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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

November 24, 2014 - 9:05 a.m.
Public Utilities Commission
21 South Fruit Street Suite 10
Concord, New Hampshire

**IN RE: SEC Docket No. 2014-03
GRANITE RELIABLE POWER, LLC:
Motion of Granite Reliable
Power, LLC, to Amend a
Certificate of Site and Facility,
with Request for Expedited Relief.
(Adjudicatory hearing and
deliberations)**

PRESENT:

SITE EVALUATION COMMITTEE:

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

Cmsr. Robert R. Scott
Cmsr. Martin P. Honigberg
Dir. Meredith Hatfield
William Oldenburg, Admin.
Dir. Philip Bryce
Dir. Eugene Forbes
Dir. Craig Wright
Dir. Elizabeth Muzzey
Dir. Brad Simpkins
Kate Bailey, Engineer
(Designated as PUC Engineer)

N.H. Dept. of Environmental
Services

N.H. Public Utilities Comm.
N.H. Public Utilities Comm.
Office of Energy & Planning
N.H. Dept. of Transportation
DRED-Div. of Parks & Rec.
DES-Water Division
DES-Air Resources Division
DCR-Div. of Historical Res.
DRED-Div. of Forests & Lands
N.H. Public Utilities Comm.

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

COURT REPORTER: *Steven E. Patnaude, LCR No. 52*
Susan J. Robidas, LCR No. 44

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ALSO PRESENT:

Counsel for the Applicant: Harold C. Pachios, Esq.
Matthew S. Warner, Esq.
(Preti Flaherty Beliveau
& Pachios)

Counsel for the Public: Mary Maloney, Esq.
Senior Asst. Atty General
N.H. Department of Justice

Reptg. Windaction Group: Lisa Linowes

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1	App. 1	Testimony of Tyler Phillips	premarked
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3	App. 3	Testimony of Kenneth Kimball (AMC)	premarked
4	App. 4	Supp. Testimony of K. Kimball (AMC)	premarked
5	App. 5	Amendment to High-Elevation Mitigation Settlement Agreement	premarked
6	App. 6	Granite Reliable Power LLC Revised High Elevation Restoration Plan	premarked
7	App. 6-A	Oversize prints of the Revised High Elevation Restoration Plan	premarked
8	App. 7	State of New Hampshire Site Site Evaluation Committee Order and Certificate of Site & Facility	premarked
9	App. 8	Email chain between William Staats, Tyler Phillips, John Cyr, Rennie Craig, Clare Kirk and others re: Kelsey road remediation	premarked
10	App. 9	Email chain between Peter Roth and Charles Kilpatrick re: Granite - Mt. Kelsey	premarked
11	App. 10	Motion of Counsel for the Public for Leave to Retain Dr. C. William Kilpatrick and for an Order Directing Granite Reliable Power LLC to Bear the Costs Thereof	premarked

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App. 12	SEC Docket No. 2008-04: Application of Granite Reliable Power LLC for a Certificate of Site & Facility for GRP Windpark in Coos County - Day 3, <i>Transcript excerpts: Page 264, Lines 5 and 11-24; Page 265, Lines 1-11</i>	premarked
App. 13	SEC Docket No. 2008-04: Application of Granite Reliable Power LLC for a Certificate of Site & Facility for GRP Windpark in Coos County - Day 4 <i>Transcript excerpts of testimony of witness David Publicover: Pages 226 - 236</i>	premarked
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App. 18	SEC Docket No. 2008-04: Application of Granite Reliable Power LLC for a Certificate of Site & Facility for GRP Windpark in Coos County (Deliberative Session) - <i>Day 3 Transcript excerpts: Page 15</i>	premarked
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PC 3	Supplemental Testimony of Dr. Charles William Kilpatrick	premarked
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PC 6	Testimony of Dr. David Publicover (2009)	premarked
PC 7	Testimony of Will Staats and Jillian Kelly (2008)	premarked
PC 8	Transcript of July 24, 2014 Technical Session	premarked
PC 9	Siren, 2013 American Marten Study on Mt. Kelsey	premarked

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PC 15	Granite Reliable Power's Maintenance Schedule	premarked
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WG-1	Testimony of Lisa Linowes	premarked
WG-2	Alexej Peder Kelly Siren, Population Ecology of American Marten in New Hampshire: Impact of Wind Farm Development in High Elevation Habitat, (2009) (Attached)	premarked
WG-3	Docket 2008-04 Supplemental Testimony of Adam Gravel and Steven Pelletier, (Supplement to the Application - Volume 1-a) http://www.nhsec.nh.gov/projects/2008-04/documents/090224app_volumela.pdf	premarked

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WG-6	Decision Granting Certificate of Site & Facility with Conditions - July 15, 2009 http://www.nhsec.nh.gov/projects/2008-04/documents/090715decision.pdf	premarked
WG-7	GRP Responses to Data Requests from July 24 Technical Session (Consisting of 10 subparts noted as WG-7-1 through WG-7-10)	premarked

P R O C E E D I N G

1
2 CHAIRMAN BURACK: Good morning, ladies
3 and gentlemen. My name is Tom Burack. I am the
4 Commissioner of the New Hampshire Department of
5 Environmental Services, and, by statute, I am serving as
6 the acting Chairman of the SEC for purposes of today's
7 proceedings.

8 We have two matters on our agenda today.
9 The first matter is the Motion of Granite Reliable Power,
10 LLC, to Amend a Certificate of Site and Facility with
11 Request for Expedited Relief, Docket Number 2014-03. In
12 that docket we will conduct an adjudicatory hearing on the
13 outstanding motion. We will also reserve time at the end
14 of the afternoon to discuss and consider a recommendation
15 from the Committee to the Legislature for a funding
16 mechanism for the Committee. The Committee is required to
17 make such a recommendation pursuant to RSA 162-H:21 as it
18 was recently amended.

19 Before turning to our agenda, I would
20 like to ask the members of the Committee who are here
21 today to introduce themselves, name and title, starting to
22 my far right.

23 DIR. FORBES: My name is Gene Forbes.
24 I'm the Water Division Director -- is this on? My name is

1 Gene Forbes. I'm the Water Division Director at the
2 Department of Environmental Services.

3 DIR. BRYCE: Phil Bryce, Director of
4 Parks and Recreation in the Department of Resources and
5 Economic Development.

6 DIR. WRIGHT: Craig Wright, Air
7 Resources Division Director, Department of Environmental
8 Services.

9 MR. OLDENBURG: Bill Oldenburg, the
10 Assistant Director of --

11 (Court reporter interruption.)

12 CHAIRMAN BURACK: Yes. You really need
13 to speak right into the microphone.

14 MR. OLDENBURG: I'm Bill Oldenburg, the
15 Assistant Director of Project Development at the New
16 Hampshire Department of Transportation.

17 MS. BAILEY: Kate Bailey, Designated
18 Engineer for the PUC.

19 DIR. HATFIELD: Meredith Hatfield,
20 Director of the Office of Energy and Planning.

21 CMSR. HONIGBERG: Martin Honigberg,
22 Commissioner at the PUC.

23 DIR. MUZZEY: Elizabeth Muzzey, Director
24 of the Division of Historical Resources.

1 CMSR. SCOTT: Bob Scott, Commissioner
2 with the New Hampshire Public Utilities Commission.

3 DIR. SIMPKINS: Brad Simpkins, Director
4 of Forests and Lands with the Department of Resources and
5 Economic Development.

6 CHAIRMAN BURACK: Attorney Iacopino.

7 MR. IACOPINO: Thank you. My name is
8 Michael Iacopino. I am Counsel to the Committee.

9 CHAIRMAN BURACK: Wonderful. Thank you
10 all very much for those introductions. I would note that
11 we have the necessary quorum of the Committee to conduct
12 our business. And, we will now turn to the first matter
13 before us today.

14 Let me provide some background. On
15 July 15, 2009, in Docket Number 2008-04, the New Hampshire
16 Site Evaluation Committee, which we will refer to as the
17 "Committee", granted a Certificate of Site and Facility to
18 Granite Reliable Power, LLC, which we will refer to today
19 as the "Applicant". The Certificate authorized the
20 Applicant to site, construct and operate a 99 megawatt
21 wind powered electric generation facility consisting of 33
22 wind turbines on private lands located in Dixville,
23 Erving's Location, Millsfield, Odell, and the Town of
24 Dummer in Coos County. And, we will refer to that entire

1 set of wind turbines and properties as the "Facility".
2 The Facility is now fully constructed and commercially
3 operating. The Certificate included a number of important
4 conditions pertaining to the construction and operation of
5 the Facility.

6 A series of conditions were incorporated
7 into the Certificate through the Committee's approval of a
8 High Elevation Mitigation Settlement Agreement. Included
9 within the High Elevation Mitigation Settlement Agreement,
10 Section A, Paragraph 5, and incorporated in the
11 Certificate was a condition stating: "Within the Retained
12 Land on Mount Kelsey, only those trees necessary for
13 project construction will be cut. Once construction is
14 completed, there shall be no commercial timber harvesting
15 in this area. After project construction the roadway
16 shall be revegetated so that the roadbed is limited to
17 12 feet in width."

18 On March 12, 2014, the Applicant filed a
19 Motion to Amend the Certificate of Site and Facility,
20 which we'll refer to as the "Motion". The Applicant
21 asserts that it has complied with all conditions contained
22 within the High Elevation Mitigation Settlement Agreement.
23 However, the Applicant asserts that the maintenance
24 requirements of the Facility necessitate the repeated and

1 periodic disturbance of the revegetated areas along the
2 turbine roads to accommodate heavy construction equipment.
3 The Applicant seeks to amend the Certificate to allow the
4 turbine roads on Mount Kelsey to be reconstructed to a
5 width of 16 feet. In addition, the Applicant seeks to
6 replace the existing High Elevation Restoration Plan with
7 a Revised High Elevation Restoration Plan.

8 The Revised High Elevation Restoration
9 Plan includes additional requirements pertaining to (1)
10 minimization of temporary and permanent disturbances; (2)
11 restricted access; (3) stabilization and revegetation,
12 including requirements pertaining to grading, soil
13 preparation, tree seedlings, and mulch for moisture
14 retention and soil stabilization; (4) monitoring; and (5)
15 maintenance.

16 Counsel for the Public filed an
17 Objection to the Applicant's Motion on March 27, 2014.
18 The Applicant filed a Replication to the Counsel for the
19 Public's Objection on April 3, 2014.

20 Pursuant to the Committee's Order and
21 Notice of Public Meeting a public meeting was held on
22 April 7, 2014. On April 7, 2014, the Windaction Group,
23 which we will refer to as "Windaction", filed a Petition
24 to Intervene *Pro Se*. On April 7, 2014, Coos County

1 Commissioner, District 3, Rick Samson, filed a request to
2 intervene with the Committee. Both motions to intervene
3 were granted on May 1, 2014. A Procedural Order was
4 issued on May 14, 2014.

