss.

15 Q. Okay. Another question was asked, I believe by one of  
16 the Committee members, concerning "impacts on tourism",  
17 do you remember that?

18 A. Yes.

19 Q. And, earlier you had spoken about Mr. Gittell's study,  
20 in terms of impacts on tourism. And, do you believe --  
21 do you feel -- let me ask you this. What effects do  
22 you think that construction activity will have on  
23 tourism, either from this wind power plant or from  
24 other ones that will be constructed in the future?

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[WITNESS: Keene]

1 And, try to differentiate, if you can.

2 A. Okay. During the construction period, which I  
3 understand is going to last for a while, is -- I can  
4 just envision in my mind, when small construction  
5 projects happen in Coos County, it causes havoc. And,  
6 you have Route 16 and you have Route 26 that is heavily  
7 traveled by tourism, not relatively wide roads. And,  
8 they have done some bridge repair in the Bartlett area,  
9 and it's a similar road. It's the tourists into North  
10 Conway. And, I can remember just a few weeks going and  
11 trying to shop, and it took me forever to get there,  
12 because of the flaggers, and their little microphones,  
13 you know, "Wait". And, you wait there for about -- do  
14 you really think people that are paying good money to  
15 come up and see our area has to sit and do that? I  
16 don't think so. So, it's going to have a grave impact.

17 But we're going to be losing tourism.

18 And, that's my -- that, I can't tell you how concerned  
19 I am about that, because that's how we thrive. And,  
20 just the window of that development, and subsequential  
21 ones coming after that, is going to ruin us. We're  
22 that fragile. I mean, I applaud people that think that  
23 this is going to bring lots and lots of money to our  
24 area. But, if you desecrate us and lose our existing  
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1 jobs, you haven't done us any favors.  
2 MR. ROTH: Thank you.  
3 WITNESS KEENE: Okay.  
4 CHAIRMAN GETZ: Anything additional from  
5 the Subcommittee?  
6 (No verbal response)  
7 CHAIRMAN GETZ: Okay. Hearing nothing,  
8 then you're excused. Thank you, Ms. Keene.  
9 WITNESS KEENE: Thank you.  
10 CHAIRMAN GETZ: Mr. Mulholland.  
11 MR. MULHOLLAND: I have witnesses from  
12 the Fish & Game Department, Will Staats and Jill Kelly.  
13 CHAIRMAN GETZ: If they could please  
14 take the stand. And, remind you that you're still under  
15 oath. Thank you.  
16 (Whereupon William Staats and Jillian  
17 Kelly were recalled to the stand, having  
18 been previously sworn.)  
19 CHAIRMAN GETZ: Ms. Keene, are you  
20 ready? Do you need a second?  
21 MS. KEENE: I will be. Just a minute.  
22 I can't see you.

23 MR. ROTH: Ms. Keene, would you like to  
24 sit here?

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[WITNESS PANEL: Staats|Kelly]

1 MS. KEENE: No, that's fine. Mr.  
2 Staats, Ms. Kelly, may I call you "Will" and "Jill"?

3 WITNESS KELLY: Sure.

4 WITNESS STAATS: Sure.

5 MS. KEENE: Okay. I thank you so much  
6 for coming and allowing me to do this, and I thank the  
7 Chairman so much for giving me the opportunity to do this.  
8 Mr. Patch has taught me something during this process, and  
9 he should be proud of that. One of the things that I have  
10 learned from this is that definitions of words are  
11 significant. And, Mr. Chairman, I do have some  
12 definitions that I will have in my questions. May I have  
13 permission to pass them?

14 CHAIRMAN GETZ: Please. And, you're  
15 going to hand them to the witnesses, and do you have  
16 copies for us?

17 MS. KEENE: Okay.

18 (Ms. Keene distributing documents.)

19 CHAIRMAN GETZ: Ms. Keene, are these  
20 subsets of your testimony or are these --

21 MS. KEENE: No, these are just for the  
22 questioning.

23 CHAIRMAN GETZ: Okay.

24 MS. KEENE: Okay? I don't know whether

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[WITNESS PANEL: Staats|Kelly]

1 to ask these questions as a panel or as one of you

2 designated.

3 CHAIRMAN GETZ: Well, it's really up to  
4 you, whether you want to just ask the panel --

5 MS. KEENE: Okay.

6 CHAIRMAN GETZ: -- or if you want to  
7 direct it to one of them in particular, it's your option  
8 of how you want to conduct the questioning.

9 MS. KEENE: Okay.

10 WILLIAM STAATS, Previously sworn

11 JILLIAN KELLY, Previously sworn

12 CROSS-EXAMINATION

13 BY MS. KEENE:

14 Q. Well, the first question I'd like both of you to  
15 answer, if you could, my question is, in your personal  
16 opinion, in your original prefiled testimony, it  
17 asserts that "the entire areas above 2,700 feet, which  
18 is 3,747 acres, found on high elevation ridgelines will  
19 have full impact by this project." What good is the  
20 Mitigation Settlement if these ridges are still  
21 impacted?

22 MR. MULHOLLAND: Mr. Chairman, I'll  
23 object to that question. I'd just like to see where  
24 Ms. Keene is referring to. Maybe she could point out in

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[WITNESS PANEL: Staats|Kelly]

1 the testimony.

2 MS. KEENE: Yes, I can. Page 12 of  
3 their original testimony, Lines 18 through 24, and  
4 Page 13, Lines 1 through 5.

5 MR. MULHOLLAND: I'll restate my  
6 objection, to the extent that Ms. Keene is characterizing

7 the testimony. The testimony is the testimony.

8 CHAIRMAN GETZ: And, I think you  
9 paraphrased somewhat, if I'm reading the -- if I recall  
10 exactly what you said. But could you just maybe point  
11 them directly to the --

12 MS. KEENE: I am.

13 CHAIRMAN GETZ: You're on Page 12, Line  
14 22?

15 MS. KEENE: Uh-huh.

16 CHAIRMAN GETZ: And, the testimony  
17 states that "New Hampshire Fish & Game acknowledges that  
18 while only 58 acres of habitat will be directly affected  
19 through clearing or road building above 2,700 feet, the  
20 impact of this Project is far greater." And, I take it  
21 your question to them is, "how does the Mitigation  
22 Settlement reconcile with what you've said in your  
23 testimony?"

24 MS. KEENE: Yes.

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[WITNESS PANEL: Staats|Kelly]

1 CHAIRMAN GETZ: If you could address  
2 that.

3 BY THE WITNESS:

4 A. (Staats) Yes, Kathy. You know, the testimony still  
5 stands. I mean, you know, it's still our professional  
6 opinion that the impacts do extend to that area that  
7 you refer to, the 3,700, whatever, that we've got in  
8 the testimony. And, as we've testified on Friday it's  
9 the Department's contention that the Mitigation Plan  
10 that we've come up with, the amount of acreage that we  
11 finally worked out, you know, working hard, you know,

12 back and forth with the Applicant on this, was the best  
13 mitigation that we could come up with. And, that --  
14 And, that it was our, you know, feeling that this,  
15 having that amount of land and the compensation, the  
16 financial compensation, was adequate mitigation for the  
17 impacts that we still stand by will occur. We haven't  
18 said the impacts -- we didn't say the impacts were  
19 going to go away. The impacts will still be there.  
20 So, the mitigation is an attempt to, you know, offset  
21 those impacts. So, --

22 BY MS. KEENE:

23 Q. Okay. I don't need an answer from Jill. That's fine.  
24 Your testimony indicates the importance of Mount Kelsey  
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[WITNESS PANEL: Staats|Kelly]

1 -- I'm sorry, this is on Page 6, Line 17 through 26,  
2 and Page 7, Lines 1 and 2.  
3 A. (Staats) Page 6, what were those lines, Kathy?  
4 Q. Lines 18 to 24. I'm sorry, first is 17 to 23.  
5 A. (Staats) On Page 6, correct?  
6 Q. Yes.  
7 A. (Staats) Yes. Uh-huh.  
8 Q. Okay?  
9 A. (Staats) Yes. Page 6 and 7, yes.  
10 Q. Your testimony indicates the importance of Mount Kelsey  
11 to martens, three-toed woodpeckers, and Canadian Lynx.  
12 Does the Mitigation Settlement displace your concerns  
13 in the Mount Kelsey range for these species?  
14 A. (Staats) As I just said, there's still going to be  
15 impacts to Mount Kelsey from the Project. But the  
16 mitigation has assured us the ability to have that

17 larger chunk of Mount Kelsey, that won't be directly  
18 impacted by the Project footprints in a block of forest  
19 that will not have any logging on it, as you know from  
20 the Mitigation Plan. And, so, it's -- I'm sorry, I  
21 forget your question here a little, Kathy.

22 Q. The importance of Mount Kelsey to the martens,  
23 three-toed woodpeckers, and Canadian Lynx?

24 A. (Staats) Okay. Yes. Mount Kelsey is still -- The  
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[WITNESS PANEL: Staats|Kelly]

1 importance of Mount Kelsey has not gone away, that's  
2 for sure. I mean, that's why we -- I mean, it's  
3 important to those species without the Project, it's  
4 important for those species with the Project, we feel,  
5 for sure. And, that's why we worked out the plan that  
6 was worked out, was to protect the remaining habitat on  
7 Mount Kelsey for those very species that you described.

8 Q. But how does that help them?

9 A. (Staats) Well, --

10 Q. Because eight turbines are still going on Mount Kelsey.

11 A. (Staats) That's right. Exactly.

12 Q. So, how does that help them?

13 A. (Staats) Well, the remaining forest land that will not  
14 be developed on Kelsey, or that will not be logged on  
15 Kelsey, and in thinking in terms of those, particularly  
16 those chunks of -- those forest stands on Kelsey that  
17 are older age stands or "primary forest" has been  
18 referred to, or whatever you want to call it, those  
19 stands will not now be logged at all. And, as you and  
20 I both know, logging either helps or hurt wildlife  
21 species, depending on the species that we're talking

22 about. In the case of the three-toeds, and to some  
23 degree in the case of marten, having those older age  
24 stands to do their thing, if you will, they're going to  
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[WITNESS PANEL: Staats|Kelly]

1 blow over, some of them, and they're going to grow back  
2 and they're going to, you know, natural things are  
3 going to happen to them. But the plan gives us the  
4 insurance that they're not going to be logged, so they  
5 can develop the way they're going to develop. That's a  
6 benefit to those species. That's not to say that there  
7 aren't some, you know, as we've said all throughout  
8 this, that's not to say there aren't going to be some  
9 impacts from that Project footprint and the Project  
10 operation up there on Kelsey. And, that's why we need  
11 to do those post-construction, and as much as we can  
12 pre-construction, studies to see what those impacts  
13 are, to get a real definitive answer as to what those  
14 impacts are. We're just as concerned about Kelsey  
15 today as we were when we wrote this prefiled testimony.  
16 Our prefiled testimony stands on that point, for sure.

17 Q. All right. With all that said, with the mitigation,  
18 there's wetlands involved on Mount Kelsey, and that  
19 plays a role with the wildlife. Where the eight  
20 turbines are going actually on Mount Kelsey there is a  
21 lot of wetlands. There's going to be a lot of  
22 disturbance. So, the habitat for these species are  
23 being disturbed in a way that probably isn't healthy  
24 for them. Is that a safe statement?

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- 1 A. (Staats) Absolutely. Where the construction is going  
2 to occur, sure. Sure. Yes.
- 3 Q. Okay. I'm now on Page 7, Lines 4 through 25. Okay?
- 4 A. (Staats) Yes. Yes.
- 5 Q. The Coos County Unincorporated Areas Planning Board has  
6 designated high elevation lands as protected districts,  
7 which requires a permit from the Planning Board for any  
8 activities at these elevations. Is this a regulated  
9 law or is it just the means for the Planning Board to  
10 be aware of what's being cut and when?
- 11 A. (Staats) It's a Zoning Ordinance, as part of their  
12 Master Plan for the unincorporated towns. They have a  
13 set of -- They have the Master Plan, and then they have  
14 a set of Zoning Ordinances. And, this is one of the  
15 protected districts, the PD6 zones, --
- 16 Q. Okay.
- 17 A. (Staats) -- which is regulated by the County's zoning.  
18 So, yes.
- 19 Q. Through a lot of the testimony that I read, and in the  
20 supplemental testimony it was repeated over and over  
21 and over again in a lot of the Applicant's supplemental  
22 testimony, that there was a permit issued for logging  
23 on Mount Kelsey, was it 200 and --
- 24 A. (Staats) Yes. 223 acres, I believe, is the actual  
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- 1 acres, yes.
- 2 Q. Okay. And, when was that issued, do you know?
- 3 A. (Staats) The exact date of that issuance, I'm sure it's  
4 in the record -- or, I'm not sure it's in the record,

- 5 but it may be in the record. I know I had a letter  
6 that went to the Board regarding that permit, which the  
7 intention was that was to be cut this winter. So, it  
8 would have been issued probably last winter or last  
9 Fall/Winter of 2008, I would say, somewhere in there.
- 10 Q. 2008?
- 11 A. (Staats) Yes.
- 12 Q. So, would it give the acreage?
- 13 A. (Staats) Yes, the permit application would give the  
14 acreage. But that -- But that is, what you have to  
15 understand is, that doesn't mean that all 223 acres  
16 were going to be cut. In fact, that's not the case.
- 17 Q. Okay.
- 18 A. (Staats) That's been talked about here, but that is not  
19 the case.
- 20 Q. Is it high elevation?
- 21 A. (Staats) Yes. It was all above 2,700 feet, yes.
- 22 Q. Did it have a max?
- 23 A. (Staats) Well, --
- 24 Q. Right to the summit, to the top?

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[WITNESS PANEL: Staats|Kelly]

- 1 A. (Staats) No, no. When I worked with the forester, and  
2 my recommendations to the Board were that -- was that  
3 no timber harvest occur above 3,100 feet.
- 4 Q. Thirty-one.
- 5 A. (Staats) And, that was in the permit that was issued.  
6 Yes.

- 7 CHAIRMAN GETZ: Mr. Mulholland, do you  
8 have a document you would like to offer?

- 9 MR. MULHOLLAND: I just wanted to offer

10 the witnesses that this is in the record as Petitioner's  
11 38. It's the permit and Mr. Staats' letter to the Board.

12 CHAIRMAN GETZ: And, what's the date of  
13 that?

14 MR. MULHOLLAND: The letter to the  
15 County was November 13th, 2007. And, the letter from Mr.  
16 Staats is November 16th, 2007.

17 CHAIRMAN GETZ: Thank you.

18 MR. ROTH: The permit is December 2007,  
19 December 28th.

20 CHAIRMAN GETZ: Thank you.

21 MS. KEENE: Thank you.

22 MR. ROTH: Do you have this?

23 MS. KEENE: I don't have that.

24 (Atty. Roth handing document to Ms.

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[WITNESS PANEL: Staats|Kelly]

1 Keene.)

2 MS. KEENE: Thank you.

3 BY MS. KEENE:

4 Q. In another part of this, it also mentions that there is  
5 a level of High Elevation Memorandum, an MOU, that  
6 provides guidelines to protect the value of high  
7 elevations. However, this particular landowner did not  
8 participate in that, am I correct?

9 A. (Staats) You're correct, yes.

10 Q. So, in all -- let me put it simply. Is it true, is it  
11 a true statement to say that "anybody who owns  
12 property, and wants to log, can. And, it's a courtesy  
13 that they notify the authorities." I mean, how do you  
14 stop them?

- 15 A. (Staats) Well, it depends on where you are. In the  
16 unincorporated towns, --
- 17 Q. Uh-huh.
- 18 A. (Staats) -- all logging or development above 2,700 feet  
19 is regulated by that Zoning Ordinance, in the  
20 unincorporated towns.
- 21 Q. Okay.
- 22 A. (Staats) Logging, in general, in the New Hampshire, has  
23 to undergo a permit process -- I shouldn't call it  
24 that. You have to file an "Intent to cut" with the  
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[WITNESS PANEL: Staats|Kelly]

- 1 State to do a timber harvest.
- 2 Q. Okay. Okay. Yes.
- 3 A. (Staats) You can't just go cut trees, you can't do a  
4 commercial timber harvest.
- 5 Q. Okay. Please remember you're giving your sworn  
6 statement when you answer this question. In your  
7 learned judgment, as stewards of the resource, this  
8 land, Phillips Brook and Bayroot tracts, abutting the  
9 Nash Stream and Vickie Bunnell's tracts, what would you  
10 trade if there was a choice to be made? (1) to  
11 clear-cut the land? Or, (2) blast 50 feet into the  
12 bedrock on the ridges of Mount Kelsey eight times, and  
13 eight times pour one acre square of cement to anchor  
14 410-foot wind turbines, which totals eight acres;  
15 lights are lighting up the night sky, never to see the  
16 Milky Way again. What would you choose?
- 17 MR. MULHOLLAND: Mr. Chairman, I object  
18 to the question. It characterizes the Project I believe  
19 inaccurately, and the answer isn't relevant.

20 CHAIRMAN GETZ: Well, I think there are  
21 certain premises to your question. If you want to ask a  
22 hypothetical or you want to ask their opinion about  
23 whether the Mitigation Settlement is reasonable, you can  
24 explore all those areas. But, to limit them to three  
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[WITNESS PANEL: Staats|Kelly]

1 particular choices, that may or may not represent the full  
2 range of choices, --

3 MS. KEENE: I hear you.

4 CHAIRMAN GETZ: -- it's not a fair  
5 question.

6 MS. KEENE: I thought it was a good  
7 question, though. We may not get the answer, but I  
8 thought it was a good question.

9 CHAIRMAN GETZ: We see a lot of that,  
10 too.

11 MS. KEENE: Yes.

12 BY MS. KEENE:

13 Q. On Pages 12 through 18, and you can't possibly go  
14 through them at this moment, and I know. Your  
15 testimony is full of details about four threatened  
16 species. What are your honest assessments of what this  
17 compromise means in your eyes to your previous  
18 testimony concerning these species? And, I think you  
19 answered that earlier by saying "they will be impacted  
20 even with the mitigation."

