

1 STATE OF NEW HAMPSHIRE

2 SITE EVALUATION COMMITTEE

3
4 **January 10, 2013** - 9:09 a.m.

5 Berlin City Hall

6 168 Main Street

7 Berlin, New Hampshire

8 In re: SEC DOCKET NO. 2011-01
9 BERLIN STATION, LLC:
10 *Motion of Berlin Station,*
11 *LLC, for Amendment of the*
12 *Certificate of Site and*
13 *Facility. (Public Meeting)*14 **PRESENT:**15 **SITE EVALUATION COMMITTEE:**

16 Cmsr. Thomas S. Burack (Presiding as Chairman of SEC)

17 N.H. Dept. of Environmental Services

18 Chrnm. Amy L. Ignatius (Vice Chairman of SEC)

19 N.H. Public Utilities Comm.

20 Acting Cmsr. Philip Bryce
21 Asst. Cmsr. Jeffrey Brillhart
22 Acting Director Craig Wright
23 Cmsr. Robert Scott
24 Cmsr. Michael Harrington
25 Director Elizabeth Muzzey
26 Randall Knepper, Dir./Safety
(Designated as PUC Engineer)27 DRED & Div. of Parks & Rec.
28 Department of Transportation
29 DES - Air Resources Division
30 N.H. Public Utilities Comm.
31 N.H. Public Utilities Comm.
32 DHR - Div. of Cultural Res.
33 N.H. Public Utilities Comm.

34 Counsel for the Committee:

35 Michael J. Iacopino, Esq.

36 Counsel for the Public:

37 K. Allen Brooks, Esq.
38 Senior Asst. Atty General
39 Department of Justice

40 Counsel for the Applicant:

41 Barry Needleman, Esq.
42 (McLane Law Office)

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

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P R O C E E D I N G

1
2 CHAIRMAN BURACK: Good morning, ladies
3 and gentlemen. If I could ask for everyone's attention
4 please. My name is Tom Burack. I reserve as Commissioner
5 of the Department of Environmental Services. And, in that
6 capacity, by statute, I also serve as the Chair of the New
7 Hampshire Site Evaluation Committee. And, I'm pleased to
8 welcome you here today to this proceeding, at which I will
9 be the Presiding Officer in the matters scheduled before
10 the Committee today. Again, we are here today for a
11 public meeting of the New Hampshire Site Evaluation
12 Committee. The Site Evaluation Committee is established
13 by RSA 162-H. The membership of the Committee consists
14 and includes of the following Commissioners or Directors
15 of a number of State agencies, as well as specified key
16 personnel from various State agencies.

17 I'm going to ask now that those who are
18 here today please speak loudly and introduce themselves,
19 so that you all will know who is sitting on this panel,
20 starting at my far right.

21 DIR. MUZZEY: Hello. I'm Elizabeth
22 Muzzey, from the Department of Cultural Resources.

23 MR. KNEPPER: I'm Randy Knepper. I'm
24 the Director of Safety from the Public Utilities

1 Commission.

2 VICE CHAIRMAN IGNATIUS: I'm Amy
3 Ignatius. I'm Chairman of the Public Utilities
4 Commission, and also serve as Vice Chair of the Site
5 Evaluation Committee.

6 CMSR. HARRINGTON: I'm Mike Harrington.
7 I'm a Commissioner on the Public Utilities Commission.

8 DIR. WRIGHT: Craig Wright, Acting
9 Director for the Air Resources Division of the Department
10 of Environmental Services.

11 CMSR. SCOTT: Bob Scott, Commissioner
12 with the New Hampshire Public Utilities Commission.

13 CMSR. BRYCE: Phil Bryce, Director of
14 Parks and Acting Commissioner of the Department of
15 Resources and Economic Development.

16 ASST. CMSR. BRILLHART: Jeff Brillhart,
17 Assistant Commissioner for the Department of
18 Transportation.

19 CHAIRMAN BURACK: Thank you. And, to my
20 immediate right is Michael Iacopino, who is legal counsel
21 to the Site Evaluation Committee for purposes of this
22 proceeding today. I will point out that we are recording
23 the proceeding with the assistance of Steve Patnaude, our
24 court reporter today. And, we will keep a separate

1 transcript for this proceeding and separate from the
2 transcript for the proceeding we'll have after this one.

3 Before we pursue things further, I'd
4 like to turn things over to Amy Ignatius of the Public
5 Utilities Commission to deal with a matter that they must
6 address regarding the designation of an engineer.

7 VICE CHAIRMAN IGNATIUS: Thank you, Mr.
8 Chairman. Under RSA 162-H:3, which describes the makeup
9 of the Site Evaluation Committee, it states that all three
10 Commissioners are members of the Committee, as well as a
11 Staff engineer designated by the Commissioners of the
12 Public Utilities Commission to serve on a particular case.

13 And, so, you heard Mr. Knepper identify
14 himself a moment ago, he is a Staff engineer within the
15 Commission, and the Director of our Safety Division. I
16 would like to ask, this is just among the three PUC
17 Commissioners to vote only, to consider designation of
18 Mr. Knepper to serve on this case. Is there a motion?

19 CMSR. HARRINGTON: I'll make the motion.

20 CMSR. SCOTT: I'll second.

21 VICE CHAIRMAN IGNATIUS: All right. All
22 in favor?

23 (Chairman Ignatius, Cmsr. Harrington,
24 and Cmsr. Scott indicating "aye".)

1 VICE CHAIRMAN IGNATIUS: Opposed?

2 (No verbal response)

3 VICE CHAIRMAN IGNATIUS: Looks like
4 that's unanimous. Thank you, Mr. Knepper.

5 CHAIRMAN BURACK: Very well. Thank you
6 very much. I would note that we have the necessary quorum
7 of the Committee to conduct business today.

8 The agenda for today's public meeting
9 includes two matters. In Docket Number 2011-01, we will
10 consider the motion of Berlin Station, LLC, to amend the
11 Certificate of Site and Facility that was originally
12 issued in that docket on November 8, 2010. In docket
13 2012-03, we will consider a Motion for Declaratory Ruling
14 filed by Atlantic Design Engineers on behalf of the
15 Jericho Power, LLC. But we will begin with Docket
16 2011-01, the Berlin Station matter. And, I will now open
17 that matter with a brief summary.

18 On November 8, 2010, the New Hampshire
19 Site Evaluation Committee issued a Certificate of Site and
20 Facility, which we will refer to as the "Certificate", to
21 Laidlaw Berlin BioPower, LLC, for the siting,
22 construction, and operation of a 70-megawatt biomass
23 fueled power facility located in Berlin, Coos County, New
24 Hampshire, which we will be refer to as the "Facility".

1 On July 12, 2011, the Committee granted a Motion to Amend
2 the Certificate and to Transfer the Certificate to Berlin
3 Station, LLC, which we will refer to as the "Applicant".

4 On November 6, 2012, the Applicant filed
5 a Motion to further amend the Certificate, which I will
6 simply refer to as the "Motion". The Motion seeks to
7 amend the Certificate in four areas. First, the Applicant
8 seeks to reconfigure the wood yard area of the facility,
9 including, first, the use of an A-frame overhead stack-out
10 conveyor and an under-pile reclaim conveyor system. And,
11 second, a shift of the processing building approximately
12 250 feet to the south with the installation of a set of
13 two conveyors to be used to handle incoming woodchips and
14 stack out to piles.

15 The second area of amendment -- that the
16 amendment seeks is a proposal to eliminate the development
17 of an area referred to as the "River Walk".

18 The third proposed amendment is that the
19 Applicant seeks to eliminate some of the fencing
20 requirements, due to the elimination of the River Walk.

21 And, the fourth proposed amendment is
22 that the Applicant seeks to modify the landscaping plan as
23 a result of closer on-site inspection of the Site. The
24 Motion was accompanied by an updated wood yard plan and

1 explanatory prefiled testimony from Dammon M. Frecker.

2 Notice of this hearing was issued by the
3 Committee on December 10, 2012. Notice was posted on the
4 Committee's website. Notice was published in the Union
5 Leader, a newspaper with statewide circulation, on Friday,
6 December 14, 2012, and in the Berlin Daily Sun, a
7 newspaper with circulation in Coos County, on December 13,
8 2012. A display advertisement noticing this hearing was
9 also published in the Berlin Daily Sun on December 13,
10 2012. The affidavit of Barry Needleman attesting to
11 publication was filed with the Committee on December 30,
12 2012.

13 The notice of this hearing designated
14 the date of January 3, 2013 for the filing of Motions to
15 Intervene in the proceeding. To date, no motions have
16 been filed. As always, the Committee accepts written
17 public comment through the conclusion of any proceeding.
18 In this case, the only comment that has been received is
19 from the City of Berlin. On December 11, 2012, the City
20 of Berlin filed a statement in support of the Motion as
21 filed by the Applicant.

22 The matter before the Committee today is
23 whether to grant the Motion to further amend the
24 Certificate. The authority for the hearing is RSA

1 162-H:4, RSA 162-H:5, and New Hampshire Code of
2 Administrative Rules, Site 203.

3 We will begin by taking appearances in
4 this matter. We will then allow the Applicant the
5 opportunity to explain the basis for the Motion, through
6 its counsel and the testimony of Mr. Frecker, and others
7 as may be appropriate. When the Applicant has concluded
8 its presentation, we will entertain questions from Counsel
9 for the Public, as well as the Committee members.

10 Following the questions from the Committee, we will then
11 hear public comment, if there be any. At that point, the
12 Committee will determine whether it should proceed to
13 deliberate on the Motion today. If we do proceed to
14 deliberations today, the deliberations will be conducted
15 in public and transcribed verbatim, just like the rest of
16 the hearing.

17 So, I would now like to proceed to take
18 appearances. And, I will turn to Mr. Needleman.

19 MR. NEEDLEMAN: Thank you, Mr. Chairman.
20 Barry Needleman, from McLane, Graf, Raulerson & Middleton,
21 representing Berlin Station. Also here with me is Dammon
22 Frecker, the Managing Director from Cate Street Capital,
23 whose prefiled testimony you have.

24 CHAIRMAN BURACK: Thank you.

1 FROM THE FLOOR: Could that be repeated
2 please, we didn't hear it. Could you speak louder.

3 MR. NEEDLEMAN: I'm sorry. I'm Barry
4 Needleman, from McLane, Graf, Raulerson & Middleton,
5 representing Berlin Station. And, this is Dammon Frecker,
6 from Cate Street Capital.

7 FROM THE FLOOR: Thank you.

8 MR. BROOKS: Allen Brooks, from the
9 Attorney General's Office, here as Counsel for the Public.

10 CHAIRMAN BURACK: Thank you.

11 Mr. Needleman.

12 MR. NEEDLEMAN: Thank you, Mr. Chairman.
13 We appreciate the Committee convening today to consider
14 this Motion to Amend. Since the issuance of the original
15 Certificate, construction has been proceeding and going
16 very well. You may even have noticed it as you came into
17 town this morning. Things are on schedule. And, the
18 expectation is that the facility will, in fact, commence
19 commercial operation before the end of this year, most
20 likely in October.

21 Like any project of this type and scope,
22 as construction progressed, some adjustments were
23 necessary. In July of 2012, I wrote a letter to the
24 Committee outlining the four changes, which the Chairman

1 described a moment ago. The Committee responded, asking
2 us to file this Motion to Amend, which you have before you
3 today. We did so on November 6th.

4 As I noted in my July letter, we believe
5 the four changes are fairly minor. But, by the same
6 token, we recognize that they're quite important to the
7 City of Berlin and its residents. And, so, we have been
8 working very closely with the City regarding these
9 changes. And, also, as the Chairman mentioned a moment
10 ago, we were pleased that, on December 11, the City filed
11 a notice of support for these changes. We're pleased that
12 the City supports us. And, it's our expectation that we
13 will continue to work very closely with the City going
14 forward.

15 Mr. Frecker is here with me. You have
16 his prefiled testimony, which described these changes in
17 detail. And, at this point, I think it would probably be
18 most useful if I just made Mr. Frecker available to answer
19 any questions that the Committee or the public has.

20 CHAIRMAN BURACK: Very good. Thank you.
21 I think we should first have Mr. Frecker sworn in, if we
22 could please.

23 (Whereupon **Dammon M. Frecker** was duly
24 sworn by the Court Reporter.)

