

1 STATE OF NEW HAMPSHIRE
2 SITE EVALUATION COMMITTEE

3 May 27, 2009 - 10:10 a.m.
4 Public Utilities Commission
21 South Fruit Street DAY 9
5 Concord, New Hampshire
6

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

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

23 * * *
24 Counsel for the Committee: Jaye L. Rancourt, Esq.

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

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2
3 APPEARANCES:

4 Reptg. Granite Reliable Power, LLC,
and Noble Environmental Power:
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5 GRP-DAY9. txt
 6 Douglas L. Patch, Esq. (Orr & Reno)
 Susan S. Geiger, Esq. (Orr & Reno)
 7 Reptg. N.H. Fish & Game Department:
 Evan Mulholland, Esq.
 8 Assistant Atty. General
 New Hampshire Dept. of Justice
 9 Reptg. the Appalachian Mountain Club:
 Kenneth Kimball
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 11 Reptg. Industrial Wind Action Group:
 Lisa Linowes
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WITNESS: DANIEL J. MANDLI (recalled)

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 STEVEN J. WEBER
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E X H I B I T S

3 EXHIBIT NO.

D E S C R I P T I O N

PAGE NO.

4	Petitioner 52	Applicant's response to the May 8, 2009 Order from the SEC Subcommittee for further information concerning the root cause of the failure and collapse of the turbines in Altona, NY, and also any evidence that indicates whether or a similar wiring anomaly may exist or does not exist in the Vestas 90 turbines that are proposed to operate at the proposed site and facility (05-21-09)	9
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P R O C E E D I N G S

CHAIRMAN GETZ: Okay. Good morning, everyone. We'll reopen the hearing in Site Evaluation Committee Docket 2008-04, concerning the Application of Granite Reliable Power. Following up on record requests for information made by the Subcommittee during deliberations in this proceeding, an order was issued on May 8, 2009 that granted a motion to reopen in part, temporarily suspended deliberations, enlarged the timeframes, and set a procedural schedule for consideration of the information responsive to the record requests.

A notice was issued on May 12 setting the hearing for this morning. And, we have two outstanding issues to consider this morning concerning the Subcommittee record requests regarding the turbine failure at Altona, New York, and the High Elevation Mitigation Settlement. The purpose of the hearing is to take testimony and permit cross-examination on those two

20 issues.

21 At this point, let's take appearances
22 for the record.

23 MR. PATCH: Good morning, Mr. Chairman,
24 members of the Committee. Doug Patch, from Orr & Reno,
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1 and Susan Geiger, from Orr & Reno, on behalf of the
2 Applicant.

3 CHAIRMAN GETZ: Good morning.

4 MR. MULHOLLAND: Mr. Chairman, Evan
5 Mulholland, from the Attorney General's Office, on behalf
6 of the Fish & Game Department.

7 CHAIRMAN GETZ: Good morning. Any other
8 parties want to make an appearance? Mr. Kimball.

9 MR. KIMBALL: Kenneth Kimball, from the
10 Appalachian Mountain Club.

11 CHAIRMAN GETZ: All right. I'd like to
12 proceed first with respect to the Altona turbine failure
13 issue. The Applicant filed a response on May 21st
14 regarding the request from the Subcommittee. And, Mr.
15 Patch, is it Mr. Mandl [Mandli?] or someone else is
16 available to sponsor the response and answer questions
17 about it?

18 MR. PATCH: Mr. Mandli is here and
19 prepared to testify.

20 CHAIRMAN GETZ: Okay. Thank you. If he
21 could.

22 MR. PATCH: Take the stand.

23 (Whereupon Daniel J. Mandli was recalled
24 to the stand, having been previously

[WITNESS: Mandli]

1 sworn in by the Court Reporter.)

2 MR. PATCH: Mr. Chairman, should we
3 swear him again or just remind him that he's still under
4 oath?

5 CHAIRMAN GETZ: I'll just remind him
6 that he's still under oath, having been previously sworn
7 in this proceeding.

8 WITNESS MANDLI: I've been under oath
9 for like a month and a half? Oh, my gosh.

10 CHAIRMAN GETZ: Do you have some direct,
11 Mr. Patch, or --

12 MR. PATCH: Just a couple of brief
13 questions. Thank you.

14 DANIEL J. MANDLI, Previously sworn.

15 DIRECT EXAMINATION

16 BY MR. PATCH:

17 Q. Good morning.

18 A. Good morning.

19 Q. Could you state your name for the record please.

20 A. Daniel Joseph Mandli.

21 Q. And, what is your position with the Company?

22 A. I'm a Senior Vice President of Operations for Noble
23 Environmental Power.

24 Q. And, you're the same Daniel Mandli who testified

[WITNESS: Mandli]

1 earlier in this proceeding?

2 A. A little older, but, yes, sir.

3 Q. Okay. And, as the Chairman has indicated, I just want
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4 to remind you that you're still under oath in this
5 proceeding. And, you're familiar with the two
6 questions that the Committee asked with regard to the
7 Altona incident, is that fair to say?

8 A. I sure am familiar with those questions, yes.

9 Q. And, the response to the second question, which was
10 attached to the May 21st, 2009 letter that was
11 submitted to the Committee, you're familiar with that
12 response?

13 A. Yes. Yes, I am familiar with that response.

14 MR. PATCH: Okay. The witness is
15 available for questions, Mr. Chairman. Would you like us
16 to have that letter, that response marked as an exhibit?

17 CHAIRMAN GETZ: Yes.

18 MR. PATCH: Okay. I did not bring extra
19 copies with me. I apologize for that, but --

20 CHAIRMAN GETZ: Well, all of the members
21 should have copies of the response, as should all of the
22 parties. Do we have -- Do you know the next number for
23 the Applicant's exhibits?

24 MR. PATCH: I have an exhibit list
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1 that's dated April 3rd. And, it says "Petitioner 51",
2 that was a PressRepublican.com article, "Wind Farm vows to
3 clear mechanic lien". And, so, if this is an updated
4 list, I'm not sure whether it is or not, then it would be
5 "52".

6 CHAIRMAN GETZ: Well, let's just mark it
7 for identification as Applicant's Exhibit 52, subject to
8 confirmation that that is indeed the next numbered exhibit

9 for the Applicant.
10 (The document, as described, was
11 herewith marked as Exhibit Petitioner 52
12 for identification.)
13 MR. PATCH: Thank you.
14 CHAIRMAN GETZ: All right. Then, well,
15 let me before we allow opportunity for cross, let me just
16 -- I want to verify one thing. Because in your response
17 the -- I guess I would characterize this in two parts,
18 there is an answer that the first page of the response,
19 which is not confidential, and it -- the second sentence
20 notes that "the failure in New York came as a result of a
21 wiring issue located in the electronic pitch system.
22 Then, the next three -- four pages of the response is
23 marked "confidential", and this is information from GE
24 Energy for which you sought confidential protection. Is
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[WITNESS: Mandli]

1 there any -- so, obviously, it's not a confidential matter
2 to note that the failure was a "result of a wiring issue
3 located in the electronic pitch system"?

4 MR. PATCH: That's correct, Mr.
5 Chairman. Everything on that one-page sheet that you
6 referred to is not confidential, but the other documents
7 provided by GE, they had requested proprietary treatment,
8 and so we had requested confidential treatment.

9 CHAIRMAN GETZ: And, it's fair to say
10 then that everything on the public page is consistent with
11 the GE Energy's analysis, and there's no conflict with
12 those positions?

13 MR. PATCH: Mr. Mandli would perhaps be
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14 the best person to ask that, but it's my understanding,
15 no, there is no conflict.

16 CHAIRMAN GETZ: And, all of the parties
17 here today have the -- Mr. Mulholland and Mr. Kimball, you
18 have the confidential materials provided by GE?

19 MR. KIMBALL: We do not.

20 MR. PATCH: No.

21 MR. MULHOLLAND: No. Fish & Game is not
22 a party to the confidentiality agreement.

23 MR. KIMBALL: Nor was AMC.

24 CHAIRMAN GETZ: Then, who was --what

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1 parties were provided was --

2 MR. PATCH: Ms. Linowes, you know, IWAG
3 had signed the confidentiality agreement, and then
4 Mr. Seiler signed it as well. And, then, we provided one
5 to Mr. Roth by e-mail.

6 CHAIRMAN GETZ: Okay. All right. Thank
7 you. Then, let's just give opportunity for
8 cross-examination on this issue. Mr. Mulholland, do you
9 have any questions for Mr. Mandli?

10 MR. MULHOLLAND: No, Mr. Chairman.
11 Thank you.

12 CHAIRMAN GETZ: Mr. Kimball, any
13 questions?

14 MR. KIMBALL: No, we do not.

15 CHAIRMAN GETZ: Any questions from the
16 subcommittee on these issues?

17 MR. HARRINGTON: It may be more of a
18 statement, I guess, than a question.

19 BY MR. HARRINGTON:

20 Q. It appears that there's two totally separate types of
21 control mechanisms, between the failed turbines that
22 happened at Altona and the kind that are being proposed
23 for this project, is that correct?

24 A. That is correct.

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1 Q. And, one is -- The one that's being proposed for this
2 project appears to be a hydraulic failsafe system, loss
3 of power, including pressurization, and automatic
4 stoppage of the blades?

5 A. That is correct. That is correct.

6 MR. HARRINGTON: Thank you.

7 CHAIRMAN GETZ: Well, I guess one other
8 issue. I'll note for the record that Ms. Linowes is
9 present. Do you have any questions for Mr. Mandli about
10 the GE turbine failure at Altona, New York?

11 MS. LINOWES: I don't, Mr. Chairman.

12 CHAIRMAN GETZ: Any other questions from
13 the Subcommittee?

14 (No verbal response)

15 CHAIRMAN GETZ: Anything further, Mr.
16 Patch?

17 MR. PATCH: No.

18 CHAIRMAN GETZ: Okay. Then, the witness
19 is excused. Thank you, Mr. Mandli.

20 WITNESS MANDLI: Thank you.

21 CHAIRMAN GETZ: Okay. Then, we'll turn
22 to the other issue that the Committee asked for further
23 information, that's regarding the Mitigation Settlement.

24 Mr. Mulholland.

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[WITNESS: Mandli]

1 MR. MULHOLLAND: Mr. Chairman, the Fish
2 & Game Department has brought two witnesses, one of whom
3 has not yet testified in this case, Mr. Steve Weber, also
4 Mr. Will Staats is here, and we thought that they could
5 testify as a panel.

6 CHAIRMAN GETZ: Please proceed. Mr.
7 Staats, you've already been sworn in this proceeding, so
8 note that you're still subject to that oath.

9 MR. STAATS: Certainly.

10 CHAIRMAN GETZ: And, if the court
11 reporter would swear in Mr. Weber.

12 MR. MULHOLLAND: Please.

13 (Whereupon Steven Weber was duly sworn
14 and cautioned by the Court Reporter and
15 William Staats was also called to the
16 stand, having been previously sworn.)

17 CHAIRMAN GETZ: Mr. Mulholland.

18 MR. MULHOLLAND: Mr. Chairman, I have
19 some, you know, basic introductory foundation questions
20 for Mr. Weber, because he hasn't been introduced to you
21 yet.