5 On May 20, 2014, the Committee received
6 an e-mail from Craig Rennie, a Land Resource Specialist at
7 the New Hampshire Department of Environmental Services.
8 Mr. Rennie advised the Committee that the DES Alteration
9 of Terrain Bureau had reviewed the Revised High Elevation
10 Restoration Plan and determined that it met the
11 notification requirements of Administrative Rule Env-Wq
12 1503.21(d). Mr. Rennie further advised the Committee that
13 the DES Alteration of Terrain Bureau had determined that
14 neither a -- neither an amended nor a new Alteration of
15 Terrain permit was necessary to implement the Revised High
16 Elevation Restoration Plan.

17 On May 22, 2014, the Applicant pre-filed
18 the testimony of three individuals: First, John R. Cyr,
19 an Operations and Maintenance Supervisor for the Granite
20 Reliable Power Windpark; second, Kenneth D Kimball,
21 Director of Research for the Appalachian Mountain Club;
22 and third, Tyler B. Phillips, a Senior Project Manager at
23 Horizons Engineering, Inc.

24 On June 18, 2014, Counsel for the Public

1 filed a Motion for Leave to retain Dr. C. William
2 Kilpatrick. That Motion was granted on July 7, 2014.

3 A technical session was conducted on
4 July 24, 2014. On August 29, 2014, the parties undertook
5 a site visit at the Facility.

6 On September 14, 2014, Counsel for the
7 Public pre-filed the testimony of Charles William
8 Kilpatrick, a Professor of Biology at the University of
9 Vermont. The pre-filed testimony of Dr. Kilpatrick was
10 accompanied by a report.

11 On September 15, 2014, Windaction filed
12 the pre-filed testimony of Lisa Linowes.

13 On October 9, 2014, the parties
14 participated in the second technical session. Thereafter,
15 on October 23, 2014, the Applicant filed supplemental
16 pre-filed testimony of Dr. Kimball, and Counsel for the
17 Public filed a supplemental pre-filed testimony of
18 Dr. Kilpatrick.

19 Today's adjudicatory hearing is
20 authorized by RSA 162-H:4, II. Notice was provided to all
21 parties by Order dated October 6, 2014. In addition, I
22 issued a Notice of Public Meeting and Agenda on
23 November 17, 2014.

24 We will proceed as follows in this

1 matter today: First, we will take public comment. Any
2 member of the public wishing to make public comment should
3 please just raise their hand, when I'm done with my
4 opening statement here, and I will ask you, with the
5 assistance of Attorney Iacopino, to -- he will provide you
6 with a sheet to sign your name on it. And, we will call
7 members of the public to the microphone to make their
8 statement. I'll ask you to come up here to this table to
9 my left. And, I would ask members of the public, who wish
10 to make statements, to keep their public statements brief
11 and to try not to be repetitious.

12 Once we have heard all public comment,
13 we will move onto the adjudicatory portion of the
14 proceeding. At that point, we will allow the Applicant to
15 present its witnesses, along with any pre-filed testimony
16 and exhibits. It is my understanding that the Applicant
17 will present a panel of witnesses, including John R. Cyr,
18 Kenneth D. Kimball, and Tyler B. Phillips. And, the order
19 of examination of the Applicant's witnesses will be,
20 first, cross-examination by Windaction, if any;
21 cross-examination by Commissioner Samson, if any;
22 cross-examination by Counsel for the Public, if any;
23 followed by questions from the Committee.

24 Then, we will allow Windaction to

1 present its witnesses, along with any pre-filed testimony
2 and exhibits. It is my understanding that Windaction will
3 present one witness, Lisa Linowes. The order of
4 examination of the Windaction's witness will be
5 cross-examination by the Applicant, if any;
6 cross-examination by Commissioner Samson, if any;
7 cross-examination by Counsel for the Public, if any;
8 followed by questions from the Committee.

9 Thereafter, we will allow Commissioner
10 Samson to present his witnesses and exhibits, if any. The
11 order of examination of Commissioner Samson's witnesses
12 will be cross-examination by the Applicant, if any;
13 cross-examination by Windaction, if any; cross-examination
14 by Counsel for the Public, if any; followed by Committee
15 questions.

16 Finally, we will allow Counsel for the
17 Public to present its witnesses -- her witnesses, along
18 with any pre-filed testimony and exhibits. It is my
19 understanding that Counsel for the Public will present a
20 panel of witnesses, including Charles William Kilpatrick
21 and Christopher Gray. The order of examination of the
22 Counsel for the Public's witnesses will be
23 cross-examination by Commissioner Samson, if any;
24 cross-examination by Windaction, if any; cross-examination

1 by the Applicant, if any; followed by Committee questions.

2 When we have completed the examination
3 of the panel of witnesses, I will consider allowing the
4 parties to make brief closing arguments. I will then
5 close the evidentiary portion of the adjudicative
6 proceeding and, if appropriate, we may move into a
7 deliberative proceeding, at which time the Committee will
8 consider whether to grant or deny the Applicant's request
9 and amend the Certificate as requested by the Applicant
10 and whether to approve the Revised High Elevation
11 Restoration Plan proposed by the Applicant.

12 I will note now that, if we are unable
13 to complete this entire proceeding by 4:00 p.m. today, we
14 will recess the proceeding until a later date to be
15 determined, likely in December. We must end this
16 proceeding by 4:00 p.m. today to allow adequate time for
17 the Committee to consider the other agenda matter. We
18 will take a lunch break at a logical stopping point
19 midday. I also expect to take a break roughly mid-morning
20 here, in order to give Mr. Patnaude, our
21 stenographer/court reporter and opportunity to have a
22 break. When we do take a break at lunch, it will likely
23 be for no longer than 45 minutes or so, so that we can
24 make the best possible use of our time today.

1 At this point, I will take appearances
2 in this docket, and we will then hear public comment.
3 Counsel for the public -- or, I'm sorry, counsel for the
4 Applicant please.

5 MR. PACHIOS: My name is Harold Pachios.
6 I am counsel for the Applicant, as well as my colleague,
7 Matthew Warner. We are of the law firm of Preti Flaherty,
8 which is here in Concord and in Portland, Maine.

9 CHAIRMAN BURACK: Thank you. Counsel
10 for the Public.

11 MS. MALONEY: Mary Maloney, from the
12 Attorney General's Office. I'm appearing for Counsel for
13 the Public for Peter Roth. Thanks.

14 CHAIRMAN BURACK: Thank you.
15 Windaction.

16 MS. LINOWES: Thank you. Thank you, Mr.
17 Chairman. Lisa Linowes, appearing here on behalf of the
18 Windaction Group.

19 CHAIRMAN BURACK: Thank you. And, is
20 Commissioner Samson here today?

21 (No verbal response)

22 CHAIRMAN BURACK: Okay. Commissioner
23 Samson does not appear to be present. Okay. Very good.

24 MR. IACOPINO: Mr. Chairman, I wanted to

1 point out one, one slight change in the agenda that you
2 laid out in your opening remarks.

3 CHAIRMAN BURACK: Yes. Thank you.

4 MR. IACOPINO: It's my understanding
5 that the Applicant will be putting on two of its witnesses
6 as a panel, followed by Dr. Kimball as a sole witness.

7 CHAIRMAN BURACK: Thank you very much.
8 All right. Let you us now turn --

9 MS. LINOWES: Mr. Chairman?

10 CHAIRMAN BURACK: Yes.

11 MS. LINOWES: I'm sorry, Mr. Chairman.
12 I just wanted to comment about the fact that we will not
13 be given an opportunity to provide closing comments. I
14 think that's unusual. And, there's no opportunity for us
15 to provide a written brief on our recommendations on a
16 decision. I guess I would like to ask why that's
17 happening and express my objection to the fact that it's
18 not. Thank you.

19 CHAIRMAN BURACK: I provided that, if
20 time permits, I'd be pleased to provide each of the
21 parties that is a participant in this proceeding,
22 including intervenors, an opportunity to make a brief
23 closing statement.

24 Okay. Are there any members of the

1 public who would like to be able to make a statement in
2 this matter? If so, please raise your hand?

3 (No verbal response)

4 CHAIRMAN BURACK: All right. I see no
5 members of the public wishing to provide comment to the
6 Committee on this matter. So, there being no further
7 public comment, we'll commence the adjudicatory portion of
8 the proceeding. Mr. Pachios, please call your witnesses.

9 MR. PACHIOS: Thank you very much, Mr.
10 Chairman. Will there be an opportunity to, I'm not
11 insisting here, that I don't think this is very important,
12 but maybe a three-minute overview of what the case is
13 about might be helpful, but --

14 CHAIRMAN BURACK: I'd be pleased to give
15 you the opportunity to do so. And, I will give each of
16 the other parties a chance to do that briefly as well.

17 MS. LINOWES: Mr. Chairman, I think that
18 you gave an ample overview of the Project. I do not -- I
19 guess I'm a little uncomfortable this is going to sound
20 like testimony, versus just an overview. I think the
21 facts are already in the record. Thank you.

22 CHAIRMAN BURACK: Mr. Pachios, is there
23 anything beyond what I provided in my opening statement
24 that the Committee should know, in order to be able to

1 understand the matter?

2 MR. PACHIOS: Yes. This is like a brief
3 opening statement, as is customary in most adjudicatory
4 proceedings and in courtrooms. And, it's just a picture
5 from 50,000 feet.

6 CHAIRMAN BURACK: You're going to need
7 to sit down and get closer to microphone, if you would
8 please.

9 MR. PACHIOS: It will be very brief.

10 CHAIRMAN BURACK: Thank you.

11 MR. PACHIOS: The evidence that will be
12 presented today demonstrates that this is not -- this
13 dispute, this case, is not about the width of the road,
14 whether it's 12 feet or 16 feet. It's about the
15 Restoration Plan. Now, the SEC approved the original
16 Restoration Plan. The amendment, which comes in the form
17 of an amendment to the agreement between New Hampshire
18 Fish & Game, Appalachian Mountain Club, and the Applicant
19 has some changes to the Restoration Plan. The reason for
20 all of this is that, under the original plan, whenever
21 a -- some kind of event happens on the mountain, with
22 respect to the turbines, that is a major kind of
23 casualty --

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

1 this is information that should be coming out as a result
2 of the testimony -- the cross-examination. It's already
3 in the record in the form of testimony. I don't feel
4 comfortable about the fact that we're now going to hear a
5 justification to the Committee on why this plan should be
6 approved. I think that should be a decision you make
7 based on the information before you today.