[WITNESS: Frecker]

1 CHAIRMAN BURACK: Thank you, Mr.
2 Frecker.

3 **DAMMON M. FRECKER, SWORN**

4 BY MR. IACOPINO:

5 Q. Mr. Frecker, you have submitted prefiled testimony.
6 Are there any changes that you have to that prefiled
7 testimony before there are questions for you?

8 A. No.

9 Q. Okay. And, if you were asked the same questions as
10 contained in that prefiled testimony today, would you
11 give the same answers?

12 A. Yes.

13 MR. IACOPINO: Okay.

14 CHAIRMAN BURACK: Thank you. So,
15 Attorney Needleman, at this point you have no questions
16 for Mr. Frecker?

17 MR. NEEDLEMAN: No. I'm happy to have
18 him just adopt his testimony and answer your questions.

19 CHAIRMAN BURACK: Okay. Very good.
20 Attorney Brooks, we will turn things now to you, to ask
21 any questions you may have of Mr. Frecker?

22 MR. BROOKS: I have no additional
23 questions. I've read the prefiled testimony.

24 CHAIRMAN BURACK: Thank you. We will,

[WITNESS: Frecker]

1 for purposes of the record, we will mark Mr. Frecker's
2 testimony as "Exhibit 1".

3 (The document, as described, was
4 herewith marked as "**Exhibit 1**" for
5 identification.)

6 CHAIRMAN BURACK: Thank you. Okay. We
7 will then turn things to members of the Committee, to ask
8 any questions that they may have of Mr. Frecker. Who
9 would like to go first? Commissioner Ignatius.

10 VICE CHAIRMAN IGNATIUS: Thank you.

11 Good morning.

12 BY VICE CHAIRMAN IGNATIUS:

13 Q. In both the testimony and in the Petition, there is a
14 statement that, by moving the woodlot a certain area,
15 it will be closer to the edge of the northern edge of
16 the property, but the sound impacts will not be any
17 greater, and there will be no trouble in maintaining
18 the sound requirements.

19 Can you describe a little bit more how
20 is it that you know that you won't run into any kind of
21 sound complications by the change?

22 A. Sure. We have conducted some preliminary noise
23 modeling analysis. It wasn't done using the same model
24 as the original filing, but it uses similar acoustical

[WITNESS: Frecker]

1 modeling methodologies, to evaluate the Project's
2 conformance with the sound standards of 70 decibels
3 daytime and 60 decibels nighttime. And, the results of
4 that analysis have indicated that the impacts of the
5 Project would be very similar to what was originally
6 presented in the initial filing. That we would well
7 conform with the 70 decibel daytime. Most of the
8 impacts are around 60 or less. And, at nighttime, most
9 of the impacts are in the low 50s, but well in
10 conformance with the 60 decibel nighttime standard.

11 Q. Thank you. You also state that, because the River Walk
12 isn't to be constructed, there's no need for fencing in
13 that area. Is there any way in which the public has
14 access to the facility, any dangers posed by not
15 putting that additional fencing up, even though the
16 River Walk isn't going to be taking -- isn't going to
17 be built?

18 A. No. The Site will be secured on all of the boundaries
19 by fencing and by security personnel at the Site on a
20 24-hour basis. So, the public would have no access to
21 the Site, from either -- from any of the property
22 boundaries beyond the river.

23 Q. Also, in your testimony, you described that the
24 landscaping changes involve working with the City and

[WITNESS: Frecker]

1 the New Hampshire Bureau of Trails to modify the
2 landscaping plan, and that a revised plan will be --
3 it's still being developed, I guess. What's the
4 timing? And, is that something that's submitted to the
5 City for the City's approval?

6 A. Yes. That plan has been a working document for some
7 time now. There was some additional changes to it, I
8 believe as recently as earlier this week. I would say
9 it's in its -- nearing its final draft form, and is
10 undergoing final review by all of the parties,
11 including our technical team, to make sure that we've
12 properly considered access gates to the Site and other
13 Site features, and that that should be complete within
14 a month at least. And, that would be the final
15 document, as done before with the landscape plan, would
16 be presented to the City for their final approval, and
17 then to the Committee.

18 VICE CHAIRMAN IGNATIUS: All right.
19 Thank you. No other questions.

20 CHAIRMAN BURACK: Thank you.
21 Commissioner Scott.

22 BY CMSR. SCOTT:

23 Q. Following up on the landscaping plan, just so I
24 understand better. So, is the intent -- is your intent

[WITNESS: Frecker]

1 that this will be an informational filing to the
2 Committee or will there be some action that you're
3 requesting from the Committee when you submit this
4 plan?

5 A. I believe that it would be in the category of an
6 informational filing, as was done before. That the
7 primary responsibility for approving that plan is the
8 City's.

9 CMSR. SCOTT: Thank you.

10 CHAIRMAN BURACK: Commissioner
11 Harrington.

12 CMSR. HARRINGTON: Yes.

13 BY CMSR. HARRINGTON:

14 Q. Just one question for you on the elimination of the
15 River Walk, it says "In lieu of constructing the River
16 Walk, Berlin Station" --

17 (Court reporter interruption.)

18 BY CMSR. HARRINGTON:

19 Q. It states in your testimony, "In lieu of constructing
20 the River Walk, Berlin Station has agreed to provide
21 the City the funds it intended to use for construction
22 of the River Walk." Is this funds being provided with
23 any particular intent or are they just going to the
24 General Fund of the City of Berlin?

[WITNESS: Frecker]

1 A. I am not aware of how the City intends to use those
2 funds. Berlin Station is merely trying to meet our
3 obligation to provide them with that, with those funds.

4 Q. So, you're just providing them to the City then?

5 A. That's correct.

6 Q. And, on the landscaping plan, there will be -- the City
7 will have to sign off on that? That's --

8 A. That is correct. The City has been working very
9 closely and collaboratively with us in the refinements
10 to that plan. And, so, they will -- they will be
11 providing the final approval of that.

12 CMSR. HARRINGTON: Thank you. That's
13 all I have, Mr. Chairman.

14 CHAIRMAN BURACK: Thank you,
15 Commissioner Harrington. Other questions? Director
16 Wright.

17 DIR. WRIGHT: Thank you, Mr. Chairman.

18 BY DIR. WRIGHT:

19 Q. Mr. Frecker, in your testimony, as part of the original
20 Application for this facility, you had to conduct air
21 pollution dispersion modeling as part of the air
22 permit. And, obviously, one of the things that takes
23 into consideration is the structures on-site. And,
24 obviously, the wood processing building is being

[WITNESS: Frecker]

1 relocated, and there's also being -- there's a change
2 in height. Will that have any impact on the analysis
3 you did as part of the original Application?

4 A. No, sir. The relocated wood processing structure is
5 actually shorter than the prior structure. So, as
6 originally proposed, it was 60 feet in height, and it
7 will be about 45 feet in height now. So, that would --
8 even if that was a so-called "controlling structure",
9 it would have a lesser impact. In fact, the boiler
10 building is really the controlling structure with
11 regard to plume dispersion in this Project. So, the
12 change will have no impact upon the air quality
13 results.

14 DIR. WRIGHT: Okay. Thank you.

15 CHAIRMAN BURACK: Other questions?

16 Director Muzzey?

17 BY DIR. MUZZEY:

18 Q. At the scale which I looked at the plans, it was a
19 rather small scale, and I see you have a bigger scale
20 there now. Could you just give us a two-minute summary
21 of the changes, not the whole plant, but just the
22 changes since we last saw that plan?

23 A. Sure. Unfortunately, I didn't bring an easel. So, I'm
24 going to try to do this, playing the part of a human

[WITNESS: Frecker]

1 easel for the Committee.

2 MR. BROOKS: Mr. Chairman, could I stand
3 up there?

4 CHAIRMAN BURACK: Yes. Certainly.
5 Please, please do.

6 VICE CHAIRMAN IGNATIUS: Anyone else who
7 wants to --

8 CHAIRMAN BURACK: Yes. Anyone else who
9 would like to come and stand by the side here to see,
10 you're welcome to do so.

11 VICE CHAIRMAN IGNATIUS: Mr. Needleman,
12 can you get that bottle out of the --

13 MR. NEEDLEMAN: Yes.

14 VICE CHAIRMAN IGNATIUS: Thank you.

15 CHAIRMAN BURACK: Please proceed,
16 Mr. Frecker.

17 WITNESS FRECKER: Thank you.

18 **BY THE WITNESS:**

19 A. So, what this figure shows is an overlay of the
20 proposed new wood yard equipment, on top of the
21 previous wood yard equipment. And, it's a little bit
22 easier perhaps to start with looking at it in these
23 individual frames, where this red [indicating] shows
24 the originally proposed woodpiles. And, so, the

[WITNESS: Frecker]

1 riverbank is located here [indicating]. Community
2 Street is -- or, the main boiler plant is in this area
3 [indicating], Community Street off further to your
4 left.

5 CHAIRMAN BURACK: Mr. Frecker, can I
6 just hold you up for a moment?

7 WITNESS FRECKER: Sure.

8 CHAIRMAN BURACK: We're going to mark
9 this as a "Exhibit 2" here, if we may.

10 (The Site Plan, as described, was
11 herewith marked as "**Exhibit 2**" for
12 identification.)

13 CHAIRMAN BURACK: And, it would be
14 helpful, as you're talking us through, if you could be a
15 little more descriptive of where you're pointing on the
16 plan as you're pointing there. So, you were just pointing
17 at the upper right-hand corner of the plan, is that right?

18 WITNESS FRECKER: That's correct.

19 **CONTINUED BY THE WITNESS:**

20 A. So, looking again at this frame in the upper right-hand
21 corner of the plan, you see three red shaded areas
22 representing the woodpiles as originally proposed and
23 configured under the original wood yard plan. The dark
24 square that you see in the center was the originally

[WITNESS: Frecker]

1 proposed wood processing structure. So, a 65-foot tall
2 structure, that had a number of conveyors going into it
3 and coming back out of it. Within that structure,
4 there is essentially a screen that screens out large
5 size material, biomass material that comes into the
6 Project that's too large to go into the boiler. That
7 large material then drops through a grinding operation
8 to grind it down to the proper size. That proper size
9 material portion is fed to the boiler, and the
10 remaining pieces are fed to these other piles. So,
11 that was how the Project was originally proposed.

12 And, then, as engineering advanced from
13 the permitting stage to the final design stage and
14 construction, the Project engineers recognized that
15 this design could be optimized through the use of this
16 so-called "A-frame stack-out conveyor", that you see in
17 this lower black and white frame on the right-hand side
18 of this figure.

19 And, essentially, what we've done,
20 excuse me, is we've maintained the overall size and
21 general shape of the wood yard. So, it hasn't changed
22 in its size at all. It's gone from these three piles
23 that you see in this upper frame, to one long oval pile
24 and one roughly square pile, similar to what you could

[WITNESS: Frecker]

1 see in the original configuration.

2 The wood processing structure has now
3 shifted about 250 feet to the south, such that the
4 trucks dump their material onto a conveyor, goes into
5 that wood processing structure, gets screened and
6 ground, comes down, and goes into this overhead
7 conveyor that you saw mentioned in our Motion, and
8 stacked out into a pile under this A-frame conveyor.
9 That A-frame conveyor has conveyors in the bottom of
10 it, under-conveyors, that pull the material and then
11 feed it into the boiler.

12 So, this system actually allows a much
13 more automated operation. In this prior configuration,
14 it required a couple of pieces of heavy equipment to
15 continuously move and manage these piles and push them
16 into so-called "reclaim hoppers" that feed the
17 conveyors. This system does all that work pretty much
18 by itself. It has redundancy to it, greater
19 reliability to it. So, it has some features that
20 improve the performance for the Project, eliminates a
21 couple of pieces of heavy equipment that would be
22 generating diesel emissions and sounds along the
23 riverbank. So, we think it has some benefits in that
24 regard as well.

[WITNESS: Frecker]

1 And, if you look at the left side of the
2 figure, you see some blue and green colors. Those
3 colors are essentially showing -- the blue colors are
4 showing where the Project has reduced impervious area,
5 paved area, if you will. And, the green areas showing
6 where additional pavement has been introduced, largely
7 in the area of the truck dumpers, to facilitate truck
8 movements. The benefit that that is trying to depict
9 is that we have reduced impervious area along the
10 riverbank. So, looking at the left side of this
11 figure, you see a series of dashed lines. Those
12 represent the protected shoreland, under the Shoreland
13 Protection Act of New Hampshire. And, it is of benefit
14 to the environment and the protected shoreland to
15 reduce impervious area and impacts within that region,
16 and that's what this change in design serves to do.