22 STEVEN WEBER, SWORN

23 WILLIAM STAATS, PREVIOUSLY SWORN

24 DIRECT EXAMINATION

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[WITNESS: Mandli]

1 BY MR. MULHOLLAND:

- 2 Q. Mr. Weber, please state your full name for the record.
3 A. (Weber) Steven J. Weber.
4 Q. And, can you summarize your education?
5 A. (Weber) I've got a Bachelor's degree from the
6 University of Wisconsin at Stephen's Point in Wildlife
7 Biology and a Master's degree from the University of
8 New Hampshire in Wildlife Ecology.
9 Q. Do you have any other certifications?
10 A. (Weber) I have been a Certified Wildlife Biologist with
11 the Wildlife Society since 1987.
12 Q. And, are you still certified in that way?
13 A. (Weber) I am still certified in that way, yes.
14 Q. How long have you been employed by the Fish & Game
15 Department?
16 A. (Weber) I have worked for the New Hampshire Fish & Game
17 Department since January of 1989. I started out
18 working as liaison with the large landowners in Coos
19 County, coordinating habitat management issues with
20 those landowners, did that for about five years. Then,
21 I actually inherited some additional duties, including
22 duties as the Regional Wildlife Biologist in the North
23 Country for an additional five years, before we were
24 able to hire Will to take over those responsibilities.

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[WITNESS: Mandi]

- 1 Since then, I have had a couple of other positions.
2 I'm currently the Chief of Wildlife for the New
3 Hampshire Fish & Game Department.
4 Q. Mr. Weber, the Fish & Game Department filed with the
5 Committee a letter on April 27th of this year, and it's
6 titled "Settlement Agreement Habitat Assessment".

7 A. (Weber) Yes.
8 Q. Have you seen this today?
9 A. (Weber) Yes, I have.
10 Q. Is this the -- Did you author this letter?
11 A. (Weber) Yes, I did.
12 MR. MULHOLLAND: I'd ask that this be
13 marked as an exhibit. And, I previously submitted this to
14 the entire Committee and all of the other parties.
15 CHAIRMAN GETZ: Okay. We'll mark for
16 identification as the next number of Fish & Game exhibit
17 the letter of April 27, 2009.
18 (The document, as described, was
19 herewith marked as Exhibit F&G 6 for
20 identification.)
21 MR. MULHOLLAND: The panel is available
22 for questions.
23 CHAIRMAN GETZ: Well, I guess,
24 Mr. Mulholland, do you want to take the same measures with
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1 respect to the May 14 letter or would you consider that
2 another exhibit or do you have any position on that?
3 MR. MULHOLLAND: That's a filing from my
4 office.
5 CHAIRMAN GETZ: So, this, from your
6 perspective, would constitute argument, and nothing that
7 -- nothing in addition to what the witnesses have already
8 either testified to or filed and wouldn't need to be
9 marked?
10 MR. MULHOLLAND: Right. I agree.
11 CHAIRMAN GETZ: Okay. Let's turn to the

12 Applicant. Are there any questions for the witnesses?

13 MS. GEIGER: Yes. Thank you, Mr.

14 Chairman.

15 CROSS-EXAMINATION

16 BY MS. GEIGER:

17 Q. Mr. Weber, I'd like to show you what I believe has been
18 marked previously as the "Applicant's" or "Petitioner's
19 Exhibit 48". Could you identify that document for the
20 record.

21 A. (Weber) Yes. This is the High Elevation Mitigation
22 Settlement Agreement that was negotiated and signed off
23 on in March, I believe.

24 Q. Okay. And, you're a signatory to that agreement,
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1 correct?

2 A. (Weber) Yes, I am.

3 Q. Okay. And, I'm going to give it back to you, because
4 I'd like to turn your attention --

5 A. (Weber) Sure.

6 Q. -- to Paragraph A.10 of that agreement. And, I'd like
7 to ask you whether it's true, whether or not it's true
8 that, in addition to providing for the permanent
9 conservation of approximately 1,735 acres of high
10 elevation land, that the Settlement Agreement also
11 requires that Granite Reliable Power pay Fish & Game
12 Department \$750,000 to secure or assist with the
13 permanent conservation of habitat that is comparable to
14 the project site, is that correct?

15 A. (Weber) That is correct.

16 Q. Okay. Now, isn't it also true that the priority for

17 expenditure of that \$750,000 is to be "for projects
18 that secure conservation of habitat for American marten
19 and other species of conservation concern, with a focus
20 on high elevation spruce-fir habitat in Coos County"?

21 A. (Weber) That's correct.

22 Q. Okay. Do you have an estimate as to how many acres of
23 land the Fish & Game Department will be able to buy or
24 secure with the \$750,000 that GRP will pay Fish & Game

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[WITNESS: Mandli]

1 under what's been marked "Exhibit 48"?

2 A. (Weber) That's a really difficult question to answer
3 with certainty. The availability of lands changes
4 constantly. The price associated with those lands also
5 changes constantly. Lands of this nature have
6 historically, as a guide, has historically, in the
7 recent past, sold for somewhere between \$500 and \$1,000
8 an acre. What lands in the future that might be
9 secured with this money would cost is very difficult,
10 in fact, it's impossible to say with certainty. But
11 that's sort of a range of prices we have paid or others
12 have paid recently.

13 Q. Do you expect to pay in the neighborhood of \$1,000 an
14 acre?

15 A. (Weber) That would be a reasonable estimate, yes.

16 Q. Okay. So, assuming that to be true, and if my math is
17 correct, would that be around 750 acres?

18 A. (Weber) It would be.

19 Q. Okay. With that additional land, assuming that it is
20 around 750 acres or a thousand acres, in that
21 neighborhood, do you know how that affects the ratio of

22 conserved property to impacted property?

23 A. (Weber) Well, first, I guess I'd like to back up. I
24 wouldn't anticipate that we would expend all of those
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[WITNESS: Mandli]

1 dollars in an independent transaction, where that was
2 the sole source of money going into the transaction.

3 Q. Okay.

4 A. (Weber) Most land conservation efforts these days that
5 are undertaken at a scale that is likely with this kind
6 of money involve in or include the involvement of many
7 partners. This could be a mixture of state and federal
8 funds, a mixture of state, private, and federal funds.
9 These monies are often leverage for federal monies that
10 require a match. So, the actual acreage that could be
11 secured with this could be much greater than just the
12 700 or a thousand acres. So, it's really difficult,
13 again, to say what the cost is going to be, how many
14 acres we're going to be able to buy, and how that
15 affects the ratio of the number of acres conserved
16 compared to the number of acres that are impacted.

17 Q. So, even though we don't know the amount of land that
18 will either be purchased or upon which conservation
19 easements will be obtained, --

20 A. (Weber) Uh-huh.

21 Q. -- isn't it a given that, and an absolute, that
22 whatever Land Fish & Game acquires, with either this
23 money or this money plus additional matching funds, has
24 to be comparable, it must be comparable, under the

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1 Settlement Agreement, to the habitat that is found on
2 the property that this project will be hopefully
3 constructed and operated on?

4 A. (Weber) That's true.

5 MS. GEIGER: Okay. Thank you. I don't
6 have any further questions.

7 CHAIRMAN GETZ: Mr. Kimball, any
8 questions?

9 MR. KIMBALL: I have no questions.

10 CHAIRMAN GETZ: Ms. Linowes.

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

12 I do have a number of questions for you, Mr. Weber.

13 BY MS. LINOWES:

14 Q. But, to Ms. Geiger's questions, is the land that is
15 already part of the mitigation package, that will be
16 the 220 acres on Long Mountain and the 60 acres on
17 Muise, is that comparable to the mitigation -- to the
18 land that will be lost where the turbines will be
19 sited.

20 A. (Weber) Yes.

21 Q. In terms of the Bicknell's thrush habitat, in terms of
22 --

23 A. (Weber) In terms of the habitat that exists on those
24 lands now? Yes.

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[WITNESS: Mandli]

1 MS. LINOWES: And, I'm going to come
2 back to that, Mr. Chairman. I just wanted to get an
3 immediate answer on that.

4 BY MS. LINOWES:

5 Q. So, Mr. Weber, you say that you're a wildlife

- 6 biologist. Are you an ornithologist?
- 7 A. (Weber) I have had courses on ornithology. I am not
8 what you would consider an "ornithologist", no.
- 9 Q. So, you don't spend your life at Fish & Game as an
10 ornithologist?
- 11 A. (Weber) No, I do not.
- 12 Q. Are you a forester?
- 13 A. (Weber) No. Again, I have taken courses in forestry.
14 I have practiced forestry in a previous job --
- 15 Q. If you could just answer the question.
- 16 A. (Weber) -- I held for five years in Vermont.
- 17 CHAIRMAN GETZ: No, he can expand on his
18 answer.
- 19 MS. LINOWES: Okay.
- 20 CHAIRMAN GETZ: Please proceed,
21 Mr. Weber.
- 22 WITNESS WEBER: Thank you.
- 23 BY THE WITNESS:
- 24 A. (Weber) A previous job that I held in Vermont for five
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[WITNESS: Mandli]

- 1 years for the Vermont Department of Fish & Wildlife was
2 to develop and implement habitat management plans,
3 including forestry operations, on 22 wildlife
4 management areas in the northwestern part of the state.
5 So, I have extensive experience in forest management,
6 in addition to the five years where I worked as a
7 liaison with the large landowners in Northern New
8 Hampshire, gave me site-specific experience on the
9 development/implementation of forest management plans.
- 10 Q. Mr. Weber, you know, I understand that Mr. Staats had

- 11 stated he is a forester. Are you a forester at the
12 level that Mr. Staats is?
13 A. (Weber) Mr. Staats has more experience in forest
14 management operations than I do.
15 Q. And, a professional forester, Mr. Staats?
16 A. (Staats) No, I'm not a licensed forester. I've worked
17 as a industrial forester for Champion International in
18 the past. And, so, yes.
19 Q. Okay. And, Mr. Weber, do you have experience in pre
20 and post construction surveys related to wind energy
21 development?
22 A. (Weber) I do not.
23 Q. Have you visited a wind energy facility?
24 A. (Weber) I have not.

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[WITNESS: Mandli]

- 1 Q. You have not been to Lempster Mountain?
2 A. (Weber) No, I haven't.
3 Q. Are you aware that there's a technical committee that
4 was formed to formulate and oversee the post
5 construction studies in the Lempster Project?
6 A. (Weber) I am.
7 Q. Are you aware that Fish & Game personnel were asked to
8 sit on that Committee?
9 A. (Weber) I am.
10 Q. And, who is it on Fish & Game that sits on that
11 committee?
12 A. (Weber) Mike Marchand.
13 Q. Does he report to you?
14 A. (Weber) He reports to one of the supervisors who works
15 below me in the organization. So, indirectly he does,

- 16 but not immediately.
- 17 Q. And, who pays for that, Mike Marchand's participation
18 in that Committee?
- 19 A. (Weber) The actual salary and expense for Mr. Marchand
20 is paid for by the Fish & Game Department.
- 21 Q. So, Iberdrola is not paying for any of that
22 participation?
- 23 A. (Weber) Not that I'm aware of, that's correct.
- 24 Q. Do you know if Iberdrola is paying for anyone's
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[WITNESS: Mandli]

- 1 participation on that Committee?
- 2 A. (Weber) I do not know.
- 3 MR. MULHOLLAND: Mr. Chairman, I believe
4 this goes beyond the scope of what we're here for today,
5 which is the High Elevation Mitigation Settlement
6 Agreement.
- 7 MS. LINOWES: Mr. Chairman, I --
- 8 CHAIRMAN GETZ: Can you establish some
9 relevance of --
- 10 MS. LINOWES: Yes, sir. The point is
11 the Mitigation Agreement has been put forth as being
12 suitable in covering all of the requirements for the
13 impacts on the land. And, I'm getting to the point that
14 the -- how comprehensive that Mitigation Plan is, whether
15 or not it really is addressing those issues.
- 16 WITNESS WEBER: Could I respond to that
17 briefly?
- 18 MS. LINOWES: Well, actually, I guess
19 I'd rather get to my --
- 20 CHAIRMAN GETZ: Yes, it's not a

21 question. Well, let's see where this is going to go.