8 CHAIRMAN BURACK: Attorney Pachios,
9 could you please just wrap up very quickly what your point
10 is.

11 MR. PACHIOS: Yes. I'm just trying to
12 set the overview. I've been at this for 49 years, and
13 this is what happens. So, it is not -- the issue is not
14 the width of the road; the issue is the restoration. And,
15 the reason we're here today is that, under the current
16 arrangement, every time there's a major casualty or some
17 kind of a casualty that requires heavy equipment to get to
18 the top of the mountain, to the ridge, to make repairs,
19 the equipment is so wide that it tears up the -- a portion
20 of the revegetated area.

21 So, the evidence will show that
22 discussions were held with the state, with the New
23 Hampshire Fish & Game and Appalachian Mountain Club, and
24 the question arose "Why keep periodically ripping up the

[WITNESS PANEL: Cyr~Phillips]

1 revegetated area? Widen the road by four feet to
2 accommodate this equipment. And, then, what's revegetated
3 can stay revegetated." And, that's the point of this
4 whole thing and why we're here today. It's pretty simple.
5 Thank you.

6 CHAIRMAN BURACK: Thank you, Attorney
7 Pachios. Counsel for the Public, would you like to share
8 anything?

9 MS. MALONEY: Just briefly. I don't
10 believe that, and I was just assigned this, because
11 Attorney Roth had to go to Bankruptcy Court today, but I
12 don't think we can concede the issue that it's not about
13 the road width. I think that the Applicant has to make
14 the case for the road width, and that's certainly not a
15 concession on the part of Counsel for the Public. So, we
16 believe the burden is on the Applicant to submit
17 sufficient evidence that there is a need to expand the
18 road width from 12 to 16 feet, as well as the Restoration
19 Plan, which we are providing additional information for
20 the Commission to consider today, and in order to make the
21 Restoration Plan more robust and actually more effective.

22 CHAIRMAN BURACK: Thank you. Ms.
23 Linowes.

24 MS. LINOWES: I have no comment. Thank

[WITNESS PANEL: Cyr~Phillips]

1 you.

2 CHAIRMAN BURACK: Thank you. Attorney
3 Pachios, please call your first witnesses.

4 MR. PACHIOS: The first witnesses, Mr.
5 Chairman, you want them to sit as a panel, the two of
6 them?

7 CHAIRMAN BURACK: Yes, if they would, if
8 that's how you intend to have them.

9 MR. PACHIOS: All right.

10 CHAIRMAN BURACK: And, we'll ask
11 Mr. Patnaude to give an oath.

12 MR. PACHIOS: The witnesses are Tyler
13 Phillips and John Cyr, C-y-r. And, they're ready to be
14 sworn.

15 (Whereupon **Tyler B. Phillips** and
16 **John R. Cyr** were duly sworn by the Court
17 Reporter.)

18 CHAIRMAN BURACK: And, would you please
19 each identify yourself as to who is Mr. Cyr and who is Mr.
20 Phillips.

21 WITNESS PHILLIPS: I am Mr. Phillips,
22 with Horizons Engineering.

23 WITNESS CYR: And, I am John Cyr, with
24 Brookfield Renewable.

[WITNESS PANEL: Cyr~Phillips]

1 CHAIRMAN BURACK: Is that microphone on?

2 Thank you.

3 **TYLER B. PHILLIPS, SWORN**

4 **JOHN R. CYR, SWORN**

5 **DIRECT EXAMINATION**

6 BY MR. PACHIOS:

7 Q. Now, Mr. Phillips, you have in front of you what has
8 been designated as the "Applicant's Exhibit Number 1",
9 which is the pre-Filed "Testimony of Tyler Phillips",
10 do you not?

11 A. (Phillips) I do.

12 Q. And, if you were to testify orally today, would this
13 pre-filed testimony be the substance of your testimony
14 and the actual testimony you would present?

15 A. (Phillips) It would.

16 Q. And, you adopt it as your direct testimony in this
17 case?

18 A. (Phillips) I do.

19 Q. Okay. And, Mr. Cyr, I ask the same question of you.
20 Your pre-filed testimony is designated as "Applicant's
21 Exhibit Number 2". If you were to testify orally here
22 today, would that be your testimony and do you adopt it
23 as your direct testimony in this case?

24 A. (Cyr) I do.

[WITNESS PANEL: Cyr~Phillips]

1 MR. PACHIOS: Okay. The witnesses are
2 ready for cross-examination, Mr. Chairman.

3 CHAIRMAN BURACK: Very good. Thank you
4 very much. I believe we had previously identified that
5 Counsel for the -- let me just confirm this here. No, I
6 think we will allow for cross-examination by Windaction
7 first.

8 MS. LINOWES: Thank you.

9 CHAIRMAN BURACK: If you would like to
10 do so.

11 MS. LINOWES: Thank you.

12 **CROSS-EXAMINATION**

13 BY MS. LINOWES:

14 Q. Mr. Tyler -- or, Mr. Phillips, rather, sorry, what is
15 your role regarding the GRP Wind Project?

16 A. (Phillips) I've had -- my role began with permitting
17 and assisting with the design of the Project. As the
18 Project went to construction, I was performing
19 monitoring, erosion control monitoring. And, as the
20 Project came to conclusion, I have been involved with
21 observing the trees, the restoration as it's been
22 completed.

23 Q. And, what do you mean by "to conclusion"?

24 A. (Phillips) As the Project, the Facility became

[WITNESS PANEL: Cyr~Phillips]

1 operational and the site went into -- was continuing
2 to -- we were waiting, basically, for the site to
3 become stable, which is a threshold that's an important
4 threshold in many of the permits.

5 Q. In that case, does that mean that the turbines were
6 erected or not?

7 A. (Phillips) The turbines were erected prior to it
8 becoming --

9 Q. Okay. So, you've been involved with the Project from
10 the very beginning, effectively, before construction
11 even started?

12 A. (Phillips) Correct.

13 Q. With Noble Environmental as well?

14 A. (Phillips) Correct.

15 Q. Okay. And, at what point did you become aware that the
16 revegetation back to 12 feet was going to be a problem?

17 A. (Phillips) As it was being laid out, I would say the --
18 that would have been in the Summer of 2012.

19 Q. I'm sorry, I don't understand by "laid out". The
20 Project was operational in December 2011.

21 A. (Phillips) The Project has roadways that are
22 constructed at 34 feet in width, and those roadways
23 continue to exist. One of the conditions of the SEC
24 order was to cover a portion of that roadway with

1 topsoil in the Retained Lands on Mount Kelsey, leaving
2 a 12-foot wide exposed portion of gravel road in place.
3 So, it was at that time that the topsoil was being
4 placed that it appeared to be relatively narrow.

5 Q. As having been part of the whole permitting process,
6 and being aware of the Project, did you know that that
7 was a condition of approval in the Project before that
8 point?

9 A. (Phillips) I was aware that the roadway had to be
10 covered. I hadn't participated in the initial SEC
11 hearings that indicated it needed to be covered except
12 for 12 feet.

13 Q. So, to your knowledge, who would have been aware of it?
14 Anyone in your company?

15 A. (Phillips) Upon reviewing testimony, I understand Steve
16 LaFrance was involved with that discussion. He's from
17 our office. He testified before the SEC prior.

18 Q. So, he was aware of the 12-foot?

19 A. (Phillips) It's my recollection, from the testimony,
20 yes.

21 Q. And, at any time during your participation in laying
22 out the roads or designing the roads that your company
23 was involved with, were you made aware of road width
24 requirements by Vestas or any of the other construction

[WITNESS PANEL: Cyr~Phillips]

1 companies that were involved in delivering parts or
2 related to the Project itself?

3 A. (Phillips) Only generally. I was not involved in the
4 road design itself. But we're a small office and we
5 discussed some of the constraints.

6 Q. So, only generally for you, but other people within
7 your company were aware of it?

8 A. (Phillips) Certainly. Yes.

9 Q. So, you knew that there was very -- either in this
10 project or other projects that you worked on, you know
11 that there are specific recommendations or requirements
12 that are put forward by those entities that will be
13 driving vehicles on roads of this type, and that you
14 have to meet those specifications?

15 A. (Phillips) That's correct.

16 Q. So, it's -- but your testimony today is that you did
17 not know that there will be a problem with the road
18 width until time in the middle of the summer?

19 A. (Phillips) Until --

20 Q. 2012. Sorry.

21 A. (Phillips) Again, the existence of the 12-foot wide
22 road was something that I was I'd say only casually
23 aware of. But the -- when I saw the 12-foot wide --
24 the road narrowed down to 12 feet, it appeared to me to

1 be pretty constraining.

2 Q. You had to physically see the road narrowed to 12 feet
3 to figure that out or, as an engineer, did you see
4 recommendations on paper that stated what the minimum
5 widths would have to be for vehicles like
6 tractor-trailers?

7 A. (Phillips) Well, I'm not an engineer. But I think one
8 of the things that combined to add, to make that
9 roadway appear narrower, is that there was a number of
10 large boulders used as guardrail rocks. So that the
11 combination of this narrower road, with the concern of
12 boulders along the road kind of constraining that
13 12 feet, making it appear to be narrower, much like we
14 hear about traffic-calming devices, it seemed to me
15 that 12 feet was exceptionally narrow.

16 Q. Okay. Mr. Phillips, if you're not an engineer, is
17 there some -- so, you did not -- you were not involved
18 in designing these roads at all, is that what you're
19 saying then?

20 A. (Phillips) I was involved with the water quality
21 elements, with erosion control, drainage design. As
22 far as the overall alignment of the road, I was not
23 involved with that. No.

24 Q. So, you really can't speak to the requirements of the

[WITNESS PANEL: Cyr~Phillips]

1 road widths? As you're not an engineering, you're not
2 a transportation engineer, you really cannot speak to
3 what the road widths have to be in order to accommodate
4 these vehicles, is that correct?

5 A. (Phillips) Not from a -- not from a position of having
6 that training. As I've participated -- as I've seen
7 the Project occur, go forward, I have observed. So,
8 I've learned something, but wouldn't have that
9 technical expertise.

10 MR. PACHIOS: Mr. Chairman?

11 CHAIRMAN BURACK: Attorney Pachios.

12 MR. PACHIOS: Mr. Chairman, we have a
13 panel. And, so, I don't know whether it's sequential or
14 whether another panel member can answer a question, if the
15 other panel member has more information?

16 CHAIRMAN BURACK: Thank you. It is our
17 standard practice here within the SEC to allow either, if
18 we have a panel of multiple members, to allow whichever
19 panelist has the most knowledge on a particular question
20 to be able to answer it. Ms. Linowes, would it be, if Mr.
21 Cyr has something to add in response to a question, I
22 trust you'll have no concern with his doing so, is that
23 right?