17 BY CHAIRMAN BURACK:

18 Q. May I ask you, what's the height of the A-frame
19 structure here?

20 A. The very top of that A-frame structure conveyor is
21 about the same as what was originally proposed for the
22 wood processing building, of about 60 feet.

23 Q. And, it's a steel construction, steel frame
24 construction?

[WITNESS: Frecker]

1 A. Yes. You see these dark lines, they're essentially the
2 pieces, the steel members that form the A-frame that
3 hold that top conveyor in place.

4 BY MR. KNEPPER:

5 Q. So, the A-frame is now higher than the wood processing
6 building itself?

7 A. It is higher than this newly proposed wood processing
8 structure.

9 Q. Yes.

10 A. But is about the same height. And, the piles
11 themselves would still be the same height. It's just
12 that conveyor sits up above it a little bit higher.

13 BY CHAIRMAN BURACK:

14 Q. And, again, can you remind us what the height you --
15 the maximum height approximately you're expecting of
16 the woodchip piles?

17 A. It's on the order of 40 feet.

18 CHAIRMAN BURACK: Commissioner Ignatius.

19 BY VICE CHAIRMAN IGNATIUS:

20 Q. Just to get oriented on your map, which I found very
21 helpful. Where is the actual plant itself?

22 A. So, if it would be helpful, this is the overall site
23 plan for the Project.

24 CHAIRMAN BURACK: And why don't we plan

[WITNESS: Frecker]

1 to mark this as "Exhibit 3".

2 (The Site Plan, as described, was
3 herewith marked as "**Exhibit 3**" for
4 identification.)

5 **CONTINUED BY THE WITNESS:**

6 A. And, so, this is Community Street [indicating], the
7 ball field area, down here in the lower left corner of
8 this figure. Along the bottom is Hutchins Street, and
9 along the top is the riverbank. And, so, this dark
10 shaded area, on roughly the left side of the figure, is
11 the wood yard. And, you can see the structures
12 associated with the main power plant, the boiler house,
13 the turbine building, and appurtenant structures on the
14 left-hand side as well.

15 BY VICE CHAIRMAN IGNATIUS:

16 Q. And, so, the process wood is fed through, automated to
17 feed in sort of a diagonal line, it's taking the
18 woodchips into the boiler itself?

19 A. Right. Correct.

20 BY CHAIRMAN BURACK:

21 Q. Perhaps you could just show us on this plan what the
22 total flow is.

23 A. Flow of material? Sure. So, you see labeled here the
24 "truck dumpers", that tilt the trucks and dump the

[WITNESS: Frecker]

1 biomass material out of the trucks, onto a reclaim
2 conveyor, that goes up into this wood processing
3 structure. That is where the screening and grinding of
4 the material takes place. They're then fed back to
5 this A-frame conveyor system. The overhead conveyor
6 moves back and forth and deposits the material in the
7 pile as it goes. The under claim conveyor that sits in
8 the bottom of this, almost underground, underneath this
9 pile, pulls those materials back, feeds them to a
10 transfer conveyor that goes up into the main boiler
11 feed conveyor.

12 VICE CHAIRMAN IGNATIUS: Thank you.

13 CHAIRMAN BURACK: Okay. I think we've
14 -- if I may, I think we had a question down here, somebody
15 had -- Commissioner Scott.

16 CMSR. SCOTT: Thank you.

17 BY CMSR. SCOTT:

18 Q. I just -- it would appear to me, if you have a more
19 efficient handling system for the woodchips and the
20 biomass, if you will, I assume there's a -- perhaps a
21 better safety component to that, meaning less chance of
22 a fire hazard, because you're turning the chips over
23 more. Is that a true statement?

24 A. I believe that's an accurate statement. And, from a

[WITNESS: Frecker]

1 safety standpoint, the reduction in heavy equipment
2 that you need moving around the area also helps
3 facilitate that goal.

4 CMSR. SCOTT: Thank you.

5 CHAIRMAN BURACK: Director Muzzey.

6 BY DIR. MUZZEY:

7 Q. Is the A-frame conveyor, is that the large structure we
8 see on the Site now?

9 A. It is.

10 Q. Is it in its permanent location on the Site now?

11 A. It is.

12 Q. It is. I know that the -- both the Certificate and the
13 Section 106 sign-off for the Project did request that
14 any changes to the original plans be submitted to the
15 State Preservation Office, the Division of Historical
16 Resources. Do you know whether that has been
17 submitted?

18 A. I don't believe that it has. I didn't -- I don't
19 believe that we perceived that to be a change that
20 triggered that requirement, but we're happy to do that.

21 DIR. MUZZEY: Thank you.

22 WITNESS FRECKER: Certainly.

23 CHAIRMAN BURACK: Any question? Mr.
24 Knepper.

[WITNESS: Frecker]

1 BY MR. KNEPPER:

2 Q. I just want to make sure if I'm characterizing this
3 correct. You know, I used to have a single structure
4 for, I guess, the wood processing and grinding
5 facility, kind of sticking out of the ground at
6 60 feet, with piles of wood around at 40 feet
7 surrounding it. Now, I have a structure that's 60 feet
8 tall, the length of the two woodpiles, and then the
9 wood processing/grinding facility is now 45 feet tall
10 at the opposite end. Is that a fair characterization?

11 A. It sounded accurate to me.

12 Q. Okay. And, does the conveyor system at all interfere
13 with any fire safety provisions that need to be
14 required by the City of the Berlin or anything?

15 A. No. It meets all -- it is designed in accordance with
16 all codes and standards.

17 MR. KNEPPER: Okay.

18 BY CHAIRMAN BURACK:

19 Q. Just want to be very clear on this. Is there a roof
20 structure over that A-frame?

21 A. No, sir.

22 Q. It's all entirely exposed to the air?

23 A. It is an open structure, that's correct. There's only
24 those support members, girders, if you will, that hold

[WITNESS: Frecker]

1 the upper conveyor in place.

2 BY MR. IACOPINO:

3 Q. And, there's actually going to be material on that
4 conveyor or is the conveyor just moving the material
5 underneath it?

6 A. The material is conveyed and transferred in this
7 structure [indicating] to that conveyor. It is then
8 conveyed out and dropped as the conveyor shifts its
9 drop location laterally into that pile.

10 Q. Okay. So, there will be material on top of the
11 conveyor, which will increase the height of what one
12 would see when they look towards it, is that correct?

13 A. I don't believe that it would be visually discernable,
14 whether you saw material sitting on that conveyor or
15 not, given that the height or quantity of material
16 sitting on that conveyor is probably less than the size
17 of the conveyor itself in its width. So, I am not
18 sure, from off-site locations, whether that would be
19 discernable or not. It is also a shrouded conveyor to
20 keep -- to prevent dust when the wind blows. So, I
21 don't think you'd see the material anyway.

22 Q. Okay. So, there is some protection from --

23 A. Dust.

24 Q. -- dust or ash or anything flying around?

[WITNESS: Frecker]

1 A. Definitely.

2 MR. IACOPINO: Okay. Thank you.

3 BY CHAIRMAN BURACK:

4 Q. And, if I may, in terms of the piles themselves, once
5 the chips are dropped off of the conveyor, is there any
6 mechanism in place, in very dry conditions, to be able
7 to put water down on those piles?

8 A. We certainly have the capability, because of the need
9 to have fire suppression and hydrants around the
10 perimeter of the site, to be able to apply water to the
11 piles, as we had discussed in the original proceeding
12 on the Project. One of the things that you see with
13 biomass piles is they -- of this type is they have a
14 tendency to crust over, if you will, fairly rapidly,
15 and contain a lot of that dust material. But we
16 certainly have the capability for additional dust
17 suppression.

18 CHAIRMAN BURACK: Thank you. Mr.
19 Harrington.

20 CMSR. HARRINGTON: Yes. Just two quick
21 questions. Maybe you've kind of answered the first one.

22 BY CMSR. HARRINGTON:

23 Q. This new mechanism will not create more dust than the
24 old mechanism?

[WITNESS: Frecker]

1 A. No, sir. We do not. Actually, given that we're just
2 having one transfer point of this conveyor dropping the
3 material, rather than pieces of equipment continuously
4 having to work those piles and agitate those piles, we
5 think that there might be an opportunity to actually
6 decrease fugitive dusts.

7 CMSR. HARRINGTON: And, this question
8 may be more appropriate for Mr. Needleman. But, under
9 162-H:5, I, it says "Certificates are required for sizable
10 changes or additions to the existing facility." Are you
11 asserting that this is a sizable change or addition or
12 have you just opted not to go that road?

13 MR. NEEDLEMAN: No. We don't believe
14 this is a sizable addition or change.

15 CMSR. HARRINGTON: But you're asking for
16 Committee approval anyways?

17 MR. NEEDLEMAN: Not in the context of it
18 being a sizable addition. Just in the context of it being
19 a slight departure from the original Certificate approval.

20 CMSR. HARRINGTON: Thank you.

21 CHAIRMAN BURACK: Director Bryce --
22 Commissioner Bryce.

23 BY CMSR. BRYCE:

24 Q. Is the new conveyor system, is that going to completely

[WITNESS: Frecker]

1 eliminate the need to use equipment or -- and it will
2 be structured such that you couldn't get equipment in
3 there to help with the operations at all? Or, are you
4 -- you may -- you still may be required to bring
5 equipment in occasionally to help when things are, you
6 know, for whatever reasons, related to wood handling?

7 A. There will still be at least one piece of equipment
8 working the site in the area of the truck dumpers. So
9 that, when the truck dumpers deposit their material,
10 that front-end loader or track vehicle would push that
11 material into this reclaim hopper that feeds the
12 processing building. Or, it could also push it over
13 into this additional stockpile. So, during the
14 daytime, when we're receiving material, there's still
15 going to be a piece of equipment operating in this
16 area. There's, as you can see, a roadway all the way
17 around the back pile -- the backside of the woodpile
18 that would allow vehicular access, as well as heavy
19 equipment access. So, if we need to do that, we can --
20 we have access to all edges of the woodpile.

21 CMSR. BRYCE: Okay.

22 BY CHAIRMAN BURACK:

23 Q. And, if I may, Mr. Frecker, as you were describing
24 that, that roadway, that's on the northerly side of the

[WITNESS: Frecker]

1 A-frame structure, of the woodpile structure, is that
2 correct, if I'm reading this plan correctly?

3 A. That's correct.

4 CHAIRMAN BURACK: Thank you. Director
5 -- or, Commissioner Scott.

6 BY CMSR. SCOTT:

7 Q. I was just curious, for those who are perhaps having
8 trouble envisioning this, is there a similar operation
9 that someone may be able to see in this state, perhaps
10 in Newington?

11 A. I'm not sure if Newington uses the same exact design,
12 but, certainly, they have a similar sort of configured
13 wood yard operation.

14 CHAIRMAN BURACK: Director Wright.

15 DIR. WRIGHT: Thank you, Mr. Chairman.

16 BY DIR. WRIGHT:

17 Q. Mr. Frecker, how, just can you remind me, how will the
18 conveyors be powered? And, I guess my specific
19 question is, is there any diesel generating equipment
20 associated with the conveying systems?

21 A. No. They're all powered by the -- by the electricity
22 that is generated by the facility.

23 Q. Okay. So, there's no change there?

24 A. No, sir.

[WITNESS: Frecker]

1 DIR. WRIGHT: And, just one follow-up
2 question?

3 CHAIRMAN BURACK: Please.

4 BY DIR. WRIGHT:

5 Q. Just for my own education, how much wood storage
6 capacity is going to be in the A-frame at this point?
7 And, how does that compare to what the original design
8 was?

9 A. It's about the same as the original design. Because,
10 as you recall, the footprint of the woodpiles, the
11 layout of the woodpiles is very similar under this
12 design as it was in the original design. So, we
13 haven't really altered the on-site storage capacity.
14 We've pretty much maintained what it was. I believe
15 that, under the A-frame, it's on the order of two weeks
16 of material.