21 A. (Staats) Sure.

22 Q. Okay.

23 A. (Staats) Uh-huh.

24 Q. Page 18, Lines 1 through 23. Okay?

[WITNESS PANEL: Staats|Kelly]

- 1 A. (Staats) Uh-huh. Sure.
- 2 Q. How has the Mitigation Settlement changed your mind to  
3 agree with such a great sacrifice to the very areas  
4 that you have indicated would have the greatest  
5 impacts?
- 6 A. (Staats) Okay. So, I'm not quite sure what the  
7 question is in regards to the --
- 8 Q. Well, maybe I could explain it a little bit.
- 9 A. (Staats) Yes.
- 10 Q. In my lay mind, I'm thinking, I know this land. I know  
11 the lay of the land. I know the species and the  
12 wildlife and the biodiversity of the property, the  
13 ecosystem, the watersheds. I know that. What I don't  
14 know is what you're giving up. I don't know what the  
15 new tracts of land will mean. I know that you're not  
16 going to cage these animals and physically relocate  
17 them to another spot. Some of the places that I did  
18 look on the map that is feasible for the mitigation  
19 isn't anywhere near tourism. So, in my head, I'm  
20 thinking, how could you explain to me, by giving this  
21 great sacrifice, and I see it as a great sacrifice in  
22 the mitigation process, minimal to the Applicant, great  
23 sacrifice to Coos County, that the very areas that you  
24 have indicated your concern and irreparable damage to

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[WITNESS PANEL: Staats|Kelly]

- 1 be done, how can we do this? How can we give this up?  
2 How can we find anything that could replace this?
- 3 A. (Staats) That's a lot of questions right there.

4 Q. I'm sorry.  
5 A. (Staats) And statements.  
6 Q. It's important though.  
7 A. (Staats) Of course, it is. And, it's very important to  
8 myself, and, certainly, without words -- putting words  
9 in Jill's mouth, the same thing. I mean, that's -- we  
10 worked very diligently, as biologists, trying to assess  
11 the impacts to habitat and the wildlife species that  
12 we're referring to here. And, we stand by that  
13 testimony, as I said earlier, is that there are going  
14 to be impacts, and then working as hard as we could to  
15 come up with some kind of mitigation package that would  
16 satisfy those impacts. And, so, you know, looking, as  
17 you said, looking at the landscape as a whole, what  
18 were those options? What could we do that would  
19 achieve that?  
20 Q. Uh-huh.  
21 A. (Staats) And, you know, the concern about Kelsey, as  
22 you mentioned, and some concern about what the future  
23 of Kelsey might be, some concern about the logging.  
24 You know, I stated Friday that, certainly, logging,  
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[WITNESS PANEL: Staats|Kelly]

1 just like you did earlier today, it grows back. We  
2 acknowledge that. At different stages, it's valuable  
3 for different wildlife species. We acknowledge that.  
4 So, we tried to work at developing the best Mitigation  
5 Plan that we could to try to protect these species that  
6 are referred to in here. You know, there are several  
7 large -- what will be essentially two large blocks of  
8 habitat on Kelsey outside of the actual footprint --

- 9 Q. Uh-huh.
- 10 A. (Staats) -- allowed to do its thing. And, the other  
11 parcels that will not be logged on the property as  
12 well. So, you know, the Department did the best that  
13 it could under the circumstances.
- 14 Q. I hear you.
- 15 A. (Kelly) I would just add to that as well that I think a  
16 key piece to the Agreement is the compensation portion,  
17 the monetary value. And, it is my hope that, while we  
18 acknowledge that there are going to be pieces of Kelsey  
19 that are permanently going to be altered due to the  
20 Project, that we will be able to find something that,  
21 with that money, to help mitigate for those impacts.
- 22 Q. Uh-huh. I just would -- I don't want to belabor this,  
23 but I just would like to read the definition of  
24 "mitigation", because I truly believe an attorney must  
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[WITNESS PANEL: Staats|Kelly]

- 1 have had his hands into this definition, and I say that  
2 with a smile. "Mitigation" is "to act in such a way as  
3 to cause an offense to seem -- seem less." And, I  
4 think that's what we're doing hear, and I think we've  
5 gone off course. And, I would just like you, as my  
6 Fish & Game biologist, tell me something that can  
7 console me about this loss that is going to be  
8 permanent?

- 9 CHAIRMAN GETZ: Well, actually, first of  
10 all, what's the -- where is the source of this definition?  
11 Where does this come from?

- 12 MS. KEENE: I passed them out.

- 13 CHAIRMAN GETZ: No, but I mean --  
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14 MS. KEENE: Oh, where did it come from?  
15 I went on the internet, typed up "mitigation", and that  
16 was the -- that was the definition.

17 CHAIRMAN GETZ: That's not from any  
18 particular dictionary or website?

19 MS. KEENE: It was Webster.

20 CHAIRMAN GETZ: Did you have something,  
21 Mr. Mulholland?

22 MR. MULHOLLAND: Mr. Chairman, I'm just  
23 going to object to this question as it's already been  
24 answered.

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[WITNESS PANEL: Staats|Kelly]

1 MS. KEENE: It's okay. It's okay.

2 BY MS. KEENE:

3 Q. The next one is Page 8, Lines 12 through 24. Okay?

4 A. (Staats) Yes.

5 Q. Cohas Hiking Trail caused much concern and discussion  
6 about the impact it would have in the highly sensitive  
7 environment, such as high elevation above 2,700 feet.  
8 New Hampshire Fish & Game worked with the trail  
9 designers to protect certain areas. How can New  
10 Hampshire Fish & Game cause such a stir concerning the  
11 location of the Cohas Hiking Trail and crumble to an  
12 immense industrial factory -- facility, sorry, carrying  
13 with it non-repairable loss to the last unfragmented  
14 wilderness in Coos County? Oooooh [sic].

15 A. (Staats) Well, I'm just trying to -- I mean, we're  
16 always concerned about everything that happens above  
17 2,700 feet in that sensitive habitat. That's for sure.

18 Q. Okay.

- 19 A. (Staats) And, so, we stand by the statement. That we  
20 certainly worked with those, the trail designers. If  
21 there was another trail tomorrow somewhere above  
22 2,700 feet, and we were provided the opportunity to  
23 provide input, we'd say the same thing again.  
24 Q. Okay.

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[WITNESS PANEL: Staats|Kelly]

- 1 A. (Staats) Honestly.  
2 Q. Okay.  
3 A. And, if it was a windpark or a Wal-Mart or a snowmobile  
4 trail at the high elevation, we're always going to be  
5 concerned. That habitat is so sensitive, so fragile.  
6 We don't back away from that at all.  
7 Q. Okay.  
8 A. (Staats) Absolutely.  
9 Q. Thanks.  
10 A. (Staats) Yes.  
11 Q. As stewards of these resources, are you concerned with  
12 the blasting on Mount Kelsey and other ridges?  
13 A. (Staats) Certainly.  
14 A. (Kelly) Yes.  
15 Q. Are you concerned with this Project affecting the two  
16 watersheds that are targeted in the construction  
17 process?  
18 A. (Staats) Absolutely.  
19 Q. Okay. Will, as an industrial forester, how can the  
20 Mitigation Settlement stop permanent destruction of the  
21 area affected? Can that be monitored by an industrial  
22 forester? Or, are they just going to clear-cut and the  
23 turbines will go up, and -- I guess I don't understand.

24 Is somebody that would be sensitive to the area be  
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[WITNESS PANEL: Staats|Kelly]

1 present to see what happens?

2 A. (Staats) I would hope so, absolutely. I got to believe  
3 that this Project is going to be, if it occurs, it's  
4 going to be monitored very closely from all quarters,  
5 to be honest with you, I would think.

6 Q. Okay.

7 A. (Staats) To the extent they allow us, we would  
8 certainly want to be on-site as much as possible to see  
9 how that develops. Because, if the mitigation package  
10 goes forward, we have a vested interest in what happens  
11 outside of the so-called "retained area", this  
12 "Retained Land", I should say from the mit --

13 Q. Okay.

14 A. (Staats) Yes, we have got to be there.

15 Q. Okay.

16 A. (Staats) We're part and parcel to this thing, if it  
17 occurs.

18 Q. Okay. Has the New Hampshire Fish & Game, as stewards  
19 of the resource, put a monetary value on this permanent  
20 destruction of the habitat and environment? It is only  
21 \$1 million?

22 A. (Staats) Well, one of the things that became rapidly  
23 evident is that there was no template to work off as to  
24 what was "mitigation". You know, wetlands, they have

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[WITNESS PANEL: Staats|Kelly]

1 these formulas, there are metrics available.

- 2 Q. Yes.
- 3 A. (Staats) We had nothing. We were -- It was new,  
4 charting new territory for us. So, it's hard to put a  
5 monetary value, absolutely, on Mount Kelsey, or any  
6 other mountain for that matter. It's difficult.
- 7 Q. Uh-huh.
- 8 A. (Staats) And, we, as biologists, aren't the ones that  
9 set those values, frankly.
- 10 Q. Okay.
- 11 A. (Staats) We're the ones that assess the habitat, make  
12 our supervisors and the Applicants aware of the  
13 concerns and the potential impacts. Those folks worked  
14 that stuff out. That's not --
- 15 Q. Okay.
- 16 A. (Staats) That's beyond my purview. I don't know.
- 17 Q. Okay. In your opinions, and this is for both of you,  
18 whether it be personal or professional, would this  
19 Project, of the size and magnitude, located in a highly  
20 sensitive environmental area, warrant requesting an  
21 Environmental Impact Statement?
- 22 A. (Staats) I'm not absolutely positive of that, without  
23 looking at all the -- my experience with EISs are -- is  
24 fairly limited.

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[WITNESS PANEL: Staats|Kelly]

- 1 Q. Okay.
- 2 A. (Staats) I'm not trying to dodge the question here, --
- 3 Q. Okay.
- 4 A. (Staats) -- but it is fairly limited. And, I just saw  
5 that Fish & Wildlife Service letter --
- 6 Q. Okay.

- 7 A. (Staats) -- Last Friday. Didn't read it.
- 8 Q. Okay.
- 9 A. (Staats) I mean, I read it, but I didn't look at it  
10 over the weekend. And, that's not the ending of it.  
11 There are many things that goes into an EIS or an EA.  
12 My experience has been limited to what I've seen  
13 through the Forest Service process, NEPA process and so  
14 forth.
- 15 Q. Okay.
- 16 A. (Staats) So, I would have to look into it a lot more to  
17 understand. And, again, I'm not trying to dodge the  
18 question. This is a big project. You know, big  
19 projects like this can trigger that kind of thing, for  
20 sure. But I don't know.
- 21 Q. But let me ask -- could I ask it this way? I don't  
22 know a lot about an environmental impact statement, but  
23 I know enough that the procedure in which it must  
24 follow will cover ground that hasn't been covered here

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[WITNESS PANEL: Staats|Kelly]

- 1 in an environmentally sensitive area. Would you agree  
2 with that part, that it would be -- it would be very  
3 helpful?

- 4 MR. MULHOLLAND: Mr. Chairman, I'll  
5 object to the question. This is a federal process that  
6 these two witnesses, as state biologists, aren't  
7 particularly involved in or have knowledge of, as far as I  
8 know.

- 9 CHAIRMAN GETZ: Well, I think Mr.  
10 Staats, in particular, has been posed as an expert on the  
11 permitting. If he knows the answer, and can give an

12 answer, that's fine. If he doesn't know the answer, then  
13 let's get that on the record as well.

14 BY THE WITNESS:

15 A. (Staats) All I would say is that it would likely cover  
16 some stuff perhaps that hasn't been covered here. But,  
17 you know, we'd have to look at the complete, you know,  
18 assessment that's been done on all the different phases  
19 of this Project, and see if that fits within what might  
20 have been or not -- or, would be covered by the EIS,  
21 let's put it that way.

22 BY MS. KEENE:

23 Q. Uh-huh. Okay. Your supplemental testimony, how can  
24 you say, under oath, after participating in a  
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[WITNESS PANEL: Staats|Kelly]

1 Settlement Agreement with AMC and GRP, that compromise  
2 is little to none, that this mitigation package will  
3 not have an adverse impact on the habitat and  
4 environment of the affected mass?

5 A. (Staats) I don't have the supplemental in front of me.  
6 Have you got that right there, Kathy?

7 Q. Do you want me to read it to you?

8 A. (Staats) Yes.

9 Q. "Is there anything in your original prefilled testimony  
10 that you would like to change or amend?" "Yes. Fish &  
11 Game anticipates signing an Agreement with AMC and GRP  
12 by which GRP will amend its application to include an  
13 expanded mitigation package. With this amendment, Fish  
14 & Game believes that the impacts of the project will be  
15 adequately mitigated by perpetual easements on, or fee  
16 transfers of, other high elevation parcels, by cash

17 payments for studying the impacts of the project on  
18 wildlife and for purchasing other conservation parcels.  
19 Once the Agreement is signed and the amendment is  
20 submitted to the Site Evaluation Committee, F&G will  
21 submit an additional statement in support of the  
22 mitigation package." You want me to read the question?  
23 A. (Staats) Yes. If you could reread your question, yes.  
24 Q. How can you say, under oath, and after participating in  
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[WITNESS PANEL: Staats|Kelly]

1 a Settlement Agreement with AMC and GRP, that  
2 compromise little to none, that this mitigation package  
3 will not have an adverse effect on the habitat and  
4 environment on the affected land mass?

5 A. (Staats) I think that the --

6 MR. MULHOLLAND: I'll just object to the  
7 characterization of the witness's testimony. That the  
8 witnesses didn't testify to that.

9 CHAIRMAN GETZ: Well, I think there have  
10 been a number of premises and characterizations included  
11 in your question, and, obviously, the witnesses do not  
12 have to accept. But I think your basic question gets back  
13 to the recurring theme of how do you reconcile this --

14 MS. KEENE: Exactly, yes.

15 CHAIRMAN GETZ: -- this Settlement with  
16 what you testified to?

17 MS. KEENE: Right.

18 CHAIRMAN GETZ: Okay.

19 BY THE WITNESS:

20 A. (Staats) Yes. You know, I think we've, you know, we've  
21 said that impacts are going to occur, still occur.

22 BY MS. KEENE:

23 Q. Yes.

24 A. (Staats) But we stand by that the mitigation, that this  
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[WITNESS PANEL: Staats|Kelly]

1 is adequate mitigation for what impacts we know are  
2 going to occur. That's where we're at with it.

3 MS. KEENE: Okay.

4 WITNESS STAATS: Yes.

5 MS. KEENE: Thank you. Thank you, both.

6 CHAIRMAN GETZ: Thank you.

7 MS. KEENE: Thank you.

8 CHAIRMAN GETZ: Are there any questions  
9 from the Subcommittee?

10 (No verbal response)

11 CHAIRMAN GETZ: Mr. Mulholland, do you  
12 have redirect?

13 DR. KENT: I have a question.

14 CHAIRMAN GETZ: I'm sorry, Dr. Kent.

15 DR. KENT: Sorry. Too slow to respond  
16 here. Just one question, for either one of you.

17 BY DR. KENT:

18 Q. Does the U.S. Fish & Wildlife Service letter of March  
19 12, 2009 change the substance or form of your  
20 Settlement Agreement, Mitigation Agreement?

21 A. (Staats) I wouldn't -- no one has informed me about any  
22 changes to the Agreement, in relation to that letter,  
23 as of this point. I mean, I don't know how that's  
24 going to, you know, I'm not sure.

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[WITNESS PANEL: Staats|Kelly]

1 DR. KENT: Thank you.

2 CHAIRMAN GETZ: Mr. Mulholland, are you  
3 set?

4 MR. MULHOLLAND: Thank you, Mr.  
5 Chairman.

6 MS. LINOWES: Mr. Chairman, I had a  
7 follow-up question for Mr. Staats', based on a question  
8 that was asked by the Committee of him on Friday, and just  
9 looking for a "yes" or "no" answer, clarification on  
10 something, if I may?

11 CHAIRMAN GETZ: Well, let's hear the  
12 question.

13 BY MS. LINOWES:

14 Q. Mr. Staats, on Friday, I believe Mr. Northrop had asked  
15 you whether or not \$750,000 -- "what kind of land you  
16 could buy in the North Country?" And, I just want to  
17 make sure I heard you correctly. Did you say that  
18 there were several pieces of property that have  
19 recently been cut, and probably would not be cut for  
20 some time, that you -- that were possible parcels?

21 A. (Staats) Yes, I was aware -- yes, I did say something  
22 to that effect, Lisa, for sure. That there were  
23 several parcels, yes.

24 Q. That were cut?

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[WITNESS PANEL: Staats|Kelly]

1 A. (Staats) Yes.

2 MS. LINOWES: Okay. Thank you, Mr.  
3 Chairman.

4 CHAIRMAN GETZ: Okay. Then, seeing no  
5 further questions for the witnesses, you're excused.

6 Thank you. And, thank you for coming back. All right. I  
7 think it's a good time to take the lunch recess. Let's,  
8 as I continually try to do, take stock of where we are.  
9 So, in the afternoon, we'll have the direct and  
10 cross-examination of Dr. Mariani and Dr. Sanford. And,  
11 I'm hopeful that we'll complete their full examination  
12 today. And, then, when we -- on Thursday, we will start  
13 at noon, in Lancaster, at the DRED offices, to do the  
14 direct and cross-examination of Mr. Trevor Evans. And,  
15 I'm hopeful that we'll still be on line for closings at  
16 3:00. So, that's my hope. And, let's come back -- well,  
17 first of all, is there anything, am I way off? Is this  
18 something that we think is doable between today and  
19 Thursday?

20 (No verbal response)

21 CHAIRMAN GETZ: Okay. Then, let's take  
22 a lunch recess. We'll come back at 1:30.

23 (Whereupon the lunch recess was taken at  
24 12:15 p.m. and the hearing reconvened at

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[WITNESS PANEL: Staats|Kelly]

1 1:35 p.m.)

2 CHAIRMAN GETZ: Let's open the record  
3 again in Site Evaluation Committee Docket 2008-04. And, I  
4 believe we're prepared to hear from Counsel for the  
5 Public's witnesses, Drs. Mariani and Sanford. If you  
6 could call the witnesses.

7 MR. MULHOLLAND: Mr. Chairman, before we  
8 start, just one housekeeping matter. Fish & Game Exhibit  
9 Number 2, I'm not sure if we addressed this on Friday, but  
10 that was our proposed conditions, which are now over --

11 superseded by the Mitigation Agreement, which is  
12 Petition's 48.