22 MS. LINOWES: I will be bringing it
23 back. I'm just trying to build a foundation as to what
24 Mr. Weber knows and does not know as well.

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[WITNESS: Mandli]

1 BY MS. LINOWES:

2 Q. Now, Mr. Weber, you are aware that Audubon and the
3 Nature Conservancy did not sign on to the Mitigation
4 Agreement?

5 A. (Weber) Yes, I am.

6 Q. Were they asked to?

7 A. (Weber) They were involved in an early meeting that we
8 had regarding this. They decided, for whatever reason
9 internally to those organizations, not to engage in a
10 formal manner with these proceedings.

11 Q. So, their reason for not participating was not made
12 public?

13 CHAIRMAN GETZ: Excuse me, I need to
14 follow where this question -- their reason for not
15 participating in this proceeding? Their reason for not
16 participating --

17 MS. LINOWES: For not participating in
18 the Agreement, for not being a signatory on the agreement
19 was not made public? I'm asking the question.

20 CHAIRMAN GETZ: Again, what's the -- I
21 think there's both issues of relevance and
22 confidentiality.

23 MS. LINOWES: Yes, they did. In fact,
24 they did make it clear why they did not participate, and

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1 I'm just trying to get an understanding.

2 CHAIRMAN GETZ: They did make it clear
3 in part of this proceeding?

4 MS. LINOWES: In their letter to the
5 Site Evaluation Committee. Well, in the letter that was
6 submitted to the Site Evaluation Committee, they did make
7 clear why -- at least the Nature Conservancy made clear
8 why they did not participate.

9 MS. GEIGER: Excuse me, Mr. Chairman. I
10 apologize. I know that these are not my witnesses, but I
11 feel I have to object. It seems at this point that Ms.
12 Linowes is trying to expand the record and is bordering on
13 testifying herself. So, I'd object to any more commentary
14 along these lines, and would object to anything other than
15 cross-examination questions by Ms. Linowes to these
16 witnesses of the information that they provided to the
17 Committee.

18 CHAIRMAN GETZ: Well, let me say this.
19 We'll give an opportunity for a brief closing this
20 morning. So, let's try to keep the line clear between
21 argument and cross-examination. And, to the extent -- I'm
22 not sure that the witnesses are qualified to testify about
23 what was in the minds of persons who chose not to
24 participate in the Mitigation Settlement. If you have

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1 argument to make in closing based on documents that are in
2 the record, then you're free to do that.

3 MS. LINOWES: Mr. Chairman, I apologize

4 to Ms. Geiger, I'm not trying to testify myself here. I'm
5 simply asking questions and trying to get -- elicit
6 responses.

7 BY MS. LINOWES:

8 Q. Okay. Mr. Weber, in the letter the Nature Conservancy
9 submitted to the Site Evaluation Committee, they had a
10 statement in there that said "We believe that
11 appropriate siting includes the avoidance or reduction
12 of detrimental impacts to especially significant and
13 sensitive natural resource features and the suitable
14 mitigation of those impacts that are determined to be
15 unavoidable." Is that a reasonable position?

16 A. (Weber) I'm not sure it's appropriate for me to comment
17 on a position that's been espoused by a different
18 organization.

19 Q. Okay. They go on to state "Based on the information we
20 have reviewed, we believe the potential impacts to the
21 wildlife species of concern, specifically American
22 marten, Bicknell's thrush, and the three-toed
23 woodpecker, along with sensitive high-elevation habitat
24 and documented old growth and mature forests, are real

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1 and substantial with regard to Mount Kel sey. These
2 ecological resources are not necessarily replaceable
3 elsewhere." Do you recall seeing a statement like
4 that?

5 A. (Weber) Yes, I do.

6 Q. Okay. Do you not agree with the Nature Conservancy?

7 A. (Weber) I agree that that's their statement.

8 Q. So, you do believe that the ecological resources that

- 9 are being lost on Kelsey are replaceable?
- 10 A. (Weber) Any time you lose habitat through development,
11 it is very difficult to replace that habitat
12 specifically. What the High Elevation Mitigation
13 Agreement does is provide additional protections to
14 similar habitats that increase the conservation value
15 in exchange for values lost through the potential
16 development of this project.
- 17 Q. Okay. Now, the prefiled testimony that was filed by
18 Mr. Staats and Ms. Kelly in December of 2008, on Page
19 19, I'm just going to read a statement here. Says "We
20 believe this project has the potential to render
21 unsuitable much, if not all, of the best marten habitat
22 on the project area, or reduce the value of this
23 habitat for these state-listed animals. The project
24 will displace these animals and adversely influence the

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[WITNESS: Mandli]

- 1 ability of these high elevation ridgelines to serve as
2 corridors for marten and Canadian [Canada?] Lynx
3 expansion." Are you familiar with that statement, that
4 testimony?
- 5 A. (Weber) I am familiar with it?
- 6 Q. Uh-huh.
- 7 A. (Weber) Yes.
- 8 Q. Now, that statement clearly states -- well, it states
9 that the ridgelines will then no longer be able to
10 serve as corridors for marten --
- 11 A. (Weber) It says that the project has the potential for
12 that to occur.
- 13 Q. And adversely --

14 CHAIRMAN GETZ: Well, wait. One person
15 at a time, or the court reporter is not going to be able
16 to get the exchange. Can you finish your answer please,
17 Mr. Weber?

18 BY THE WITNESS:

19 A. (Weber) The prefiled statement says that the project
20 "has the potential" for that to occur, yes.

21 BY MS. LINOWES:

22 Q. It says "The project will displace these animals and
23 adversely influence the ability of these high-elevation
24 ridgelines to serve as corridors".

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[WITNESS: Mandli]

1 MR. MULHOLLAND: Mr. Chairman, the
2 testimony is what it is. I'd ask you direct Ms. Linowes
3 to ask a question about it, instead of arguing about what
4 it is or isn't. I mean, it is what it is. We seem to be
5 in an argument over what the testimony was.

6 CHAIRMAN GETZ: Well, I took her to be
7 asking whether he agreed with the statement by Mr. Staats,
8 and that -- was that where we are, Ms. Linowes?

9 MS. LINOWES: Yes, that's correct.

10 That's correct.

11 BY MS. LINOWES:

12 Q. Now, it's speaking to the four peaks, correct, on where
13 the project will be sited?

14 A. (Weber) Well, I guess I'd have to go back and re-read,
15 it's been a while since that testimony was submitted.
16 The exact reference in that statement I'm not certain
17 of.

18 Q. It makes no mention of the 220 acres on Long Mountain?

- 19 A. (Weber) Correct.
- 20 Q. It makes no mention of the 60 acres on Mui se Mountain?
- 21 A. (Weber) That's correct.
- 22 Q. So, it's speaking as to the project site itself?
- 23 A. (Weber) That's correct.
- 24 Q. It makes no reference to the land surrounding Kelsey
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[WITNESS: Mandli]

- 1 that is now as part of the Mitigation Plan Agreement?
- 2 A. (Weber) The prefiled testimony was specific to the
3 project site, correct.
- 4 Q. And, if you can help me out here, how far,
5 distance-wise, is Long from -- Long Mountain from
6 Kelsey?
- 7 A. (Weber) I don't know exactly enough to say, in the area
8 of 5 miles. Well, is that --
- 9 A. (Staats) At the most. Straight line, probably at the
10 most.
- 11 Q. So, it's measured in miles? Measured in miles?
- 12 A. (Staats) Yes. Yes. That would be the most, I think,
13 Lisa, if you looked at a straight line from Kelsey to
14 Long, yes.
- 15 Q. And, the same for Mui se?
- 16 A. (Staats) Are you directing that to me?
- 17 Q. It sounds like you know the area better.
- 18 A. (Staats) Well, all those particular, you know, Mui se,
19 Bald Head, it's all on that sort of western line. So,
20 as you go up to Mui se, you're a little closer to
21 Kelsey, straight across, kind of, not straight across,
22 but you're sort of getting closer. Long is the more
23 southern piece. And, then -- so, you have the valley

24 separating those two ridgelines, essentially.

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[WITNESS: Mandli]

- 1 Q. And, those valleys go below 2,700 feet?
- 2 A. (Staats) That valley does, yes. Yes. Oh, sure.
- 3 Q. And, the animals in question travel on the ridgelines?
- 4 A. (Staats) You addressing that to me again, Lisa?
- 5 Q. I am.
- 6 A. (Staats) Not always, no. Not always. Absolutely not.
- 7 No.
- 8 Q. Now, what I'm trying to understand now is the High
- 9 Elevation Agreement -- Mitigation Agreement allows for
- 10 the project to be built in its entirety, and all of a
- 11 sudden those issues, as stated in the prefilled
- 12 testimony, go away. What's different?
- 13 A. (Weber) The impacts don't go away. What's different is
- 14 the fact that the Mitigation Plan that has been put
- 15 together is significantly different than the Mitigation
- 16 Plan that was offered in the Application. And, so, the
- 17 conservation values that were gained through the
- 18 enhanced Mitigation Plan compensate for what we believe
- 19 the impacts will be on the project site.
- 20 Q. Now, I'm not asking you to compare the original
- 21 Mitigation Plan to the one that's been signed. What
- 22 I'm asking is, what is it in the one that's been signed
- 23 that makes those issues go away?
- 24 A. (Weber) Nothing.

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[WITNESS: Mandli]

- 1 Q. Okay. So, are we -- are we essentially throwing under
- 2 the bus the habitat that -- we're saying that that

- 3 habitat that is being lost, as a result of the project
4 being built, is being -- you're saying that it's
5 compensated sufficiently by this?
- 6 A. (Weber) That's exactly right.
- 7 Q. All right. Then, there's another statement in there on
8 testimony, prefiled testimony from Mr. Staats and Ms.
9 Kelly, it says "We feel that the impact of this project
10 will be long-lasting and far more intrusive than an
11 occasional logging operation which might occur on a
12 limited portion of these high elevation areas. In
13 addition, it is our opinion that the long-term
14 viability of the Bicknell's thrush population is
15 tenuous enough that it cannot afford any further
16 permanent habitat loss or encroachment." Do you recall
17 a statement like that?
- 18 A. (Weber) I don't specifically recall it. But, at the
19 same time, I don't doubt that you're accurately reading
20 the prefiled testimony.
- 21 Q. So, now, with the Mitigation Agreement in place, the
22 \$750,000 to buy some amount of land, \$200,000 to check
23 to see if things go really bad on the project site
24 after they're built, the turbines are erected, the

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[WITNESS: Mandli]

- 1 Bicknell's thrush population is no longer tenuous?
- 2 A. (Weber) I'm not sure how to answer that question.
- 3 Q. Is the Bicknell's thrush population tenuous at this
4 point?
- 5 A. (Weber) It appears to be secure in New Hampshire at
6 this point in time. We do have a large component of
7 the worldwide population of Bicknell's thrush. But the

8 population of that species was secure enough, when we
9 went through the analysis for identifying threatened
10 and endangered species, that it was not listed.