24 MS. LINOWES: That's correct.

[WITNESS PANEL: Cyr~Phillips]

1 CHAIRMAN BURACK: Thank you.

2 BY MS. LINOWES:

3 Q. And, if I -- I will ask Mr. Cyr, you are new to this
4 project, relative to Mr. Phillips, isn't that correct?

5 A. (Cyr) That's correct.

6 Q. So, when did you start working on the Project?

7 A. (Cyr) It would be September of 2011.

8 Q. Okay. So, the Project -- the roads were already
9 built -- the Project was already permitted, the roads
10 were already built, there were already expectations
11 that the width of the roads would go to 12 feet, is
12 that correct?

13 A. (Cyr) Well, at that time, I wasn't aware that the roads
14 were going to be narrowed to 12 feet. At that time,
15 the roads were 34 feet. The turbines were still being
16 erected when I came onsite.

17 Q. Okay. I would like to direct your attention to the
18 High Elevation Restoration Plan. This would be --

19 MS. LINOWES: I'm not sure of the
20 exhibit. And, if I could ask if Attorney Iacopino could
21 help me with this. This would have been one of Public
22 Counsel's exhibits. Mike, do you have that?

23 MR. IACOPINO: I'm looking.

24 MS. LINOWES: My apologies, Mr.

1 Chairman.

2 MR. IACOPINO: Public Counsel 16.

3 MR. PACHIOS: Thank you. Thank you.

4 So, Public Counsel 16 exhibit.

5 BY MS. LINOWES:

6 Q. There is an original version of this that was dated
7 August 2012, and then an amended version, which is more
8 recent. But the text in both that I'm going to refer
9 to has not changed. This would be on Page 3, and also
10 on Page 13, under the section called "Monitoring". Do
11 you have that in front of you?

12 A. (Phillips) The original -- yes. The present one? Yes.

13 Q. The section titled "Monitoring"?

14 A. (Phillips) Yes.

15 Q. And, in there, it says "Following establishment" -- I'm
16 sorry, "Following construction, Granite will provide
17 annual [biennial?] monitoring of seedling survival for
18 two years." And, then, success -- and, then, it goes
19 on to say "Successful tree establishment will be a
20 75 percent survival rate." Are you seeing a 75 percent
21 survival rate today?

22 A. (Phillips) Yes.

23 Q. You are?

24 A. (Phillips) Yes.

1 Q. Okay.

2 A. (Phillips) I have not gone out and actually measured.
3 But, again, it would appear as though it's 75 percent.

4 Q. So, as the Project stands right now, it is in
5 compliance with the roads narrowed to 12 feet, and you
6 are seeing that there is seedling survival rate of
7 75 percent. So, it looks fine. Is that what you're
8 saying?

9 A. (Phillips) I'd say that, yes, the Project is in
10 compliance with the original condition.

11 Q. Okay. Now, if this -- if the Committee agrees to grant
12 this change, there will be another two years of
13 monitoring?

14 A. (Phillips) That's my understanding, yes.

15 Q. And, who will conduct that monitoring?

16 A. (Phillips) That's at Brookfield's discretion. I don't
17 have a contract currently to perform that monitoring.
18 So, I'm not sure.

19 Q. So, you conducted the monitoring initially, in the
20 previous -- in the two years we're coming to a close?

21 A. (Phillips) Yes. I performed the qualitative checks. I
22 think that it was, as you recall, it was so soon after
23 us having planted the vegetation up there that the
24 disruption occurred where we windrowed trees that at

[WITNESS PANEL: Cyr~Phillips]

1 that point in time everything -- we were in discussions
2 with Fish & Game to develop what we considered a more
3 logical plan for planting vegetation. And, so, trying
4 to determine whether 75 percent survival or not exists
5 would have been hampered by this temporary destruction
6 of the 4-foot wide area.

7 Q. So, you don't really know then, is what you're saying?
8 I mean, you said that you found 75 percent survival
9 rate, but it sounds like the monitoring didn't go on
10 the way you had envisioned it to, because the plan
11 wasn't quite what you thought it should be. Is that
12 what you're saying?

13 A. (Phillips) Well, I guess I'd characterize it a little
14 differently. We had planted the trees. And, we were
15 waiting for that first tier to begin. But not knowing
16 how this plan might be revised, it didn't seem wise to
17 go and start counting trees at that point in time,
18 when, in fact, we may end up changing the location of
19 trees. There was subsequent maintenance after that
20 that damaged them. So, at this point in time, I would
21 say that, again, an estimate, greater than 75 percent
22 survival exists, and the Project is currently in
23 compliance with the conditions.

24 Q. How much were the state agencies involved in that

1 review, that monitoring process?

2 A. (Phillips) They weren't involved. When we were
3 considering replanting trees in other locations we're
4 onsite with Fish & Game, we discussed how we would go
5 about potentially in the future monitoring for this,
6 when some of the tree planting locations were not going
7 to be as obvious, not being planting in the topsoil
8 right over the road, instead they may be out off to the
9 sides of the road, and how we would keep track of that.

10 Q. So, what was your obligation? Okay, let's just, this
11 is hypothetical for the moment, I guess, because it
12 didn't go the way the original monitoring was expected.
13 But had there not been an issue, what was your
14 expectation, because I'm trying to understand what you
15 think the next two years will look like, what was your
16 expectation, in terms of monitoring and reporting of
17 the condition of the trees -- of the revegetation?

18 A. (Phillips) My expectation was that we would, after year
19 one, we would take a look at the trees. If it was
20 close to the 75 percent standard, that we would count
21 the trees, go out and literally count the trees. If it
22 was obvious that we would discuss with Fish & Game
23 whether they wanted us to count or whether they would
24 accept a visual estimation of that standard.

[WITNESS PANEL: Cyr~Phillips]

1 Q. So, it was -- okay. So, it was just a matter of
2 meeting the 75 percent. However, it could have been
3 100 percent in one location, it could have been 50
4 percent in another location within the site of survival
5 rate?

6 A. (Phillips) I personally view the condition as a total
7 of 75 percent. If there was large swaths that were
8 dead, due to some, I can't imagine what, but either a
9 topographical situation or nutrients or something, we
10 would probably reevaluate it. And, I would think we
11 would work with Fish & Game. Brookfield has been very
12 willing to work with Fish & Game to do what they like.

13 Q. And, just so I'm clear, the High Elevation Restoration
14 Plan was designed by whom?

15 A. (Phillips) The original -- the original or the one
16 we're -- the original was prepared --

17 Q. The original.

18 A. (Phillips) -- was prepared by RMT, who is the
19 contractor, the engineering, procurement and
20 construction contractor. They took the standards that,
21 as I understand, they took the standards that Fish &
22 Game had been interested, in terms of a planting plan.
23 They developed a planting plan for this high elevation
24 area. They developed it.

[WITNESS PANEL: Cyr~Phillips]

1 Q. And Fish & Game signed off on it?

2 A. (Phillips) To my knowledge, yes.

3 Q. And, the monitoring would be conducted by you, with
4 reporting back to Fish & Game?

5 A. (Phillips) Yes.

6 Q. On a yearly basis?

7 A. (Phillips) Yes. Okay. Now, I had questions regarding
8 the turbine failure rates. Mr. Cyr, I think these
9 questions are for you. You have stated multiple times
10 during -- well, let me ask you this question first. In
11 Exhibit App. 2, which is your pre-filed testimony, on
12 Page 5, Line 5, you state there that "The proposed
13 Revised High Elevation Restoration Plan that's
14 incorporated into the Settlement Agreement establishes
15 road widths of 16 feet with widths of 18 to 26 feet at
16 six corners." And, then, you go on to say "These
17 widths are the minimum possible to accommodate the
18 tractor-trailers needed to carry large cranes and other
19 heavy equipment." When you say "the minimum widths",
20 does that mean that they're going to get wider? Are
21 there wider conditions than that?

22 A. (Cyr) I don't know that, no. No.

23 Q. So, it's not the minimum, it's the maximum?

24 A. (Cyr) Well, this is the minimum width to safely bring

[WITNESS PANEL: Cyr~Phillips]

1 this equipment up the mountain. You know, the
2 equipment that needs tow assist --

3 (Court reporter interruption.)

4 **CONTINUED BY THE WITNESS:**

5 A. (Cyr) Tow assist, it's a large piece of equipment that
6 tows the equipment up the steep grades. So, this is
7 the minimum, yes. Correct.

8 BY MS. LINOWES:

9 Q. So, it would be fine if it were larger, but this is --
10 is that what you mean? It would be fine if that width
11 was larger, but it needs to at least be this width, is
12 that what you're saying?

13 A. (Cyr) Correct. It needs to be this width, the minimum
14 width.

15 Q. In your plans, and these will be WG-7-2, and I believe
16 that they are also your App. 6-A, these would be the
17 oversized prints of the Revised High Elevation
18 Restoration Plan. Do you have those in front of you?

19 A. (Cyr) No, I do not.

20 MS. LINOWES: Mr. Chairman, if I may
21 approach the witness? You have them, okay.

22 CHAIRMAN BURACK: Yes, you may, unless
23 it's just been provided to him. Do you have it now?
24 Again, the exhibit number that we're looking at is?

[WITNESS PANEL: Cyr~Phillips]

1 MS. LINOWES: It will be App. 6-A. And,
2 it would also be my WG-7-2.

3 MR. WARNER: The witnesses have App. 6
4 in front of them. Do you need the oversized? We have
5 those as well.

6 MS. LINOWES: Yes. Well, if he could
7 look at the under -- the non-oversized, that will be fine.

8 MR. WARNER: Yes. Let's see what the
9 question is, and then we can --

10 MS. LINOWES: Okay. And, just so I'm
11 clear, these are what I'm talking, I'm pointing to this
12 document. Is this what you have in front of you, but
13 perhaps in reduced size?

14 WITNESS CYR: I do. I do.

15 MS. LINOWES: Okay.

16 BY MS. LINOWES:

17 Q. Now, you're showing the roads to be 16 feet wider, but
18 you also show, in the roads leading to Turbines T-10,
19 T-12, T-14, and T-15, that these roads will only be
20 12 feet. Why is that?

21 A. (Cyr) As compared to what? You're saying --

22 Q. As opposed to 16 feet. Maybe Mr. Phillips can answer
23 this question, I don't know.

24 (Witness Cyr conferring with Witness

1 Phillips.)

2 **BY THE WITNESS:**

3 A. (Phillips) My recollection for that is that, due to the
4 straight grades, there's two -- there's two pieces to
5 this. That is the permanent widths, and that would
6 need to be cleared to accommodate crane assembly, crane
7 erection. So, if you want to use, for instance,
8 Turbine 15 as an example.

9 BY MS. LINOWES:

10 Q. Uh-huh. Okay.

11 A. (Phillips) That would be a reasonably straight --
12 straight approach up to the turbine pads. However, as
13 noted by the crosshatching, the blocked crosshatching,
14 if you will, that would also be impacted, if we needed
15 to get a crane up to that point.