13 CHAIRMAN GETZ: I vaguely recall that we  
14 were going to treat it similarly to the testimony. That  
15 it would still be part of the record, but recognize that  
16 there is additional evidence, a Settlement Agreement, that  
17 supersedes it.

18 MR. MULHOLLAND: Okay. Thank you.

19 CHAIRMAN GETZ: If I didn't say that  
20 before, I think I said that.

21 (Whereupon George Mariani and Gary  
22 Sanford was duly sworn and cautioned by  
23 the Court Reporter.)

24 GEORGE MARIANI, SWORN

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[WITNESS PANEL: Mariani |Sanford]

1 GARY SANFORD, SWORN

2 DIRECT EXAMINATION

3 BY MR. ROTH:

4 Q. Okay. Good afternoon. At long last, here we are. Can  
5 you give your name for the transcriptionist to post in  
6 the record.

7 A. (Sanford) Gary Sanford.

8 A. (Mariani) George Mariani.

9 Q. And, starting with you, Dr. Mariani. I'm showing you a  
10 document identified as "Testimony of George M. Mariani  
11 on behalf of Counsel for the Public", dated "December  
12 2008". Did you offer this testimony?

13 A. (Mariani) I did.

14 Q. Is that your testimony in this case?

15 A. (Mariani) Yes, it is.

16 Q. Okay. And, Dr. Sanford, I'm showing you a document  
17 entitled "Testimony of Dr. Gary R. Sanford on behalf of  
18 Counsel for the Public December 2008". Was that your  
19 testimony, Dr. Sanford?

20 A. (Sanford) Yes, it is.

21 Q. Okay. And, I'm now also showing you a "Supplemental  
22 Testimony of Dr. Gary R. Sanford on behalf of Counsel  
23 for the Public", dated "February 2009". Is that also  
24 your testimony, Dr. Sanford?

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[WITNESS PANEL: Mariani |Sanford]

1 A. (Sanford) Yes, it is.

2 MR. ROTH: Okay. Mr. Chairman, as we  
3 did with Mr. Sundstrom, there were documents that were  
4 filed by the Applicant, and along with their prefilled  
5 testimony, that were not necessarily prefilled testimony.  
6 And, I'd like to ask Dr. Mariani if he had any additional  
7 direct testimony that he would make after having reviewed  
8 those documents. And, in particular, I'm calling  
9 attention to Tabs Number 44 and 45 of the Binder Number 6.  
10 One that's called a "Revised Draft Management &  
11 Stewardship Plan for the Compensatory Wetland Mitigation  
12 Area" and the other is the "Compensatory Wetland  
13 Mitigation Plan Analysis", both by Lobdell.

14 MR. IACOPI NO: Which appendix were they?

15 MR. ROTH: They're in Volume Number 6,  
16 Appendix 44 and 45.

17 CHAIRMAN GETZ: And, your proposal,  
18 Mr. Roth, is that they would provide additional direct  
19 testimony, in terms of their reactions to those two  
20 documents?

21 MR. ROTH: Yes. The question I would  
22 ask Dr. Mariani is whether he "has any additional direct  
23 testimony he would make after having seen Appendix 44 and  
24 45?"

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1 CHAIRMAN GETZ: Okay. Any objection?  
2 (No verbal response)

3 CHAIRMAN GETZ: Hearing no objections,  
4 then, please proceed.

5 MR. ROTH: Okay.

6 CHAIRMAN GETZ: I presume the intent is  
7 to keep this brief?

8 MR. ROTH: Yes, it is. I'm hoping he  
9 will. I don't even intend to interrogate him. I just  
10 want to see what he has to say about them, if anything.

11 BY MR. ROTH:

12 Q. Dr. Mariani, have you had an opportunity to review the  
13 "Revised Draft Management & Stewardship Plan" and the  
14 "Compensatory Wetland Mitigation Plan Analysis that are  
15 enclosed -- included in Binder 6?

16 A. (Mariani) I have reviewed those.

17 Q. Okay. And, is there anything that you would add to  
18 your direct testimony filed in this case in December --  
19 or, I'm sorry, in January, after having reviewed those  
20 documents?

21 A. (Mariani) After reviewing those documents, I have a  
22 couple of comments. One of them being that those  
23 documents offer some indication that the Project now  
24 has some additional opportunities to compensate for

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1 wetland loss by either providing wetland restoration or  
2 creation opportunities.

3 Q. And, in what way would they do that or -- and where?

4 A. (Mariani) Well, based on my review of those documents I  
5 think that additional opportunities do exist within the  
6 proposed 620 acre wetland mitigation site to provide  
7 compensation for the net loss of wetland acreage that  
8 would result from this Project.

9 MR. ROTH: Okay. Thank you. Mr.  
10 Chairman, Attorney Geiger and I had also discussed  
11 previously whether Dr. Mariani would make a statement to  
12 revise his prefiled testimony with respect to high  
13 elevation wildlife impacts, in light of having seen the  
14 Mitigation Agreement between Fish & Game, AMC, and the  
15 Applicant.

16 CHAIRMAN GETZ: You spoke about it. Did  
17 you come to an agreement?

18 MR. ROTH: Yes, I believe we did. And,  
19 I had offered to have Dr. Mariani make a comment about  
20 what the High Elevation Impact Mitigation Agreement, and  
21 whether that -- whether you would change any of your  
22 testimony having seen that at this point.

23 CHAIRMAN GETZ: And, we would like to  
24 hear that as well, so --

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1 MR. ROTH: Okay.

2 BY MR. ROTH:

3 Q. Dr. Mariani, do you believe that the High Elevation

- 4 Impact Mitigation Agreement provides satisfactory  
5 mitigation for the impacts you identify to high  
6 elevation wildlife habitat in your testimony?
- 7 A. (Mariani) Notwithstanding the actual loss of high  
8 elevation acreage, I do believe that the new Mitigation  
9 Agreement does address the issues as they relate to  
10 impacts to high elevation wildlife habitat. It is a  
11 much better mitigation package than was provided  
12 before. And, in addition, the new mitigation -- high  
13 elevation mitigation package does also provide  
14 additional opportunities for the Applicant to provide  
15 wetland mitigation.
- 16 Q. In what way would that provide opportunity for  
17 additional wetland mitigation?
- 18 A. (Mariani) Well, the new mitigation package has  
19 basically restricted any further logging on the  
20 proposed mitigation acreage, and has limited any other  
21 new activities. In the original Application, the  
22 Applicant's -- one of the Applicant's major  
23 reservations about providing wetland creation or  
24 restoration to compensate for the lost wetland acreages

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- 1 that will be a result of this project has been or was  
2 the continued logging operations that would take place  
3 on the Project site. Since this concern goes away, I  
4 would think that the Applicant would have some  
5 additional opportunities to provide wetland restoration  
6 or wetland creation on the Project and the mitigation  
7 area.

- 8 MR. ROTH: Thank you. I don't have any

9 further direct questions. The witness is available -- The  
10 witnesses are available for cross-examination.

11 CHAIRMAN GETZ: Thank you. Ms. Keene,  
12 do you have questions for these witnesses?

13 MS. KEENE: Mr. Chairman, I was  
14 wondering if I would be able to go last, because, usually,  
15 when Lisa asks questions, it's usually what questions that  
16 I may have had. So, I may not have to.

17 CHAIRMAN GETZ: Okay.

18 MS. KEENE: Would that be all right?

19 CHAIRMAN GETZ: Well, Mr. Odell, do you  
20 have questions?

21 MR. ODELL: No, I don't.

22 CHAIRMAN GETZ: Ms. Linowes, would you  
23 like to start?

24 MS. LINOWES: Sure, Mr. Chairman. Thank  
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1 you. Good afternoon. I am going to reference several  
2 documents. And, I hope that I'll give you all the time to  
3 find them.

4 CROSS-EXAMINATION

5 BY MS. LINOWES:

6 Q. Dr. Sanford, it appears from your prefiled testimony  
7 that you've read all of the pertinent documents  
8 pertaining to wetlands and wildlife impacts on this  
9 Project?

10 A. (Sanford) Yes. I listed what my testimony is based  
11 upon in my first testimony.

12 Q. And, you're aware that the Project site will impact 13  
13 plus acres of wetlands for the building of roads and

14 installing of turbine strings?

15 A. (Sanford) Yes. That used to be 14.8, but has been  
16 reduced to 13 and a half.

17 Q. Okay. And, I believe it was you or Dr. Mariani that  
18 stated in one of the technical meetings that "13 acres  
19 of wetlands, particularly in this day and age, is a  
20 substantial impact by today's standards." Is that  
21 true?

22 A. (Sanford) That's true.

23 Q. And, can you tell us, either one of you, throughout  
24 your experience and career, have you ever dealt with a  
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1 project, a private enterprise, that entailed this many  
2 acres of wetland impact?

3 A. (Sanford) Twenty-five years ago there was a project,  
4 the Attleboro Mall, that was going to impact 22 acres.  
5 That received a permit from the State of Massachusetts  
6 and the Army Corps of Engineers, which was overturned  
7 by EPA's 404(c) veto power. It went through the  
8 courts, and the Supreme Court failed to hear it, so  
9 that project failed on being able to impact 22 acres.

10 Q. And, that was 25 years ago?

11 A. (Sanford) At least 25 years ago.

12 Q. Okay. So, it would be very odd to see something this  
13 large come forward as a private enterprise these days  
14 at all? It was brought 25 years ago and overturned?

15 A. (Sanford) Yes.

16 Q. Okay. Are you aware of the Lempster Wind Energy  
17 Project in New Hampshire at all?

18 A. (Sanford) Only it's name. I haven't followed it at

19 all.

20 Q. Okay. And, that Project consisted of 12 turbines,  
21 about 9 miles of road, and had no impacts on wetlands.

22 A. (Witness Sanford nodding affirmatively).

23 Q. So, on that basis, is it safe to say that one can build  
24 wind energy projects in the State of New Hampshire

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1 without having to disturb this much in the way of  
2 wetlands?

3 A. (Sanford) The answer to that is totally site-specific.  
4 So, you can't make a generalization, I'm sorry.

5 Q. Do you have any thoughts on how Lempster was able to do  
6 that?

7 MS. GEIGER: Objection. Mr. Chairman, I  
8 believe this witness has testified that he doesn't have  
9 familiarity with the Lempster Project. So, I think that  
10 question is out of line.

11 MS. LINOWES: Okay. I'll move on, Mr.  
12 Chairman.

13 BY MS. LINOWES:

14 Q. Are you aware that the Army Corps is requiring an  
15 individual Wetlands Permit for this Project?

16 A. (Sanford) Yes.

17 Q. Okay. And, it appears from perhaps both testimonies,  
18 from Dr. Mariani and you, I know both of you are  
19 familiar with the Army Corps process?

20 A. (Sanford) Yes.

21 A. (Mariani) Yes.

22 Q. And, I'm not sure if you've had a chance to read the  
23 letter that was submitted by U.S. Fish & Wildlife

24 Service, it arrived on Friday, it is written to the  
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1 Army Corps in reference to comments on the permit  
2 process?

3 A. (Sanford) I have not really had an opportunity.

4 Q. I would like to read you two sentences out of that  
5 document and get your sense of whether you agree with  
6 their statements or not. This would be the Fish &  
7 Wildlife Service letter that is dated "March 12th,  
8 2009", sent to the Army Corps.

9 MS. LINOWES: And, I don't know if this  
10 is in the record. Does everyone have copies of this?

11 MR. IACOPI NO: Fish & Wildlife?

12 MS. LINOWES: Fish & Wildlife Service.

13 MR. IACOPI NO: We've received it, it's  
14 not part of the adjudicatory proceedings, but we did  
15 receive it as part of the public comment that have been  
16 received in this case.

17 MS. LINOWES: Mr. Chairman, may I read  
18 from it?

19 CHAIRMAN GETZ: Please.

20 BY MS. LINOWES:

21 Q. This would be on Page 11 of that document. I see you  
22 don't have it in front of you, I will read it, if  
23 that's okay? This is about seven or eight lines down.  
24 It starts "Scores of Waters and wetlands would be" --

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1 MR. ROTH: Hold on please.

2 (Atty. Roth handing document to the  
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3 witnesses.)  
4 CHAIRMAN GETZ: Ms. Linowes.  
5 MS. LINOWES: I'm sorry.  
6 CHAIRMAN GETZ: Mr. Roth wants to --  
7 MR. ROTH: What page are you looking at?  
8 MS. LINOWES: On Page 11. Thank you.  
9 WITNESS SANFORD: I'm sorry, where about  
10 on the page?

11 MS. LINOWES: It's about the seventh  
12 line down from the top of the page of Page 11.

13 BY MS. LINOWES:

14 Q. It starts "Scores of waters and wetlands would be  
15 adversely affected by the construction of access roads,  
16 turbine pads and transmission lines." And, then, it  
17 goes on "The anticipated impacts are considered severe  
18 and long-lasting and, as a result, the applicant is now  
19 proposing conservation easements". Do you see that?

20 A. (Sanford) Yes.

21 Q. Do you agree with that statement?

22 A. (Sanford) Yes. I'm not sure what their definition of  
23 "scores" is, but certainly major impact.

24 Q. And, then, the second sentence I would like to read is  
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1 down towards the bottom of that same paragraph, five  
2 lines from the bottom, it reads "The construction of  
3 roads in this steep, high elevation terrain thin soils  
4 and near-surface bedrock will create irreversible  
5 landform, hydrology, aesthetic and ecological  
6 conditions". Do you agree with that statement?

7 A. (Sanford) Yes, I do.

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8 MS. LINOWES: Okay. Mr. Chairman, I  
9 would like to move this letter into evidence.

10 CHAIRMAN GETZ: Okay. We can mark this  
11 as an exhibit --

12 MR. IACOPI NO: Not yet, we haven't.

13 CHAIRMAN GETZ: We certainly can mark it  
14 for identification. I guess, at the end of this  
15 proceeding, we'll entertain whether -- what extent of the  
16 exhibits will be moved into evidence --

17 MS. LINOWES: Okay.

18 CHAIRMAN GETZ: -- and entertain any  
19 objections at that point.

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

21 (Ms. Linowes handing document to Atty.  
22 Iacopi no.)

23 MR. IACOPI NO: That you didn't mark up?

24 MS. LINOWES: I will get you a copy.

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1 MR. IACOPI NO: That would be "IWA" --  
2 how did you want to designate it, since you haven't  
3 designated them in a series? Thirty? "IWA-X-30".

4 MS. LINOWES: I might have a "30". Make  
5 that "40". If you can make that "40"?

6 MR. IACOPI NO: Okay, "40"?

7 CHAIRMAN GETZ: Sold.

8 [Laughter]

9 MR. IACOPI NO: Thank you. Actually, we  
10 have a clean copy here that can be marked.

11 (The document, as described, was  
12 herewith marked as Exhibit IWA-X-40 for  
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13 i d e n t i f i c a t i o n . )

14 BY MS. LINOWES:

15 Q. Now, Dr. Sanford and Dr. Mariani, I learned today that  
16 EPA, in fact, has sent a letter requesting, and this  
17 letter asks that an EIS be -- that the Army Corps  
18 undertake an EIS process on this Project. And, I  
19 learned today that EPA has also sent a letter  
20 requesting the same. Does that surprise you?

21 A. (Mariani) No, it wouldn't surprise me at all.

22 Q. That an EIS would be requested?

23 A. (Mariani) No, it doesn't surprise me.

24 Q. And, why would that be?

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1 A. (Mariani) Well, for one reason, the size of the  
2 Project, the location of the Project, given the fact  
3 that the Project is being proposed in a sensitive area,  
4 the high elevation area, and the scope of the impacts.

5 Q. On just the wetlands or beyond the wetlands?

6 A. (Mariani) Oh, I think their concern would probably be,  
7 I haven't seen the letter, but I think their scope  
8 would be that the impacts, even further than the  
9 wetland impacts, be something they're concerned about.

10 Q. Okay. And, now, Dr. Sanford, on your -- in your  
11 testimony, the prefiled testimony of December 2008?

12 A. (Sanford) Uh-huh.

13 Q. On Page 12 of your testimony, Line 3, you state, and  
14 I'm going to read that -- this for you. It says  
15 "Whether or not preservation is considered adequate  
16 mitigation by the agencies, it is clear that without  
17 wetland creation or restoration there will be a net

18 loss of both wetlands and wetland function." Do you  
19 still agree with that statement?  
20 A. (Sanford) Yes, I do.  
21 Q. Now, based on that statement, would you agree that the  
22 620 plus acres of land set aside for wetland  
23 mitigation, whether these -- this land includes  
24 wetlands or not, cannot be construed as replacement for  
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[WITNESS PANEL: Mari ani |Sanford]

1 those wetlands that are lost?  
2 A. (Sanford) That's correct.  
3 Q. And, is it also true that the wetlands that are lost,  
4 whatever function they have, can also -- is also not  
5 mitigated -- or, replaced, rather?  
6 A. (Sanford) That's correct.  
7 Q. Okay. Now, in looking at wetlands that are lost, is it  
8 fair to say that there are two ways of evaluating the  
9 wetlands? There's actual number of acres that are  
10 built and then there's an actual loss of functional  
11 value?  
12 A. (Sanford) Yes. Interestingly enough in this case, a  
13 functional analysis was done by the Applicant. And, it  
14 identified fisheries as one of the major functions, and  
15 in the lower elevation wetlands, along the access road.  
16 And, in the higher elevations, it identified wildlife  
17 habitat, as well as the lower elevations. All of the  
18 wetlands were considered valuable for wildlife habitat.  
19 Those were the two functions that really I focused on  
20 because of the analysis that was done.

21 But, interestingly enough, when you look  
22 at the impacts of wetland, of habitat loss, and from a

23 functional point of view, it's directly proportional in  
24 almost every case to the amount of acres that are lost.

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[WITNESS PANEL: Mariani |Sanford]

1 So that, you can almost evaluate, on a one-to-one  
2 basis, the lost functions by looking at the loss  
3 acreage and the landscape.

4 CHAIRMAN GETZ: Can everybody hear?

5 MS. KEENE: No. Thank you.

6 CHAIRMAN GETZ: Can you pull that  
7 microphone a little closer please? Thank you. It may  
8 need to be even a little closer.