11 Q. Mr. Weber, are you saying that the testimony that was
12 filed in December 2008 was inaccurate or did something
13 change between December 2008 and now?

14 A. (Weber) No, I'm not. Either one of those.

15 Q. Okay. So, the statement said "It is our opinion that
16 the long-term viability of the Bicknell's thrush
17 population is tenuous enough that it cannot afford any
18 further permanent habitat loss or encroachment." Is
19 that a true statement?

20 A. (Weber) I'm saying that, when we did the analysis to
21 determine whether or not the species needed to be
22 listed as "threatened" or "endangered" in New
23 Hampshire, that it was not found to be that tenuous.
24 There is a limited amount of high-elevation spruce-fir

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[WITNESS: Mandli]

1 habitat for Bicknell's thrush in New Hampshire. And,
2 we are concerned that we not lose that habitat. That
3 said, we are comfortable with the notion that the
4 Mitigation Plan that has been put together adequately
5 compensates for the loss of habitat that is expected
6 through this project by enhancing conservation value of
7 the lands protected.

8 Q. Is it inventing new habitat?

9 A. (Weber) It is improving the security of additional
10 habitat.

11 Q. From logging?

12 A. (Weber) Yes.

- 13 Q. Which, as --
- 14 A. (Weber) From development.
- 15 Q. -- Mr. Staats says, "occasional logging" -- that "the
- 16 impacts of the project are long-lasting and far more
- 17 intrusive than an occasional logging operation"?
- 18 A. (Weber) He did say that.
- 19 Q. Mr. Staats, if I may, is it your opinion that the
- 20 long-term viability of the Bicknell's thrush population
- 21 is tenuous enough that it cannot afford any further
- 22 permanent habitat loss?
- 23 A. (Staats) Well, our wish is that it would not incur
- 24 permanent habitat loss any more than need be. However,
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[WITNESS: Mandli]

- 1 you know, the aim of this mitigation package is to
- 2 ensure that those western ridges over there will be
- 3 protected long term for the Bicknell's thrush. So, it
- 4 helps to secure long-term protection for that bird by,
- 5 you know, with that package. But, it's, you know, --
- 6 Q. Those acreage we're talking about, 280 acres, 220 on
- 7 Long and 60 acres on Mui se?
- 8 A. (Staats) Yes. Yes.
- 9 Q. Okay. So, Mr. Weber, who detailed and outlined the
- 10 parcels to be designated as mitigation lands?
- 11 A. (Weber) That was a joint effort between ourselves, AMC,
- 12 and the Project Applicant.
- 13 Q. And, this would be the land on Kelsey, Long, and Mui se?
- 14 A. (Weber) And Bald Head.
- 15 Q. Bald Head is part of the Wetlands Mitigation Plan?
- 16 A. (Weber) Yes, it is.
- 17 Q. It has high-elevation lands associated with it?

- 18 A. (Weber) Yes, it does.
- 19 Q. Was that established, however, as part of wetlands --
- 20 to compensate for the loss of wetlands?
- 21 A. (Weber) That's how it was originally delineated, yes.
- 22 Although, there was some expansion of that tract
- 23 coincident to the discussions we were having regarding
- 24 potential mitigation sites for the high-elevation
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[WITNESS: Mandli]

- 1 lands.
- 2 Q. From what size? From 550, was it?
- 3 A. (Weber) Something in that nature, yes.
- 4 Q. So, you're saying that that parcel was expanded to add
- 5 a little additional high-elevation lands, but the
- 6 entire -- was the requirement that there be mitigation
- 7 lands set aside for the wetlands established by DES?
- 8 A. (Weber) I was not privy to all of those discussions.
- 9 All I know is that, coincident to our discussions
- 10 regarding mitigation parcels, the size of that parcel
- 11 was increased.
- 12 Q. Now, Mr. Weber, didn't you tell me that Dr. Publicover
- 13 had actually been the one who identified those parcels
- 14 of land?
- 15 A. (Weber) It was a joint effort. Who came up with the
- 16 idea initially is not as important as the fact that we
- 17 all discussed those parcels and agreed that those were
- 18 adequate as the actual lands that would be transferred.
- 19 We can't lose sight of the fact, throughout this
- 20 document, that those -- those parcels, those individual
- 21 particles that will be transferred are only a component
- 22 of the entire Settlement Agreement. If you take one

23 part out of the -- or focus on one part as adequately
24 compensating for the impacts, you misrepresent the

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1 agreement in total.

2 Q. Okay. I'll be getting to that in a few moments, in
3 terms of -- you're talking about the money?

4 A. (Weber) The money, the post construction monitoring,
5 which I do want to get back to. If you'll look at
6 Section A.8 in the Settlement Agreement, it
7 specifically says "This is not intended to substitute
8 for the need on the part of GRP to conduct any bird or
9 bat post-construction monitoring studies that might be
10 required through this or any other permitting process."
11 So, your characterization that this Settlement
12 Agreement is being put forth as complete mitigation for
13 all of the post-construction monitoring efforts is
14 inaccurate.

15 Q. I don't think I said that today.

16 A. (Weber) Yes, you did.

17 Q. Are you aware that Dr. Publicover had testified he had
18 not visited Long or Mui se Mountain?

19 A. (Weber) I don't recall that.

20 Q. And, that he had only been on some components of the
21 Kel sey mitigation land?

22 A. (Weber) I don't recall that. I don't doubt, if you
23 have record of that, that that's what he testified to.

24 Q. Have you been on Long Mountain?

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[WITNESS: Mandli]

- 1 A. (Weber) Yes, I have.
- 2 Q. The specific parcels we're talking about?
- 3 A. (Weber) Not the specific parcels. I've been on the
4 other side of Long Mountain during winter conditions.
5 And, I can tell you that the -- actually stepping foot
6 on those mitigation parcels is not as significant as
7 some may make it out to be, in terms of understanding
8 the conservation values that are being protected or
9 enhanced through the Mitigation Settlement Agreement.
- 10 Q. You're saying that you would work from maps and aerial
11 photos?
- 12 A. (Weber) General knowledge of the area, as I said, I
13 worked there for five years. I live within 10 miles of
14 the facility, of the proposed facility. Spent many,
15 many hours on those mountain ridges. I am familiar
16 with the habitat types. While there might be
17 differences in micro climate, aspect, slope, forest
18 stand condition, the fact that they are high-elevation
19 lands, dominated by spruce-fir, with the soil
20 characteristics that want to grow spruce-fir, indicate
21 to me that the long-term conservation values that we're
22 looking to protect through this agreement will be
23 protected.
- 24 Q. Mr. Weber, let me make sure I understand then. So, is
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- 1 it your contention that any land above 2,700 feet that
2 has spruce-fir on it is equal quality habitat for
3 Bicknell's, three-toed woodpecker, or marten,
4 regardless of where you are in New Hampshire?
- 5 A. (Weber) No, I'm not.

- 6 Q. Are you saying that -- is it conceivable that Kelsey is
7 higher value than Long or Mui se?
- 8 A. (Weber) We have identified Mount Kelsey through
9 testimony as being the largest block of mature
10 spruce-fir habitat within that area of the state. We
11 recognize that it has outstanding conservation values.
12 And, because of that, we have also identified
13 significant mitigation to compensate for the impacts on
14 those lands.
- 15 Q. What is "significant"? What do you mean by that? I
16 want to know what your characterization of
17 "significant" is? Is it the 750,000? Is it the
18 200,000? Is it the 280 acres on Mui se and Long? What
19 is it?
- 20 A. (Weber) It's all of those combined.
- 21 Q. Okay. Mr. Staats, did you have a -- Do you know who
22 John Lanier is?
- 23 A. (Staats) Yes. Yes.
- 24 Q. Okay. And, he was a Fish & Wildlife Service -- U. S.
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[WITNESS: Mandli]

- 1 Fish & Wildlife Service wildlife biologist?
- 2 A. (Staats) No. He worked for the White Mountain National
3 Forest and then subsequently for us.
- 4 Q. Thank you. Oh, so, he was an employee of Fish & Game?
- 5 A. (Staats) Yes.
- 6 Q. Did you have a conversation with him recently about the
7 Long Mountain habitat?
- 8 A. (Staats) About the Long Mountain habitat? I'm not
9 sure.
- 10 Q. And, whether it compared to Kelsey?

- 11 A. (Staats) I don't recall. I've had so many
12 conversations with John over the years and months.
13 Q. This would have been in the last week and a half?
14 A. (Staats) I don't recall exactly what conversation that
15 might be, Lisa, no.
16 Q. Is it your sense of the 220 acres on Long Mountain is
17 comparable to Kelsey?
18 A. (Staats) Well, what, and I'm not trying to beat around
19 here, but what I can tell you about that Long Mountain
20 piece, because I have been on that, is that it
21 probably, you know, I say "probably" because I haven't
22 been on it for a while, Lisa, but, like so many of
23 these high-elevation pieces, you go in and out of
24 different size classes and different vegetation

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[WITNESS: Mandi]

- 1 structure, whether it's Mount Kelsey or Long or Mui se,
2 you're in and out of stuff, and some stuff's big, some
3 stuff's small, some stuff is falling apart, and some
4 stuff isn't.
5 Q. What -- excuse me, what do you mean by "stuff"?
6 A. (Staats) Oh. Sorry. Trees. I should have been more
7 technical. But trees and vegetation. Long, that piece
8 of Long is part of a much larger, as you well know,
9 piece that goes into Nash Stream, it's a huge complex,
10 huge soft spruce-fir complex. That has some stuff
11 that's fairly older aged and some stuff that isn't.
12 Just like, to some degree, Kelsey, actually. I mean,
13 if you drop off the summit of Kelsey, despite the fact
14 that there is, you know, some great primary forest,
15 older age forest on Kelsey, you'll get into some

16 smaller diameter stuff as well. So, the point I'm
17 making is that you go in and out of different size
18 classes of vegetation on both Long and Kelsey.

19 So -- I'm still looking for the rest of
20 your question.

21 Q. I was asking you if the habitat in those 220 acres is
22 comparable?

23 A. (Staats) So, it is, in places, very similar to Kelsey;
24 in places it's not. You know, obviously, Kelsey hasn't

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1 been logged in the recent past, but it has been logged
2 in places for sure. Long as been logged, I worked on
3 that operation with the DRED forester and the
4 International Paper Company forester when we did that
5 layout under the auspices of a High Elevation
6 Agreement. So, we did the layout, the logging that you
7 see on those aerial photos, we helped direct the
8 prescription for that. Very light touch, 45 acres I
9 think is what we figured roughly, from the aerial
10 photos, of what was impacted.

11 If you look to the north of that,
12 there's a very steep face on Long that will be part of
13 this mitigation. As I recall dropping into some of
14 that, and it's been a while, there is some of that,
15 that spruce-fir there is very of larger diameter. I
16 think it's pretty inaccessible. We determined at that
17 point, when that harvest was done, that they could not
18 harvest that. So, that is probably in an older age
19 condition, which would be similar to Kelsey.