17 BY CHAIRMAN BURACK:

18 Q. And, what's the maximum supply timeframe you have in
19 the additional woodpile there on the south side?

20 A. I believe that the entire wood storage area provides us
21 with about a month of operating material.

22 Q. Thank you. You were asked before about the source of
23 the energy to power the conveyor systems, and you
24 explained that that would come from the generator

[WITNESS: Frecker]

1 on-site here. Obviously, that's increasing the
2 parasitic load. Have you done any calculations as to
3 the extent to which the parasitic load is increased?
4 What the electrical demand is going to be from this
5 additional conveying system?

6 A. Yes. That's a very good question. I'm not sure that
7 it necessarily does increase the parasitic load.
8 Because, as you recall, and if I can go back to --

9 Q. Going back to Exhibit 2 now?

10 A. -- Exhibit 2, thank you. You'll recall that this wood
11 processing structure had a total of eight conveyors
12 coming into it and going out of it. And, we've reduced
13 the number of conveyors in this revised wood yard
14 configuration, albeit a larger conveyor serving a
15 significant duty. So, I'm not entirely sure about the
16 change in load associated with it. It could be about
17 the same.

18 CHAIRMAN BURACK: Thank you. Director
19 Muzzey.

20 BY DIR. MUZZEY:

21 Q. Getting back to the riverside path, in Laidlaw's draft
22 scope of work for that project, the scope states that
23 "the path will pass very close to the former Riverside
24 Newsprint Shipping Department or the newsprint

[WITNESS: Frecker]

1 building." And, at that time, Laidlaw had expected to
2 stabilize the building, clean it out, repair the roof
3 as necessary, and seal up the building to protect it.
4 Are you aware whether Laidlaw is still expecting to do
5 that work to the building, now that the path is no
6 longer part of the Project?

7 A. I am not aware of what the long-term plans are with
8 regard to the Riverside structure. But I can -- we can
9 certainly provide that information to you.

10 DIR. MUZZEY: That would be terrific.

11 Thank you.

12 BY MR. IACOPINO:

13 Q. Well, has it been sealed up yet? Has there been any
14 work done on the building yet?

15 A. There has not been work done on the structure.

16 BY CHAIRMAN BURACK:

17 Q. Mr. Frecker, I just want to make sure we're a little
18 clearer on the modifications to the landscaping plan.
19 Are those all shown on this plan here, Exhibit 3? Or,
20 can you describe for us in greater detail what other
21 modifications there may be to the original landscaping
22 plan?

23 A. They're not shown on either of the figures that I have
24 here today. But I can certainly describe them to you.

[WITNESS: Frecker]

1 Q. Would you please?

2 A. Certainly. The landscaping plan that was submitted, it
3 was approved by the City and submitted to the
4 Committee, showed landscaping along the River Walk,
5 between the River Walk -- proposed River Walk path and
6 the Project area. And, all of that landscaping has
7 been eliminated with the elimination of the River Walk.
8 So, from the northern border perspective, all of that
9 landscaping has been eliminated.

10 With regard to the southern border,
11 along Hutchins Street, the plan, as submitted to the
12 Committee, and approved by the City, originally showed
13 two rows of plantings on either side of a recreational
14 vehicle path that followed the very edge of the site
15 along Hutchins Street.

16 In talking with the New Hampshire Bureau
17 of Trails, it was their preference that there not be
18 plantings on both sides of that recreational vehicle
19 path. It presented concerns of theirs on the part of
20 safety, I believe, as well as maintenance with the
21 vegetation growing into the vehicle trail itself. So,
22 the row of plantings that are on the Project side or
23 the north side of that recreational vehicle path have
24 been eliminated. And, now, the landscaping focuses on

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1 just the row of plantings that would be between
2 Hutchins Street and the recreational vehicle path
3 itself.

4 As we noted in our Motion, the
5 landscaping plan, concept plan as originally
6 contemplated, didn't adequately consider vehicular
7 access gates that actually exist right now. So, if you
8 were to go over to the Project right now, you'd see the
9 main gate off of Hutchins Street that is being used by
10 all the construction workers. The landscaping plan
11 didn't consider that, and showed plantings all the way
12 across that. There are other gates --

13 Q. So, if I may interrupt you, that gate will remain in
14 existence after the completion of the Project?

15 A. Yes, sir.

16 Q. Thank you.

17 A. In addition, there are at least one or more other gates
18 along Hutchins Street that we would like to maintain
19 available. Because, as we have discussed in the
20 original proceedings of the Project, and I can show you
21 on this site plan again.

22 Q. And, again, we're looking at Exhibit 3 now.

23 A. Thank you. On the eastern portion of the site, there's
24 a large amount of area that is not being used by the

[WITNESS: Frecker]

1 Project that is available for other economic
2 development and growth. And, so, there are other gates
3 along Hutchins Street that we would like to maintain to
4 facilitate access by, hopefully, future tenants.

5 As we noted in the Motion, there are
6 also a couple of locations where there are ledge
7 outcrops that would just make sustaining vegetated
8 growth impractical. And, there are several places
9 where the landscaping plan failed to consider existing
10 vegetation. So, we wanted to take advantage of that
11 which already exists and provide buffering. And, why
12 alter that or why take down vegetation to put in new
13 vegetation, right? So, the landscaping plan is further
14 considering all of these features.

15 BY MR. KNEPPER:

16 Q. Can you show on Exhibit 3, just visually show us where
17 the River Walk was on this and where the shielding, I
18 guess, fence was?

19 A. Right. So, if you look at this dark gray dashed and
20 dotted line, can you see that where my finger is going,
21 along the northern edge of the -- that represents the
22 edge of the river itself. And, up the embankment, it's
23 difficult for you to see probably from where you are,
24 but you see some lines that represent the edge of tree

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1 line.

2 But, essentially, the River Walk was
3 going to go right along the top of the embankment,
4 following along that edge of tree line, roughly 50 feet
5 set back from the river's edge, which is a "no build"
6 area under the Shoreland Protection Act. So, that's
7 where the River Walk was going to go.

8 And, what was the rest of your question
9 again?

10 Q. Well, I assume the fencing was just between that and --

11 A. It would go along the northern edge of that River Walk.

12 Q. Yes.

13 A. So that people who were walking along that walkway had
14 safety protection from a rather precipitous embankment
15 going down to the river itself.

16 MR. KNEPPER: Thank you.

17 BY CHAIRMAN BURACK:

18 Q. And, Mr. Frecker, can you just help us to understand, I
19 don't recall if it's in your testimony, why it is that
20 the City and the Applicant here have decided not to
21 install that River Walk?

22 A. It's my understanding that, as the City started looking
23 closer, with the development of the Project itself,
24 under construction, and actually going into the ground,

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1 and then walking along the riverbank with their
2 engineers, who were looking at the design features,
3 that there were -- there was recognition that, you
4 know, when you see things actually get built, it's
5 different than looking at this piece of paper. And,
6 your mind would allow you to envision that things might
7 be able to be done on this piece of paper that, when
8 you walk out on the Site and see the physical reality
9 of it, you realize there are some very significant
10 challenges.

11 And, a couple of places that I would
12 point out are, on the far left-hand side of this
13 figure, you see a rectangular box that has four circles
14 in it that represents the cooling tower for the
15 Project. As we talked in the initial proceedings, and
16 is shown by this dark line to the left of that
17 rectangle, there's a sound wall, to prevent -- to
18 minimize noise impacts across the river in the downtown
19 area. That sound wall sits right on the riverbank,
20 right on the top of the riverbank. So, getting around
21 this structure presents some very significant
22 challenges.

23 Likewise, there is a former transformer
24 site, this gray area that you see, off to the upper

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1 right of the cooling tower that I just showed you, is a
2 fenced-in area. And, to get around this, you would
3 need to go behind it, again, right on the very
4 precipitous edge of the riverbank itself, presenting
5 some significant challenges.

6 So, there is -- and, then, going further
7 down the Site, you realize that you are in very, very
8 close proximity to a large industrial project. And,
9 even with landscaping plantings, you're not going to
10 make that fully go away.

11 I think that one of the even more
12 significant issues that was actually mentioned in the
13 meetings of a City Council working session back in May,
14 was that, if you see this dashed line along the upper
15 right-hand corner of this figure, that represents the
16 property line of the Project. And, the City has not
17 yet been able to gain access to the portion of
18 property, the former mill site, that Berlin Station
19 does not own. And, therefore, the trail would
20 essentially dead-end at the end of the property. And,
21 that wasn't consistent with one of the objectives and
22 goals that the City had for construction of the River
23 Walk.

24 So, all of those features combined have

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1 really, I think, it's my understanding that that has
2 led to the City's decision.

3 CHAIRMAN BURACK: Thank you. That's
4 helpful. And, I do now see that I have found, in your
5 prefiled testimony, on Page 4, the questions and answers
6 that address this issue as well. So, thank you for that.
7 Are there other questions from the Committee members
8 themselves? I know Attorney -- I'm sorry, Director
9 Muzzey.

10 BY DIR. MUZZEY:

11 Q. This question is in regard to the landscaping that will
12 not be built now. Did you state earlier that there had
13 been a plan for landscaping along the river with the
14 riverside path, but that won't be done now?

15 A. That's correct. The purpose of that landscaping was to
16 provide buffering for people that were walking along
17 the River Walk to buffer them from the Project itself.

18 Q. And, how tall would that landscaping have been?

19 A. Oh. I don't know the answer to that. I mean,
20 initially, --

21 Q. I mean, is it comparable to what we saw planned along
22 the street side of the Project?

23 A. Excuse me?

24 Q. Do you know whether it's comparable to was planned near

[WITNESS: Frecker]

1 the street side of the Project?

2 A. I believe that that is probably consistent, that the
3 landscaper contemplated a similar size planting.

4 Q. I'm just trying to imagine the view from Route 16,
5 because so much traffic does move along Route 16, and
6 whether that landscaping had the benefit also of
7 providing a bit of a visual shield to travelers and
8 pedestrians along that main road from some of the
9 workings of the plant?

10 A. Yes. I don't believe it really does anything material
11 in that regard. And, when you go along the downtown
12 area, what you -- what provides visual buffering is the
13 natural vegetation that exists along the City side, if
14 you will. So, a 20 or 30-foot plant right in front of
15 you does a lot more than a 10-foot plant on the
16 opposite side of the river that's sitting in front of a
17 200-foot tall boiler building.

18 And, I think you see some of that when
19 you look at the visual simulations that were originally
20 done for the Project. What you see providing buffering
21 in the view from Saint Anne's Church, which was one of
22 the viewpoints that was originally done in the
23 Project, --

24 Q. Right.

[WITNESS: Frecker]

1 A. -- is the buffering on the City side of the river, not
2 on the other side.

3 CHAIRMAN BURACK: And, when you're
4 referring to the "City side", you're referring to the
5 north side of the river?

6 WITNESS FRECKER: Thank you. Yes.

7 CHAIRMAN BURACK: Thank you. Director
8 Muzzey, you had further questions?

9 BY DIR. MUZZEY:

10 Q. So, is the elevation higher on the plant side of the
11 river than on the --

12 FROM THE FLOOR: Could you speak up. I
13 just didn't hear the question.

14 DIR. MUZZEY: Okay.

15 BY DIR. MUZZEY:

16 Q. Is the elevation higher on the plant side of the river,
17 rather than the City side of the river?

18 A. I am not sure that there's a -- I'm not sure of those
19 specific elevations. But, from my observations, I
20 don't believe there's an appreciable difference in the
21 ground elevation on either side of the river.

22 DIR. MUZZEY: Okay. Thank you.

23 CHAIRMAN BURACK: Any other questions
24 from members of the Committee?

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1 (No verbal response)

2 CHAIRMAN BURACK: If not, Attorney
3 Iacopino, do you have any questions for Mr. Frecker?

4 MR. IACOPINO: I just have two
5 questions, one for Mr. Frecker and one might be for
6 Mr. Needleman.

7 BY MR. IACOPINO:

8 Q. You mentioned before the reduction of the -- I'm sorry.
9 You had mentioned before the reduction of the
10 impervious area in the shoreline protection area. Was
11 there a net reduction overall on the Project in
12 impervious area?

13 A. Yes. It's on the order of 11 to 12,000 square feet of
14 reduced impervious area.

15 MR. IACOPINO: Mr. Needleman, does the
16 Applicant have any objection to filing as-built plans for
17 the Project with the Committee upon the start of
18 commercial operation?