9 WITNESS SANFORD: Okay. I'm sorry.

10 BY THE WITNESS:

11 A. (Sanford) I can give you an example here. We have 13  
12 and a half acres, this is just very rough now, 13 and a  
13 half area of proposed impact. Of that, there's a  
14 little over 3 acres that would be impacting existing  
15 ditches. Now, the ditches probably don't have the high  
16 wildlife habitat impact. They're probably more  
17 important for a sediment control and pollution control.  
18 But the fact is is that the Project will basically  
19 relocate those ditches. So, if you assume that, say,  
20 three and a half acres of ditches are relocated and  
21 compensate for those lost ditches, that leaves you with  
22 about 10 acres of unmitigated wetlands.

23 Now, several other proposals have been  
24 made. One is to recreate or create vernal pools. That

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1 amounts to a little over three-tenths of an acre.  
2 Excuse me, 3,600 square feet, not even a quarter of an  
3 acre. They also are proposing an upgrade through  
4 culverts, bottomless culverts, upgrade the habitat for  
5 fisheries, that amounts to about three-tenths of an  
6 acre.

7 Finally, there is an old logging yard  
8 that's going to be used in their construction that  
9 they're going to -- proposing to restore. And, that  
10 was labeled in Mr. Lobdell's supplementary testimony as  
11 two and a half acres. And, it composed of both uplands  
12 and wetlands. So, if you assume that maybe half of  
13 that two and a half acres is wetlands, you're still  
14 short 7 or 8 acres of wetland mitigation.

15 BY MS. LINOWES:

16 Q. So, you're saying that the total wetlands that will be  
17 filled in, 13.5 acres, there's a net loss in its  
18 entirety of seven and a half acres?

19 A. (Sanford) Seven and a half, seven or eight. I mean,  
20 these are very rough, but it gives you a way of  
21 appreciating the loss in wild habitat function.

22 Q. And that, if I understand what you were saying  
23 correctly, in terms of the value of these wetlands, for  
24 the most part, other than perhaps those that are

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[WITNESS PANEL: Mariani |Sanford]

1 ditches by the road, in the lower elevations, the  
2 wetlands, in general, are very high value for habitat?

3 A. (Sanford) Based upon the Applicant's submissions, yes.

4 Q. So, -- And, now, I want to go to the Wetland Creation  
5 and Restoration Proposal. There has been a proposal to

- 6 create eight vernal pools, I believe.
- 7 A. (Sanford) Uh-huh.
- 8 Q. And, now, do you know of any -- what else beyond that  
9 has been proposed, in terms of wetland creation or  
10 restoration or was that part of what you just talked  
11 about?
- 12 A. (Sanford) That's just what I said. The three-tenths of  
13 an acre of the improve stream channels; the two and a  
14 half acres of upland/wetland complex. I think that's  
15 it that I'm aware of.
- 16 Q. (Okay) Now, Mr. Sanford, in your experience, in terms  
17 of wetland creation or restoration proposals, have you  
18 required or has -- it's been common practice to employ  
19 the science to that, where you are understanding  
20 exactly what the wetlands was going to be lost, the  
21 habitat functions of that wetland, and you would like  
22 to try to preserve and/or create an equivalent loss?
- 23 A. (Sanford) Yes.
- 24 Q. Okay. So, I want to direct you to Pages 13 and 14 of  
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[WITNESS PANEL: Mari ani |Sanford]

- 1 your prefiled testimony. I'm on the bottom of Page 13,  
2 Line 18. The question is asked: "What considerations  
3 led to the conclusion of the presence of important  
4 wildlife habitat?" And, you give a listing of  
5 indicators that show that the wetlands had high value  
6 for habitat. Am I interpreting that correctly?
- 7 A. (Sanford) Yes.
- 8 Q. And, then, on the next page, on Line 5 and 6, it  
9 appears that you're critical of the fact that there is  
10 no inventory of what is being lost. Is that correct?

- 11 A. (Sanford) Yes.
- 12 Q. And, you say something to the effect of "For example,  
13 how many snags, how many woody debris, and how many and  
14 what size trees, how much shrub cover", etcetera. Is  
15 that correct?
- 16 A. (Sanford) Yes.
- 17 Q. Okay. So, it's been your experience that that is  
18 typical that you would go through and inventory what is  
19 being lost?
- 20 A. (Sanford) In more recent years, yes.
- 21 Q. Now, if the Applicant is looking to preserve other  
22 lands as wetland mitigation and/or restore or create  
23 vernal pools, without such an inventory, what  
24 information would Noble Environmental's biologist be

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- 1 working from to create, to properly create or restore  
2 equivalent wetland loss?
- 3 A. (Sanford) The way I would do it is to observe models in  
4 the field. Obtain those characteristics, list those  
5 characteristics, and try to duplicate those  
6 characteristics in the creation effort or restoration  
7 effort.
- 8 Q. If that has not been done, then what would the  
9 biologist be working from, simply a hunch?
- 10 A. (Sanford) Basically. Yes.
- 11 Q. So, what feels right?
- 12 A. (Sanford) That's right.
- 13 Q. Now, in terms of -- we've heard a bit about the  
14 Mitigation Plan that's put in place to preserve the  
15 land, and Dr. Publi cover, Publi cover of AMC, on Friday

16 had stated that he had not visited the mitigation sites  
17 or evaluate their quality. Basically, he worked from  
18 maps. Does that -- is there any way to know whether  
19 the land that is being cleared and given up, this would  
20 be for the top of Kelsey and some of the other  
21 ridgelines, is being -- equal quality land is being  
22 preserved?

23 A. (Sanford) Not without direct observation. As I  
24 understand it, in my mind anyway, the preservation of  
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1 land justifies, as part of a mitigation effort, in  
2 terms of meeting the "no net loss" functional  
3 perspective, by preventing the future destruction of  
4 wetlands. But there is nothing in the record to  
5 indicate that such future destruction would occur or,  
6 if it did, how much would occur. So, there's no way of  
7 knowing whether that future destruction, if it were to  
8 occur, could -- was avoiding, and therefore compensated  
9 for the impacts. You follow what I'm --

10 Q. I'm not sure I am. I'm sorry.

11 A. (Sanford) Well, if one were to assume that logging  
12 destroyed wetlands, which, by the way, not necessarily  
13 does it do that, if it's filled, that might be produced  
14 by road crossings, that would destroy wetlands, not the  
15 cutting of wood. So, if you assume that, let's say you  
16 assume that over the 600 acres, 10 acres of impact were  
17 going to occur in the future, and could be avoided by  
18 preserving the land, then you might be able to count  
19 that as part of your mitigation. But there's no way of  
20 knowing whether or how much of that might happen.

21 Q. Okay. So, you're saying that, I want to make sure I  
22 understand what you're saying, if no project were  
23 built, and the presumption is that there will be  
24 logging that went on on this site, and there will be a  
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1 certain amount of loss in wetlands from the logging  
2 activity, is that what -- I guess, maybe we can move  
3 on, I'm not sure I'm following what you're saying.  
4 A. (Mariani) I think what Gary is saying is that, assuming  
5 that logging activities, when done properly, and the  
6 land restored after the logging activity, you wouldn't  
7 really incur any impact to wetlands on that logging  
8 site. However, if, in fact, logging was done, and  
9 other impacts as a result of the logging activity, not  
10 necessarily the cutting the trees, but the building of  
11 roads and lay-down areas or whatever, were not  
12 restored, then the future potential of those areas as  
13 mitigation could be considered, but not the logging  
14 activity itself, if logging was done properly.

15 Q. Okay.

16 A. (Mariani) I don't know if that explains it any better.

17 Q. I think it does. You're talking about a scenario where  
18 a project is not built, though, correct?

19 A. (Mariani) As an area for mitigation. We're talking  
20 about a mitigation area, aren't we?

21 Q. Oh. Okay. All right. I see what you're saying. Now,  
22 there was one thing I wanted to ask you about.  
23 Attorney Roth had asked you to make comments on the  
24 Mitigation Plan that was signed by AMC and Fish & Game.

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[WITNESS PANEL: Mari ani |Sanford]

- 1 And, as I understand it, you had said that you "thought  
2 it was sufficient to address some of the wildlife  
3 impacts"?
- 4 A. (Mari ani ) That' s right.
- 5 Q. Okay. But not the wetlands impacts?
- 6 A. (Mari ani ) That' s correct.
- 7 Q. Okay. I would like to read you a sentence out of the  
8 Fish & Game' s testimony that' s been filed. And, we  
9 heard this same sentence earlier today. This would be  
10 on Page 13. And, I' ll just read it to you, I realize  
11 you don' t have it in front of you. It says,  
12 "Therefore, New Hampshire Fish & Game asserts the full  
13 impact of this project extends to all the high  
14 elevation lands", and they say "3,747 acres", and they  
15 found that -- so, it would be all of the lands "found  
16 on the four high elevation ridgelines slated for  
17 development." Okay. You may have read that at some  
18 point?
- 19 A. (Mari ani ) I may have.
- 20 Q. And, when you say that the "Mi ti gati on Pl an that' s in  
21 place", have you taken into consideration the species  
22 avoidance of the area because of the industrialization  
23 of it or because of the noise due to the turbines or  
24 any of the other aspects of building a road and

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[WITNESS PANEL: Mari ani |Sanford]

- 1 operating the turbines that might cause wildlife to  
2 stay out of that area?
- 3 A. (Mari ani ) My opinion about the adequacy of the  
4 mi ti gati on for high elevation habi tat is basi cally

5           reliant on the fact that the additional area and the  
6           restrictions put on the new area, for additional or  
7           future development and logging, would create a  
8           situation in the future that would benefit the high  
9           elevation habitat. Now, does that mean there won't be  
10          some impacts? Certainly not. There will be impacts.  
11          But the major concerns regarding fragmentation of  
12          habitat, I think, are largely addressed by the  
13          mitigation package that's been accepted.

14 Q.       Okay. Now, Dr. Mariani, I want to direct you to your  
15          testimony, this would be on Page 7 of your testimony.  
16          Bear with me. I have it here. You make a statement  
17          here, this is on Line 11, it says "the applicant has  
18          not demonstrated that the final design has less  
19          environmental impact than a scaled down project or a  
20          project that utilizes turbines at locations that are  
21          less environmentally sensitive." Is that -- Do you  
22          still agree with that sentence?

23 A.       (Mariani) I'm sorry, you're going to have to repeat the  
24          page and line numbers.

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[WITNESS PANEL: Mariani |Sanford]

1 Q.       Oh. Page 7, Line 11.

2 A.       (Mariani) Yes.

3 Q.       You state "the applicant has not demonstrated that the  
4          final design has less environmental impact".

5 A.       (Mariani) Uh-huh. Yes. That statement is based on my  
6          reading of the original Application, which I think is  
7          still applicable. In the alternatives analysis that  
8          was presented in the Application, the Applicant  
9          compared the preferred alternative or the current

10 alternative to a "no-build" alternative and a project  
11 that had smaller turbines. And, within the  
12 Application, there was a general statement that -- made  
13 by the Applicant that basically, and I'll paraphrase it  
14 to the best extent that I can, the Applicant states  
15 that "the minor reductions in impact associated with  
16 the smaller turbine project doesn't really -- is not  
17 justified, compared to the new project." However there  
18 is no detail on what those impacts were for the reader  
19 to compare it. So, I, on the face of it, that's the  
20 basis for that statement.

21 Q. So, I want to make sure I'm clear on that. Because  
22 that alternative that you're talking about was the case  
23 where there were 66 turbines of 1.5 megawatts?

24 A. (Mariani) I think it was 67, but --

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[WITNESS PANEL: Mariani |Sanford]

1 Q. Sixty-seven. As opposed to 33 3.0 megawatt turbines?

2 A. (Mariani) Yes.

3 Q. And, you're saying that there was -- that, while a  
4 statement was asserted that the impacts, the  
5 environmental impacts, or was it wetland impacts?

6 A. (Mariani) I believe all impacts associated with that  
7 Project.

8 Q. Between one alternative and the other were comparable,  
9 so it didn't justify proceeding with the turbine  
10 configuration of smaller turbines, is that what you're  
11 saying?

12 A. (Mariani) Yes.

13 Q. Okay. And, how many alternatives were offered in the  
14 Application?

- 15 A. (Mariani) Just the three that I mentioned.  
16 Q. Okay. So, it would be the "no-build", the current  
17 proposal, and the proposal with the 1.5-megawatt  
18 turbines?  
19 A. (Mariani) Yes.  
20 Q. Okay. And, it would be your assertion that the  
21 alternatives analysis was -- was not thorough?  
22 A. (Mariani) It may have been thorough, the information  
23 just wasn't presented in the Application that I could  
24 find.

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[WITNESS PANEL: Mariani |Sanford]

- 1 Q. Okay. And, in your professional opinion, has the  
2 Applicant conducted a thorough analysis to avoid  
3 impacts to wetlands in critical high elevation habitat?  
4 A. (Mariani) My opinion about the Applicant's ability to  
5 avoid wetlands impacts is that I believe that there are  
6 still opportunities to avoid and minimize impacts to  
7 wetlands for this current project.  
8 Q. Dr. Mariani, I'd like to address again the Fish &  
9 Wildlife Service letter that we had mentioned from  
10 March 12th. This will now be Page 3 of the letter.  
11 And, it's about eight lines, seven lines from the  
12 bottom. This section is entitled "On-site  
13 Alternatives". And, Fish & Wildlife Service writes:  
14 "All of the site selection and on-site planning  
15 activities up to and including layout of the roads,  
16 turbine strings and turbine pads were accomplished  
17 prior to wetland delineation work being initiated and  
18 completed". And, so, my question to you is, "how could  
19 they -- how could the Applicant have designed a project

20 that avoided wetlands, if the wetlands were not  
21 delineated until after the Project Plan was defined?

22 A. (Mariani) I don't know how to answer that question.

23 Q. It would seem logical that the wetlands would have been  
24 well known before the plan was defined?

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1 A. (Mariani) It's standard practice to go in and identify  
2 your wetlands, wildlife habitat areas before you design  
3 a project. That's my experience.

4 Q. And, so, Ms. Keene earlier today had made a statement  
5 that she felt Fish & Game and AMC, that the mitigation  
6 that was put in place may have "skipped some steps in  
7 the process", and she said they "jumped to mitigation".  
8 Is it possible that somewhere in this process they  
9 jumped the avoidance and minimization steps?

10 A. (Mariani) I'm not sure whether I'd characterize that as  
11 "jumping over minimization and avoidance". I think, in  
12 large part, a project of this size, sometimes there is  
13 not enough attention paid to impacts that, from a  
14 project engineering standpoint seem to be minor, but  
15 eventually turn out to be a significant issue. I'm not  
16 sure if, you know, "jumping the process" is an adequate  
17 characterization.

18 Q. Okay. Well, I'll move on from that then. I have one  
19 line of questions that I have and then I'll be done.  
20 I'd like to direct your attention to the State's  
21 process, the New Hampshire Department of Environmental  
22 Services' process for evaluating the wetlands. I'm  
23 going to read to you, and I know you don't have this in  
24 front of you, a section out of the New Hampshire Code

[WITNESS PANEL: Mariani |Sanford]

1 of Administrative Rules as pertains to wetland permits.  
2 This would be Env-Wt 302.04. And, specifically, it  
3 says "For any major or minor project, the applicant  
4 shall demonstrate by plan and example that the  
5 following factors have been considered in the project's  
6 design in assessing the impact of the proposed project  
7 to areas and environments under the department's  
8 jurisdiction." And, then, there is a list of things  
9 that the Applicant has to demonstrate the project  
10 design has taken into consideration.

11 Bearing in mind what you said about the  
12 alternatives analysis, one of the requirements that has  
13 to be met is that the alternative proposed by the  
14 Applicant is the one with the least impact to wetlands  
15 or surface waters on site. Based on your understanding  
16 of the Project, and what you testified to moments ago,  
17 is there enough information available to the Department  
18 of Environmental Services to state that this project,  
19 as proposed, the alternative as proposed is the one  
20 with the least impact to wetlands or surface waters on  
21 site?

22 A. (Mariani) Well, I'm not sure I'm qualified to speak for  
23 DES. As I stated before, I still think there are areas  
24 in which this Project could minimize impacts.

[WITNESS PANEL: Mariani |Sanford]

1 Q. Let me ask you then from the federal perspective, I  
2 know that doesn't apply in the State of New Hampshire.

3 But, from the federal perspective and what you know of  
4 the Army Corps process, could an affirmative be  
5 answered on that statement?

6 MS. GEIGER: Mr. Chairman, I'm going to  
7 object to this question. It seems to me that these  
8 proceedings relate to state standards. And, while there  
9 may be some overlap with federal jurisdictional processes,  
10 in terms of the subject matter that they evaluate, it  
11 seems to me that that's not a relevant question for  
12 purposes of this Committee's decision.

13 MS. LINOWES: That's fine, Mr. Chairman.  
14 I'll just ask one more question and then I'm done. I'll  
15 move on from that.

16 CHAIRMAN GETZ: Okay.

17 BY MS. LINOWES:

18 Q. And, Dr. Mariani, under that same set of rules, it  
19 states "The Department", Department of Environmental  
20 Services, "shall not grant a permit if there is a  
21 practicable alternative that would have a less adverse  
22 impact on the area and environments under the  
23 Department's jurisdiction." Based on what you know of  
24 the Project, would you say that there are less adverse

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1 -- there are alternatives that are less adverse on the  
2 environment and under the Department of Environmental  
3 Services' jurisdiction?

4 A. (Mariani) I guess I'll answer that by reiterating my  
5 opinion that was presented in my prefiled testimony,  
6 that I believe that the alternatives analysis that was  
7 performed for this Project originally was lacking. Are

8 there alternatives that would have less impact?  
9 Possibly, for this Project. I can't evaluate that from  
10 the standpoint of what those alternatives are, but I'm  
11 sure that there is definitely a way to minimize the  
12 impacts of the current project.

13 MS. LINOWES: Thank you very much.

14 Thank you, Mr. Chairman.

15 CHAIRMAN GETZ: Dr. Publicover.

16 DR. PUBLICOVER: All right. Just a few  
17 questions for Dr. Sanford.

18 BY DR. PUBLICOVER:

19 Q. In your supplemental prefiled testimony, which was I  
20 believe Public Counsel Exhibit 4, yes. Towards the  
21 end, you made several recommendations for additional  
22 conditions that you thought should be included with the  
23 DES Wetlands, Water Quality, and Terrain Alteration  
24 Permits. And, the last of these was for the inclusion

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1 of a -- or requiring the use of a rock sandwich road  
2 construction technique as needed to maintain  
3 groundwater flow under the road, to basically provide  
4 hydrologic connectivity between the upstream and the  
5 downstream portions of the wetlands, is that correct?