16 Q. So, I guess you're not really answering the question.
17 What will happen if you have to get something big, a
18 tractor-trailer up to there that you're saying needs a
19 minimum width of 16 feet, what happens there?

20 A. (Cyr) Can you repeat your question?

21 Q. Yes. In the access roads leading to Turbines T-10, 12,
22 14, and 15, you've established the road widths there as
23 12 feet wide. Is that a mistake or was that
24 intentional? Maybe I should ask it that way.

[WITNESS PANEL: Cyr~Phillips]

1 MR. PACHIOS: It may clarify it, Mr.
2 Chairman, --

3 CHAIRMAN BURACK: Mr. Pachios, please
4 speak into your microphone.

5 MR. PACHIOS: It may clarify it, if the
6 witnesses don't understand the question, that they say to
7 Ms. Linowes they "don't understand the question", and then
8 she can rephrase it, maybe we'll have better communication
9 here.

10 **BY THE WITNESS:**

11 A. (Cyr) So, Lisa, you're asking the question, the access
12 roads, not the main travel bed, but the access roads
13 that takes you up to the actual pad?

14 BY MS. LINOWES:

15 Q. Correct.

16 A. (Cyr) What you're saying, on these drawings, they're
17 actually laid out as 12 feet and not 16 feet?

18 Q. That's correct. Right.

19 A. (Cyr) Okay.

20 Q. Do you know why? Is that intentional?

21 A. (Cyr) I do not know why, no. I thought -- I do not
22 know why, no.

23 Q. Do you know, Mr. Phillips?

24 A. (Phillips) That's what I was told to draw. I guess my

[WITNESS PANEL: Cyr~Phillips]

1 understanding is that these was some coordination with
2 a contractor, who is familiar with what widths would be
3 needed, whether it's grade-related, radius
4 turn-related, and, based on that, we arrived at the
5 widths that you see on the plans here.

6 MS. LINOWES: Okay. One moment please.

7 BY MS. LINOWES:

8 Q. Then, there is another section -- there are other
9 sections of the road that would be from Station 141 to
10 169. Can you explain why those -- those look very
11 similar. Why would those be 16 feet wide versus
12 12 feet wide? I guess I don't understand why there's a
13 condition where 12-foot wide roads are acceptable, but
14 in other places they're not. I guess that's a
15 discrepancy for me, and it would be very helpful if you
16 could explain that.

17 A. (Phillips) Are you asking me that?

18 Q. Yes.

19 A. (Phillips) Okay. Again, my understanding is that there
20 are certain constraints to hauling equipment that exist
21 due to the equipment itself. And that, when that was
22 reviewed, it was determined that those were -- those
23 particular areas would not present a challenge, if you
24 look at the overall approach, which is that, in the

[WITNESS PANEL: Cyr~Phillips]

1 event that a crane needs to come up to that point, that
2 entire width, the roadway would be widened from 12, all
3 the way out to 34, to get access for that, for that
4 equipment.

5 Q. Can I --

6 A. (Phillips) So, for the limited, to answer your
7 question, Lisa, I believe, for the limited risk of
8 needing a potentially wider than 12-foot wide road, I
9 think that Brookfield was making an attempt to keep the
10 roadways as narrow as possible, to keep the vegetation
11 on the road, to the extent they could. And, where they
12 discussed with transport experts and determined it was
13 still doable with -- either due to grades or however,
14 that they were going to try to retain 12 feet to the
15 extent they could.

16 Q. Okay. And, I understand that, with regard to the
17 cranes, that's going to be a case on all of these
18 roads. But there was the other transportation vehicle,
19 which is the tractor-trailer, that had only 16 -- had a
20 16-foot requirement, and you're not really answering
21 that.

22 A. (Phillips) It may -- I'm speculating, to try to give
23 you an example, but I --

24 Q. Okay. It's okay. I don't really want speculation

[WITNESS PANEL: Cyr~Phillips]

1 right now. I mean, if you're going to repeat yourself,
2 that's fine. So, let me ask you this question. If you
3 can look at Stations 149 to 161, --

4 MR. IACOPINO: Ms. Linowes, do you have
5 a page, if possible?

6 MS. LINOWES: Yes. These would be
7 Permit Sheet 105.

8 CHAIRMAN BURACK: Ms. Linowes, in the
9 actual exhibit book that you provided, there are -- I
10 believe there are Bates numbers in the lower right-hand
11 corners of the sheets. Can you give --

12 MS. LINOWES: Oh. Would it be R302?
13 Does that look like one of the pages?

14 WITNESS PHILLIPS: That would be great.
15 Yes.

16 CHAIRMAN BURACK: I'm sorry, GRP -- the
17 Bates numbers on these small sheets are "GRP", and then
18 there's a six-digit number, triple zero, and the first one
19 I have here under your Exhibit 7-2 is "GRP000343", and
20 that goes up to --

21 MS. LINOWES: I apologize. I don't see
22 those numbers on the larger page.

23 CHAIRMAN BURACK: They probably are not
24 on the larger sheets. So, perhaps you can help us find

[WITNESS PANEL: Cyr~Phillips]

1 some other way to identify them?

2 MS. LINOWES: Yes. It's the page that
3 has Turbines 12, 13, and 11 on it. Does that help?

4 WITNESS PHILLIPS: That would be "0336".

5 CHAIRMAN BURACK: Okay. Thank you.
6 Apparently, I don't have a full set of the exhibits in my
7 hard copy. So, thank you.

8 MS. LINOWES: Okay.

9 BY MS. LINOWES:

10 Q. Mr. Phillips, when the -- if a tractor-trailer is
11 required to go onto these roads that have now 12 feet,
12 what is your expectation in that area, since there are
13 no trees there, what will happen?

14 A. (Phillips) Under the present situation or under the
15 proposed?

16 Q. Under the proposed.

17 A. (Phillips) What would happen in the road segment, which
18 one are you referencing? Which segment?

19 Q. Where it's 12 feet wide. And, this would be leading
20 to -- this one example being leading to Turbine 12.

21 A. (Phillips) I would suspect that it's possible that they
22 may be able, in the limited instances where they need a
23 tractor-trailer, but do not need to transport or drive
24 a crane, I would suspect at that location, because the

[WITNESS PANEL: Cyr~Phillips]

1 radius is on the outside of the bend, that a
2 tractor-trailer may still get up there with only
3 limited difficulty.

4 Q. But you would not say the same in the road section that
5 goes from 149 to 161?

6 A. (Phillips) Well, two things. Number one, again, I'm
7 not a traffic designer, roadway designer. But, again,
8 I'm trying to -- I'm trying to convey to you what my
9 recollection of why there's these differences.

10 Q. Okay.

11 A. (Phillips) In terms of -- I'm having a little
12 difficulty in terms of finding the roadway stationing
13 you're referring to. These plans are --

14 Q. I'm sorry. That begins right at T-12, and it proceeds
15 just past T-11.

16 A. (Phillips) Okay. And, in that portion, I can only
17 speak to what's different on the ground. And, again,
18 it would be me -- my uneducated guess. That portion of
19 the roadway there would be hauling, there would be --
20 it heads downhill. The turns are, again, on an outside
21 bend, so that they have the full -- they have a wider
22 radius. So, I would say that the difference -- the
23 difference here is that, on that roadway station, that
24 is a more gradual turn. Although, it does make it

1 around the bend, we measured -- the reason that we
2 arrived at these numbers, how we came to these numbers
3 of 16 feet and wider at the corners, is we actually
4 measured in the field what was needed, based on the two
5 maintenance events that occurred.

6 Q. Okay.

7 A. (Phillips) So, during those two maintenance events, the
8 topsoil was rolled back. And, I went out and actually
9 measured the roadway width there. Saw plenty of
10 vehicle tracks on --

11 Q. So, you did not base this on recommendations by the
12 companies that drive these vehicles. You just did --
13 you eyeballed it and decided 16 feet was better than
14 12 feet, is that how you arrived at this?

15 A. (Phillips) No, that's not what I said.

16 Q. Okay. I apologize.

17 A. (Phillips) We measured -- we measured what existed in
18 the field, after they had rolled the topsoil back, and
19 observed tire tracks right up against the topsoil,
20 using the full width of the roadway. The expertise of
21 the -- I suppose you could call that "expertise", in
22 that the same company that would be doing -- that did
23 the maintenance would also likely be doing the future
24 maintenance. And, they or their -- Cianbro Corporation

[WITNESS PANEL: Cyr~Phillips]

1 would be doing a lot of crane work, as I understand,
2 met with John Cyr, and they went over, in addition to
3 the roadway widening, other constraints that would
4 exist, and opportunities for, I'm sure we'll get to
5 later, revegetating the pads. Meaning, "what could we
6 continue to revegetate and not impact future
7 maintenance needs?"

8 Q. And, just so we're clear though, these areas that I'm
9 talking about do not have any trees on them, is that
10 correct? On those portions of the road?

11 A. (Phillips) Presently, today, there are trees
12 throughout, there are trees covering the entire roadway
13 portion except for 12 feet. It's been built, it is
14 compliant with the plans. If you're talking about what
15 might happen under this proposed --

16 Q. Under the proposed plan.

17 A. (Phillips) Under the proposed plan, trees will continue
18 to exist on every portion that they exist today, that
19 is the entire roadway, until such time as there is a
20 need to impact them.

21 Q. Mr. Phillips, I just want to make sure you understand
22 my question. The proposal, the proposal that's before
23 the Site Evaluation Committee today does not envision
24 trees being planted in these areas that I'm talking

[WITNESS PANEL: Cyr~Phillips]

1 about. Going along the access roads to the turbines
2 and also on those stations, is that correct?

3 A. (Phillips) Correct.

4 Q. So, there are no trees that will be impacted, other
5 than what you're saying is there today, but may be gone
6 tomorrow?

7 A. (Phillips) Right. I guess I don't understand your
8 question. Yes. There will be, if the plan is
9 approved, the road will be permanently widened, and the
10 planted seedlings that are there today, in this
11 four-foot wide strip that we're talking about, would be
12 removed and either transplanted or replaced elsewhere.

13 Q. Okay. But also any trees that would be there in the
14 remaining that -- okay, you rolled back the four feet,
15 but, whatever is there today, there's no expectation of
16 putting any more trees in that area, on this section of
17 the road?

18 A. (Phillips) No.

19 Q. Based on the current plan?

20 A. (Phillips) No. No. Based --

21 Q. Okay. And, Mr. Cyr, you have testified that there
22 were -- there was an event that required multiple
23 turbines, six turbines having to have the gearbox or
24 some portion of the gearbox replaced. And, that

1 required a crane?