19 MR. NEEDLEMAN: No. That's fine.

20 MR. IACOPINO: Okay. Including the
21 landscape -- the final landscaping, the final as-built
22 landscaping plan and the final as-built for the Project
23 itself?

24 MR. NEEDLEMAN: Sure.

[WITNESS: Frecker]

1 CHAIRMAN BURACK: I'd like to ask a
2 follow-up question of Mr. Frecker. I'm sorry.

3 CMSR. HARRINGTON: Someone was something
4 for you to repeat --

5 MS. TUCKER: I missed the last -- I
6 think the last part of your sentence.

7 MR. IACOPINO: They indicated they have
8 no objection to filing an as-built, a-s b-u-i-l-t, plan --

9 MS. TUCKER: Okay. For landscaping.

10 MR. IACOPINO: For landscaping and for
11 the Project.

12 MS. TUCKER: Thank you.

13 BY CHAIRMAN BURACK:

14 Q. Mr. Frecker, I'm trying to recall now whether there was
15 a permit required under the state Shoreland statute for
16 this Project?

17 A. Yes, there was.

18 Q. Okay. As a result of these changes, are you going to
19 need to file an amendment to that permit?

20 A. No. The changes are -- fall within the exemption
21 criteria within the Shoreland Protection Act, as well
22 as within the Alteration of Terrain regulations.

23 Q. Well, again, just let me ask you this follow-up then as
24 well. Are there any other permits that have been

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1 issued for this Project by any State agencies or by the
2 City of Berlin that will need to be amended, assuming
3 that this Motion to Amend your Certificate of Site and
4 Facility is granted?

5 A. No. Again, these changes fall within the exemption
6 criteria for the need to modify permits. And, I spoke
7 with representatives of the New Hampshire Department of
8 Environmental Services regarding the changes. And, the
9 Department said, "if you are confident that your
10 changes fall within the exemption criteria, your
11 obligation is to document that and maintain that
12 documentation on-site. We're not in the process of
13 approving things that our regulations exempt." So,
14 that's what we have done.

15 CHAIRMAN BURACK: Thank you. At this
16 time, there are no other questions from members of the
17 Committee?

18 (No verbal response)

19 CHAIRMAN BURACK: All right. If not, I
20 just want to check in again with Counsel for the Public.
21 Do you have any questions at all at this time, Attorney
22 Brooks?

23 MR. BROOKS: No. No questions.

24 CHAIRMAN BURACK: No? Okay. Thank you.

1 We'll then turn to public comments, if any. I do know
2 that there was a Roland Theberge here today, who informed
3 me that he is here on behalf of the Mayor of Berlin. And,
4 Mr. Theberge, if you would be kind enough to come forward
5 and introduce yourself, so that we can be sure we've got
6 the correct spelling of your name for the record and make
7 any statement you'd like to share with us.

8 COUNCILOR THEBERGE: Okay. Thank you,
9 Mr. Chairman. Okay. For the record, I am Roland
10 Theberge, a member of the Berlin City Council. I am here
11 to represent both his Honor, the Mayor, Paul Grenier, and
12 my fellow colleagues on the Council. Firstly, I would
13 like to thank you for taking the time to meet on what we,
14 the members of the Council, believe to be an important
15 motion to amend the Biomass Project.

16 His Honor, the Mayor, is very pleased
17 with the progress, to date, with the plant. To that end,
18 we are grateful that the developers have kept their word
19 regarding the work, which was needed, and needs to be done
20 for this Project. The developers have consistently and
21 conscientiously worked with the City of Berlin to
22 streamline the process thus avoiding any conflict. On the
23 rare occasion, the problems which have arisen have been
24 addressed in a timely manner.

1 The commitment to the community remains
2 strong. Okay. The challenges [changes?] put forth in the
3 motion before you, as amended, has been thoroughly
4 discussed and coordinated with the City's involvement and
5 input and the blessing of the Mayor and City Council.
6 This has been, and is, an excellent effort between the
7 City of Berlin and the Biomass Project. Thank you.

8 CHAIRMAN BURACK: Thank you, Councilor
9 Theberge.

10 COUNCILOR THEBERGE: Can I submit this?
11 (Councilor Theberge handing document to
12 the court reporter.)

13 CHAIRMAN BURACK: Okay. Are there any
14 other members of the public who would like to offer a
15 comment today? Please, sir, in the back, please come
16 forward and introduce yourself.

17 MR. MacQUEEN: My name is Patrick
18 MacQueen.

19 (Court reporter interruption.)

20 CHAIRMAN BURACK: Sir, why don't you
21 have a seat and introduce yourself. And, please speak
22 loudly, because the acoustics in here are not all that
23 good.

24 MR. MacQUEEN: My name is Patrick

1 MacQueen. I'm the City Manager of the City of Berlin. I
2 would like to reiterate Councilor Theberge's support for
3 this Project, and very much aware that the Mayor and
4 Council support this Project, and they support the Motion
5 to Amend very much. I recently had the opportunity to
6 take a tour of the construction site, which you can see
7 through the windows. It is a large construction site, as
8 you know. It's employing several hundred people. And,
9 the City is very much in need of that sort of development.
10 And, it is certainly helpful to our very stressed economy
11 in the City.

12 I noticed a question came up about the
13 elevations on this side of the river, which is the west
14 side, versus the east side. The elevations driving up
15 Main Street is significantly higher than the east side of
16 the river, or the plant side of the river. So, when
17 you're driving up Main Street, you are looking down at the
18 Project. So, any landscaping on the east side of the
19 river would not block anything to speak of.

20 CHAIRMAN BURACK: Thank you for those
21 comments, Mr. MacQueen. And, would you be willing to take
22 one question?

23 MR. MacQUEEN: Sure.

24 MR. IACOPINO: Mr. MacQueen, I

1 understand that the City Council supports the amendment.
2 Are there any other planning boards or commissions within
3 the City that do not support or have expressed any
4 concerns about the Project as it's been going along?

5 MR. MacQUEEN: I'm not aware of any
6 other boards in the City which have expressed any concerns
7 about the Project. The City Planner, Pam Laflamme, is
8 here. She has been very -- she works with those boards
9 very closely, and certainly has been very much involved
10 with the landscaping issues that we've been discussing.

11 MR. IACOPINO: Thank you.

12 CHAIRMAN BURACK: Thank you. I might
13 also just remark, based on your comments, that, when I was
14 asking Mr. Frecker questions throughout here to make clear
15 what side of the river we were on I was asking about the
16 "north side". And, apparently, the "north side" really
17 should be the "west side".

18 MR. MacQUEEN: West.

19 CHAIRMAN BURACK: And, what we were
20 referring to as the "south side" is actually the "east
21 side". So, let the record reflect that corrections will
22 need to be made as folks are reading them through the
23 record, through the transcript, I should say. Thank you,
24 Mr. MacQueen.

1 MR. MacQUEEN: Thank you.

2 CHAIRMAN BURACK: I believe there is
3 another member of the public. Please, sir, come forward
4 and introduce yourself.

5 REP. THEBERGE: Yes. Thank you. For
6 the record, State Representative Robert Theberge,
7 representing Coos District 4, Berlin. I'm here on behalf
8 of my constituents. A number of questions for the
9 Committee. And, I thank you for coming up here. I know
10 what it's like leaving early to make an early meeting.
11 So, I can really, you know, appreciate your being here.

12 Although the meeting was well noticed,
13 the problem I have, and I couldn't find any maps to
14 compare and contrast before and after regarding this
15 Project. It is a concern -- I have tried to locate that.
16 I don't know if there's any on a website or whatever,
17 because I was trying to inform my constituents, that was
18 one of the questions I had raised.

19 Whenever, secondly, if you're going to
20 have a public meeting, I wish that there would be maps
21 presented. I don't think that's your responsibility, but,
22 at any rate, it would make things clearer.

23 Regarding the River Walk, I know there
24 was a trade-off made for funding. However, you know,

1 funds, I mean, it's probably in the amount, you know,
2 based on what it would cost to construct and develop a
3 river walk. You know, and that amount of funds would be
4 spent in one year. A river walk would be there to last
5 for a number of years. So, I don't know if it's a really
6 good balance.

7 But, when it comes to landscaping, the
8 maintenance of the landscaping and the trails may be an
9 issue. I would always advocate that, if landscaping can
10 be used around a facility or a structure, it would
11 certainly make it more appealing. So, I mean, I would
12 strongly hope that some type of landscaping would be done
13 around the facility.

14 Also, the fire suppression system, I was
15 wondering if the Fire Chief was consulted regarding the
16 fire suppression system? Anyone who has worked or been
17 around, you know, chips, through a process of degradation,
18 they do give off heat and do cause fire. So, I was
19 wondering if that fire suppression system was, in fact,
20 you know, discussed with the Fire Chief, and the plan to
21 access the property in the event of a fire? I'm not sure
22 about that.

23 Secondly, I mean, we're well versed with
24 decibels. But, for clarity, for members of the public, I

1 know that 60 or 70 decibels is far, far less than what was
2 emitted from the mill before. But, for clarity, members
3 of the public should know what 60 or 70 decibels equates
4 to. It's not a lawnmower, but, I mean, I would like that
5 to be clarified for the public. Thank you. And, I'm
6 willing to entertain any questions.

7 MR. IACOPINO: I have no questions. I
8 have some answers to a couple of your questions.

9 REP. THEBERGE: Yes.

10 MR. IACOPINO: Just we do maintain a
11 website. And, on that website, there was filed on
12 November 1st, 2011 the landscaping plan that was
13 originally agreed upon between the City and the developer.
14 And, the documents which they filed for this proceeding
15 were also published on our website. And, they included
16 the revised wood yard plan, which was referred to as
17 "Exhibit 2" here previously.

18 REP. THEBERGE: Okay.

19 MR. IACOPINO: So, we did have -- there
20 were maps, albeit not of that size. And, if you're
21 looking at it on a computer screen, it would be much
22 smaller. But we do have a fairly useful website --

23 REP. THEBERGE: Okay.

24 MR. IACOPINO: -- that these things were

1 on. And, if you ever need any help, Representative, in
2 accessing something on the website, please feel free to
3 call me at my office and I can help you through it.

4 REP. THEBERGE: You know, I really
5 appreciate that. I was looking through a number of
6 websites, and it didn't dawn on me to look at the, you
7 know, Site, you know, your plan -- you know, your
8 Committee. Is it under the PUC or --

9 MR. IACOPINO: The website is
10 *www.nhsec.nh.gov*.

11 REP. THEBERGE: Okay. The Site
12 Evaluation Committee, okay.

13 CMSR. HARRINGTON: It is accessible from
14 the PUC as well.

15 REP. THEBERGE: Yes. Okay. I couldn't
16 find it. And, I --

17 MR. IACOPINO: There's a link from both
18 DES and from the PUC website as well.

19 REP. THEBERGE: Okay. Okay, I
20 appreciate that. I mean, members of the public were
21 calling me over the weekend. And, given my responsibility
22 as chair of one of the committees in Concord, I was trying
23 to do my best at trying to find some information. But I
24 really appreciate that information. Thank you.

[WITNESS: Frecker]

1 MR. IACOPINO: Before you leave today,
2 I'll give you a couple of my cards, and you can give them
3 to your fellow representatives as well. If anybody has
4 any questions about the Site Evaluation Committee or about
5 what's been filed, they should feel free to give me a
6 call.

7 REP. THEBERGE: I appreciate that.
8 Thank you very much.

9 CHAIRMAN BURACK: Great. Thank you very
10 much.

11 BY MR. IACOPINO:

12 Q. Mr. Frecker, has there been communication with the Fire
13 Department regarding the fire suppression system?

14 A. Yes. I personally met with the Fire Chief as much as
15 over two and a half years ago, when we were first
16 working on concept planning for the Project. And, we
17 showed our proposed fire water loop system, as well as
18 the access roads around the wood storage areas. And,
19 that dialogue with him and other public safety
20 officials has continued through this day and it
21 continues now.

22 Q. And, will the facility be subject to periodic
23 inspections for compliance with the Fire Code?

24 A. Yes.

[WITNESS: Frecker]

1 MR. IACOPINO: Thank you.

2 BY CHAIRMAN BURACK:

3 Q. So, you're telling us that the Fire Chief is aware of
4 these changes in design, and you have been working with
5 him as you've been making these changes in design, with
6 respect to fire suppression and property access?