6 A. (Sanford) Yes.

7 Q. And, look -- I presented you with the current version  
8 of the site plans. On Sheet 43, there is a detail for  
9 a rock sandwich technique. Could you tell me whether  
10 that detail and the note on its use addresses your  
11 concerns and your recommendation in this area?

12 A. (Sanford) Yes, it does. Provided, of course, that this

13 is a general detail, and it would have to be  
14 individually engineered for each particular site that  
15 it's used in.

16 DR. PUBLICOVER: Okay. Oh. Yes. Sheet  
17 143. I think I said "Sheet 43".

18 CHAIRMAN GETZ: Thank you.

19 BY DR. PUBLICOVER:

20 Q. All right. You have reviewed the proposed conditions  
21 submitted by DES on these permits?

22 A. (Sanford) Yes, I have. They're not fresh in my mind,  
23 though.

24 Q. Okay. In the proposed conditions for the Alteration of  
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1 Terrain Permit, they recommend that the permittee --  
2 they say "The permittee shall employ the services of an  
3 environmental monitor." And, their role essentially  
4 will be to inspect the site, report to DES. Again,  
5 could you give your understanding of what the role of  
6 the environmental monitor should be?

7 A. (Sanford) The environmental monitor should be in a  
8 position to identify unexpected problems, such as  
9 erosion problems, and be in a position to inform the  
10 Field Engineer or the contract manager, construction  
11 manager, of these problems. And, in fact, that  
12 environmental monitor should be in a position to be  
13 able to even halt construction, if the situation  
14 required, and to report in writing to DES.

15 Q. Is it fair to say that the monitor is essentially  
16 serving as DES's eyes on the ground on the project?

17 A. (Sanford) I suppose you could characterize it that way.

18 Q. Now, is it fair to say that, even though the monitor  
19 may be being paid for by the Applicant, that it should  
20 be clear that their responsibility is to DES?

21 A. (Sanford) Yes.

22 Q. And, is it important that the monitor be free of any  
23 potential conflicts of interest relating from their  
24 employment or the relationship to the Applicant or its

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1 contractors?

2 A. (Sanford) Yes.

3 Q. All right. Now, you weren't here Friday, is that  
4 correct?

5 A. (Sanford) No, I wasn't.

6 Q. Right. During my cross-examination of Steve LaFrance,  
7 I asked him a question related to the relationship  
8 between the environmental monitor and the Field  
9 Engineer, specifically related to recommendations as to  
10 when the rock sandwich technique would be used. And,  
11 he responded that "the environmental monitor and the  
12 Field Engineer may be the same person." Do you think  
13 that's appropriate?

14 A. (Sanford) No, I don't.

15 DR. PUBLICOVER: All right. Thank you.

16 That's all the questions I have.

17 CHAIRMAN GETZ: Thank you.

18 Mr. Mulholland.

19 MR. MULHOLLAND: I have a few questions.

20 Thank you, Mr. Chairman.

21 BY MR. MULHOLLAND:

22 Q. Why wouldn't that appropriate?

23 A. (Sanford) In my experience, the Field Engineer is --  
24 his first obligation is to see to the proper  
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1 construction of the project, that it stays on schedule,  
2 that it stays within budget. And, there can be a  
3 potential conflict of interest. Because there may be a  
4 situation where, because of extreme rainfall, for  
5 example, that watches out erosion control, and  
6 requires, perhaps, the cessation of work that the Field  
7 Engineer would be reluctant to pursue.

8 Q. Dr. Sanford, you were testifying earlier about the --  
9 essentially the missing seven or eight acres of  
10 wetlands?

11 A. (Sanford) Yes.

12 Q. In terms of "no net loss", right?

13 A. (Sanford) Yes.

14 Q. Now, Dr. Sanford, are you aware of the makeup of the  
15 620 acre mitigation parcel proposed?

16 A. (Sanford) Only what was presented in the Application.

17 Q. But there's over 100 acres of wetlands there?

18 A. (Sanford) Yes.

19 Q. And, it includes the headwaters of Hedgehog Brook?

20 A. (Sanford) Yes.

21 Q. And, also large areas of forested wetlands?

22 A. (Sanford) Yes.

23 Q. And, it contains 30 acres of poorly drained Bucksport  
24 muck?

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1 A. (Sanford) I vaguely remember something about the muck,  
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- 2           yes.
- 3   Q.   And, you're aware that this 620 acre parcel is going to
- 4       be preserved in perpetuity through fee ownership by the
- 5       State, right?
- 6   A.   (Sanford) Yes, I do.
- 7   Q.   And, there are going to be no roads, right?
- 8   A.   (Sanford) Yes.
- 9   Q.   And, no ATVs?
- 10  A.   (Sanford) Yes.
- 11  Q.   And, no logging?
- 12  A.   (Sanford) Yes.
- 13  Q.   Doesn't that account for anything, in terms of
- 14       mitigating the wetlands?
- 15  A.   (Sanford) I'm not saying that the preservation of this
- 16       land isn't important as a mitigation element. My job
- 17       is simply to look at whether the "no net loss of
- 18       functions" is achieved. There is a net reduction in
- 19       available landscape for animals to use.
- 20  Q.   But, as it exists, there's no -- I mean, this is
- 21       private land now, correct?
- 22  A.   (Sanford) Yes.
- 23  Q.   And, there's no -- there's no way to know for certain
- 24       that it's not going to be destroyed in the future, and

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[WITNESS PANEL:  Mari ani |Sanford]

- 1       we're talking perpetuity, right?
- 2   A.   (Sanford) That's correct.  And, likewise, you don't
- 3       know whether it's going to be destroyed or preserved.
- 4       There's no way of knowing.  So, there's no way of
- 5       taking consideration of it, in terms of a functional
- 6       analysis.

7 Q. But, now we do know. I mean, if the Project's built,  
8 this will be preserved forever.

9 A. (Sanford) It might have been preserved forever anyway.

10 MR. MULHOLLAND: Thank you, Mr.  
11 Chairman.

12 CHAIRMAN GETZ: Ms. Keene, do you have  
13 any questions?

14 MS. KEENE: No, I'm fine. Thank you.

15 CHAIRMAN GETZ: Mr. Patch or Ms. Geiger.

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

17 Good afternoon, Drs. Sanford and Mariani. I'll start with  
18 you, Dr. Sanford.

19 MR. ROTH: Ms. Geiger, it's "Sanford".

20 MS. GEIGER: "Sanford"?

21 MR. ROTH: It's "San", as in "San", no  
22 "T".

23 MS. GEIGER: I'm sorry, I apologize, Dr.  
24 Sanford.

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1 WITNESS SANFORD: I thought you said it  
2 right.

3 BY MS. GEIGER:

4 Q. Now, the Department of Environmental Services has  
5 issued some recommended findings and recommended permit  
6 conditions, has it not, with respect to the Applicant's  
7 request for a Section 401 Water Quality Certificate, a  
8 Wetlands Permit, and an Alteration of Terrain Permit?

9 A. (Sanford) Yes.

10 Q. Okay. Have you both reviewed all of those conditions  
11 and recommended findings?

- 12 A. (Sanford) I did review it.  
13 A. (Mariani) I did, yes.  
14 Q. Okay. Great. Now, Dr. Sanford, do you disagree with  
15 any of those permit conditions?  
16 A. (Sanford) I can't think of one that I disagree with.  
17 Q. Okay. But, from your prefiled testimony, it appears  
18 that you're recommending some additional conditions, is  
19 that right?  
20 A. (Sanford) Yes.  
21 Q. Okay. And, I believe, on Pages 2 to 4 of your  
22 supplemental prefiled testimony, you've provided  
23 approximately 12 examples of some potential  
24 opportunities that you believe exist for the project to
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- 1 further avoid or minimize wetlands impacts, is that  
2 correct?  
3 A. (Sanford) Yes.  
4 Q. And, I believe one day last week Attorney Roth went  
5 through the exercise of pointing out some of those  
6 examples to the Applicant's witnesses on wetlands.  
7 Were you here for that?  
8 A. (Sanford) No, I wasn't.  
9 Q. Were you, Dr. Mariani?  
10 A. (Mariani) I was, yes.
- 11 MR. ROTH: Excuse me. I'm going to  
12 object to this question, because that does not properly  
13 characterize what happened. I did not follow  
14 Dr. Sanford's approaches to additional wetlands  
15 mitigation. What I did was I found my own, without  
16 reference to anything that Dr. Sanford had done.

17 MS. GEIGER: Okay. Well, and I  
18 apologize for the mischaracterization.

19 BY MS. GEIGER:

20 Q. But let's turn back to your 12 examples, Dr. Sanford.  
21 Do you know what the total acreage would be if we went  
22 through -- if the Applicant went through the exercise  
23 of following all of your suggested -- your suggestions  
24 for further reducing or avoiding impacts to wetlands?

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1 A. (Sanford) What the acreage is? I'm not sure I follow  
2 the question.

3 Q. Well, if the Applicant went through and followed all of  
4 your recommendations, and either avoided or mitigated  
5 all of the areas that you suggest, --

6 A. (Sanford) Uh-huh.

7 Q. -- what would be the total -- total acres of wetlands  
8 that would be saved, if you will?

9 A. (Sanford) The only information I put together was, if  
10 you took just those 12 examples, and you drew the toe  
11 of slope back one foot, it would save something like 12  
12 or 1,300 square feet of wetlands.

13 Q. Okay. And, I believe, at the top of Page 5 of your  
14 supplemental prefiled, I believe that the number there  
15 is "1,390", would you agree that?

16 A. (Sanford) Yes, that was an estimate.

17 Q. And, how many acres is 1,390 square feet?

18 A. (Sanford) Well, 43,000 square feet is an acre, so --

19 Q. So, would you agree with me, subject to check, that  
20 1,390 square feet, as compared to 43,560 square feet,  
21 which is an acre, would amount to 3/100ths of an acre?

- 22 A. (Sanford) Probably. Something like that.  
23 Q. So. You've suggested that any certificate issued by  
24 this Committee should be conditioned upon the Applicant  
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- 1 going through the plans, as I understand it,  
2 identifying all the opportunities, like the 12 examples  
3 that you gave in your supplemental prefiled, conducting  
4 an appropriate analysis, regarding the feasibility of  
5 making additional changes to the plans and avoiding and  
6 minimizing wetlands, and then providing the Committee  
7 with a report of those changes, is that correct?  
8 A. (Sanford) Yes.  
9 Q. Okay. And, do you have any idea of how many acres of  
10 wetlands would, in fact, be avoided or mitigated, if  
11 the Applicant went through that exercise?  
12 A. (Sanford) I think I just said that my only calculation  
13 was on those 12 examples of reducing the width of the  
14 slope by one foot.  
15 Q. Okay. But do you recall a meeting that we had at the  
16 Attorney General's Office a while back, where we  
17 discussed the plans and some of your recommendations?  
18 A. (Sanford) Yes, I do.  
19 Q. And, do you recall any discussion there of your  
20 suggestions and what the estimate might be of further  
21 reducing wetlands impacts if we followed your  
22 recommendations?  
23 A. (Sanford) I don't recall any estimate, no.  
24 Q. You don't, okay. Do you know whether the original  
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- 1 sheet plans for this Project were ever modified by the  
2 consultants in this case?
- 3 A. (Sanford) There are revisions on the sheets. I also  
4 understand that the impacts were reduced from 14.8 to  
5 13 and a half acres. But I'm not sure how that was  
6 accomplished.
- 7 Q. And, so, you don't know how many of the original sheets  
8 were revised by the Applicant in response to  
9 consultations with DES, for example?
- 10 A. (Sanford) No.
- 11 Q. Well, would it surprise you to learn that Mr. LaFrance  
12 testified here last week, and he indicated that all of  
13 them, all of the original plans were changed?
- 14 A. (Sanford) Not at all. That wouldn't surprise me.
- 15 Q. Okay. But you still think that the Applicant needs to  
16 go through the plans one more time, even though the  
17 Department of Environmental Services has issued  
18 recommended findings and permit conditions?
- 19 A. (Sanford) Yes.
- 20 Q. Okay. Now, do you recall at the same meeting at the  
21 Attorney General's Office where we talked about how  
22 many wetlands were "save or avoided" as the result of  
23 the exercise that the Applicant engaged in by taking  
24 the original plans and modifying them in talking to

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[WITNESS PANEL: Mari ani |Sanford]

- 1 DES?
- 2 A. (Sanford) I remember something about "further  
3 modifications", but I don't recall.
- 4 Q. Well, would you agree, subject to check, that we

- 5 discuss that it was between 8 and 9 percent of the  
6 original wetlands that were impacted?
- 7 A. (Sanford) Yes, come to think of it, that does ring a  
8 bell.
- 9 Q. Okay. So, just to be clear, would you agree that, when  
10 the Applicant took the original plans, met with DES,  
11 and then changed each page of the original plans, the  
12 Applicant was able to come up with only 8 to 9 percent  
13 of wetlands impacts being saved?
- 14 A. (Sanford) I wouldn't characterize it as "only 8 to  
15 9 percent".
- 16 Q. Okay. Now, excuse me, are your recommendations in this  
17 case based on standards or rules adopted by the New  
18 Hampshire Department of Environmental Services?
- 19 A. (Sanford) No, they are not. My role was not to review  
20 the Project in lieu of what the Department of  
21 Environmental Science -- the Department of Environment  
22 Services did, that was their job. I took a broader  
23 brush approach, and looked at the potential for  
24 avoidance, minimization, and mitigation to achieve the

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[WITNESS PANEL: Mariani |Sanford]

- 1 "no net loss" of function.
- 2 Q. Okay. So, it's your testimony that you did not  
3 consider the New Hampshire Department of Environmental  
4 Services' standards in making your recommendations in  
5 this case?
- 6 A. (Sanford) That's correct.
- 7 Q. Okay. Well, let's look at some of your  
8 recommendations. You recommend that a "geotechnical  
9 survey be done in the high elevations to redesign the

10 road to eliminate sloping cuts into wetlands." Is that  
11 correct?

12 A. (Sanford) Yes.

13 Q. But DES did not require that of the Applicant, did it?

14 A. (Sanford) No.

15 Q. And, in fact, were you here last week when Mr. LaFrance  
16 testified that, in fact, there were some geotechnical  
17 surveys conducted at the Project site?

18 A. (Sanford) I was not here.

19 Q. Were you here for that, Dr. Mariani?

20 A. (Mariani) Yes, I was.

21 Q. Okay. And, do you recall Mr. LaFrance indicating that  
22 he felt that no further geotechnical surveys were  
23 required?

24 A. (Mariani) I think what he stated was that "no

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1 preliminary geotechnical surveys were required at this  
2 time." However, he did indicate that, when the Project  
3 -- if and when the Project is permitted, that there  
4 would be a need to do some on-site drilling activities  
5 to verify the preliminary geotechnical results.

6 Q. Okay. Fair enough. Now, Dr. Sanford, I believe you've  
7 also recommended that the new ditch systems be  
8 considered as mitigation for impacted ditches, and that  
9 they have the same monitoring conditions that DES  
10 imposed on the vernal pool creations, is that correct?

11 A. (Sanford) Yes.

12 Q. But isn't it true that the new ditches in this case  
13 were not designed as wetlands, but rather were designed  
14 as road and storm water drainage?

- 15 A. (Sanford) And, that's how the original ditches were  
16 designed, I believe.
- 17 Q. Okay. But do you believe it's appropriate to take  
18 mitigation credit for storm water drainage structures?
- 19 A. (Sanford) Just as much as you have to take credit for  
20 their damage.
- 21 Q. Is that standard practice in New Hampshire, do you  
22 know?
- 23 A. (Sanford) I believe it is.
- 24 Q. Okay. Now, you've also recommended a certificate  
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- 1 condition that requires monitoring of the hydrology of  
2 the vernal pools and remediation within one year of the  
3 vernal pools, if the vernal pools do not hold water for  
4 a minimum of two months during the vernal pool season,  
5 is that correct?
- 6 A. (Sanford) Yes.
- 7 Q. Okay. And, are you aware that the Department of  
8 Environmental Services here in New Hampshire has  
9 imposed five conditions relating to the creation and  
10 monitoring of vernal pools at the Project site?
- 11 A. (Sanford) I don't recall what they are.
- 12 Q. Oh, you don't recall those conditions?
- 13 A. (Sanford) No.
- 14 Q. So, you don't know whether you believe they're  
15 sufficient?
- 16 A. (Sanford) I don't recall them.
- 17 Q. Well, could you take a look at I believe what's been  
18 marked as Petitioner's Exhibit 40, which I believe is  
19 the Department of Environmental Services' Wetlands

20 Bureau conditions. And, I'd like to show you -- just  
21 take a look at that document, and I'll refer you to the  
22 paragraphs relating to vernal pool conditions.

23 CHAIRMAN GETZ: Ms. Geiger?

24 MS. GEIGER: Yes.

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1 CHAIRMAN GETZ: Is this under cover of  
2 the letter from Mr. Pelletier dated February 10, 2009?

3 MS. GEIGER: Yes, Mr. Chairman, I  
4 believe that's correct. And, I'm not sure what format the  
5 Committee has the Wetlands Permit conditions, the Terrain  
6 Alteration conditions, and the Section 401. I believe I  
7 submitted it as one package, but I think Attorney Iacopino  
8 may have split them up into three different exhibits.

9 MR. IACOPIANO: I have extra copies if  
10 anyone needs them.

11 CHAIRMAN GETZ: Does anyone need copies  
12 on the subcommittee?

13 MR. IACOPIANO: Yes, we did split them in  
14 separate exhibits for the record. What I'm passing out,  
15 they're all -- all three permits are stapled together.