2 A. (Cyr) That's correct.

3 Q. And, how long was that crane up at the site?

4 A. (Cyr) You know, I'm not sure. I want to say at least a
5 couple weeks.

6 Q. If I can refer you to my WG-4 -- I'm sorry, WG-5.

7 These would be the data requests that I had submitted
8 to Brookfield. And, this would be Question Number 5.

9 So, this will be on Page 5. I asked for the dates that
10 the turbines that had the problem, those six turbines
11 were down. And, you gave -- someone gave, from
12 Brookfield, six discrete dates. Does that mean that,
13 when you say "a couple weeks", I mean, did the crane
14 come, go away, and come back again, because these span
15 from August 6 to October 4?

16 A. (Cyr) Cianbro, who performed the work, started the
17 repairs up on Dixville, I believe Turbine 7 on
18 Dixville. And, they were there, I'm going to say -- I
19 would say the crane was there probably, yes, probably
20 at least a week, about a week. There was only one
21 gearbox on Mount Kelsey that needed to be replaced.

22 Q. And, which one would that be?

23 A. (Cyr) That would have been Turbine 10.

24 Q. Okay. So, it was then they took the turbine -- this

[WITNESS PANEL: Cyr~Phillips]

1 crane away and then brought it back, or they kept it
2 there for the entire duration, from August 6 to
3 October 4th?

4 A. (Cyr) No. You know, once Turbine 10 -- once the
5 gearbox in Turbine 10 was replaced, they removed the
6 crane and it did not come back to Kelsey.

7 Q. And, I believe that you testified that there was also a
8 lightning strike on one of the turbines on Kelsey?

9 A. (Cyr) Correct.

10 Q. And that involved a crane or not?

11 A. (Cyr) That did.

12 Q. So, there have been two events, I believe that you
13 testified or at least during the -- and correct me if
14 I'm wrong, that the likelihood of a problem like what
15 was found with the Vestas gearboxes is unlikely to come
16 back or that is unlikely to come back, is that correct?

17 A. (Cyr) That particular defect, correct. That's unlikely
18 to come back.

19 Q. So, failures that you envision in the future will be of
20 what type?

21 A. (Cyr) Related to lightning, lightning strikes, and ice
22 damage on the blades.

23 Q. And, ice damage or lightning strikes, how typical will
24 it be for those to be repaired in the field without

1 requiring a tractor-trailer?

2 A. (Cyr) I really can't answer that. We've had, just this
3 past summer, on Kelsey alone, I believe we've had 16
4 lightning strikes on Mount Kelsey.

5 Q. Okay. And, how many required a tractor-trailer?

6 A. (Cyr) None. None of these required a tractor-trailer.
7 These were repaired by Rope Partners. But every one of
8 these lightning strikes had the potential to damage the
9 blade to the point where we would have had to bring in
10 a crane.

11 Q. Do you have -- do you have statistics on that?

12 A. (Cyr) I do not have that at this time.

13 Q. So, does anyone have statistics?

14 A. (Cyr) Statistics on what now?

15 Q. Some information that Vestas has provided for you of
16 the likelihood that they're going to see lightning
17 strikes that will cause the blade to fail --

18 A. (Cyr) No.

19 Q. -- catastrophically?

20 A. (Cyr) It's not -- I don't believe you could have, no,
21 it doesn't. We do not. They do not.

22 Q. So, how many lightning strikes have you had on the
23 entire Project that required repairs?

24 A. (Cyr) You're talking Mount Kelsey or the whole Project?

1 Q. The whole Project.

2 A. (Cyr) Oh, the last two and a half, three years, and
3 this is just a guess, I'm going to say we've probably
4 had 50 or 60.

5 Q. And, how many resulted in bringing a tractor-trailer up
6 to the site?

7 A. (Cyr) Just the one on that Turbine 9 that damaged -- it
8 damaged the spar, and the spar is the spine of the
9 blade. The lightning damage we have experienced this
10 year was not on the spar. But every one of these
11 strikes could have hit the spar. And, once the spar is
12 hit, the blade has to come down to be repaired.

13 Q. So, you're saying that Vestas cannot or has not or will
14 not give you information that discusses the likelihood
15 of the spar being hit?

16 A. (Cyr) Well, you know, we're talking about Mother Nature
17 here. This is weather. This is lightning. You
18 can't -- you can't predict lightning, or I can't
19 predict lightning.

20 Q. But these are all -- this is also the largest turbine
21 manufacturer in the world, who must track this kind of
22 thing?

23 A. (Cyr) Well, again, I believe you can track it. But,
24 you know, I don't know anybody that can predict where

[WITNESS PANEL: Cyr~Phillips]

1 lightning is going to hit, and what the extent of the
2 damage will be.

3 Q. Okay.

4 MR. PACHIOS: But, Mr. Chairman, I'm
5 going to object to this line of questioning.

6 MS. LINOWES: I'm done with it.

7 MR. PACHIOS: She's asking him about
8 things that no human being can predict with accuracy or
9 come up with some estimate of how often it's going to
10 happen in the future. It's just impossible.

11 CHAIRMAN BURACK: Thank you, Attorney
12 Pachios.

13 MS. LINOWES: Mr. Chairman, I am done
14 with that line of questioning. But I would object to that
15 statement, because this is an industry that has to work
16 very hard to protect its equipment in the field. And, it
17 really does know the information. But I'll move on.

18 CHAIRMAN BURACK: Thank you.

19 BY MS. LINOWES:

20 Q. Okay. Then, I just want to close up, and I'll be done
21 with my questions, and that is, for you, has the New
22 Hampshire State Fire Marshal issued a Certificate of
23 Occupancy for the 33 turbines and that O&M building?

24 A. (Cyr) I assume so. I don't know that for a fact.

[WITNESS PANEL: Cyr~Phillips]

1 Q. So, given the potential for lightning strikes, has
2 anyone from the State raised a concern about fire?

3 MR. PACHIOS: He's already said he
4 doesn't know. How many times can we ask --

5 MS. LINOWES: I withdraw the second
6 question. Okay.

7 BY MS. LINOWES:

8 Q. And, then, one last question. And, what I'm trying to
9 understand with these -- these next couple of
10 questions, I should say, is how well the Project is
11 adhering to the Certificate. And, that is, I had asked
12 in my data requests, and this would be Question
13 Number -- Questions Number 2 and 3 in my data requests,
14 again, WG-5. Just one second. I'm sorry, it would be
15 Question Number 6. My apologies. And, this would be
16 on Page 6. And, the question was "During the dates
17 when the turbines were off, what post-construction
18 environmental studies were occurring, and not limited
19 to the bird/bat mortality studies?" And, just the
20 reason I was asking that question, and then I want
21 to -- I just want to lay the foundation, if the
22 turbines were off for a period of time during these --
23 when the turbines were down, and were we doing studies
24 in a non-operating Project, okay, and would that

[WITNESS PANEL: Cyr~Phillips]

1 have --

2 MR. PACHIOS: Again, Mr. Chairman, I
3 hate to do this, but I want to object, because we're going
4 to get very far afield. We're now talking about "bat
5 studies". And, we're here to talk about the Restoration
6 Plan. I just don't know where this is going, but it could
7 be endless.

8 MS. LINOWES: It's my last question, Mr.
9 Chairman.

10 CHAIRMAN BURACK: If you can answer the
11 question, please answer the question. If you're not able
12 to, let us know that as well please.

13 BY MS. LINOWES:

14 Q. And, in the response to my question about the turbines,
15 whether they were on or off, the response was, this is
16 on Page 6, "Granite responds this it has performed no
17 such studies and that the only studies occurring were
18 those studies required by Granite's Certificate of Site
19 and Facility." Do you know what that means? Did
20 you -- were either of you involved in answering that
21 question?

22 A. (Phillips) Generally, yes, as to what studies were
23 going on. I think your question is whether or not the
24 turbines were spinning at the time and would have

[WITNESS PANEL: Cyr~Phillips]

1 skewed results of the bird/bat studies, is that what
2 your question is getting to?

3 Q. Right. That was what I was trying to understand,
4 whether the turbines were turned off, the period of
5 time when the turbines were turned off as a result of
6 maintenance or fixes to the turbines, would it have had
7 an effect on the mortality studies? And, the answer
8 was that "performed no such studies and the only
9 studies occurring were those required by the
10 Committee."

11 A. (Phillips) I suspect that's in response to additional
12 studies over and above the bird and bat studies. Is
13 that what that response is saying?

14 Q. So, you don't know? If you don't know, then you don't
15 know.

16 A. (Cyr) I don't know.

17 MS. LINOWES: Okay. Fine. Thank you,
18 Mr. Chairman.

19 CHAIRMAN BURACK: Thank you, Ms.
20 Linowes. Before we proceed, --

21 (Brief off-the-record discussion ensued
22 with the court reporter.)

23 CHAIRMAN BURACK: Commissioner Samson I
24 do not believe has come in. So, he is not present. So,

[WITNESS PANEL: Cyr~Phillips]

1 we will turn now to Counsel for the Public for your
2 cross-examination of these witnesses.

3 MS. MALONEY: Thank you.

4 BY MS. MALONEY:

5 Q. Mr. Phillips, just to pick up on a couple of things,
6 because I was just a little bit confused. I believe
7 you indicated that, when the 34-foot road was being
8 pushed back to 12 feet, that's when you first became
9 aware that the 12-foot was too -- too narrow?

10 A. (Phillips) Yes. I think it's important that you
11 characterize it being "pushed back".

12 Q. Well, --

13 A. (Phillips) Just to be clear, a 34-foot wide gravel road
14 exists today and in perpetuity, but it was covered with
15 topsoil, leaving all but 12 feet, 12 feet was exposed.
16 There was an exposed gravel surface. At that -- when
17 the topsoil was being placed on the roadway, it looked
18 narrow to me. But that was, again, just a casual
19 observation. It's not something that I'm qualified
20 necessarily to -- I think the average person would look
21 and say "it seems pretty narrow."

22 Q. Thanks for helping with that. Do you remember when
23 that was, at what point in time?

24 A. (Phillips) The topsoil was being placed, I believe, in

1 the month of May or May and June, early Summer 2012.

2 Q. Because I also understand that the events regarding the
3 lightning strike and the repair of the gearbox also
4 helped inform you or helped inform Brookfield that the
5 road at certain places was too narrow?

6 A. (Phillips) Correct.

7 Q. So, when you first came to the conclusion that the road
8 was too narrow, did you discuss that with Mr. Cyr or
9 anyone else?

10 A. (Phillips) Only with the contractor, you know, who was
11 placing the topsoil, and I questioned whether it was
12 12 feet, because it looked pretty narrow. And, the
13 added fact of there being stone guardrail along the
14 edge has this kind of greater sense of encroachment
15 than might actually exist. So, I didn't discuss it
16 necessarily at the time. I thought "well, this will
17 be" -- you know, "we'll see how it works, when the
18 first maintenance need arises." And, sure enough, that
19 maintenance need arised, arose a couple months
20 thereafter.