20 Q. So, it would have been preserved no matter what?

21 A. (Staats) Possibly. But, you know, logging methods
22 change. I mean, there's been -- when I was a forester
23 for Champion, they talked about "high lead logging"
24 then, meaning putting a cable up on top of very, very
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[WITNESS: Mandli]

1 steep, inoperable slopes and pulling stuff uphill like
2 they do out west. So, nothing is -- nothing is
3 absolutely off limits, depending on the technology
4 that's available. So, --

5 Q. But not the road building that you would see?

6 A. (Staats) No. But, I mean, they're adverse to road
7 building up there anyways, because it's so expensive.
8 But -- and, then, under the auspices of a High
9 Elevation Agreement, and when I go through the
10 permitting process with the county, you know, we have
11 always tried to stay, you know, prevent road building
12 up there anyway. So, --

13 Q. So, when you say that "the occasional logging
14 operation" -- that the project "is far more intrusive
15 than the occasional logging operation", is that what --

16 A. (Staats) That was what I was referring to, sure.

17 Q. Okay. So, Mr. Weber, are you aware that GRP's own
18 breeding bird study did not find any species of high
19 priority on Long Mountain, such as a Bicknell's,
20 three-toed woodpecker, and others?

21 A. (Weber) I don't recall that that area was surveyed.

22 Q. Did you read the breeding bird survey?

23 A. (Weber) I scanned through it. I did not read it in
24 detail, no.

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[WITNESS: Mandli]

1 Q. Mr. Staats, are you aware of the fact that the GRP's
2 breeding bird survey did not find any species of high
3 priority on Long Mountain?

4 A. (Staats) Yes, it's been a while since I've read that,
5 Lisa. I would, if that's what it says, --

6 Q. Do you want me to quote from it?

7 A. (Staats) It's okay. If that's what it says, that's
8 what it says.

9 Q. It does --

10 MS. LINOWES: Okay, I'm not going to
11 read from this. It's in the record, Mr. Chairman, so I'm
12 not going to read from the report.

13 BY MS. LINOWES:

14 Q. Is it reasonable to expect that the Bicknell's found
15 Kelsey for a reason and didn't find Long?

16 A. (Staats) Is that to me, Lisa?

17 Q. It is.

18 A. (Staats) Well, what it would tell me is that there is a
19 set of habitat conditions that exist on Kelsey as of
20 now that are amenable to Bicknell's thrush. Now, that
21 doesn't -- doesn't preclude Bicknell's from occupying
22 Long, however, just because they didn't find them in
23 their one survey period. In fact, that harvest that we
24 did up there, Lisa, would have created some early

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1 successional young spruce-fir growth in those patch
2 cuts that we did that very likely would possibly, in
3 the near future, be occupied by Bicknell's, because
4 that's the kind of stuff they like. So, it is quite

- 5 possible that in the future Bicknell's could be, if
6 they're not already, on that piece of Long. I'm not --
- 7 Q. Well, that cutting happened when?
- 8 A. (Staats) That cutting happened about -- within the last
9 ten years.
- 10 Q. And, the survey was conducted when, by Audubon?
- 11 A. (Staats) Yes, within the last -- I can't recall --
- 12 Q. But recently?
- 13 A. (Staats) -- what the date of the survey was. Yes. But
14 the point being is that habitat -- you know, habitats
15 change over time, it doesn't -- it may take longer
16 than, you know, softwood regeneration happens
17 relatively slowly in many instances at these high
18 elevation. So, to get to the point where it's useable
19 by Bicknell's thrush may take some time. Could be next
20 year, it could be two years from now, it could be five
21 years from now. So, that's --
- 22 Q. As things stand right now, Long Meadow -- Long
23 Mountain, rather, according to the survey, did not show
24 any species of high priority?

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[WITNESS: Mandli]

- 1 A. (Staats) Uh-huh. The Long Mountain piece, are you
2 referring to all of Long Mountain or just the --
- 3 Q. The Long Mountain piece.
- 4 A. (Staats) The Long Mountain piece. Because there are,
5 you know, I'm very familiar with the entire summit of
6 Long Mountain, and there is very nice habitat for
7 things like three-toeds up there for sure.
- 8 Q. And, that's protected, though. I'm talking about --
- 9 A. (Staats) Yes. Yeah. Yeah. But I would be surprised

10 that, I'm just thinking out loud here, Lisa, that some
11 of that bigger diameter stuff down on the side in that
12 area that I was just referring to, I'd be surprised if
13 that wasn't at a point, either now or soon, that would
14 be good three-toed habitat as it begins to fall apart.
15 Yes, it's possible.

16 Q. Okay. Now, Mr. Weber, I wanted to refer to the
17 transcript from Day 4, and you may not have this in
18 front of you, but I'll read -- I have a couple of
19 questions for you regarding this, specific to the
20 \$200,000. Before I get to that, on that \$200,000, how
21 did you come up with that dollar figure?

22 A. (Weber) It was an estimate on what it would cost to do
23 post-construction monitoring, primarily focused on
24 marten. That was the focus of the discussion when that
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[WITNESS: Mandli]

1 figure came up. It is roughly the same amount of money
2 that we are expending right now to conduct a four-year
3 study on bobcat abundance and distribution in New
4 Hampshire. So, we knew basically what we could buy for
5 \$200,000, in terms of research, and felt that that was
6 adequate to meet our needs for post construction
7 monitoring for marten, in particular.

8 Q. Does it include any kind of pre-construction work?

9 A. (Weber) There was a little bit of pre-construction work
10 done. But, no, it doesn't include work that's
11 anticipated pre-construction.

12 Q. It does not?

13 A. (Weber) It does not. It was a post-construction study.

14 Q. So, do you know what the status is of marten on that

15 site right now?

16 A. (Weber) Like I say, we do have some information that
17 was collected prior to the construct -- or, to the
18 Application. We are reasonably certain that there is
19 an abundance and secure marten population using that
20 area.

21 Q. Okay. And, now, it's true that the -- well, let me ask
22 you this. Does the \$200,000 secure additional habitat?

23 A. (Weber) No, it buys us information on the impacts.

24 Q. Of such a project?

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[WITNESS: Mandli]

1 A. (Weber) Correct.

2 Q. On this scale?

3 A. (Weber) Yes.

4 Q. And, what will you do with that information?

5 A. (Weber) We will review the information and we will use
6 it as appropriate when dealing with similar projects in
7 the future.

8 Q. So, it's informing us for the future, but does it have
9 anything to do with informing additional mitigation on
10 this project site?

11 A. (Weber) No.

12 Q. So, it has nothing to do with this project
13 after-the-fact?

14 A. (Weber) It has nothing to do with identifying
15 additional mitigation for this project.

16 Q. Okay. So, on Day 4, in the transcript, Dr. Kent had
17 asked Mr. Lyons a couple of questions, and I want to
18 verify -- he answered some of these questions in a way
19 that I would like to verify if you agree with that,

20 okay?

21 A. (Weber) Uh-huh.

22 Q. The first question was from Dr. Kent, to Mr. Lyons:
23 "You made that statement yesterday about the wetlands
24 being conveyed to Fish & Game or another agency. Does
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[WITNESS: Mandli]

1 that require some agreement with DES for that to
2 happen?" And, Mr. Lyons responded: "My understanding
3 is that Fish & Game has had a discussion with DES. I
4 did express a concern about making a commitment to have
5 it conveyed to Fish & Game without having DES
6 concurrence. And, I was told by Fish & Game staff that
7 they had that discussion, and DES concurred." Is that
8 a fact?

9 A. (Weber) That's true. I had a personal conversation
10 with Mike Walls, the Assistant Commissioner of the
11 Department of Environmental Services, who agreed that
12 transfer of the entire wetlands mitigation piece, he
13 would support the transfer of that entire piece to the
14 Fish & Game Department, provided we go through the
15 whole process with Governor and Council and all that.
16 But, yes, I had that conversation personally with
17 Mr. Walls.

18 Q. And, then, an additional question from Dr. Kent, he
19 asked of Mr. Lyons: "I just want to be clear on who's
20 conducting the post-construction bird and bat studies?
21 And, Mr. Lyons said: "Those would be conducted by Fish
22 & Game or their designee." Is that your understanding
23 as well?

24 A. (Weber) That's my recollection of his response.

[WITNESS: Mandli]

- 1 Q. Is that your understanding?
- 2 A. (Weber) How that actually plays out is unknown to me at
3 this time. Fish & Game has been an advocate for
4 additional post-construction bird and bat monitoring.
5 We are also an advocate for setting up a technical
6 committee associated with designing those studies.
7 And, we are still in support of those, those conditions
8 on the permit. Who would actually do that work is
9 unknown to me at this point.
- 10 Q. And, then, forgive me, I don't recall if you had
11 submitted those as conditions to the Committee. Has
12 Fish & Game submitted those conditions to the
13 Committee?
- 14 A. (Weber) I believe we have, yes.
- 15 Q. I don't recall seeing them.
- 16 A. (Weber) Yes, I'm pretty sure in our follow-up, I'd have
17 to find that, but I'm pretty sure that we did mention
18 post-construction monitoring studies in our follow-up
19 at the conclusion of the hearing the first time around.
20 And, I'm certain that Public Counsel did. I could dig
21 it out here, if you want to spend a minute.
- 22 Q. Yes, I'm wondering if it was part of your final brief.
- 23 A. (Weber) I believe it was, yes. This is part of the
24 document, Fish & Game Department proposed conditions,
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- 1 Item C, "Migratory Bird and Bat Post-Construction
2 Mortality Study".

- 3 Q. Is that all it says?
- 4 A. (Weber) No, it says "GRP" -- this is one of those
5 conditions, Fish & Game Department's proposed
6 conditions, under Section C, "Migratory Bird and Bat
7 Post-Construction Mortality Study: GRP shall conduct a
8 migratory bird and bat post-construction mortality
9 study. This study shall last three consecutive years
10 following commercial operation of the turbines. A full
11 report with analysis shall be submitted after each year
12 of study. The study's protocols shall be subject to
13 review and approval by Fish & Game, and shall include
14 searches of individual turbines at the entire project
15 site, searcher efficiency trials and scavenging rate
16 trials."
- 17 Q. Okay. So, it would be GRP that is conducting this
18 study, and not Fish & Game?
- 19 A. (Weber) It says "GRP shall conduct".
- 20 Q. So, what Mr. Lyons said is not accurate?
- 21 A. (Weber) Well, I can't say what Mr. Lyons said was
22 accurate or not. All I can say is what we put forward
23 in our proposed conditions on the permit.
- 24 Q. So, at the time when he stated it, though, he either
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- 1 had it wrong or didn't know? He stated "those would be
2 conducted by Fish & Game"?
- 3 A. (Weber) I can't speak to what state of mind he was in
4 when he made that comment.
- 5 Q. Okay. And, then, I wanted to, an additional
6 transcript, this is now questions by Mr. Harrington to
7 Mr. Pelletier. You know who Mr. Pelletier is?