16 MS. GEIGER: Okay.

17 CHAIRMAN GETZ: Please go ahead,  
18 Ms. Geiger.

19 MS. GEIGER: Okay. I apologize for the  
20 interruption.

21 BY MS. GEIGER:

22 Q. But, Dr. Sanford, isn't it true that, if you look at  
23 the Wetlands Permit conditions, which I believe is  
24 Exhibit 40, if you look at, unfortunately, the pages

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- 1 aren't numbered, but there's some wetlands construction  
2 conditions that starts with "Condition Number 16".  
3 And, those relate -- 16 relates to vernal pools,  
4 correct?  
5 A. (Sanford) Yes, it does.  
6 Q. And, how about mitigation conditions 18, 19, 21, 22,  
7 and 24?  
8 A. (Sanford) It will take me a second to look at them.  
9 Q. Okay.  
10 A. (Sanford) What was your question again?  
11 Q. Well, my question was, that those conditions all relate  
12 to vernal pools, correct?  
13 A. (Sanford) Yes, it does.  
14 Q. And, do those conditions address your concerns about  
15 monitoring vernal pools?  
16 A. (Sanford) No. I would emphasize the difficulty in  
17 creating vernal pools has to do with establishing a  
18 vernal pool hydrology, which requires that the pools  
19 maintain water for a period of at least two months  
20 during the vernal pool season. And, that's why I put  
21 that suggestion in there, is that particular monitoring  
22 should be done during that first season, to make sure  
23 that they don't go dry too quickly.  
24 Q. But there's monitoring in here, right?

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- 1 A. (Sanford) Yes, there is. It's too general, is what I'm  
2 saying.  
3 Q. It's too general. Okay. And, I believe, Dr. Mari ani,

4 on Page 10 of your prefiled testimony, you provided  
5 some recommendations about vernal pools, is that  
6 correct?

7 A. (Mariani) That's correct.

8 Q. Okay. Is it fair to say those recommendations are  
9 somewhat detailed?

10 A. (Mariani) Yes, they are.

11 Q. Okay. Now, how would you react to the vernal pool  
12 mitigation conditions that the Department of  
13 Environmental Services has included in its proposed  
14 certificate -- Wetlands Permit conditions?

15 A. (Mariani) While I agree with their conditions, I would  
16 also add some specific conditions as it relates to the  
17 performance standards for meeting criteria for actually  
18 determining whether the pool is a success or not, and  
19 whether or not there needs to be any kind of  
20 remediation to make the pool a success. At the present  
21 time, the conditions that DES have in this Draft Permit  
22 are not sufficient for anyone to come to a conclusion  
23 as to whether or not the vernal pool was a success.

24 Q. And, why is that your position?

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1 A. (Mariani) Well, because the conditions that they  
2 specified in here, and I'll reiterate what Gary said,  
3 do not specifically call out any physical  
4 characteristics of the vernal pool, for instance, being  
5 able to retain water during the vernal pool season for  
6 a period of two months, nor do they specifically state  
7 what the criteria -- the biological criteria that are  
8 going to be -- have to be met in order for the vernal

9 pool to be a success. Whether or not obligate species  
10 have to be present in the pool, whether the pool lacks  
11 any adult fish populations or any other types of  
12 biological indicators that would deem a hole in the  
13 ground a vernal pool.

14 Q. And, are the issues that you just listed addressed by  
15 the New Hampshire Department of Environmental Services'  
16 rules with respect to the creation of vernal pools?

17 A. (Mariani) The condition of being able to hold water is  
18 in there, in their regulations, as well as the ability  
19 for the vernal pool to support vernal pool species.  
20 However, this permit doesn't really reflect that.

21 Q. Well, and how about Condition 19, where the -- where  
22 DES requires that the final siting location of the  
23 vernal pools has to be coordinated and field-verified  
24 by the designated certified wetlands scientist,

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1 Wetlands Bureau staff, and a New Hampshire Fish & Game  
2 biologist. Is it your position or your opinion that  
3 those three professionals would not be able to follow  
4 the standards in the New Hampshire Department of  
5 Environmental Services' Wetlands Bureau for the  
6 creation -- the creation of vernal pools and  
7 implementation of vernal pools, according to plans for  
8 particular projects?

9 A. (Mariani) That particular condition is only for the  
10 siting of it, actually, the location of the potential  
11 vernal pool.

12 Q. Okay. How about Condition Number 1 [21?], where we  
13 talked before, the Department of Environmental Services

14 requires that the creation areas be "properly,  
15 constructed, monitored, and managed in accordance with  
16 the final mitigation plans", and then "remedial actions  
17 be taken that may be necessary to create functioning  
18 wetland areas, similar to those of the wetlands  
19 destroyed by the project"?

20 A. (Mariani) Which condition is this again now?

21 Q. Twenty-one.

22 A. (Mariani) Again, it is a general condition. If the  
23 agency requires them to go back and remediate, then I  
24 guess they'll have to go back. My only objection to it

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1 is that it does not specifically call out the criteria  
2 by which they're going to make a decision as to whether  
3 or not the vernal pool is a success.

4 Q. Okay. Now, isn't it true that the New Hampshire  
5 Department of Environmental Services has also made a  
6 finding, and I believe it's Finding Number 11, with  
7 respect to the Wetlands Permit Application. And, I  
8 apologize, because there's -- I think there's a couple  
9 of number 11s. But the number 11 that I'm referring to  
10 is on the -- I believe the fourth page of the Wetlands  
11 Permit conditions.

12 A. (Mariani) The Wetlands Bureau conditions?

13 Q. Yes. And, isn't it true that the Department of  
14 Environmental Services' Finding Number 11 there,  
15 relative to the Wetlands Permit Application, is that  
16 "The applicant has demonstrated by plan and example  
17 that each factor listed in Env-Wt 302.04(a),  
18 Requirements for Application Evaluation, has been

19 considered in the design of the project"?  
20 A. (Mariani) That's what they state.  
21 Q. Okay. And, isn't it also true that the New Hampshire  
22 Department of Environmental Services has also found  
23 that the Applicant's proposed Wetlands Mitigation Plan  
24 meets the ratios outlined in Chapter 800 of the  
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1 Wetlands Mitigation rules?  
2 A. (Mariani) Yes, it does.  
3 Q. Okay. Now, Dr. Mariani, were you here when Mr. Lobdell  
4 testified last week about the ratio that the mitigation  
5 parcel, the 620 acre wetlands mitigation parcel bears  
6 to the acreage of wetlands impacted?  
7 A. (Mariani) Yes, I was.  
8 Q. Do you recall what that number is, that ratio?  
9 A. (Mariani) I don't recall specifically the ratio, but I  
10 know it exceeds the required ratio by quite a bit.  
11 Q. Okay. And, if I were to say it was something like "45  
12 to 1", would you agree with me, subject to check?  
13 A. (Mariani) Yes.  
14 Q. And, what is the required ratio by DES?  
15 A. (Mariani) I believe it's 15 to 1.  
16 Q. Okay. Now, were you here when Mr. Lobdell testified  
17 about how -- how it came to be that the Applicant  
18 identified the acreage, the 620 acres that have been  
19 designated for wetland mitigation?  
20 A. (Mariani) Yes.  
21 Q. And, do you recall that he testified that he walked the  
22 site with Ms. Lori Sommer, who is the Director of the  
23 New Hampshire Wetlands Bureau Mitigation Program?

24 A. (Mari ani ) Yes.

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1 Q. Okay. And, yet, is it still your testimony that that  
2 620 acres of -- that 620 acre parcel that has been  
3 designated as mitigation for the wetlands impact in  
4 this Project is insufficient?

5 A. (Mari ani ) Yes, it's insufficient because we're still  
6 going to have a net loss of wetland areas as a result  
7 of this Project.

8 Q. Is there any requirement in the State of New Hampshire  
9 that requires an Applicant to replace or create, on an  
10 acre-for-acre basis, wetlands that a particular project  
11 impacts?

12 A. (Mari ani ) Well, there are options for offering  
13 compensation or mitigation. This Project does not  
14 offer compensation through creation or restoration.  
15 And, the reasons why they chose not to do that were the  
16 fact that they felt that the creation of wetlands or  
17 restoration of wetlands on the Project site could not  
18 be feasibly done, given the fact that the Project site  
19 was going to be continually logged by commercial  
20 forestry. Now, that has changed, and there are  
21 opportunities to compensate on a one-to-one basis.  
22 Again, the use of upland buffer as compensation is only  
23 one option.

24 Q. Well, I don't believe that you answered my question,

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1 and I don't mean to be difficult, but maybe I'll phrase

- 2 it a different way. Is it your position that the  
3 Applicant must create 13.5 acres of new wetlands to  
4 compensate for the 13.5 acres of wetlands that the  
5 Project will be impacting?
- 6 A. (Mariani) No, there are options in the State of New  
7 Hampshire for compensation.
- 8 Q. Okay. And, isn't the 620 acre wetlands mitigation  
9 parcel one such option?
- 10 A. (Mariani) Yes, it is.
- 11 Q. It just happens --
- 12 A. (Mariani) It is one of three different options.
- 13 Q. And, it just so happens that you don't happen to agree  
14 with that, is that fair?
- 15 A. (Mariani) It is true that I do not agree with the  
16 compensation that's being offered as replacement for  
17 lost wetland.
- 18 Q. And, isn't it also true again that the State of New  
19 Hampshire does not require an Applicant, such as GRP,  
20 to go out and create, on an acre-for-acre basis, a new  
21 wetland for every acre that's impacted?
- 22 A. (Mariani) Not if they present a plan that has a upland  
23 buffer compensation mitigation package, but they could.
- 24 Q. Now, neither of you gentlemen delineated the wetlands  
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- 1 that are the subject of this particular project, did  
2 you?
- 3 A. (Mariani) That's correct.
- 4 A. (Sanford) No.
- 5 Q. Now, Dr. Mariani, I noted that, unlike Dr. Sanford, you  
6 did not file supplemental prefiled testimony, why was

7 that?

8 MR. ROTH: Objection. That's asking  
9 for, essentially, insight into the process of, you know,  
10 the attorney and his experts. And, I don't think that's  
11 appropriate.

12 MS. GEIGER: Mr. Chairman, I'm not  
13 asking that. I'm just curious as to why we got some  
14 reaction or some response from, on the record and in  
15 supplemental prefiled from Dr. Sanford, but we didn't get  
16 any from Dr. Mariani.

17 MR. ROTH: I know that's what she's  
18 asking, and the objection is the same. It's asking for  
19 insight into the attorney/client -- or, the  
20 attorney/expert relationship. I think that's completely  
21 inappropriate.

22 CHAIRMAN GETZ: Yes, I'm going to  
23 sustain the objection. I'm not sure about the relevance,  
24 in any case, of why they decided not to submit any

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1 particular kind of testimony.

2 MS. GEIGER: Okay, I'll move on.

3 BY MS. GEIGER:

4 Q. Dr. Mariani, on Page 7 of your prefiled testimony, you  
5 state that the Project "has not demonstrated that the  
6 final design of the Project has less environmental  
7 impact than a scaled down project or a project that  
8 utilizes turbines...that are less environmentally  
9 sensitive." Is that correct?

10 A. (Mariani) "At locations that are less environmentally  
11 sensitive".

12 Q. Okay. But isn't it true that the Applicant did, in  
13 fact, explore many alternatives to the current turbine  
14 layout?

15 A. (Mariani) My reading of the alternatives analysis is  
16 that they explored a no-builds alternative, an  
17 alternative that utilized 67 smaller turbines, and the  
18 current project.

19 Q. Well, isn't it also true that the Applicant originally  
20 looked at siting turbines on the ridges to the west of  
21 the proposed site, but changed its plans to reduce the  
22 impacts to the Nashua Stream Forest and the Phillips  
23 Brook watershed areas?

24 A. (Mariani) Yes, it is.

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1 Q. Okay. So, that would be less of an environmental  
2 impact, correct?

3 MR. ROTH: Objection. There's no basis  
4 in the record for showing that 67 turbines placed anywhere  
5 would be less of an environmental impact. I'm not sure  
6 what --

7 MS. GEIGER: Well, I apologize. I'm not  
8 talking about the 67 turbines. I'm talking about avoiding  
9 the Nashua Stream Forest and the Phillips Brook watershed  
10 areas.

11 MR. ROTH: I maintain the objection.  
12 There's no evidence that putting turbines on the other  
13 side of the Nashua Stream or Phillips Brook or anywhere  
14 else would have less of an environmental impact.

15 CHAIRMAN GETZ: I think the question is,  
16 she's asking the witness what his opinion of that state of

17 affairs is. Am I interpreting you correctly, Ms. Geiger?

18 MS. GEIGER: That's correct.

19 MR. ROTH: I understood her to be saying  
20 that she's asking him to agree that that would be less of  
21 an environmental impact. And, I'm saying there's no  
22 evidence in the record of the environmental impact of  
23 building turbines on the other side.

24 CHAIRMAN GETZ: And, I think the  
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1 question that she's asking, and let me see if I can  
2 establish this, she's asking the witness "if such a case  
3 would represent less of an environmental impact, based on  
4 his review of the documents in this proceeding?" And, I  
5 think that's a fair question.

6 MR. ROTH: Stated that way, I guess I  
7 can't argue with you, but that's not the question she  
8 asked, Mr. Chairman.

9 MS. GEIGER: I like the question you  
10 asked, Mr. Chairman. And, I'll ask Mr. Patnaude to read  
11 it back.

12 (Short pause.)

13 MS. GEIGER: Well, actually, why don't I  
14 do this and save some time.

15 BY MS. GEIGER:

16 Q. I'm going to show Dr. Mariani Page 56 of the  
17 Application, this is in Volume 1, and, as I indicated,  
18 it's Page 56, at the bottom. And, I'd like you to read  
19 into the record the last paragraph there.

20 A. (Mariani) Where it starts "Additional"?

21 Q. Yes.

22 A. (Mariani) "Additional benefits of the present design --

23 [Interruption]

24 CHAIRMAN GETZ: Start again.

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1 BY THE WITNESS:

2 A. (Mariani) Additional benefits of the present design  
3 include a larger distance of separation from the Nash  
4 Stream Forest, significant reduction in length of roads  
5 and collection line, and eliminating the need to cross  
6 the Phillips Brook watershed multiple times with  
7 collection lines and proposed access roads. The final  
8 design reduces the amount of area disturbed while  
9 maintaining Project viability. Benefits not directly  
10 related to reducing site disturbance include reducing  
11 the visibility of the Project, reducing the number of  
12 turbine foundations by half as a result of using fewer  
13 higher rated turbines, and eliminating the need for the  
14 cut-and-fill required to support the 34 turbines that  
15 will not be built.

16 BY MS. GEIGER:

17 Q. So, based on -- I'll take that back. Based on your  
18 reading of that paragraph, isn't it fair to say that  
19 the Applicant did, in fact, consider alternatives and  
20 resulted in or settled upon the current plans in order  
21 to avoid other impacts?

22 A. (Mariani) Based on that paragraph, that's correct.  
23 However, as I said before, there was no information in  
24 the Application that demonstrates that that statement

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1 is correct. There was no information provided that you  
2 could go back to and look at that other design and  
3 determine independently whether or not that statement  
4 is correct.

5 Q. Now, I believe in questions from Ms. Linowes this  
6 afternoon, there was some discussion about whether the  
7 Applicant looked at a project with fewer turbines. Do  
8 you recall that?

9 A. (Mariani) Vaguely.

10 Q. Okay. Vaguely. Now, I'm going to read to you Page 59  
11 from the Application, which says that "Granite Reliable  
12 Power evaluated a project with fewer turbines, and  
13 determined that such a project would reduce the  
14 localized environmental impacts only marginally. Is  
15 that the phrase that you were trying to recollect when  
16 you, I believe, paraphrased something similar?

17 A. (Mariani) I believe it is, yes.

18 Q. Okay. Now, on Page 7 of your prefiled testimony, you  
19 say that the Applicant "did not evaluate a project that  
20 uses a mix of turbine technologies at different  
21 locations to reduce impacts to wetlands and wildlife  
22 habitat". Do you recall that?

23 A. (Mariani) Yes.

24 Q. Do you know if it's technically feasible for a single  
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1 wind energy project to use different turbines or  
2 different types of turbines at different locations  
3 within the same Project site?

4 MR. ROTH: I object to this question.

5 The witness is a wetlands expert. He's not an electrical  
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6 engineer or a wind power plant engineer.

7 CHAIRMAN GETZ: Well, I'm going to  
8 overrule the objection. I think he's opened the door with  
9 his testimony.

10 WITNESS MARIANI: Can you repeat that?

11 BY MS. GEIGER:

12 Q. Do you know if it's technically feasible for a single  
13 wind energy project to use different types of turbines  
14 at different locations within the same project site?

15 A. (Mariani) At the time of my prefiled testimony, I did  
16 not know that. Subsequently that, to my testimony, I  
17 did hear other witnesses indicate that a mix of  
18 turbines is not technically feasible.

19 Q. Okay. Do you know whether it would be financially  
20 feasible for this particular project to do that, if it  
21 could?

22 MR. ROTH: Objection. The same  
23 objection.

24 CHAIRMAN GETZ: Overruled.

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1 BY THE WITNESS:

2 A. (Mariani) I don't know.

3 MS. GEIGER: Just a minute, Mr.  
4 Chairman. Okay. I have no further questions. Thank you.

5 CHAIRMAN GETZ: Thank you. Questions  
6 from the members? Mr. Scott.

7 BY DIR. SCOTT:

8 Q. Mr. Mariani, other witnesses haven't been able to see  
9 me, so I apologize for that. Back to the DES 401 Water  
10 Quality Certificate, under the -- unfortunately, it's

11 not numbered here, but back under the "Mitigation  
12 Conditions" for "Wetland construction". I just want to  
13 make sure, if I understood you right, you were  
14 suggesting perhaps this wasn't sufficient. And, so we  
15 can understand better, as the subcommittee here, what  
16 conditions you may be suggesting, I just want to make  
17 sure I understand. I'll read you a little bit from 21,  
18 talking about vernal pool creation, and it talks about  
19 taking "remedial actions" necessary to "create a  
20 functioning wetland area similar to those wetlands  
21 destroyed". And, then, if I go to Item 22, it talks  
22 about the Certified Wetland Scientist being required to  
23 do "inspections for the first three consecutive  
24 breeding seasons", and to look at the "success of the

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1 vernal pool creation", and "schedule remedial action as  
2 necessary" and report that to DES for that same period.  
3 Can you flesh that out a little bit? So, if I  
4 understood correctly, you think there should be a  
5 little bit more detail and what would that detail be?  
6 A. (Mariani) I do believe there should be, in the permit  
7 conditions, greater detail, for whoever is going to be  
8 doing this work, to at least understand what the  
9 conditions and the requirements are going to be by  
10 which DES is going to make a decision as to whether or  
11 not the vernal pool is a success.