7 A. That is correct.

8 Q. Thank you. Could you also address for us the question
9 that Representative Theberge raised.

10 CHAIRMAN BURACK: And, Representative
11 Theberge, thank you very much for being here today and
12 providing your comment and raising these questions.

13 BY CHAIRMAN BURACK:

14 Q. Could you help us understand what 60 to 70 decibel
15 range, what that might equate to. And, how that might
16 compare with what the decibel range might have been at
17 the site while it was operating as a paper mill?

18 A. Well, I could certainly help you try to put what a 60
19 or 70 decibel sound means in context. And, you may
20 recall, we talked a little bit about this during the
21 original proceedings. That a -- it's conventionally
22 accepted that a general conversation between two people
23 is about a 60 to 65 decibel. I think we're all trying
24 to exceed 70 decibels here in this conversation. So, I

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1 think that is one way to try to put that in context
2 that most people recognize.

3 I don't know what the sound levels were
4 when the mill was operating. And, you may recall from
5 the original proceeding that we were very cautious to
6 say we didn't want to compare this Project against the
7 mill, because that's not the baseline. The baseline is
8 what has existed there for several years, which is a
9 pretty quiet area. And, we had gone and done
10 background measurements in the community, to be able to
11 put our sound impacts in context of the background
12 sound levels in the community, and showed that there
13 were, in many instances, a rather minor increase in
14 sound levels of the Project from baseline. And, when I
15 say "minor", it's conventionally accepted that the
16 human ear can only discern changes in sound of about 3
17 decibels. And, many of the changes of the Project
18 impacts to background, for instance, up in the
19 residential area, on both sides of the river, were on
20 that order of 3 decibels or less. So, that's what
21 we've tried to do is to put it in the context of the
22 existing conditions.

23 CHAIRMAN BURACK: Okay. Thank you,
24 Mr. Frecker. Are there any other questions from members

1 of the Committee?

2 (No verbal response)

3 CHAIRMAN BURACK: Are there any other
4 members of the -- are there any other members of the
5 public who would like to make comment? Going to go first
6 to the back here. Sir. Again, just comment from the
7 members of the public. Please come and take a seat and
8 introduce yourself for the record please.

9 MR. ESTABROOKS: My name is Peter
10 Estabrooks. And, I'm from Jefferson, New Hampshire. And,
11 I presently serve as the Business Agent for the Poet
12 Laureate of the White Mountains Region, which also
13 includes the Great North Woods, for a person named Esther
14 M. Leiper. That's Scotch, by the way. She's also known
15 as "Mrs. Peter Estabrooks".

16 And, I promised I wouldn't speak in
17 rhyme. But I will offer you this little ditty, which kind
18 of describes my position here today. It goes this way:
19 "Reach among sharp thorns, dear heart, nor spare your soft
20 hand sweeter than the plucked rose." That's a Japanese
21 *haiku*, by the way.

22 My father, in 1949, happened to be
23 working for Hertz You Drive It. And, was chosen, as a New
24 Hampshire man, to head up the new contract with a

1 brand-new company. He was the on-site man to run their
2 logging fleet. He introduced 18-wheelers to this area,
3 and trained all the original 18-wheeler truck drivers.
4 And, he chose to make our home in Jefferson, because
5 Berlin stunk so bad. That, if you didn't grow up with it,
6 you couldn't live with it. And, I graduated eighth grade
7 in Jefferson in 1955. And, because my dad came to Berlin
8 every day, I became a student at Berlin High School. I
9 would have graduated in 1959. But, in 1957, I guess the
10 smell of Berlin got to my dad, too, and we moved out.

11 But, at any rate, my fondest memories of
12 growing up are here in northern New Hampshire and
13 Jefferson. And, I made the mistake of, in 1976, of
14 vacationing here. One thing led to another, and I've been
15 back since 1976. I want to make two points about this
16 Project. And, realize that there are many people who
17 don't speak up anymore in the City of Berlin. They have
18 learned that it's useless. If you speak up against
19 prisons, it doesn't matter. If you speak up against this
20 power plant, it doesn't matter. So, people have kind of
21 given up, which you didn't get much of a turnout here
22 today. But, in a fantasy way, if that whole property had
23 nothing on it, became a central park and a golf course,
24 that would be more in line with where the City of Berlin

1 and the North Country is really trying to go.

2 If you notice, when you came into the
3 City, there's a new kiosk, but I hope you noticed that
4 when you came in, and there's one down in Gorham. What
5 the North Country and Berlin, and Berlin's been like a Rip
6 Van Winkle, but they finally have woken up to the fact
7 that their future resides with becoming a destination, a
8 destination.

9 How can this plant dovetail or fit with
10 this direction that the North Country and, in particular,
11 the City of Berlin, which is totally new for the City of
12 Berlin, become a destination, to invite people to come to
13 this place, that has such a bad reputation over a long
14 period of time. I mean, that has a built-up negative.
15 How do you do that?

16 Well, I think one of the things, and I
17 won't try to comment on this River Walk thing, but I know
18 the people who concepted that and who believed in it, knew
19 that it was right for the City of Berlin. So, I'm not
20 that familiar with the details, but to take and X this
21 River Walk, which is a concept, just to X it out, when
22 that was so important to the concept of the City of
23 Berlin, just it doesn't add up to me. If it's a little
24 bit challenging, so what? I mean, the whole plant is a

1 challenge. But that's my comment on this River Walk.
2 This city needed that River Walk as part of its attraction
3 in becoming a destination.

4 But the more important thing, and my
5 sense is, this whole organization that's behind, there's
6 so much momentum behind doing what this gentleman is
7 proposing today that it's useless to even try and talk
8 about, you know, having this River Walk. They have gone
9 that far. I mean, the City signed up for \$650,000. How
10 do you overcome that kind of momentum? I don't believe
11 you can.

12 But, at any rate, there is something
13 else. And, I'm talking in a macro sense about this plant.
14 What could it do to contribute to being part of the
15 "destination" idea of the City of Berlin. We all know the
16 story of the Eiffel Tower. They hated it when it was
17 first built. Nobody wanted that thing. Who is this
18 fellow Eiffel then? He had the gall, the gall, to build
19 such a thing in the City of Paris. But we know what its
20 reputation is today. I mean, Paris wouldn't be Paris
21 without the Eiffel Tower. New York wouldn't be New York
22 without the Empire State Building, the Statue of Liberty.

23 So, here we sit in around the most
24 natural, attractive, visual environment, on both sides,

1 with a smokestack right in the center of this thing.

2 This winter, somebody put a little
3 Christmas tree on the roof, a little thing. Somebody was
4 thoughtful enough to put a Christmas tree on the roof of
5 that thing over there. Well, I think we need to take that
6 sensitivity and that general approach to things, and they
7 need to multiply that astronomically, and make that thing
8 a reason why people want to come here. Make it so people
9 want to come and see that thing. Make it so they want a
10 tour of that thing.

11 And, I just leave you with a question:
12 Why, in the whole concepting of this thing, and realizing
13 what the potential future was, why there couldn't have
14 been an elevator to go up the side of that stack, with a
15 view deck, an opened and a closed view deck? Why not? We
16 can send people to the moon, we can re-enter vehicles that
17 don't get burned up, why can't we do that? I just leave
18 you with that thought.

19 I think there are things, if you put
20 your mind to it, that you can do with that plant that
21 would really contribute to Berlin being a destination.
22 And, I hope the heck you do it. And, I don't think you
23 need the judgment of this whole panel here to do it.
24 There are things that need to be done, and they could be

1 done, that fit with Berlin becoming a destination. Thank
2 you.

3 CHAIRMAN BURACK: Thank you very much,
4 Mr. Estabrooks. Mrs. Tucker, I saw your hand up earlier.
5 Do you want to make a comment as a member of the public or
6 do you wish to ask a question in your role as a
7 journalist?

8 MS. TUCKER: The latter.

9 CHAIRMAN BURACK: If it's the latter, I
10 would ask you please to save your questions until the
11 close of the proceedings, and you can speak with whomever
12 ever you wish to speak with.

13 MS. TUCKER: It's a public question.

14 CHAIRMAN BURACK: I'm sorry?

15 MS. TUCKER: It's a public question.

16 CHAIRMAN BURACK: I understand it may be
17 a public question. But, if you're a member of the public,
18 I would ask you to sit at this table, introduce yourself,
19 and make a comment as a member of the public. You could
20 frame your comment as a question, if you wish to do so.

21 MS. TUCKER: Edith Tucker. I'm a
22 reporter with the Berlin Reporter, Coos County Democrat.

23 FROM THE FLOOR: Speak up.

24 FROM THE FLOOR: Please.

[WITNESS: Frecker]

1 MS. TUCKER: So, in the testimony you
2 gave on the wood yard changes, you spoke of the change so
3 that there would be fewer diesel-powered pieces of
4 equipment. From the outset, we've heard that 40 people
5 approximately will be working at the plant. Will this
6 change the number of expected employees?

7 CHAIRMAN BURACK: And, what I'm going to
8 do is I'm going to treat your question as a question
9 directed to the Committee, not to the witness.

10 MS. TUCKER: Yes. Okay. Excuse me.

11 CHAIRMAN BURACK: Thank you very much,
12 Mrs. Tucker.

13 BY CHAIRMAN BURACK:

14 Q. Mr. Frecker, you heard the question that was asked, and
15 you and I did have a discussion earlier regarding, and
16 others asked you, regarding the changes between the
17 equipment previously and the equipment now. Do you
18 anticipate, based upon all of the changes that we've
19 discussed in the design today, based upon the motion,
20 that there would be a change in the overall employment
21 levels at the facility from what was previously
22 described when we went through the original
23 certification process here?

24 A. No. To my knowledge, there has been no change in the

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1 projection of employment at the facility. Rather, I
2 think it would allow us to be able to utilize those
3 personnel in perhaps a more effective role.

4 Q. Thank you. And, if you will, where is the plant, in
5 terms of the hiring process here? I believe
6 Mr. Needleman earlier talked about, anticipated that
7 the facility would go on line this October. Is that
8 correct?

9 A. Yes.

10 Q. I assume there will be some kind of a start-up and
11 testing phase that will be associated with that. Can
12 you walk us through that timeline very quickly, and
13 also how the hiring process went in line with that
14 timeline?

15 A. Sure. With regard to the Project timeline itself, the
16 next major milestone for us is so-called "mechanical
17 completion". That's when most of, as the term
18 suggests, most of the mechanical part of the Project
19 has been built and it's ready to start commissioning
20 and testing. We anticipate that we'll be doing that in
21 the summer, in the June/July timeframe. I don't know
22 the exact target date for mechanical completion.

23 And, then, that leads to a series of
24 testing and commissioning and start-up phase

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1 activities, culminating in what is referred to as
2 "substantial completion". And, substantial completion
3 target date right now is October 17th. And, that is
4 the point at which the Project would go into commercial
5 operation. And, essentially, the current contractor
6 hands the keys over to us to operate the facility.

7 You may recall, in the original
8 proceeding, with regard to the Applicant's capability
9 to manage the Project, that there is an operating
10 agreement with Delta Power Services to be our operator
11 for the Project. And Delta Power has started the
12 application and interview process. I know that they
13 have hired a plant manager so far. I'm not sure, given
14 that that's an ongoing process, where they are with
15 other people. But it is an active process to get those
16 folks on board.

17 CHAIRMAN BURACK: Thank you. Are there
18 any other questions from members of the Committee at this
19 time?

20 (No verbal response)

21 CHAIRMAN BURACK: If not, we will close,
22 and I'm assuming there are no other members of the public
23 who wish to speak to this matter?

24 (No verbal response)

1 CHAIRMAN BURACK: Very good. Thank you.
2 If not, we will close this portion of the proceeding.
3 And, I will now ask the members of the Committee as to
4 what their desires are. That is, is there an interest in
5 moving directly into deliberations on this Motion at this
6 time? And, if so, I would entertain a motion to that
7 effect.

8 CMSR. SCOTT: So moved.

9 CHAIRMAN BURACK: A motion by Director
10 Scott. Is there a second?

11 CMSR. HARRINGTON: Seconded.

12 CHAIRMAN BURACK: Or, Commissioner
13 Scott. And, a second from Commissioner Harrington. Any
14 discussion of the motion?

15 (No verbal response)

16 CHAIRMAN BURACK: If not, all in favor,
17 please signify by saying "aye"?

18 (Multiple members indicating "aye".)