- 8 A. (Weber) I do.
- 9 Q. And, Mr. Harrington asked: "Okay, Mr. Pelletier, you
10 mentioned a couple of times about a post-construction
11 monitoring plan, and you sort of alluded, without
12 specifically saying, that it's "not written yet". So,
13 I guess my first question is, is there a
14 post-construction monitoring plan for this project?"
15 And, he wrote: "My understanding is that one would be
16 developed." Is that -- So, is that your understanding
17 as well?
- 18 A. (Weber) That is my hope, is that the Site Evaluation
19 Committee will include our proposed condition as a
20 condition on the permit. And that, if that occurs, I'm
21 certain that post-construction studies will be designed
22 and implemented.
- 23 Q. And, he states further that: "It's probably
24 inappropriate to try to pull one together right now,
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[WITNESS: Mandli]

- 1 because, again, all of the different things we're
2 learning over time." And, then, the next question:
3 "Okay. Mr. Lyons," this is from Mr. Harrington, "could
4 you confirm that the Applicant intends to have a
5 post-construction monitoring plan? Mr. Lyons says
6 "Yes." So, that's concurring with what you're saying.
- 7 MR. PATCH: Mr. Chairman, it seems to me
8 we're getting far afield of the five questions that the
9 Committee put in the May 8th order.
- 10 MS. LINOWES: Mr. Chairman, I'm almost
11 done. I have only three more questions.
- 12 MR. PATCH: I mean, we're talking about

13 "post-construction avian studies", and we don't seem to be
14 talking about the High Elevation Mitigation Plan, you
15 know, which I thought was the subject of the hearing
16 today.

17 CHAIRMAN GETZ: Well, Ms. Linowes,
18 you've got three questions, three areas of questions?
19 Well, let's continue.

20 BY MS. LINOWES:

21 Q. Well, I think I've established what I wanted to with
22 the post-construction. That the High Elevation
23 Mitigation Plan does not address bird and bat
24 post-construction?

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[WITNESS: Mandli]

1 A. (Weber) That's correct.
2 Q. And, the pre-construction studies that are established,
3 there are no real pre-construction studies as part of
4 the High Elevation Mitigation Plan, other than what
5 you're saying -- other than what? Are there any?
6 A. (Weber) Not as a component of the High Elevation
7 Mitigation Settlement Agreement, no.
8 Q. And, no -- in terms of the land that may be purchased
9 with the \$750,000, there has been no scoping as to
10 where that land can be purchased within the state?
11 A. (Weber) "No scoping"? I'm not sure I understand --
12 Q. Any identified locations within the state to purchase
13 the additional land?

14 MR. PATCH: Mr. Chairman, it's a matter
15 of record that it says "Coos County" right in Paragraph
16 10, at the end of Paragraph 10, in terms of where that --
17 so, I'd object to the question, because I think the

18 question is inaccurate.

19 BY MS. LINOWES:

20 Q. Well, most of the high-elevation spruce-fir forest is
21 located in Coos County, is that correct, in this state?

22 A. (Weber) I'm not sure. There is a lot of it on the
23 White Mountain National Forest, which actually occurs
24 in three different counties. So, how those percentages

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[WITNESS: Mandli]

1 break out, I can't say with certainty. But I know that
2 there is a significant component of it in Coos County,
3 yes.

4 Q. If I may, on the -- from the Wildlife Action Plan, --

5 A. (Weber) Yes.

6 Q. -- the New Hampshire Wildlife Action Plan, you're
7 familiar with that document?

8 A. (Weber) Yes, I am.

9 Q. It says "Nearly 80 percent of New Hampshire's predicted
10 high-elevation spruce-fir forest is located in Coos
11 County and Grafton County"?

12 A. (Weber) Yes.

13 Q. And, there is a map, which shows clearly the majority
14 is in Coos. Would that concur with what your
15 understanding is?

16 A. (Weber) Yes, it does.

17 Q. So, to my original question, have you scoped out
18 anywhere within Coos County then where would be
19 appropriate to buy this land?

20 A. (Weber) We have not started going through the process
21 of identifying potential sites at this point, no.

22 Q. Do you know of any parcels that are equivalent in size

23

to Kelsey at this point?

24

A. (Weber) Yes. There are, in fact, lands that have
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[WITNESS: Mandli]

1

recently become available in the Balsams that has a

2

significant component of high-elevation lands that very

3

recently were made known that are for sale.

4

Q. Have they been cut?

5

A. (Weber) Some of them have. And, I would ask Mr. Staats

6

that, to respond more directly. He has current site

7

knowledge that I lack regarding the status or the

8

condition of those stands.

9

Q. Actually, I would like to ask Mr. Staats that. But has

10

there been a price put on it?

11

A. Like I say, we haven't started to identify potential

12

sites yet, no. Not that I'm aware of.

13

Q. How did you become aware of this land becoming

14

available?

15

A. (Weber) I became aware of it from Mr. Staats.

16

Q. Today?

17

A. (Weber) Last week.

18

Q. Okay. Mr. Staats, if you could elaborate on that then?

19

A. (Staats) Yes. No, it was just brought to our attention

20

publicly, and I see Edith Tucker is here, the reporter

21

who I believe wrote the story about the Balsams

22

property being for sale, the hotel, the whole hotel and

23

lands being for sale. That's public knowledge now.

24

So, it did reach the newspapers last week, and that's

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1

fairly widely known that that is for sale, yes, which

- 2 does incorporate a chunk of high-elevation lands.
- 3 Q. Do you know how much?
- 4 A. (Staats) How much?
- 5 Q. Of that high-elevation lands is --
- 6 A. (Staats) Well, I assume all of the -- the entire
- 7 property is for sale, so that would incorporate all of
- 8 the high-elevation lands. I don't know what their
- 9 exact acreage is above high elevation, I would -- off
- 10 the top of my head, Lisa. But I certainly know that,
- 11 you know, there's a fair chunk, in the hundreds of
- 12 acres.
- 13 Q. In the hundreds of acres?
- 14 A. (Staats) Yes, I would say.
- 15 Q. Not in the thousands?
- 16 A. (Staats) I wouldn't -- No, I don't believe so. No.
- 17 Q. And, how much of it has been cut?
- 18 A. (Staats) Some of it has been cut. And, I don't know
- 19 what the percentage of that is either. I mean, I've
- 20 certainly walked on those high-elevation lands, that
- 21 some has been cut and some has not been cut.
- 22 Q. So, some of the land is cut above 2,700 feet?
- 23 A. (Staats) Oh, sure. Yes.
- 24 Q. You would have been part of that permitting process,
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[WITNESS: Mandli]

- 1 would you not have?
- 2 A. (Staats) I wasn't when that particularly harvest
- 3 occurred, actually. No, I was not part of that
- 4 process.
- 5 Q. Was it within the last ten years?
- 6 A. (Staats) No, it was a bit longer than that ago. Might

7 have even been prior to me coming to work for the Fish
8 & Game Department, actually.

9 Q. So, it essentially predates the MOU?

10 A. (Staats) Oh, absolutely. They were never -- They were
11 never a party to the MOU. They were invited, but they
12 did not participate.

13 MS. LINOWES: Okay. Mr. Chairman, I
14 have no more questions.

15 CHAIRMAN GETZ: Questions from the
16 Subcommittee? Dr. Kent.

17 DR. KENT: Thank you. I'll take
18 responses from either one of you.

19 BY DR. KENT:

20 Q. I've heard quite a bit more in response this morning
21 than we have in the past, so that's a good sign. If
22 you would allow me, I'd just like to walk through and
23 see if we can fill the record out as much as possible
24 today. This process of identifying the mitigation

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[WITNESS: Mandli]

1 parcels, could we go into some more detail about how
2 that occurred? How you actually identified these
3 pieces?

4 A. (Weber) You're talking about the high-elevation pieces
5 that have been identified?

6 Q. Yes, please.

7 A. (Weber) Like I said, it was a general conversation
8 between the parties regarding what lands were thought
9 to be available. As we undertook those discussions, it
10 was obvious to all of us that the Applicant did not
11 have control over whether or not lands were available

12 or not. This was a complicated set of negotiations,
13 where we negotiated with the Applicant, and then the
14 Applicant had to go to the landowners and negotiate to
15 determine whether or not the parcels were actually
16 available as mitigation or not. So, the thought
17 process was that we would like to see high-elevation
18 lands, compensate for impacts on high-elevation lands,
19 spruce-fir habitat. And, the added contiguous nature
20 of the parcels identified to already protected lands
21 was another desirable component when identifying
22 potential mitigation lands. But it was a group
23 discussion. Those particular parcels may well have
24 been brought forward by Dr. Publicover first.

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[WITNESS: Mandli]

- 1 Q. And, to determine that they were high elevation, you
2 looked -- did you start with a USGS map and look at
3 2,700 feet and presume high-elevation forest from
4 there?
- 5 A. (Weber) It was a combination of knowledge of the area,
6 GPS -- excuse me, GIS layers that are widely available
7 to the public through the Granite system, and, you
8 know, just our knowledge of the fact that there was
9 high-elevation spruce-fir lands on the western ridge
10 that abuts the Nash Stream State Forest, that were
11 unprotected at this point in time, in private
12 ownership, without a conservation easement.
- 13 Q. So, you have been on the ground in that region enough
14 to know that 2,700 feet, in that western ridge, you're
15 in spruce-fir?
- 16 A. (Weber) Yes.

17 Q. Thank you. The Applicant, in its response to our
18 query, indicated they talked with landowners and
19 confirmed that no further logging has occurred on the
20 mitigation properties since you investigated them. Do
21 you have any independent knowledge of the status of
22 that, the logging on those properties?

23 A. (Staats) Not that I've been to each one of them, but I
24 certainly was on the wetland mitigation piece about a
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[WITNESS: Mandli]

1 month ago, Dr. Kent, and there was no evidence of any
2 recent logging. And, I'm pretty well appraised by the
3 company forester when those harvests occur. And, if
4 they were to occur in those areas, they would have to
5 get a permit through the county, and then I would
6 definitely know. So, it would have to be done through
7 a permit process.

8 Q. Thank you. On Bald Head, you note in one of your
9 responses that "100 acres has been logged". Can you
10 estimate when that logging might have occurred?

11 A. (Staats) Not by looking at those aerial photos. It
12 would have been probably 10 to 15, somewhere in the 10
13 to 15 years ago, I would guess.

14 Q. You don't have any idea then? Were you involved in
15 that or does that predate your --

16 A. (Staats) The Bald Head, I have not been involved in any
17 harvest on Bald Head. So, it could very well be over
18 17 years ago, actually, to tell you the truth.

19 Q. So, you wouldn't have any knowledge of what kind of
20 management system they had up there?

21 A. (Staats) No. No. It sort of looks, from the photos,
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22 kind of a defuse kind of a prescription there. It's
23 not a large clear-cut. It's just some -- it looks to
24 be some small pockets removed here and there. And, I

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1 may actually have been up, I may have been flirting
2 with that area a month ago into that, some of that
3 stuff, so I have a little bit. I just can't say
4 accurately whether I was in the exact place or not.
5 But, you know, certainly saw some evidence of past
6 harvest on the ground. Yes, it certainly -- it could
7 be pushing 20 years ago.

8 Q. Long Mountain, 45 years ago -- I mean 45 acres, that
9 was -- you were involved in that?

10 A. (Staats) Yes. Yes.

11 Q. So, you have a pretty good sense of when that --

12 A. (Staats) Sure. Oh, yeah. Uh-huh.

13 Q. And, I'm sorry if you already said this, but could you
14 remind me how long ago you thought that cut occurred?

15 A. (Staats) It was within the last ten years. Yeah, I
16 just don't have the exact date. I've certainly got the
17 exact date in my files back at the office. And, I'm
18 sure the Applicant could find that out very easily by
19 talking to the forester in charge on the ground there,
20 too.