12 I believe, in my prefiled testimony, I  
13 did put some guidelines together that our firm  
14 typically uses to evaluate whether or not a vernal pool  
15 that is being constructed is a success. It requires

16 monitoring during the vernal pool season, monitoring  
17 for the presence of species, as well as listening to  
18 chorusing of frogs, the presence of egg masses,  
19 biological indicators, as well as physical parameters,  
20 such as water elevations. I just felt that the  
21 conditions in this particular permit, draft permit  
22 should be fleshed out a little bit more for anybody  
23 that's going to be required to meet them. So, they  
24 explicitly know when and what to do and what to do --

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1 and when to do it.

2 DIR. SCOTT: Thank you.

3 CHAIRMAN GETZ: Mr. Northrop.

4 MR. NORTHROP: Yes. Thank you. This is  
5 for Mr. Mariani.

6 BY MR. NORTHROP:

7 Q. On balance and overall, do you think this would be a  
8 better project if the Applicant provided a direct  
9 one-to-one wetlands replacement for the 13 acres  
10 plus/minus impacted, rather than providing the 620 odd  
11 acre Wetlands Mitigation Plan as they proposed?

12 A. (Mariani) That's kind of a loaded question, but I'll  
13 answer it this way. I think that some additional  
14 wetland replacement or creation or restoration would  
15 enhance the mitigation package, to the extent that it  
16 would mitigate for lost wetland acreage, which will  
17 never be recouped.

18 MR. NORTHROP: Okay. Thank you.

19 CHAIRMAN GETZ: Other questions?

20 Mr. Harrington.

21 MR. HARRINGTON: I'm just going to  
22 direct my questions to either of you, and whoever feels  
23 like answering, please jump in, because I'm sure you both  
24 can probably answer. And, I can't remember who said what

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1 each time.

2 BY MR. HARRINGTON:

3 Q. So, just maybe backing up a little bit here so we're  
4 correct -- clear on terminology. We're talking a lot  
5 about "wetlands", and we use the term "mitigation" and  
6 "restoration". So, am I correct in assuming that  
7 "restoration" means some area of wetlands that was  
8 destroyed or affected as part of the construction of  
9 the project, then gets returned to its pre-project  
10 state?

11 A. (Sanford) Actually, "mitigation" is sort of a general  
12 term, and it encompasses three things: One is  
13 "creation", construction of a wetland; second is  
14 "restoration", taking a wetland and for -- as an  
15 example, it was infested with phragmites, and --

16 Q. Excuse me, what?

17 A. (Sanford) Infested with weeds.

18 Q. Okay.

19 A. (Sanford) -- and returned it to an improved condition.  
20 And, what's referred to as "enhancement", when you take  
21 an existing wetland and enhance its functions in one  
22 way or another.

23 Q. So, of those three then, I guess the one that would be  
24 -- could be done someplace else would be "creation".

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- 1 In other words, you affect an acre of wetlands over  
2 here, and you create a new acre of wetlands over there.  
3 Is that the idea of that?
- 4 A. (Sanford) That's one way. Although, the Applicant, in  
5 its submission, had indicated there are opportunities  
6 for restoration also.
- 7 Q. Okay. So, that would be -- and that's why I want to  
8 try and get the terms down. When you say  
9 "restoration", with regards to how the wetland is  
10 before the project starts, in other words, you're  
11 saying you go to a wetland that's not in such good  
12 shape, and then you make it better as part of the  
13 project? Or, as part of the construction, you cause it  
14 to deteriorate, and then you ameliorate what you did to  
15 deteriorate the wetland?
- 16 A. (Sanford) No, you go to another wetland that may have  
17 been filled, for example, remove the fill to bring it  
18 back to a wetland condition.
- 19 Q. All right. I just wanted to make sure, because of the  
20 terminology, we have a lot going on here. There was a  
21 lot of discussion on "what happens to the acreage in  
22 the Mitigation Plan", both the 620 acres from the --  
23 which was in the original wetlands mitigation, then I  
24 believe it was 1,735 acres from the -- I call it the

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- 1 "Settlement Agreement", whatever you want to, that  
2 AMC/Fish & Game/Granite Ridge Agreement.  
3 Now, one of you stated that "It wasn't

4 really possible to determine how much loss of wetlands  
5 that this would prevent, because you don't know how  
6 much wetlands were going to be affected over the next  
7 20 or 30 years." But is it reasonable to assume that,  
8 if this area continued to get logged for, say, another  
9 25 years, that there would be a number of wetlands that  
10 were disturbed or affected, or whatever the correct  
11 term is, by the building of -- continuous building of  
12 logging roads for 25 years?

13 A. (Sanford) Yes. I'm just doubtful that it would amount  
14 to the amount that -- the number of acres that we're  
15 talking about.

16 Q. Okay.

17 A. (Sanford) And, I would think there are ways of  
18 estimating that that the Applicant could have done.

19 Q. Okay. But you're just not aware of that being done,  
20 but I suppose you could look historically back at  
21 previous logging permits or something to --

22 A. (Sanford) Exactly.

23 Q. Okay. All right. There was a lot of mention of "no  
24 net loss of function" goal. Now, other than seemingly

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1 common sense that that would be a goal one would want  
2 to achieve all the time. We heard that that was not  
3 part of -- a specific part of New Hampshire law. Where  
4 does that come from or is that just, you know, good  
5 environmental practice?

6 A. (Sanford) It is good environmental practice, but it  
7 really stems from the federal government, issuing a  
8 requirement that projects meet the "no net loss".

9 Q. So, that's a federal EPA or Army Corps of Engineers?  
10 Is it a rule somewhere?

11 A. (Sanford) I think it was originally mandated by a  
12 Presidential -- yes, under Bush, original Bush.

13 Q. The original Bush. Compared to the unoriginal one.  
14 [Laughter]

15 MR. ROTH: You mean an "Executive  
16 Order"?

17 WITNESS SANFORD: Yes, an Executive  
18 Order.

19 BY MR. HARRINGTON:

20 Q. Okay. And, then, one last question. Again, we've had  
21 a lot of discussion on the mitigation requirement in  
22 vernal pools, and we went over the type of qualified  
23 personnel and so forth who would be there. Is there  
24 anything unique about these vernal pools that would

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1 require some unique type of monitoring that -- other  
2 than you do to all vernal pools or most vernal pools?

3 A. (Sanford) That was one of my critiques of the material  
4 that was submitted. I had recommended that habitat  
5 characteristics be identified and inventoried.

6 Q. Okay.

7 A. (Sanford) But we don't have them.

8 Q. So, you don't know at this point?

9 A. (Sanford) So, we don't know.

10 MR. HARRINGTON: That's okay. That's  
11 all.

12 CONTINUED BY THE WITNESS:

13 A. (Sanford) There's, I think, a short paragraph or a

14 sentence or two, but in tabular form, of each vernal  
15 pool, but not sufficient to evaluate what the key  
16 characteristics should be.

17 BY MR. HARRINGTON:

18 Q. Okay. And, that would be, then, I would gather, that  
19 would be helpful information to have when you went to  
20 create the replacement vernal pools?

21 A. (Sanford) Yes. I mean, some of these vernal pools that  
22 are -- would be impacted are basically from logging  
23 operations, and may support only things like wood  
24 frogs. Other vernal pools are more productive. I

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1 mean, vernal pools vary all over the scale, in terms of  
2 their quality.

3 Q. Okay. So, it's not "if you've seen one vernal pool,  
4 you've seen them all", doesn't apply?

5 A. (Sanford) That's right.

6 Q. Okay. Getting past that, and once these vernal pools  
7 would then be established, there was some inference  
8 that there should be a list of criteria of very  
9 specific things to verify. But wouldn't somebody who's  
10 a Certified Wetland Scientist, a Fish & Game Biologist,  
11 and the Wetlands Bureau staff, wouldn't they know, once  
12 these vernal pools were established, if they were still  
13 working properly or doing whatever a vernal pool is  
14 supposed to doing two months down the road, without a  
15 specific checklist. I could go with a checklist. But  
16 I'm supposed to tell you if there's frogs there or if  
17 there's croaking or whatever it was you were referring  
18 to. But I assume a certified biologist -- a wetland

19 scientist would probably know what to look for in a  
20 vernal pool?

21 A. (Mariani) Certainly hope so. However, the use of a  
22 standard format for conducting a vernal pool  
23 investigation, if you want to call it that, is  
24 something that is key, because there's -- there's just  
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1 so many indicators, and they're very transient in  
2 nature, over the course of a short period of time, that  
3 the observations have to be made and documented. And, if  
4 they're not done, then you have to rely on a person's  
5 word-of-mouth, so to speak.

6 MR. HARRINGTON: Okay. Thank you.

7 That's all the questions I have, Mr. Chairman. Thank you.

8 CHAIRMAN GETZ: Dr. Kent.

9 DR. KENT: Either one of you are free to  
10 respond.

11 BY DR. KENT:

12 Q. Are you aware that the, of the 13.5 acres of impacted  
13 wetlands, they range from about 0.01 to 0.4 acres in  
14 size?

15 A. (Sanford) Yes.

16 A. (Mariani) Yes.

17 Q. And, you're familiar that or aware that there's 537  
18 separate impacts?

19 A. (Sanford) Yes, I am.

20 Q. So, does that characterize in your mind what kind of  
21 wetlands we're dealing with out here?

22 A. (Sanford) Over half of those 550 impacts are associated  
23 with the road ditches that exist today. And, the other

24 half involve primarily the development of new road  
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1 systems and the turbines at high elevation themselves.  
2 There are many impacts well above a thousand square  
3 feet.  
4 Q. Above a thousand square feet?  
5 A. (Sanford) Yes.  
6 Q. Well, most of the property is a thousand el., so that's  
7 no surprise.  
8 A. (Sanford) No, no. I don't mean in elevation, square  
9 feet.  
10 Q. A thousand square feet, yes. All right. Would those  
11 be the ones that are due to forestry activities or  
12 natural up on the high elevation areas?  
13 A. (Sanford) No, these -- I'm talking about the proposed  
14 impacts from the project from constructing.  
15 Q. Right.  
16 A. (Sanford) They would fill these wetlands or otherwise  
17 destroy them through excavation.  
18 Q. Right. But, of these wetlands, you just said they were  
19 most -- you said a good portion of them were a thousand  
20 square feet in size.  
21 A. (Sanford) Or more.  
22 Q. Are those the wetlands we're finding up at the high  
23 elevation sites or are those the wetlands that are  
24 created by forestry activities?

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1 A. (Sanford) Those are natural wetlands at high elevation  
2 sites by and large.

- 3 Q. Do you place much value professionally in those  
4 wetlands created by forest activities, those ditches  
5 and log yards and things like that, that technically  
6 qualify, based on the three parameters?
- 7 A. (Sanford) The drainage ditches have a function,  
8 obviously. They're engineered, I mean, they're going  
9 to be replaced if they didn't have value. But they  
10 don't achieve the kind of value we're talking about in  
11 the wooded wetlands that are going to be impacted.
- 12 Q. Are you aware of the reasons for rejecting the  
13 mitigation option of creating wetlands?
- 14 A. (Sanford) I'm sorry?
- 15 Q. Are you aware of the reasons for rejecting the option  
16 of creating wetlands?
- 17 A. (Sanford) The primary reason, as I understand it, is  
18 the potential for a created wetland again being lost  
19 through additional logging activities, so that you  
20 couldn't guarantee the long-term viability of it.
- 21 Q. And, in addition, I would, if you -- if I might get you  
22 to the right place, in what is Binder 6, and you'll  
23 have to help me out here.

24 MR. IACOPI NO: Exhibit 2.2.

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- 1 BY DR. KENT:
- 2 Q. Attachment E, which is Appendix 45, Page 9. I'll just  
3 read it for you, it's not that critical.
- 4 MR. IACOPI NO: Forty-five, did you say?
- 5 DR. KENT: Yes. Tab 45, Page 9.
- 6 BY DR. KENT:
- 7 Q. At the bottom of the page, "Wetland Creation".

- 8 A. (Sanford) Yes.
- 9 Q. The last primarily three lines. You were correct,  
10 you're half correct. One of the reasons is, in fact,  
11 because we're talking about isolated wetlands and  
12 commercial forest setting.
- 13 A. (Sanford) Yes.
- 14 Q. The other reason is that we're looking at 40 years to  
15 get a forested wetland back.
- 16 A. (Sanford) Yes. Forested wetlands are long-term  
17 propositions. I would agree with that.
- 18 Q. Right. So, given the opportunity to set aside a small  
19 isolated wetland, if we were trying to replicate, and  
20 wait 40 years for the functions to return, or preserve  
21 a large contiguous piece, am I listening to your  
22 testimony correctly, that you prefer the creation?
- 23 A. (Sanford) No. But I'm not saying that "preservation is  
24 a bad idea". I love the idea. What I'm saying is that

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- 1 the Project, as proposed, simply does not meet, by the  
2 numbers, the "no net loss" standard. We will end up,  
3 in 100 years, everything else being equal, with  
4 10 acres or so less wetlands than we have now.
- 5 Q. In your business, Sanford Environmental, do you  
6 restrict yourselves to mitigation that's only  
7 restoration and creation?
- 8 A. (Mariani) No. No, we don't.
- 9 Q. The vernal pools on the site, there are eight them, are  
10 you aware that seven of them are from skidder trails?
- 11 A. (Sanford) Yes, I am.
- 12 Q. And, do you know where the proposed mitigation for

- 13 vernal pools will occur?
- 14 A. (Sanford) No, that information was not presented.
- 15 Q. That, on Page 16 of the same chapter, the same tab I'm
- 16 showing you, those vernal pools are proposed in the 620
- 17 acre Phillips Brook area?
- 18 A. (Sanford) Yes.
- 19 Q. To your mind, does that increase the chances of
- 20 providing high value and being successful?
- 21 A. (Sanford) It increases the chance of being successful,
- 22 if it's in an area that can be preserved, if that's
- 23 what you're asking?
- 24 Q. Yes. One more. You got into a discussion with Ms.

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- 1 Linowes about the size of impacts allowed through the
- 2 Corps of Engineer process, and you told the story about
- 3 25 years ago the Attleboro Mall or some mall being
- 4 rejected for 22 acres?
- 5 A. (Sanford) Yes.
- 6 Q. Are you familiar with any more recent information about
- 7 the size of wetland impacts permitted by the Corps of
- 8 Engineers?
- 9 A. (Sanford) Yes. The Corps has a requirement, a
- 10 programmatic permit here in New Hampshire, that allows
- 11 minor projects to go forward. And, I believe that's
- 12 projects less than an acre, but I won't swear to it.
- 13 And, larger projects have to go through what this
- 14 Project is doing, an individual feeling. In which the
- 15 Corps is required to evaluate alternatives, and make
- 16 sure that there's no practical alternatives to the
- 17 project, to evaluate, and then to make sure that it

18 meets 404(b)(1) guidelines, which basically says that  
19 there can be no significant adverse impacts. And, once  
20 that is achieved, then it must look at potential  
21 mitigation to achieve the "no net loss" standard.

22 Q. Do you know if the Corps has permitted a project to  
23 occur here or anywhere else larger than 13.5 acres?

24 A. (Sanford) I'm sure it has, particularly, probably with  
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1 highways.

2 DR. KENT: Thank you.

3 CHAIRMAN GETZ: Director Normandeau.

4 DIR. NORMANDEAU: Just one question that  
5 hasn't been clear to me.

6 BY DIR. NORMANDEAU:

7 Q. Have you gentlemen actually gone up there and toured  
8 this area?

9 A. (Mariani) We were given a motorized tour back in  
10 December, by Mr. Josh Brown. Unfortunately, the time  
11 of the year restricted access to the peaks or the  
12 ridges, so we had to follow along the existing roadways  
13 and access roads within the Project, and look at the  
14 lower elevations of the Project area.

15 DIR. NORMANDEAU: Thank you.

16 CHAIRMAN GETZ: Other questions?

17 Mr. Iacopino.

18 MR. IACOPI NO: I just have some  
19 questions about the vernal pool issue, and I don't want to  
20 question it to death, but -- and either one of you can  
21 answer these questions, I imagine.

22 BY MR. IACOPI NO:

23 Q. Did you review the Department of Environmental  
24 Services' regulations before giving your opinions in  
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1 this matter?

2 A. (Mariani) I did not review those regulations prior to  
3 my prefiled testimony.

4 Q. Have you reviewed them since?

5 A. (Mariani) Yes.

6 Q. Are you aware that there's a fairly detailed definition  
7 of what is a "vernal pool"?

8 A. (Mariani) Uh-huh.

9 Q. And, it has various criteria in it, almost like a  
10 checklist?

11 A. (Mariani) Yes.

12 Q. Okay. And, as I understand it, and maybe I'm just  
13 missing something here, but, as I understand it, at  
14 least the why they're defined by the Department of  
15 Environmental Services, it would not include a ditch  
16 that's caused by logging or agricultural operations  
17 conducted in accordance with New Hampshire laws, is  
18 that correct?

19 A. (Mariani) I guess that's open to interpretation, but go  
20 ahead.

21 Q. Okay. Well, what's your interpretation of that,  
22 because I'm curious. I'm learning here that a number  
23 of these vernal pools that are going to be replacements  
24 are for essentially ditches alongside logging trails.

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1 Is there a distinction between a "ditch alongside a  
2 logging trail" and "one that is created by logging and  
3 agricultural operations"?

4 A. (Mariani) Well, that's an opinion. I mean, I guess  
5 that opinion was made by Ray Lobdell in the original  
6 characterization of the Project. I mean, if you're  
7 asking me if a ditch or a rut in the road is a vernal  
8 pool or not a vernal pool, because it was made by a  
9 logging truck? Then, obviously, according to the  
10 regulations, it isn't. But I'm assuming, and I can't  
11 speak for Ray, himself, but, when he went to the site,  
12 he identified these areas as vernal pools based on  
13 their biological characteristics. And, whether or not  
14 they were made by a logging truck, I guess, was an  
15 opinion on his part. I mean, that --

16 Q. I see. Okay. And, the other question I have about the  
17 vernal pools is, I understand that you would prefer to  
18 see some time frames for inspections and things like  
19 that as part of the conditions, correct?