19 CHAIRMAN BURACK: Opposed?

20 (No verbal response)

21 CHAIRMAN BURACK: Abstentions?

22 (No verbal response)

23 CHAIRMAN BURACK: Very good. I think
24 it's unanimous. We'll then move now into deliberations of

1 this Motion. And, who would like to make a motion that we
2 could then discuss? Somebody like to make a motion to
3 grant the motion?

4 CMSR. HARRINGTON: I move that we grant
5 the motion as submitted.

6 CMSR. SCOTT: Second.

7 CHAIRMAN BURACK: Okay. Very good.
8 Motion my Commissioner Harrington, seconded by
9 Commissioner Scott. And, we should have discussion now of
10 the motion. Commissioner Ignatius.

11 VICE CHAIRMAN IGNATIUS: Thank you.
12 There are a number of issues raised that we should take
13 separately. It seems to me, the issue of the Woodlot
14 configuration and equipment is a very important one to me.
15 It seems to me that the proposal is a more efficient and
16 really more advanced way of managing the wood supply than
17 in the original Petition. And, it seems to have some
18 benefits, in terms of moving the wood in an automated way,
19 and not having to have, you know, machinery in and out to
20 shift it around, and to keep it -- it sounds like keep it
21 more sort of evenly dispersed and managed, in terms of
22 fire issues and dust issues, that it seems like it's an
23 improvement overall.

24 The change in the impervious surface as

1 well, a sort of reconfiguration of the woodlot is very
2 important, particularly as it fronts onto the river
3 itself.

4 So, I think those are all benefits to
5 the proposal to change the wood configuration and the
6 equipment, automation of a number of the components of it,
7 and reduce the amount of truck traffic, heavy equipment
8 traffic that's needed to manage the wood supply.

9 And, maybe we ought to take, if there
10 are other issues, you know, related, issue-by-issue,
11 rather than move on to other, I'll stop there.

12 CHAIRMAN BURACK: Commissioner Ignatius,
13 thank you for that comment. I think, before we take this
14 conversation further, I'm going to ask Attorney Iacopino
15 if he could just lay out for all of us what the legal
16 standards are that apply to the decision that we need to
17 make here on this motion?

18 MR. IACOPINO: Sure. Because this is a
19 Motion to Amend a Certificate that has already been
20 granted, the Committee would have to determine that the
21 original findings that are made by the Committee, under
22 RSA 162-H, Section 16, are not effected by the amendments.
23 And that, because these really are amendments to
24 conditions of the Certificate, the Committee must

1 determine whether or not these, the change in terms or
2 conditions of the Certificate are reasonable.

3 So, basically, if the proposed amendment
4 would serve to undermine the initial findings of the
5 Committee, then a Petition to Amend should not be granted.
6 In addition, if the proposed changes to conditions are
7 unreasonable, then the proposed amendment should not be
8 granted.

9 If the proposed changes do not undermine
10 the initial findings of the Committee, then that would
11 favor granting the Motion. And, if the proposed
12 amendments are determined by you to be reasonable, that
13 would also favor the granting of the Motion to Amend.

14 CHAIRMAN BURACK: Thank you very much,
15 Attorney Iacopino. That's helpful for all of us. So,
16 bearing that information in mind, let's pick up where
17 Commissioner Ignatius left off and let's walk through
18 these four areas of amendment one at a time, starting with
19 the issue that Commissioner Ignatius discussed, which was
20 the reconfiguration of the woodpiles and the introduction
21 of this conveyor system.

22 Would anyone like to speak further to
23 this? Commissioner Bryce.

24 CMSR. BRYCE: Yes. Having worked with

1 wood handing systems in the past that didn't work, I would
2 just say it's really important that they get it right.
3 And, so, it may not seem like it's all that big a deal,
4 but it can really cause significant problems if that wood
5 yard isn't working the way it should. And, so -- and, it
6 appears to me, based on what they have presented, any --
7 there aren't really any significant changes of the impact
8 of the Project due to that, due to the changes in the
9 configuration of the wood yard. And, so, it's good to see
10 that they have thought it through, and have actually made
11 those changes, so they have -- so that it's more likely
12 that that will be a successful part of the operation.

13 CHAIRMAN BURACK: Thank you. Others who
14 wish to comment on this aspect of the Motion? Director
15 Muzzey.

16 DIR. MUZZEY: I just add this as a
17 comment, in that, for the record, that the Applicant will
18 be supplying those changes to the Division of Historical
19 Resources for its review, as noted in both the Certificate
20 and the 106 findings. So, that remains something to be
21 done as part of this action.

22 CHAIRMAN BURACK: Thank you, Director
23 Muzzey. And, we can ensure that, in our written -- if we
24 are to grant this Motion, that in that written document

1 that we --

2 DIR. MUZZEY: Thank you.

3 CHAIRMAN BURACK: -- reflect that that
4 is an ongoing expectation and requirement of the original
5 Certificate that we are restating here.

6 It does strike me, as I look back on the
7 original findings relating to the wood yard, that the
8 changes that are described here really are not
9 significant. And, if anything, they are an improvement
10 over what -- what we originally were expecting and had
11 approved in the original Certificate with respect to the
12 wood yard operations.

13 Does anybody have anything further on
14 this? Commissioner Harrington.

15 CMSR. HARRINGTON: Yes. I guess
16 following up on what you just stated, Mr. Chairman. And,
17 I asked the question about "sizable changes or additions
18 to existing facilities", and the question was answered
19 that "they're not". And, I'm not quite sure why they even
20 filed for an amendment. It appears that, under that
21 provision, it is not required. And, I agree with you,
22 that this does not represent a sizable change. And,
23 whatever changes there were to the woodlot were
24 improvements to the previously proposed system.

1 CHAIRMAN BURACK: Thank you for that.
2 And, I'm going to ask Attorney Iacopino to address this
3 point further.

4 MR. IACOPINO: Just from a legal
5 perspective, what the Committee granted in the original
6 Certificate is not what they are now proposing to build.
7 So, the Certificate was specific to what they had proposed
8 before. They have changed that proposal. And, that's why
9 they're properly before us for an amendment to the
10 existing Certificate. This is not like a subsequent
11 addition to a facility or a subsequent change to a
12 facility, because this facility is still under
13 construction.

14 CMSR. HARRINGTON: Okay. Thank you for
15 that clarification.

16 CHAIRMAN BURACK: And, it was a
17 condition of the Certificate, if I'm correct? That, if
18 there were to be any amendments or changes, that they
19 would come back to us, correct?

20 MR. IACOPINO: Yes. And, it's also
21 required by the statute, that they submit any
22 modifications promptly to the Committee for approval.

23 CHAIRMAN BURACK: All right. Thank you.
24 Is there any other discussion then on this, the first

1 portion of the Motion relating to the conveyor system and
2 the reconfiguration of the woodpile?

3 (No verbal response)

4 CHAIRMAN BURACK: If not, let's move to
5 a discussion of the second item. I'm sorry, Mr. Knepper,
6 did you have something on this?

7 MR. KNEPPER: Well, I just want to make
8 sure I'm clear. When determining the reasonableness,
9 we're considering, if I look at the law correctly, we're
10 going to consider the aesthetics, the air and water
11 quality, natural environment, public health and safety
12 aspects of this woodlot configuration. Those are the
13 factors that we're looking at. And, so, I kind of look
14 at, you know, I kind of go through those things in my
15 mind. As to, you know, what I heard was the air and water
16 quality will be improved, because we're going to have less
17 impervious surfaces for water, and we're not going to have
18 any greater air emissions or fugitive emissions from this.

19 The aesthetics, it sounds like there
20 will be less landscaping. So, from an aesthetics
21 standpoint, that may be a deterrent. But it's not
22 aesthetically, I think, out of proportion for the entire
23 site. So, I didn't hear any large aesthetic changes
24 there.

1 For the safety aspect, I heard that the
2 -- no fire issues are going to be arisen out of this, that
3 there would be no interferences because of the conveyor
4 system, versus what was originally proposed and what's
5 there now.

6 The historic site issue, I think, is
7 still -- they're going to be submitting that later, I
8 guess.

9 And, then, the other part of the statute
10 I see is that you need to take into consideration the
11 municipal governing body's view. And, so -- and, what I
12 heard was support from that.

13 Is there anything that I missed in that
14 statute? I think those are what I heard.

15 CHAIRMAN BURACK: I think that's -- I
16 think that's a comprehensive review.

17 MR. KNEPPER: Okay.

18 CHAIRMAN BURACK: Thank you. Okay.
19 Let's turn then to a discussion of the second, and we may
20 want to take these together, because they really are
21 related, the second and third items that the Applicant
22 sought, which was the proposal to eliminate the
23 development of the area referred to as the "River Walk",
24 and also to eliminate some of the fencing requirements

1 because that River Walk was being eliminated from the
2 plan.

3 Would anyone care to speak to this set
4 of issues? Commissioner Bryce.

5 CMSR. BRYCE: Yes. As folks hopefully
6 know locally, the Division of Parks has been investing in
7 the area slowly, but continually, in enhancing outdoor
8 public recreation. And, I think the points have been made
9 about the importance of that to the local area going
10 forward. So, I'm a little both concerned and a little
11 perplexed over the River Walk, the situation with the
12 River Walk. Certainly, I understand what has been
13 presented. You know, it makes sense. It's, obviously,
14 going to be difficult, there are some things to get worked
15 out. But, nonetheless, as an advocate for outdoor
16 recreation, it is a real asset to the community.

17 I was not involved in the original
18 permitting. So, I don't know the extent to which the
19 River Walk was a key element of the permitting of the
20 original Project, or even if it's included in the
21 Certificate. But, anyway, you know, on the --

22 (Court reporter interruption.)

23 CMSR. BRYCE: I was not -- I was not
24 here for the original permitting of the Project. So, I

1 don't understand the degree to which the River Walk was
2 incorporated into the Certificate, the original
3 Certificate, and how important that was to the overall
4 approval of the Project. However, as an advocate for
5 outdoor recreation, you know, I continue to be concerned
6 about that, that getting -- that getting dropped off.

7 But I also understand that the -- as a
8 practical and an operational matter, you know, it's --
9 there are some real substantial -- substantially good
10 reasons why it doesn't make sense to build either. So,
11 that's why I'm a little perplexed, as to why, in the
12 original project planning, those, you know, that that
13 wasn't understood that those factors were going to be in
14 the way of putting the River Walk in.

15 And, then, my last point is, I don't
16 know, certainly, if the City is, you know, there's been --
17 we all know where government sits financially across, you
18 know, especially towns in the North Country. I don't know
19 what the City is going to do with those funds. But are
20 they going to -- does the Certificate, or is there any --
21 is there anything that, in this process, that would
22 indicate that those funds that are coming out of something
23 in the Project, what was in the Certificate of the
24 Project, those funds would have to be used for some sort

1 of similar purpose that is relative to outdoor, you know,
2 enhancing outdoor recreation, or whether or not it's just
3 a cash payment to help pay for fire, police, you know, and
4 just the operations of state government.

5 CHAIRMAN BURACK: Director Muzzey, and
6 then Commissioner Harrington.

7 DIR. MUZZEY: Thinking of the River
8 Walk, the fencing, and the landscape, I share your
9 perplexed feeling as to where we are at with those items
10 now. At least two of the items that the Applicant has
11 brought forward as problems with the River Walk, and
12 that's the termination at the north end, and its closeness
13 to the facility itself, were known at the time of the
14 original hearing. And, likewise, I understand the feeling
15 that, you know, when things are on the ground, it's
16 different than when they're looking at in concept on a
17 plan. But I did want to state for the record that those
18 two items were known when we first reviewed this.

19 These items were what I consider a major
20 part of the community benefit aspect of the City's
21 agreement that was part of our Certificate. And, if there
22 is a community benefit that would better fit this Project
23 than those items, it's understandable that perhaps that
24 could be exchanged at this point. But I feel that we're

1 dealing with an absence of information on that. We just,
2 as Director -- Acting Commissioner Bryce stated, we're
3 just dealing with an idea of a cash exchange now, without
4 knowing where that will go to. And, I think that makes it
5 difficult to think clearly about this idea now.