21 Q. Do you know what management system they were using up
22 there, what kind of cut?

23 A. (Staats) Yes, we prescribed it, actually, myself and
24 the DRED forester. What we -- These were very small

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1 patch cuts. In fact, I wouldn't call them "patch
2 cuts", I'd characterize them as "group cuts". That we
3 laid out sort of a string of pearls, if you will, small
4 little holes, that where the shear operator was
5 instructed, I believe, to not to stay in one position
6 within the group that we designated with ribbon and cut
7 no further than the length of his boom. There was many
8 complaints from the logging contractor regarding that
9 system, but we thought it turned out very well. In
10 fact, took the White Mountain National Forest staff on
11 a tour of that several years after it happened to show
12 them the harvest that we used up there.

13 So, it was a string of small groups,
14 strung together, all designated by flagging, designated
15 skid trails, highly controlled prescription that we put
16 onto the ground there. In keeping with the -- well
17 within the auspices of the High Elevation MOU. It was
18 an attempt to, I don't want to say "test", but one of
19 the first harvests done under the MOU, and, you know,
20 obviously a cooperative effort between ourselves and
21 the landowner. So, you know...

22 Q. Thank you. Mui se hasn't been cut, my understanding is,
23 from your previous responses. So, that must be, I'm
24 going to, you can tell me if you agree with me, that

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[WITNESS: Mandli]

1 must be late successional or --
2 A. (Staats) Well, I can't say if it's late successional,
3 but it hasn't been cut for a while. So, I just, you
4 know, I haven't walked on that exact piece in quite a

- 5 while or, you know, it's 60 acres. Yes, I can't say
6 with certainty. It appears, you know, unbroken from
7 the aerial photo. Hard saying.
- 8 Q. That helps, in part, to address some of my next set of
9 questions about the habitat up there. It sounds from
10 your descriptions that habitat exists for marten and
11 for Bicknell's and for three-toeds on those parcels for
12 mitigation. Is that a fair statement or unfair
13 statement?
- 14 A. (Staats) Yes, it's a fair statement. As I was
15 explaining earlier, I mean, you're going to go in and
16 out of different habitat, in and out of different
17 vegetative sizes that are going to be more amenable to
18 one species than the other, depending on where you are
19 on those parcels.
- 20 Q. And, they found -- or, well, that habitat extends into
21 Nash Stream?
- 22 A. (Staats) Correct.
- 23 Q. Correct? So, when we add the mitigation parcels to the
24 Nash Stream parts of that property, we have fairly

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[WITNESS: Mandi]

- 1 extensive habitat. Is that a correct statement?
- 2 A. (Staats) Sure. Sure. It's certainly -- it was
3 certainly part our thought process when we looked at
4 those parcels. It's a benefit to the species involved
5 that it's part of a larger patch size, if you will.
6 You know, Long Mountain is one of the -- Long Mountain,
7 on Nash Stream State Forest, is one of the largest
8 contiguous blocks of spruce-fir in Coos County, I'm
9 sure. So...

- 10 A. (Weber) If I could just add, I'm sure you're aware,
11 Dr. Kent, that, you know, when you're talking about
12 perpetual conservation of lands, the condition of the
13 land at the time of acquisition is important, but it is
14 also important to know that those lands will not be
15 impacted in an adverse way by logging throughout
16 perpetuity. That the state will have ownership and,
17 therefore, management discretion on those lands in
18 perpetuity.
- 19 Q. Right. The one caveat I would add to that statement,
20 which I agree with, is that we don't want to leave
21 individuals of a species homeless for 50 years while
22 we're waiting for habitat to regenerate.
- 23 A. (Weber) Absolutely. I agree.
- 24 Q. From a landscape perspective, it would seem to be
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[WITNESS: Mandli]

- 1 important what happens between those mitigation
2 parcels. Is that going to be true? Or, do we have a
3 route, say, if I'm a lynx, can I walk around Nash
4 Stream and access these mitigation parcels or am I
5 going to have to traverse through these low land areas
6 that could potentially be logged in the future?
- 7 A. (Staats) Well, I think that's one of -- one of the
8 things that we looked at with that western string of
9 parcels is the fact that Nash Stream is there adjacent,
10 and so you do have a linkage. You will, in some
11 instances, be dropping below 2,700 feet, that's for
12 sure. But some of those species -- that's not a
13 problem for some of those species. So, there is a good
14 linkage through the Nash Stream, which extends all

15 along that where those parcels are on that western side
16 there. So, you know, knowing that we have, you know,
17 the State has management, the management ability in
18 Nash Stream and the protection, you know, there's that
19 linkage there. I mean, we looked at the landscape as a
20 whole, you know, you see both sides of the valley allow
21 travel for those species down through, and not just the
22 Kelsey side, but the western side as well. So, that
23 was the thought process -- part of the thought process,
24 I mean, there's obviously a lot of different reasons we

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[WITNESS: Mandli]

1 went into it. But there was that ability, because of
2 Nash Stream laying adjacent to those parcels that are
3 referenced in the Mitigation Agreement, the ability for
4 those creatures to come down through there was better,
5 you know, certainly better, you know, that the
6 protection was long term.
7 Q. So, you've created an alternative in case travel along
8 the Dixville/Owlhead ridge there is no longer as
9 optimal as it would be now?
10 A. (Staats) Yes, I would say so, definitely. I mean, you
11 know, again, what Jill and I did, looked at, and marten
12 in particular, you know, looked at marten, as well as
13 lynx, you know, there's sort of two avenues from the
14 northern portions down through. You know, both that
15 eastern side to Kelsey and Owlhead, and then that
16 western side, and, you know, both looked good. And,
17 so, there is two, you know, if something was to happen
18 to that east side, then you still have the ability for
19 those species of wildlife to travel down that western

20 corri dor.

21 Q. Start ing with something that Ms. Geiger brought up
22 earli er, when she was making you calculate how much --
23 how many acres you could buy, as that discussi on was
24 ensui ng, I started to get concerned that we didn't have
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[WITNESS: Mandi i]

1 enough high-el evati on parcel s avail able to purchase.
2 But I think your more recent comment suggests that
3 there may be possi bly 750 acres, if we're playing with
4 that number, of avail able habi tat not conserved in some
5 fashi on?

6 A. (Staats) Yes, if I might. You know, in some respects,
7 this is -- I'm not trying to be cavalier, but
8 everything is for sale at some time or other, and
9 there's a large, you know, ownership to the north that
10 has high elevati on. It may not be for sale today, it
11 may never be for sale. But the Balsams coming --
12 suddenl y coming up for sale offers an opportuni ty, and
13 they may not choose to make that avail able for this
14 kind of a sale, but they may. And, as well as those
15 other ownershi ps to the north also have high-el evati on
16 parcel s. So, you know, that potential exists, for some
17 more thousands of acres to the north, if those
18 landowners so choose to sell. That's possi ble.

19 A. (Weber) The other thing that I would like to add is
20 that, while our focus clearl y is on high-el evati on
21 spruce-fi r habi tats, the High El evati on Mi ti gati on
22 Agreement does not require that that money be spent on
23 high-el evati on areas. It states that the pri ori ty for
24 expendi ture of funds shall be "for projects that secure

[WITNESS: Mandli]

1 conservation of habitat for American marten or other
2 species of conservation concern, with a focus on
3 high-elevation spruce-fir habitat in Coos County." So,
4 that's what we're going to try to get. If we can't,
5 the agreement allows us to spend those monies on
6 habitats that do support marten and other species of
7 concern. So, while our focus is clearly high
8 elevation, it's not exclusive. It's not like we won't
9 be able to spend the money in a productive way, if
10 high-elevation lands are not available.

11 DR. KENT: Thank you. Appreciate that.
12 That's all the questions I have. Thank you.

13 CHAIRMAN GETZ: Other questions?

14 Mr. Scott.

15 BY DIR. SCOTT:

16 Q. Good morning. My questions are for whoever can answer
17 best, probably Mr. Weber, I think. Still on the topic
18 of the \$750,000 to be spent, I'm intrigued by some of
19 the comments that were made, and I want to make sure I
20 flesh it out a little bit more. First of all, within
21 the area of the project, are there -- I assume there
22 are some areas that are already in conservation
23 easement in one way or another, is that a correct
24 statement?

[WITNESS: Mandli]

1 A. (Weber) In the area of the project?

2 Q. Yes.

3 A. (Weber) Just the Nash Stream Forest is the only area

4 that I'm aware of in the immediate vicinity of the
5 project that is currently conserved.

6 Q. Okay. And, then, obviously, assuming this project goes
7 through with the Mitigation Agreement, the 1,700, I
8 forget the exact number, would be also?

9 A. (Weber) Right.

10 Q. I guess I want to get you -- basically, I want to
11 understand, too, is there, and I know you haven't
12 looked at it yet from your statement, is there
13 opportunity also for providing some more contiguous
14 properties that are in easement to avoid fragmentation?

15 A. (Weber) Yes, there is, in particular, on Bald Head
16 Mountain, where there is high-elevation lands that are
17 owned by two different private individuals or
18 corporations, neither one of which we've approached yet
19 to determine whether or not they would be willing to
20 sell those lands. But that's another immediately
21 adjacent opportunity where these funds could be
22 leveraged.

23 Q. And, in that scenario, that would probably get a high
24 priority, given the --

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[WITNESS: Mandi]

1 A. (Weber) It would.

2 DIR. SCOTT: Thank you.

3 CHAIRMAN GETZ: Other questions?

4 Mr. Harrington.

5 BY MR. HARRINGTON:

6 Q. Yes. Just I'm curious, during all this discussion,
7 mostly what's been stated is that the Mitigation
8 Agreements have preserved these lands or would preserve

9 these lands from future logging. Yet, no one's
10 mentioned as to whether that's the only option. And, I
11 guess maybe you don't know the answer, but I'd be
12 curious if there is. Are these lands subject to other
13 types of development? I mean, if someone went in to
14 log these lands, if there was no Mitigation Agreement,
15 could then they turn around and build a camp up there
16 or permanently clear land for a house?

17 A. (Weber) They're private lands, that they could have
18 anything occur on those lands, with the permission of
19 the owner.

20 Q. Okay. So, there is no -- all we've mentioned is the
21 option as to occasional logging versus the wind
22 development. What I guess I'm trying to determine here
23 is that there's a possibility that some of these lands
24 could be developed and occasional logging would not be

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[WITNESS: Mandli]

1 the most extreme form of development, but it could
2 become some other permanent type of clearing and
3 development there?

4 A. (Staats) Oh, for certain. I mean, as Steve says,
5 they're private lands. I mean, there's been other
6 developments, if you will, in the past. On that
7 particular piece of land, there was a trail and yurt
8 system that went in for a while. And, although a yurt
9 isn't permanent, one could foresee that perhaps, if
10 those were popular, longer term lodging, lease camps or
11 hunting lodges or whatever, you know, sort of, you
12 know, type of project that the landowner might see fit
13 to create some, you know, money, economic gain, could

14 happen there, for sure. You know, whether it's a
15 further ski area development on the Dixville side or
16 something of that nature, that those kinds of things
17 could happen.

18 I mean, what we've seen in the recent
19 past in the North Country is just continued
20 parcelization of these large blocks of forest land
21 anyways overall. You know, as they went from the paper
22 companies to the private investors, you know, these
23 pieces keep getting broken into smaller and smaller
24 chunks, and very often that means they're under greater

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[WITNESS: Mandli]

1 threat. You know, they become places where, you know,
2 they may be posted, that kind of stuff. So, those are
3 always some concerns that we have about that as well.