20 A. (Mariani) Yes.

21 Q. But you also talked about "conditions of success", is  
22 that correct?

23 A. (Mariani) Yes.

24 Q. And, do you think that the -- that the definition of  
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1 "vernal pool", as set forth in the DES regulations at  
2 Section 101.99, give a good criteria of success?

3 A. (Mariani) Yes, they do.

4 Q. Okay. So that, in this permit, the Applicant is  
5 required to create vernal pools, correct?

6 A. (Mariani) Yes.  
7 Q. And, so, those vernal pools would be subject to this  
8 section of the environmental regulations, wouldn't  
9 they?  
10 A. (Mariani) Yes, they are.  
11 MR. IACOPI NO: Okay. I have no other  
12 questions.  
13 CHAIRMAN GETZ: Anything else from the  
14 members?  
15 (No verbal response)  
16 CHAIRMAN GETZ: Would you like some time  
17 for preparing redirect?  
18 MR. ROTH: Yes, I would like some time  
19 to consult with them. I'm not sure we're going to do any,  
20 but I would like a few minutes just to talk about it.  
21 CHAIRMAN GETZ: Well, let's take 15  
22 minutes and give everyone a break.  
23 MR. ROTH: Thank you.  
24 (Whereupon a recess was taken at 3:27  
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1 p.m. and the hearing reconvened at 3:44  
2 p.m.)  
3 CHAIRMAN GETZ: Okay. Good afternoon.  
4 We're back on the record. And, opportunity for redirect,  
5 Mr. Roth.  
6 MR. ROTH: Thank you. I have only a  
7 couple of questions on redirect.  
8 REDIRECT EXAMINATION  
9 BY MR. ROTH:  
10 Q. Dr. Sanford and Dr. Mariani, there was some discussion

11 during your cross-examination about the roadside  
12 ditches and sort of the man-made things that have  
13 become wetlands. Can you comment on the value of those  
14 features?

15 A. (Mariani) Well, you know, a lot of discussion has been  
16 made about the lack of value that ditches have. But  
17 they can have important value with regard to  
18 controlling storm waters for flood storage, as well as  
19 removal of sediment during rainfall events. So, from  
20 that standpoint, and, if a ditch was replaced and  
21 actually built to have some wetland characteristics, it  
22 may have other values too with regard to habitat.

23 Q. And, if a -- this is a similar question, but, if a  
24 wetland were created, and it took 40 years for it to

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1 become a forested wetland, wouldn't it still have value  
2 as a wetland while it developed or evolved into a  
3 forested wetland over some period of time?

4 A. (Mariani) Yes.

5 Q. Okay. Now, you heard testimony last week concerning  
6 the project's storm water run-off system, including  
7 ditches and culverts and rock sandwiches and all that  
8 stuff, correct?

9 A. (Mariani) Yes.

10 Q. And, what's your impression or what kind of a condition  
11 would you recommend with respect to future care and  
12 maintenance of that system?

13 A. (Mariani) With regard to the new ditches culvert  
14 systems?

15 Q. That's right.

16 A. (Mariani) I think it's the same recommendations that  
17 were discussed last week. I mean, there should be a  
18 maintenance program, to make sure that those ditches,  
19 whether they're put in as wetlands or not, as well as  
20 the culverts, they should have a maintenance program  
21 that maintains the hydrology of those structures for  
22 their carrying capacity during storm events.

23 Q. And, what kind of a duration should a maintenance  
24 program like that have?

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1 A. (Mariani) Well, that depends on the surrounding use.  
2 But, given the situation that these ditches and  
3 culverts are going to be in a fairly unpopulated area,  
4 I would think that, once the Project has been  
5 constructed and stabilized, that, you know, they  
6 probably wouldn't need to be maintained much more than  
7 every ten years or so.

8 Q. But is -- And, that's the frequency. But, in terms of  
9 the duration, should the duration be indefinite?

10 A. (Mariani) Oh. Well, the duration is their lifetime, I  
11 would expect.

12 MR. ROTH: Okay. Thank you. That's --  
13 I have no further questions.

14 CHAIRMAN GETZ: Okay. Anything further  
15 from the members?

16 (No verbal response)

17 CHAIRMAN GETZ: Hearing nothing, then  
18 you're excused. Thank you very much, gentlemen.

19 WITNESS SANFORD: Thank you.

20 WITNESS MARIANI: Thank you.

21 CHAIRMAN GETZ: Okay. I want to follow  
22 up on a couple of things. One is, we have a number of  
23 outstanding record requests. And, I guess -- well, if you  
24 have the information about when each of them would be

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1 available and we can get that right now, that's fine.  
2 But, if we can -- I would at least like to know by  
3 Thursday when these materials are going to be ready. And,  
4 can you respond?

5 MS. GEIGER: We're in the process of  
6 pulling together some of that information. Unfortunately,  
7 Mr. Decker I think is the person who's most familiar with  
8 the timeframes, and he's not here at this time. But we  
9 will definitely have that information for you, a status  
10 report on Thursday.

11 CHAIRMAN GETZ: Okay. Thank you.  
12 Actually, if it could be -- I think the easiest thing  
13 would be to do it in writing, the exhibit number, what it  
14 is, and when you'll have it.

15 MS. GEIGER: Okay.

16 CHAIRMAN GETZ: Thank you. Any other  
17 issues to address of a procedural nature before we close  
18 for the day? I guess my expectation is that we, on  
19 Thursday, we'll start at noon, in Lancaster, at the -- I  
20 keep referring to it as the "DRED offices", but I guess  
21 it's the "Division of Forests and Lands, North Country  
22 Resources Center, on Main Street, in Lancaster. So, we'll  
23 start at noon to have the direct and cross of the last  
24 witness, Mr. Trevor Evans, which I'm taking, if we start

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1 at noon, I assume we'll be giving ourselves a lot of  
2 leeway, in terms of being able to start with the closing  
3 statements at 3:00. Is that a fair conclusion on my part?

4 MR. PATCH: I think so, Mr. Chairman.  
5 Could we just clarify how many closings there will be and  
6 what order they will go in? I believe there was a 30  
7 minute limit.

8 CHAIRMAN GETZ: Thirty minute limit, and  
9 with the Applicant the opportunity to go last. I'm  
10 assuming most folks would want a closing opportunity.  
11 Mr. Roth, I expect you'll be doing a closing and may take  
12 pretty close to the allotted time?

13 MR. ROTH: Well, I imagine. But it's  
14 interesting, Dr. Publicover said something to me that made  
15 me think about whether I should do one at all. And, so,  
16 it is possible that my closing could be quite brief, but I  
17 haven't even begun to work on it.

18 CHAIRMAN GETZ: And, well, Mr.  
19 Mulholland, will you have a closing?

20 MR. MULHOLLAND: I will, and it will be  
21 brief.

22 CHAIRMAN GETZ: And, Dr. Publicover?

23 DR. PUBLICOVER: Yes. Also, five, ten  
24 minutes max.

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1 CHAIRMAN GETZ: And Ms. Linowes?

2 MS. LINOWES: I can't imagine it being  
3 longer than that.

4 CHAIRMAN GETZ: And, Ms. Keene or Mr.  
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5 Odell, you have --

6 MS. KEENE: Yes, about five minutes.

7 CHAIRMAN GETZ: Well, we'll see how it  
8 -- time estimations, if past performance is an indicator  
9 of future results, the estimates of how long it takes to  
10 do things, --

11 MR. HARRINGTON: But we do have all that  
12 on the record, Mr. Chairman, right?

13 MR. ROTH: And, in the North Country,  
14 things are larger than they appear.

15 MR. PATCH: Mr. Chairman, I have a  
16 couple more issues. The second thing, we have the public  
17 hearing, I believe, on Monday night, at 6:30. My  
18 understanding is that the Intervenor's opportunity to  
19 speak is really through this process and not on Monday  
20 night, is that correct? It's not as if an Intervenor  
21 could get up on Monday night and give a public statement?

22 CHAIRMAN GETZ: Well, I think our past  
23 practices in these things is the public statement hearings  
24 are an opportunity for the public to speak, and that they

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1 will be given preference. I mean, it seems to me that, if  
2 parties to the proceeding have had an opportunity to do a  
3 -- to participate and to do closing statements, whether  
4 there's a need for them. But, I think I'm going to give  
5 the opportunity to the public to speak first, and, if a  
6 party wants an opportunity to say something briefly at the  
7 end of the public statement hearings, then I think we  
8 would permit that. I don't think it's precluded. But  
9 they certainly do not have a -- certainly, the preference

10 goes to members of the public, who haven't had an  
11 opportunity or who have determined not to participate in  
12 this proceeding.

13 MR. PATCH: And, you're not expecting, I  
14 mean, a presentation from the Applicant that night, --

15 CHAIRMAN GETZ: No.

16 MR. PATCH: -- along the lines of what  
17 we did in the fall, at the public hearing or anything like  
18 that?

19 CHAIRMAN GETZ: No. I think the  
20 Applicant did what was required of it by the statute, and  
21 this is an additional opportunity for a public statement  
22 hearing. And, I don't expect any direct presentation by  
23 the Applicant or by the Committee. I may provide some  
24 procedural background, not unlike what was done at

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1 Groveton High School. But it's an opportunity to open it  
2 up to whoever in the public would like to speak to the  
3 matters.

4 MR. ROTH: Mr. Chairman, in light of my  
5 statutory role as Counsel for the Public, a thought  
6 crossed my mind would be to forgo my opportunity to make a  
7 closing argument, and instead make a presentation or some  
8 comment at the public comment. And, I say that in -- to a  
9 certain extent because I think it's important for the  
10 public to hear, and I suspect that -- to hear what I have  
11 to say and think about it. And, I suspect we'll get a  
12 better turnout at the public comment evening than we will  
13 at closing arguments. So, I'm -- I'm not saying this in  
14 some kind of strategizing to get the last word on it. But

15 I just think it would be important for my views to be  
16 heard by the public that I represent.

17 CHAIRMAN GETZ: Well, I don't think the  
18 two are exclusive, that you only -- that you can pick one  
19 or you only get one. And, I think it's important for the  
20 Committee to hear your closing statement. And, I think  
21 that's -- so, I'm not sure. It seems to me it might be  
22 two entirely purposes that you have in mind. One is to  
23 speak to us, as a committee, and what kind of a decision  
24 we should make. And, it sounds like you're saying that,

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1 for the public hearing on Monday night, are you speaking  
2 to the issues so that the public at least has an idea of  
3 what the role of the Site Evaluation Committee is and what  
4 the role of Public Counsel is, and how all of those items  
5 and the roles of all of the individuals who have  
6 participated, is that the motion?

7 MR. ROTH: Not necessarily. And, I'm  
8 trying to avoid the impression that I'm trying to take two  
9 bites at the apple, and I'm trying to --

10 CHAIRMAN GETZ: Well, I think it's clear  
11 that there's a different role for Public Counsel. But the  
12 way you were posing it, it seemed like -- to me it sounded  
13 like two different things. What you would do in terms of  
14 a closing statement to us and what you would do Monday  
15 night, in terms of advising the public in what the  
16 Attorney General's Office has been doing and Public  
17 Counsel has been doing as part of these proceedings. But  
18 I think it's, you know, fair for, given the special role  
19 of Counsel for the Public to speak Monday evening.



1 MS. KEENE: Okay.

2 CHAIRMAN GETZ: -- and everybody else is  
3 speaking, so please.

4 MS. KEENE: I think his idea is a very  
5 good one, because I live there, and I have been getting a  
6 lot of feedback of what his opinion is on this Project  
7 from the public. So, it only seems appropriate, where he  
8 has represented them through these whole proceedings, that  
9 he would be able to say a little something at that public  
10 hearing. I don't know how the other intervenors feel, but  
11 I don't feel the need to say anything on that evening.  
12 But I do understand the importance of why he should.

13 CHAIRMAN GETZ: Okay. Thank you.

14 MS. KEENE: Okay?

15 CHAIRMAN GETZ: Did you have other  
16 issues, Mr. Patch?

17 MR. PATCH: Yes. This is on a different  
18 matter. We had submitted a couple of requests for  
19 confidential treatment last week, March 9th and March  
20 10th, related to the responses to some of the data  
21 requests that came out of the financial technical session.  
22 And, one of the them actually related to an item that --  
23 it was a wind turbine supply agreement. There is no final  
24 agreement, but I think there may be a tentative agreement

1 of some sort, a draft agreement that had been requested.

2 And, we had indicated in the March 9th letter that, under

3 the terms of that agreement, I don't think we could  
4 actually provide it until it had been determined to be  
5 confidential. And, then, there were some other items that  
6 we sought confidential treatment for. And, so, I think at  
7 some point, well, number one, in order to get a copy of  
8 that draft agreement, if there was some way to make that  
9 determination, it could be conveyed, as a basis for us  
10 getting the -- having the ability to be able to provide  
11 the agreement, that would be helpful. And, then, perhaps  
12 the other issues could be addressed in the Final Order of  
13 the Committee, I don't know, but -- so, that's just  
14 outstanding.

15 MR. ROTH: I don't have any objection to  
16 the turbine supply agreement draft being treated  
17 confidentially. I have not reviewed the other requests,  
18 however.

19 CHAIRMAN GETZ: Well, let me do this  
20 then. I'll grant the request for confidential treatment  
21 of the turbine supply agreement and take the other matters  
22 under advisement, and we'll treat those in the Final  
23 Order.

24 MR. PATCH: Okay. That's helpful.

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1 Thank you.

2 CHAIRMAN GETZ: I'm just going through  
3 my checklist. One other thing. To the extent that, the  
4 issue got raised earlier about the exhibits, and said I  
5 would entertain at the end of the proceeding if there's  
6 any objections to entering any particular exhibits into  
7 the record. I guess, as a general matter, given what

8 we've seen and what I've looked at, my inclination would  
9 be to admit all of the proposed exhibits into the record.  
10 To the extent anyone has a particular objection about any  
11 particular exhibit, I'd like to -- I'd like to at least  
12 have something in writing identifying them on Thursday.  
13 And, we may not have the time to go through and hear  
14 argument and rule on them. But I want to make sure that  
15 I've identified the universe of any objections to entering  
16 any particular exhibits into the record. But, with the  
17 background, I think, of how we conducted things in the  
18 Lempster proceeding, I think there's going to be, as a  
19 general matter, an inclination to admit all of them, from  
20 what I've seen so far, into the record. But we'll listen  
21 to any particular arguments that any of the parties have.  
22 Okay. Any other procedural issues?

23 MR. ROTH: Mr. Chairman, I'm sorry.  
24 With respect to the written objection, I've already  
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1 objected to number 56. And, there was some discussion on  
2 that at the outset of the hearing. Do I need to reiterate  
3 that?

4 CHAIRMAN GETZ: No.

5 MS. LINOWES: Mr. Chairman? I have a  
6 question regarding the EPA letter that apparently was  
7 delivered, sent to the Army Corps. Does that  
8 automatically get put in as an exhibit or do we need to go  
9 through that process as I did today with regard to the  
10 Fish & Game -- Fish & Wildlife Service letter?

11 CHAIRMAN GETZ: I think, for  
12 administrative purposes at a minimum, we should mark these

13 things, if they're going to be referred to. So, this is  
14 the March 11 letter from EPA to the Army Corps, we can --  
15 and I guess that would raise one other issue.

16 Mr. Iacopino, do you want to have the attorneys meet to go  
17 through and discuss all of the markings, just to make sure  
18 we have everything identified?

19 MR. IACOPI NO: I think we should.  
20 There's also, I mean, we have received a number of  
21 letters, especially over the past several days, two from  
22 federal agencies, the EPA and Fish & Wildlife, one of  
23 which was marked today. But we've also received letters  
24 from individuals, for folks on the Committee, at least

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1 you'll note that you're getting e-mails from Jane Murray,  
2 shifting copies of those things over. Typically, what  
3 we've done is we've maintained a public comment file in  
4 the official file and put those types of correspondence in  
5 there. Obviously, the EPA and U.S. Fish & Wildlife  
6 address more technical issues. So, it's probably better  
7 to make them part of this record, if everybody can agree  
8 on that.

9 CHAIRMAN GETZ: Well, I think that's a  
10 reasonable outcome. But, I think, to the extent the  
11 parties can discuss and make sure the numbering is  
12 consistent, and we have the full universe of what's  
13 proposed to be in the record, I would just ask that  
14 Mr. Iacopino could take care that that is accomplished.

15 MR. IACOPI NO: And, before everybody  
16 leaves today, I would like to meet with all the parties,  
17 just to make sure that we've got all the exhibits, they

18 can identify which ones they might need up in Lancaster  
19 and I'll bring them up. And, that way I can -- because we  
20 have to clear out of this room tonight. So, I need to  
21 find a place to store the exhibits as well.

22 CHAIRMAN GETZ: Mr. Mulholland.

23 MR. MULHOLLAND: Mr. Chairman, closing  
24 briefs, we set a date for that and a time, just so we're

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1 all on the same --

2 CHAIRMAN GETZ: My recollection is  
3 Monday, March 30th. And, I could be getting my dockets  
4 totally confused, but I think this was where we were  
5 talking about even a time of day, is that --

6 MR. MULHOLLAND: We were.

7 CHAIRMAN GETZ: And, I believe, at one  
8 point, we had settled on 7:00 p.m. Does that work for  
9 everyone?

10 MS. LINOWES: Excuse me, Mr. Chairman.  
11 Would that be received by e-mail, in by 7:00.

12 CHAIRMAN GETZ: Yes.

1349: Say that again?

14 CHAIRMAN GETZ: Off the record.

15 (Off the record.)

16 CHAIRMAN GETZ: Okay. Back on the  
17 record. Anything else that we should discuss?

18 (No verbal response)

19 CHAIRMAN GETZ: Okay. Then, we'll  
20 recess until Thursday morning, in Lancaster, at 10:00 a.m.  
21 Thank you, everyone.

22 MR. HARRINGTON: No, no, no. Noontime.

23 GRP-DAY6.txt  
CHAIRMAN GETZ: Noontime, sorry.

24 (Hearing adjourned at 4:05 p.m.)  
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