6 CHAIRMAN BURACK: Commissioner
7 Harrington.

8 CMSR. HARRINGTON: Yes. Just for the
9 sake of the rest of the Committee, you might want to look
10 to the permit on it. It's on Page 6. And, it has to do
11 with the agreement, which is Appendix II, I believe.

12 CHAIRMAN BURACK: You're referring to
13 the original Certificate?

14 CMSR. HARRINGTON: The original
15 Certificate, and the agreement between Laidlaw and the
16 City of Berlin. And, it says in there, under
17 Section V [IV?], "Community Benefits", Part 1, that "The
18 City will contract with a party of its selection for the
19 design of the River Walk, which shall resemble, to the
20 greatest extent possible, the Conceptual Landscaping Plan
21 and the Laidlaw Scope." So, the City, actually, it's not
22 the City, but -- not the Company that was charged with
23 coming up with the design of the River Walk. So, that's
24 one thing that people might want to think about.

1 The second thing, with regard to the
2 funding, if you go to Page 7 in that same section, it says
3 "Laidlaw shall provide \$325,000 from which all costs
4 incurred by the City in connection with the River Walk or
5 other aspects of the site evaluation process, including
6 but not limited to design costs and permitting costs,
7 shall be repaid. Laidlaw shall then place whatever
8 remains of the 325,000 after payment of all the City's
9 expenses incurred in connection with the River Walk into a
10 maintenance fund accessible to the City for use in the
11 maintenance of its River Walk."

12 So, it appears that, two points I wanted
13 to make, that the City assumed responsibility for the
14 design of the River Walk. So, if the design cannot come
15 to fruition, I guess it's the City saying they can't come
16 up with something that's acceptable to them.

17 But, two, as far as the funding goes,
18 clearly, the money was intended not to go to the General
19 Fund of the City, but to cover River Walk expenses that
20 the City incurred. And, anything left over was to go to a
21 fund that would be used for the maintenance of the River
22 Walk. Of course, if there is no River Walk, there's no
23 additional expenses incurred by the City. I imagine they
24 incurred some already. And, there certainly will be no

1 maintenance fund.

2 CHAIRMAN BURACK: Is there other
3 discussion? Commissioner Ignatius.

4 VICE CHAIRMAN IGNATIUS: Thank you. I
5 feel as though the City really is in the driver seat on
6 this issue. It wanted to have the River Walk developed.
7 As Commissioner noted, it was responsible for development,
8 of planning for it, and would retain the obligation for
9 maintenance of it. If the City feels it isn't something
10 that is feasible anymore, and has not complained at the
11 idea of abandoning it and receiving the monetary value to
12 do something else with, I guess I don't feel it's my place
13 to second guess that decision.

14 I would hope it does get used for
15 something that enhances the community and enhances the --
16 in some way is tied to the presence of the plant. But I
17 don't feel that I can compel that. It isn't that every
18 project that comes before us has to have a, you know, a
19 park or a river walk type structure built as an element of
20 approval. This is really something that the City brought
21 forward. And, the City is now telling us that it isn't
22 appropriate after further reflection.

23 So, as much as I would like to have seen
24 it be a successful component of the Project, I don't feel

1 I can vote to reject the request to drop it, because I
2 don't think that's really within -- within our purview.

3 CHAIRMAN BURACK: Thank you.
4 Commissioner Scott.

5 CMSR. SCOTT: I think I have to agree
6 with that assessment from Chairwoman Ignatius. When I
7 look at the original SEC Certificate, and the discussions,
8 I have to remind myself that this was not a greenfield
9 site. This is a site that's being used -- effectively
10 being reused and redeveloped.

11 I like very much the idea of a river
12 walk and that type of contribution to the Community. I
13 think it's very important. And, I would encourage the
14 City to continue working that way. But I don't believe it
15 rises to the level that we would need to block this from
16 -- this change from that.

17 CHAIRMAN BURACK: Thank you,
18 Commissioner Scott. Others who would like to offer
19 comment on this point? Commissioner Harrington.

20 CMSR. HARRINGTON: I can be very brief.
21 I would say I agree with both Commissioner Scott and
22 Chairman Ignatius.

23 CHAIRMAN BURACK: And, I will add that I
24 am inclined to agree with that view as well. As I think

1 back on the original proceeding, this really was a matter
2 that had been negotiated, as I recall it, between the City
3 and the Applicant. And, it was something that we included
4 really as a condition, really out of respect and deference
5 to the City itself.

6 And, as Commissioner Ignatius and others
7 have indicated, given that the City has made the
8 determination that it's not reasonable, based on the
9 information that we've heard today, I see no reason to
10 question their judgment on that. I would agree that it's
11 not our place to try to substitute our judgment for what
12 the Committee -- what the City's determination is on this
13 point.

14 Other thoughts? Anybody else want to
15 offer comment on this piece?

16 (No verbal response)

17 CHAIRMAN BURACK: If not, then let's
18 turn to the last item, which is the Applicant's request to
19 modify the landscaping plan as a result of their closer
20 on-site inspection of the site. And, again, we've heard a
21 description of the modifications to the landscaping plan
22 in Mr. Frecker's testimony and questioning here. And, we
23 also had a representation, which we will include as a
24 condition, if we were to issue an order approving this

1 Motion, that the final landscaping and as-built
2 construction plans be filed with the Committee.

3 So, any discussion on this last element?
4 Commissioner Harrington.

5 CMSR. HARRINGTON: Yes. This is maybe a
6 legal question for Mr. Iacopino. I just want to make
7 sure, on Page 5 of the Application, under Section IV,
8 "Modification of the Landscaping Plan". The last sentence
9 says "Berlin Station is working with the City and the New
10 Hampshire Bureau of Trails to modify the landscaping plan
11 to the satisfaction of both parties and will submit a
12 revised plan upon receiving their approval."

13 So, if we were to accept, approve the
14 Certificate as amended and filed, we would be then
15 imposing a condition that both the City of Berlin and the
16 New Hampshire Bureau of Trails would need to approve the
17 revised modified landscaping plan, is that correct?

18 MR. IACOPINO: You would be approving a
19 condition that they shall work, I believe, that they shall
20 work with the City of Berlin. It's very similar to the
21 condition that was contained in the original Certificate.
22 That Certificate -- that condition said "Laidlaw shall
23 work in good faith with the City and New Hampshire's State
24 Bureau of Trails and the local snowmobile and ATV clubs to

1 develop an ATV/snowmobile trail along the Hutchins/Coos
2 Street site boundary." So, it would be very similar to
3 what was already in the Certificate.

4 What happened was, on November 1, 2011,
5 they filed with us a final landscaping plan, which was
6 consistent with what we expressed to them to do in the
7 Certificate. And, now, they're looking to amend that. So
8 that, if you granted the Motion as -- if you granted the
9 Motion as written by the Applicant, you would be putting a
10 very similar condition on them to what has already
11 existed. And, I assume, at some point we would be
12 receiving a final final landscape plan.

13 CMSR. HARRINGTON: I guess my question
14 was to the very last few words of that sentence. Because
15 it seems to me that it goes beyond the previous condition,
16 where it says "upon receiving their approval". And, I'm
17 assuming that "their" approves -- applies to the City and
18 the New Hampshire Bureau of Trails. So, my question is,
19 does this require both the City and the New Hampshire
20 Bureau of Trails to approve the modified landscaping plan
21 as submitted by the Applicant?

22 MR. IACOPINO: The way that it's written
23 in the Motion, it does. The way the Certificate condition
24 was before, it did not require "their approval", those

1 words were not used.

2 CMSR. HARRINGTON: So, if they --

3 MR. IACOPINO: And, technically, it is a
4 little bit of a challenge.

5 CMSR. HARRINGTON: And, so, they have
6 voluntarily made that condition a little more restrictive?

7 MR. IACOPINO: It looks that way.

8 CMSR. HARRINGTON: Thank you.

9 CHAIRMAN BURACK: Other comments on
10 thoughts on this particular aspect of the Motion?

11 (No verbal response)

12 CHAIRMAN BURACK: All right. If not, do
13 we need any general discussion, before we were to take a
14 vote on this motion?

15 (No verbal response)

16 CHAIRMAN BURACK: No further discussion
17 that anyone would like to have?

18 (No verbal response)

19 CHAIRMAN BURACK: Okay. Very good. So,
20 again, the question before us is on the motion to grant
21 the Motion of the Applicant as submitted. And, we'll take
22 a roll call vote on this. Actually, I don't think we need
23 a roll call vote. We probably can --

24 MR. IACOPINO: We don't need a roll

1 call, but, if you want to go through a roll call, that's
2 fine.

3 CHAIRMAN BURACK: Okay. We can do a
4 roll call vote. And, I'll start to my right, and just
5 walk through. Director. Muzzey?

6 DIR. MUZZEY: Could you repeat the
7 motion at this point, after all the --

8 CHAIRMAN BURACK: Yes. The motion that
9 was made and seconded is a motion to grant the Motion of
10 the Applicant as submitted. So, it is the Motion that
11 appears in their document filed with us, dated
12 November 6th, 2012, and would include the provisions as
13 they have described them in their motion.

14 DIR. MUZZEY: Yes.

15 CHAIRMAN BURACK: And amended to include
16 the submissions that we requested here today. Did you
17 vote on it?

18 DIR. MUZZEY: Yes.

19 CHAIRMAN BURACK: Okay. Mr. Knepper?

20 MR. KNEPPER: I vote "yes".

21 CHAIRMAN BURACK: Very well.

22 Commissioner Ignatius?

23 VICE CHAIRMAN IGNATIUS: Aye.

24 CHAIRMAN BURACK: Commissioner

1 Harrington?

2 CMSR. HARRINGTON: Yes.

3 DIR. WRIGHT: Yes.

4 CMSR. SCOTT: Yes.

5 CMSR. BRYCE: Yes.

6 ASST. CMSR. BRILLHART: Yes.

7 CHAIRMAN BURACK: And, I vote "yes" as
8 well. So, it is unanimous. The Motion is granted.

9 We will ask Attorney Iacopino, upon
10 receipt of the transcript of this proceeding, to work with
11 the Committee to prepare a written order on this matter.
12 And, that will be issued -- or, circulated for review by
13 the members of the Committee, and, when ready, will be
14 executed by the members of the Committee, and then
15 distributed.

16 CHAIRMAN BURACK: Commissioner Ignatius.

17 VICE CHAIRMAN IGNATIUS: One thing I
18 wanted to suggest, in future notices, and I thought
19 Representative Theberge's suggestion was a really good
20 one, that when we issue an order of notice for a
21 proceeding and hearing, whatever it may be, to actually
22 state a link to locate the materials in the most effective
23 way. People often get there, but it takes a lot of
24 fighting to get there. Maybe we've already done that.

1 And that, if there are maps available in a filing, to
2 identify that fact, and even identify where you find a
3 particular map, if that would help people to get a quick
4 orientation to what the issues are. We sometimes -- we
5 know we're making material available, but it's sometimes
6 so voluminous that it's hard to sort out where to begin.

7 CHAIRMAN BURACK: Yes. I will just note
8 for the record that, in fact, the Order of Notice of
9 Public Meeting does include a reference to the Committee's
10 website. And, again, we recognize that these orders of
11 notice are often in very small print in the newspapers.
12 But we certainly will continue to include that, and
13 perhaps we can find a way to make that more prominent in
14 our notices. We're just checking to confirm that the
15 actual -- we'll check to confirm that the actual language,
16 it does appear in the printed copy that appeared in the --
17 I believe that's the Union Leader publication there. And,
18 we will confirm that the same language is in the -- is in
19 the Daily Sun as well.

20 And, again, it's very important for us
21 to note that it is, for purposes of public access to
22 information, we want to do all that we can to make -- to
23 make the information readily available and accessible.

24 Does anybody have anything further they

1 wish to discuss with respect to this particular
2 proceeding?

3 (No verbal response)

4 CHAIRMAN BURACK: No? Okay. If not, I
5 want to thank Attorney Needleman, Mr. Frecker, Attorney
6 Brooks, as well as all the members of the public who took
7 the time to participate today and provide comment to the
8 Committee on this matter. And, at this time, we will --
9 we will close this docket. We will take a approximately
10 ten minute break, until roughly ten minutes past 11:00,
11 and then we will resume our proceedings with the next item
12 on our docket. Thank you. We stand adjourned at this
13 time.

14 (Whereupon the Public Meeting regarding
15 SEC 2011-01 ended at 11:01 a.m.)