21 Q. Was Cianbro the contractor doing the road at that time?

22 A. (Phillips) Replacing the topsoil, the initial, the
23 first time?

24 Q. Right.

[WITNESS PANEL: Cyr~Phillips]

1 A. (Phillips) No. That was the contractor who constructed
2 the Project, the Sargent Corporation. They're the ones
3 that placed it. John may be able to better answer the
4 contractor who rolled the topsoil the back the first
5 time, the first maintenance need.

6 Q. Okay. That's fine. Now, you've indicated that you --
7 well, I'm assuming you're the person who's charged with
8 overseeing the Restoration Plan for Granite Reliable?

9 A. (Phillips) I guess I was charged with making sure the
10 Project had met stability requirements, of which this
11 is one component. And, I am responsible for looking at
12 the health of the planted trees. There's kind of two
13 separate responsibilities that were delegated to me,
14 but they're overlapping. But, yes, generally,
15 vegetation establishment was what I was involved with.

16 Q. And it was -- who did the actual work? RMT?

17 A. (Phillips) The placement of the topsoil and planting of
18 trees? It was Sargent placed the topsoil.

19 Q. Okay.

20 A. (Phillips) And, they had a subcontractor who planted
21 the trees, as I recall.

22 Q. And, so, how -- and, in terms of monitoring their work,
23 how did you go about doing that?

24 A. (Phillips) Well, again, my -- I had a limit, my role

[WITNESS PANEL: Cyr~Phillips]

1 was I came up there -- I came up there at least once a
2 week, and then would come up there if there were rain
3 storms, again, related to certain triggers in the
4 permits. And, as they -- they planted trees pretty
5 rapidly. And, so, it might have been only a two-week
6 period in which they were planting trees, as I recall,
7 they planted trees. So, I would have been coming up
8 there midway, and then towards the end. And, my job
9 was, I think, more to look at the health of the trees,
10 that was kind of delegated to me. In the original RMT
11 plan, the Restoration Plan, it says the environmental
12 monitor will look at the -- perform I believe it was
13 "qualitative checks of vegetation", not quantity,
14 "qualitative checks on the vegetation". And, so, I
15 didn't -- I watched them planting, but I was not there
16 overseeing the planting or anything of that nature.

17 Q. You're not a forestry expert?

18 A. (Phillips) I'm not a forester.

19 Q. So, when you say that, did you -- by the way, did you
20 go up to the site visit in August of this year, when
21 they did the site visit?

22 A. (Phillips) This year?

23 Q. Yes.

24 A. (Phillips) No. I did not.

[WITNESS PANEL: Cyr~Phillips]

1 Q. And, so, when you testified that you thought that -- I
2 believe you said that there was a 75 percent survival
3 rate with respect to all the plantings, when did you
4 reach that conclusion?

5 A. (Phillips) Well, I've been up to the site well over a
6 hundred times. I'm up there a number of times. And,
7 so, when I drive through, I keep a visual estimation.
8 And, every once in a while I'll check myself and say
9 "Well, this looks representative of this 50 or so
10 trees. How many are dead?" And, so, no formal, but,
11 you know, I'm a curious person, and so I keep an eye on
12 it. And, I'd say my estimates, I'd say we're probably
13 at about 80 to 85 percent survival rate.

14 Q. And, when was the last time that you were up at the
15 site or at the wind farm and took particular notice of
16 the seedlings and the plantings?

17 A. (Phillips) About a month ago maybe.

18 Q. And, you think there's an 80 percent success rate
19 there?

20 A. (Phillips) Of the trees in the roadway, I'd say yes.
21 There's -- I would say it's about 80 percent, yes.

22 Q. You were asked a number of questions about the
23 monitoring and what would happen. And, for example, I
24 believe you replied that, if something occurred, then

[WITNESS PANEL: Cyr~Phillips]

1 you would discuss it with Fish & Game, and based on
2 different variables. That's not set in stone, correct?

3 A. (Phillips) What is? My need to coordinate with them
4 or --

5 Q. Correct.

6 A. (Phillips) I don't know that it is. I just have
7 learned through doing this for a while that it always
8 makes sense to talk to those that have the greatest
9 interest. And, so, you know, as part of my
10 coordination effort on that, there's discussions about
11 what's going to happen if we continue to have this
12 repeated disturbance. And, so, I never hesitate to
13 pick up the phone and contact the agencies and get
14 their input, and see if we can come up with a plan that
15 addresses their concerns. And, that's really what
16 happened here.

17 Q. And, that's great. But there's nothing that's part of
18 the Restoration Plan that puts any requirements on
19 Brookfield to follow through with that kind of
20 activity?

21 A. (Phillips) After impacts, I don't know that there are.
22 But, as I understand, there was the SEC -- the order
23 said that "Brookfield will work in coordination with
24 Fish & Game to develop a revegetation plan." So, I

[WITNESS PANEL: Cyr~Phillips]

1 guess I feel like who am I -- who am I to counter that.
2 It makes more sense to then continue to work with Fish
3 & Game, if we see concerns that the original plan may
4 not meet the intent that it was set up to do. So, yes,
5 I reached out to Fish & Game, as well as DES initially,
6 yes.

7 Q. And, how long are you required to do the monitoring
8 under the original plan?

9 A. (Phillips) Two years, as I recall, was two years from
10 the date the trees are planted.

11 Q. Part of the plan I believe involved, or as part of the
12 Mitigation Plan involved some funding for some studies
13 with respect to two of the threatened species found on
14 Mount Kelsey. Are you familiar with that?

15 A. (Phillips) I am now. I'm familiar that there was some
16 money to fund studies, but it's not something that I --
17 it was out of my realm of -- I wasn't involved with any
18 of the studies, either prior to, during the Project
19 construction, or after. So, I'm aware of them, but --

20 Q. Are you aware of the results of those studies or any of
21 the findings of those studies?

22 A. (Phillips) I'm aware of the -- I have read the marten
23 study.

24 Q. And, isn't it true that that particular study indicates

[WITNESS PANEL: Cyr~Phillips]

1 there has been an adverse impact on the pine marten
2 population on Mount Kelsey?

3 A. (Phillips) Well, I'm not a biologist. But I think a
4 plain read of that indicates that there's been -- the
5 author felt that there's been some impact, and they
6 hypothesize as to what that impact -- the cause of that
7 impact.

8 Q. Okay. So, you're familiar there has been an impact?

9 A. (Phillips) I am familiar with the results of their
10 study, yes.

11 Q. And, is there -- to your knowledge, is there any part
12 of the Restoration Plan that accounts for what to do
13 about that? A follow-up action as a result?

14 A. (Phillips) Of the present -- I guess my understanding
15 of this, of this component of the Mitigation Plan, the
16 overall mitigation package, is that there was a desire,
17 both by the SEC, as well as some of the original
18 intervenors, Fish & Game, Will Staats, and other
19 biologists, that there was a need, one component of the
20 Restoration Plan ought to include a revegetation on
21 Mount Kelsey to try to, as quickly as possible,
22 reestablish a dense -- dense forest cover in that area.
23 I can't offer as to how it may complement the other
24 pieces in the mitigation package, but that's my

[WITNESS PANEL: Cyr~Phillips]

1 understanding of the purpose of this, of this plan.

2 I'm not sure if that --

3 Q. Doesn't quite answer my question.

4 A. (Phillips) Okay.

5 Q. But I'll try to ask it differently. So, in terms of
6 the studies, from what I read of the studies, it did
7 appear to be there's some negative impact to the pine
8 marten. Would you agree to that?

9 A. (Phillips) I think that's what they concluded, yes.

10 Q. So, is there any part of this plan that would take into
11 consideration additional actions to take protections to
12 protect that species?

13 A. (Phillips) I don't know whether our plan itself would
14 have a direct or an indirect effect on that. So, I
15 can't say. Again, I'm not a biologist. So, I can't
16 say as to what the exact habitat needs are of those
17 species, other than taking, my understanding from Fish
18 & Game as to this piece, would, if implemented, the
19 original plan, as well as the proposed plan, would
20 recreate habitat. How it would affect the conclusions
21 that were drawn by the author of that study, I really
22 can't say.

23 Q. So, you had just discussed that, you know, pursuant to
24 the SEC order, and you're going to work in coordination

[WITNESS PANEL: Cyr~Phillips]

1 with Fish & Game and other agencies, if they made
2 recommendations, would Brookfield be cooperative with
3 those recommendations?

4 A. (Phillips) Brookfield has, in my mind, been especially
5 cooperative with input from all parties.

6 Q. Well, are you familiar with Dr. Kilpatrick's testimony?

7 A. (Phillips) I have briefly read it, yes.

8 Q. So, you know, he made certain recommendations with
9 respect to the Mitigation Plan to make it a little bit
10 more robust. Would Brookfield entertain or be
11 agreeable to adding some of those factors to the
12 Mitigation Plan?

13 A. (Phillips) I guess I'm not, number one, I'm not
14 entirely familiar what that recommendation would be,
15 nor am I in a position to recommend what or indicate
16 what Brookfield might or might not do. I think all
17 along Brookfield has been very forward with those
18 parties, the experts that the SEC had designated to
19 handle this piece of the Project. So, I can't -- I
20 can't really indicate whether they would.

21 Q. You're not in a position. Okay. That's fine. I guess
22 a few questions for Mr. Cyr. Now, you previously have
23 indicated that there is nothing in your general
24 maintenance plan that requires expansion of this road,

1 correct?

2 A. (Cyr) Yes. Yes, there's nothing in our plan here.

3 Q. And, there's nothing currently that the Company needs
4 at this point to require the expansion of this road?

5 A. (Cyr) Not at this time.

6 Q. And, there's nothing that the Company has planned in
7 the future to require this road expansion, correct?

8 A. (Cyr) That's correct.

9 Q. And, I believe your testimony, you indicated, I'm
10 looking at Page 4 of your testimony, Line 8, you
11 indicate "While it's impossible to know exactly what
12 turbine maintenance might arise", and I believe you
13 were referring to that would require the use of the
14 cane -- the crane, rather?

15 A. (Cyr) Correct.

16 Q. Okay. So, your informed -- your knowledge and
17 information about the necessity to expand the road is
18 based on the two experiences that you had in the past
19 two years?

20 A. (Cyr) Correct. And, the amount of lightning and ice
21 damage we see up on Mount Kelsey.

22 Q. And, I believe during the technical session you
23 discussed that with Mr. Roth, and you indicated that --
24 or you agreed that, I believe, that the turbines are

[WITNESS PANEL: Cyr~Phillips]

1 designed and manufactured to withstand lightning
2 strikes, is that correct?

3 A. (Cyr) That's correct. Yes, they have -- you know,
4 that's correct, a certain amount of lightning strike
5 damagewise.