4 Q. So, I guess it would be fair to say then that the
5 mitigation proposal would protect these lands, not only
6 from future logging, but future more permanent
7 development then?

8 A. (Staats) Oh, sure. Yes. Those parcels, yes.

9 MR. HARRINGTON: Yes. Okay. Thank you.

10 CHAIRMAN GETZ: Other questions? You
11 have a question, Mr. Weber?

12 WITNESS WEBER: No, I'd just like to
13 clarify one thing, if I could, Mr. Chairman.

14 CHAIRMAN GETZ: Well, usually we do that
15 through redirect, but go ahead.

16 WITNESS WEBER: Sure. I just wanted to
17 make sure that everybody was aware, in case statements
18 that I made earlier did not indicate this, that we are

19 concerned about the security of Bicknell thrush habitat.
20 It is a species of conservation need. And, the presence
21 of Bicknell's thrush did influence the scope of the
22 mitigation package that we have put together. And, I
23 would not want the record to indicate anything other than
24 significant concern for the long-term security of Bicknell

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[WITNESS: Mandli]

1 thrush on my part.

2 CHAIRMAN GETZ: Thank you. Any
3 redirect, Mr. Mulholland?

4 MR. MULHOLLAND: No, I think we're set.
5 Thank you.

6 CHAIRMAN GETZ: All right. Then, these
7 witnesses -- Mr. Kimball, did you have something here?

8 MR. KIMBALL: I do have some redirect.

9 BY MR. KIMBALL:

10 Q. Is it not true that Long and Whitcomb and Mui se and so
11 forth were actually considered as part of the original
12 windpark?

13 A. (Weber) That's my understanding, yes.

14 Q. And, is it not true that there was an attempt to
15 negotiate the protection of Whitcomb in part because of
16 the -- there was an attempt to also protect Whitcomb,
17 because it did have Bicknell thrush habitat, as shown
18 up in the original studies by GRP?

19 A. (Weber) Yes.

20 Q. And, when the landowner refused to allow that parcel to
21 become available, did we not negotiate that any of the
22 infrastructure here that could be used for the future
23 development of wind power could not be used, which

24 would greatly reduce the potential for future wind
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[WITNESS: Mandli]

1 power development there?

2 A. (Weber) That's correct.

3 CHAIRMAN GETZ: Okay. Is there anything
4 else for this witness? Mr. Mulholland?

5 MR. MULHOLLAND: No. Thank you.

6 CHAIRMAN GETZ: All right. Then,
7 hearing nothing, the witnesses are excused. Thank you,
8 gentlemen.

9 Is there any objection to striking the
10 identifications and entering as exhibits in this
11 proceeding the Applicant's response on the Altona issue
12 dated May 21st or the Fish & Game letter with respect to
13 the high level -- or, High Elevation Mitigation Settlement
14 dated April 27?

15 (No verbal response)

16 CHAIRMAN GETZ: Hearing no objection,
17 then both of those documents will be admitted into
18 evidence.

19 I guess I would provide an opportunity
20 for closing statements with respect to these two issues,
21 and noting for the record that we did provide the
22 opportunity for responses to the filings by the Applicant
23 and Fish & Game, and Ms. Linowes submitted her responses
24 on May 26th with respect to the Fish & Game filing.

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1 So, in terms of brief closings, I would

2

start with Ms. Linowes.

3

MS. LINOWES: Thank you, Mr. Chairman.

4

I'm afraid I didn't come too prepared for a closing

5

statement. But I just want to leave with the Committee a

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substantial concern over the fact that there seems to be

7

more hand-waving and pushing to the future decisions

8

regarding post-construction study, whether or not the

9

pre-construction studies have been sufficient, what kind

10

of costs those would involve, and whether or not any kind

11

of land here in the State of New Hampshire could attempt

12

to replace what is being lost. And, there's a lot of

13

emphasis on buying new land. The record shows from the

14

testimony that there will be significant loss, either

15

through the letter from the Nature Conservancy, the letter

16

from Audubon, as well as what Fish & Wildlife Services

17

submitted to the Committee.

18

I cannot see how we're even attempting

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to regain what is being lost. And, so, for the record my

20

closing comment, the High Level -- High Elevation

21

Mitigation Agreement comes nowhere close to meeting that

22

requirement. Thank you.

23

CHAIRMAN GETZ: Thank you. Mr. Kimball?

24

MR. KIMBALL: No further comments.

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CHAIRMAN GETZ: Mr. Mulholland?

2

MR. MULHOLLAND: Briefly, Mr. Chairman.

3

What the Subcommittee has to do on this aspect, you know,

4

impacts on the natural environment, is to determine

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whether or not there has been unreasonable adverse effect.

6

And, I think we've heard today, and from previous

7 testimony from the Fish & Game witnesses and the other
8 witnesses in this case, is there will be some adverse
9 effect. And, the point of Fish & Game's involvement here
10 is to make sure that that effect wasn't unreasonable, to
11 make sure there was some mitigation for those impacts
12 specifically to those species, the marten, the three-toed
13 woodpecker, the Bicknell's thrush, and the other species
14 of concern.

15 And, I think what we've heard today, and
16 previously, support Fish & Game's position that, with the
17 inclusion of this agreement, as we negotiated it, there
18 won't be an unreasonable adverse effect on the natural
19 environment. And, Fish & Game would ask that any permit
20 that you issue include the Settlement Agreement.

21 CHAIRMAN GETZ: Thank you. Mr. Patch?
22 Ms. Geiger?

23 MS. GEIGER: Yes, Mr. Chairman. I think
24 I'll focus my closing on the Fish & Game witnesses'

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1 testimony and the issues that the Committee -- or,
2 questions that were posed to those witnesses, since there
3 was no cross-examination on the Altona incident. In
4 supplement to the comments that Attorney Patch filed on
5 May 21st, with respect to the Applicant's position that
6 we've met our burden to demonstrate to this Committee that
7 there will be no unreasonable adverse impact on the
8 natural environment by the project, in consideration of
9 the High Elevation Mitigation Settlement Agreement, I'd
10 also like to note for the record that there is other
11 information that's already been before the Committee that

12 I respectfully ask the Committee to look at to assist it
13 with making that determination. Specifically, the revised
14 supplemental testimony of Adam Gravel and Steven
15 Pelletier, dated March 12th, and marked as "Petitioner's
16 Exhibit 50", this is the redline version that we submitted
17 toward the end of the hearings. It contains lots of
18 information that responds to the questions that the
19 Subcommittee posed to Fish & Game a short while ago.

20 More specifically, with respect to the
21 question of whether habitat characteristics within the
22 mitigation lands are adequate to support viable
23 populations of marten, three-toed woodpecker, and
24 Bicknell's thrush, I respectfully refer the Subcommittee

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1 to Pages 8 through 14 of Exhibit 50. And, also, with
2 respect to the question of whether mitigation landscape
3 characteristics are adequate to support lynx occupation or
4 travel through the area, I would refer the Subcommittee to
5 Pages 17 and 18 of Petitioner's Exhibit 50.

6 Also, I echo the sentiments expressed by
7 Attorney Mulholland regarding the witnesses' testimony
8 this morning from Fish & Game. I think that that
9 information helps to round out the record in this
10 proceeding that will afford the Committee the opportunity
11 to make the required findings under 162-H:16.

12 The last thing I'd like to do, in
13 addition to the closing, Mr. Chairman, is it's not clear
14 to me what the status of the responses filed by Ms.
15 Linowes to the information presented by -- the written
16 information presented by the Fish & Game witnesses is. I

17 don't think it's been marked, but I would move to strike
18 from the record of this proceeding the appendix to Ms.
19 Linowes' filing. I think that it goes beyond what the
20 Committee authorized the parties to file in its May 5th
21 order. We were instructed to file replies to the
22 responses that Fish & Game and the Applicant filed in
23 response to the Committee's questions. Yesterday, the
24 Industrial Wind Action Group filed a reply, with an

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1 attachment that purports to be something adopted by the
2 Virginia State Corporation Commission. And, I think that
3 goes well beyond the scope of what we were authorized and
4 directed to file. And, I think, under the guise of a
5 reply, IWA is essentially seeking to expand the record at
6 this late date to introduce through the backdoor, if you
7 will, a document for which now foundation has been laid,
8 no witnesses have testified. I just think it's
9 inappropriate, and that the Committee should not consider
10 that information at all during its deliberations. So, we
11 would respectfully move to strike that from the record.

12 MS. LINOWES: Mr. Chairman, may I
13 respond to that? I think that the High Elevation
14 Mitigation Agreement was put forward and much of the
15 response from Fish & Game was all about the value of the
16 money that was in there, the \$200,000 and the \$750,000.
17 The purpose of that document, of which it is a
18 governmental document right now, and I'm not sure what the
19 level of validation is accepted. It dates back to 2005 on
20 a wind energy project that was approved in the State of
21 Virginia. And, it shows that the purpose of this document

22 was to demonstrate the extent to which other states have
23 put forward mitigation plans and funding for these
24 projects. And, the idea was to demonstrate that the State

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1 of New Hampshire is falling grossly short of what other
2 states have adopted. And, I think it's an indication of
3 the experience of this state or inexperience of it. And,
4 I think that it is important to show on balance what can
5 be done in order to protect the resources in this state
6 from comprehensive wind energy development. So, I think
7 it is important to be part of the record.

8 CHAIRMAN GETZ: Ms. Geiger, let me make
9 sure I understand the objection. You're not objecting to
10 the argument of the response, it's just to the three-page
11 attachment -- to the three-page attachment, is that
12 correct?

13 MS. GEIGER: That's right.

14 CHAIRMAN GETZ: Okay. I'm going to deny
15 the motion to strike, but recognize that the attachment
16 has not been provided subject to or sponsored by a
17 witness, so we'll give it the weight that's appropriate
18 under the circumstances.

19 MS. LINOWES: Mr. Chairman, if I may,
20 I'm happy to supply the entire document, if that would be
21 useful to the Committee?

22 CHAIRMAN GETZ: If we determine it's --
23 well, actually, that won't be necessary. I think that
24 this document has been filed, and I think the -- we'll

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1 leave it at that and give it the weight it's due.
2 Let's take care of some other
3 housekeeping at this point. I'll just note for the
4 record, I neglected to do this at the beginning, that the
5 full Subcommittee is present, has been present since the
6 beginning of the hearing today. I'll note that, for the
7 record, that evidence of the publication of this hearing,
8 as required by the notice that we issued on May 12th, has
9 been provided to the Committee. And, we'll, pursuant to
10 Site Committee Rule 202.26, I'm going to close -- close
11 the record with respect to evidence, testimony, exhibits
12 or arguments that will be considered by the Committee
13 during deliberations.

14 We have, let's see, a couple of things
15 we need to do, further deliberations are going to need to
16 be resumed. But, at this point, it's almost noon. I
17 would suggest that we take the lunch recess, and that we
18 also discuss with counsel during the recess what the, you
19 know, what the next procedural steps are that are required
20 of us, and that we resume the hearings and the meeting at
21 1:00. So, is there any thoughts, questions, concerns
22 about that process?

23 (No verbal response)

24 CHAIRMAN GETZ: Okay. Then, let's take
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1 the lunch recess, and we will resume at 1:00. Thank you.
2 (Whereupon the lunch recess was taken at
3 11:56 a.m., and Day III of deliberations
4 resumed at or around 1:00 p.m. under a
5 separate transcript so designated.)

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