6 Q. And, obviously, in this one circumstance, that didn't
7 occur?

8 A. (Cyr) Correct.

9 Q. I was wondering, with -- it looks like Brookfield has
10 three other wind facilities?

11 A. (Cyr) I believe so, yes.

12 Q. And, at least with -- maybe you can answer this or
13 maybe not, are those -- I think it's two are in Canada
14 and one is in California. Is that correct?

15 A. (Cyr) Yes. I believe so, yes.

16 Q. Are you familiar with any of those facilities?

17 A. (Cyr) No, I'm not. No.

18 Q. I was wondering if Brookfield has submitted any
19 information, and I have tried to get through as much of
20 the record as I could, that indicated in their
21 experience how often they needed to do the kind of
22 maintenance with those other wind facilities that
23 required that type of a crane?

24 A. (Cyr) Yes, I don't --

[WITNESS PANEL: Cyr~Phillips]

1 Q. Because that would be information I think the public
2 would be interested in, and it would help inform our
3 decision-making.

4 A. (Cyr) Are you talking in regards to lightning strikes
5 and blade damage?

6 Q. The kind of -- the kind of repairs that you need to
7 make that would require this kind of large equipment?

8 A. (Cyr) Well, you know, this type equipment is not just
9 for the blades. You could have a gearbox failure. You
10 could have a generator failure. So, there's many needs
11 for a crane that size, not just lightning strikes on
12 blades.

13 Q. No, I understand that. And, that's what I'm saying.
14 Is that Brookfield has obviously been in operation for
15 some time, and they have come before the Commission
16 asking for this road to be expanded. And, so, I was
17 wondering if, to your knowledge, or if there's anywhere
18 in the record, that Brookfield submitted what their
19 past experience is that would help inform us as to the
20 magnitude of the need here?

21 A. (Cyr) Not that I'm aware of.

22 Q. Now, are you familiar with -- are these facilities, are
23 they mountain facilities? Do you know if they're in
24 the mountains or where they're located?

[WITNESS PANEL: Cyr~Phillips]

1 A. (Cyr) I believe the one out in California is in the
2 desert. It is not in a mountain area. I believe
3 Conger, up in Canada --

4 (Court reporter interruption.)

5 **CONTINUED BY THE WITNESS:**

6 A. (Cyr) "Conger" I believe is the name of the facility.
7 That, again, is on the edge of one of the Great Lakes.
8 It's not in a mountain area. It's fairly flat. So,
9 I'm not aware of any wind sites that Brookfield has
10 that are in this type of terrain that Granite is.

11 BY MS. MALONEY:

12 Q. I was just wondering if you had, and that's helpful,
13 but, in general, do you know what the road widths were
14 for the access to the turbines at those sites? Do you
15 have that information?

16 A. (Cyr) No, I do not.

17 Q. I guess this is more for Mr. Phillips, or if Mr. Cyr
18 can answer it. Do you know how many trees you've
19 planted to date?

20 A. (Phillips) Not exactly. But we've planted to date well
21 over 10,000 trees.

22 Q. And, these are along that -- the 4-foot -- or, no,
23 these are on the side of the road?

24 A. (Phillips) We've planted -- it depends. We've planted

[WITNESS PANEL: Cyr~Phillips]

1 trees all over the Project. But, if we're talking just
2 in the high elevation area, we've planted them in the
3 roadways, and this summer we planted some trees up
4 along the sides as well, largely in the Tier 2 and Tier
5 3 areas. Because we had ordered the trees, and felt
6 that the longer they get growing, the better, the more
7 likely we are to achieve the intent of the Project,
8 which is mature forest.

9 Q. And, these are, of the 10,000, those are all on Mount
10 Kelsey?

11 A. (Phillips) Yes.

12 MS. MALONEY: Thank you. I have nothing
13 further.

14 CHAIRMAN BURACK: Thank you very much.
15 (Brief off-the-record discussion ensued
16 with the court reporter.)

17 CHAIRMAN BURACK: Do you have any
18 recross, Mr. Pachios, for --

19 MR. PACHIOS: Yes. Just a little bit,
20 Mr. Chairman, of redirect, yes.

21 CHAIRMAN BURACK: Of redirect, okay.
22 Fine. We'll do redirect, and then we'll see if there are
23 any further recross questions.

24 Oh, I'm sorry. I can't go there yet. I

[WITNESS PANEL: Cyr~Phillips]

1 first need to -- I first need to give the panel an
2 opportunity to ask questions. And, that may alleviate
3 some of the redirect that you otherwise had in mind,
4 Mr. Pachios.

5 So, Commissioner Scott, you want to
6 start here?

7 CMSR. SCOTT: Thank you. Good morning.
8 Probably for Mr. Cyr, but whoever of the two would like to
9 answer.

10 BY CMSR. SCOTT:

11 Q. Probably for Mr. Cyr, but whoever of the two would like
12 to answer. I was just curious, presuming a Certificate
13 amendment was granted, what's the timeframe that
14 Brookfield would be planning on to make this widening
15 work happen?

16 A. (Cyr) I would think as soon as next year. You know, I
17 can't speak for Mr. Phillips.

18 A. (Phillips) Yes. I think that, at this point, my
19 understanding is that Brookfield I think would not do
20 the widening until such time as it was needed, the next
21 time it was needed, and then this plan would take
22 effect. I think that's been pretty consistent, that
23 they would wait and see. So, the first time it's
24 needed, it would be widened.

[WITNESS PANEL: Cyr~Phillips]

1 Q. And, so, again, in relationship to the questions you
2 were being asked I believe was "how frequently do
3 things happen that may require this?" So, if it's six
4 months from now, you have a problem, that's when you do
5 it. If it's three years from now, that's when you do
6 it. Is that correct?

7 A. (Phillips) I believe so. I believe that's the current
8 approach, yes.

9 CMSR. SCOTT: Thank you. That's all I
10 had.

11 BY DIR. MUZZEY:

12 Q. Below the 2,700 foot --

13 CHAIRMAN BURACK: Go ahead. Please get
14 close there.

15 BY DIR. MUZZEY:

16 Q. Below 2,700 feet, how wide are those access roads?

17 A. (Cyr) Thirty-four feet.

18 Q. So, they remained the full 34 feet?

19 A. (Cyr) Correct.

20 DIR. MUZZEY: Thank you. That's it.

21 CHAIRMAN BURACK: Ms. Bailey.

22 MS. BAILEY: Thank you. I have a couple
23 of questions, just because I don't understand all this.

24 BY MS. BAILEY:

[WITNESS PANEL: Cyr~Phillips]

1 Q. So, in your testimony, Mr. Cyr, on I think it's Page 5,
2 you say that -- that the "cranes can only be assembled
3 in four areas on the ridgeline, moving the assembled
4 crane to a turbine requiring maintenance may require
5 temporarily expanding the roadway in that area to
6 34 feet."

7 A. (Cyr) Correct.

8 Q. Can you explain the 34 feet to me? And, you know, what
9 you're talking about when you're walking cranes between
10 turbines? And, what happens to that 34 feet when
11 you're done?

12 A. (Cyr) Yes.

13 Q. And, can you also talk right into your microphone,
14 because I'm having a really hard time hearing you.

15 A. (Cyr) Okay. Yes. The width of these cranes that we
16 utilize to perform the work are basically 30 plus feet
17 wide. So, once they're assembled, in the area that we
18 assemble them on, there is no trees there. There's
19 just grass growing. So, we would roll back that
20 topsoil. And, we would walk that crane on the 34-foot
21 road width. We would just roll it right back. Walk
22 the crane to do the job. And, then, when the crane
23 comes back to be disassembled, we would put the topsoil
24 back where it was.

[WITNESS PANEL: Cyr~Phillips]

1 Q. To what? Twelve feet or sixteen feet?

2 A. (Cyr) Well, we prefer it to be to the amended plan,
3 16 feet.

4 Q. So, any time in the future that you have to roll back
5 to 34 feet, wherever you are, --

6 A. (Cyr) Yes.

7 Q. -- you would restore it to 16 feet?

8 A. (Cyr) Correct.

9 Q. Okay.

10 A. (Phillips) Excuse me, or otherwise, at the corners,
11 there are some deviations that are -- where the roadway
12 would need to be wider than 16 feet. Those are noted
13 on the plan, but they're limited.

14 Q. Yes. Okay. And, you just testified that the widening
15 would take place the first time it was needed. But the
16 additional 5,000 trees that you suspect may be
17 demolished at some point, because you need to widen to
18 16 feet, would be planted when?

19 A. (Phillips) Some of those have already been planted in
20 advance. So, there is an obligation to plant about
21 5,900 trees. Of those, we looked and figured out how,
22 both through the road widening, as well as potentially
23 in this -- for a crane assembly or walk area, how many
24 trees would be impacted under those various scenarios,

[WITNESS PANEL: Cyr~Phillips]

1 and said there's 4,000 trees, let's say, that would be
2 impacted. So, we went ahead and we identified a plan
3 for these trees. And, because we had those trees this
4 last summer, we thought this process would not take
5 this long to go through this, we went ahead and planted
6 those additional trees, are already planted in many of
7 the Tier 2 and Tier 3 areas, so that they would start
8 to grow. There are trees that currently exist in all
9 these areas, all but 12 feet. Those would not be
10 impacted until such time as that maintenance, that
11 either causes a permanent widening of the road to
12 16 feet, or requires that full topsoil to be rolled
13 back. The intent being, let's get the trees, let's
14 plant in advance of the impacts. If the impacts occur,
15 they occur, but let's get these trees, or our
16 mitigation, if you will, for these impacts, let's get
17 them growing. So, they have been -- many of these
18 trees have been planted already.

19 Q. Are there some that would be planted in the future or
20 are you all finished?

21 A. (Phillips) The only ones that we have not planted are
22 on the turbine pads themselves, because that seemed to
23 be -- well, number one, they would -- we need to take
24 some of the top, if we widen, those would be done at

[WITNESS PANEL: Cyr~Phillips]

1 the same time that we widen the road permanently. We
2 could utilize that topsoil, put it on the turbine pads
3 to support the growth and plant there. So, really, the
4 T-1 area -- the Tier 1 areas, the turbine pads, have
5 not yet been planted, and they're awaiting for approval
6 from the SEC before we do that.

7 Q. And, that would happen some time after the next time
8 you have to widen the road?

9 A. (Phillips) Yes. Correct.

10 MS. BAILEY: Okay. Thank you.

11 CMSR. SCOTT: I have a follow-up.

12 CHAIRMAN BURACK: We'll first go to
13 Director Hatfield, and then to Commissioner Scott.

14 BY DIR. HATFIELD:

15 Q. Good morning, Mr. Phillips. I think you testified that
16 you're not a roadway designer and you're not an
17 engineer, is that correct?

18 A. (Phillips) Correct.

19 Q. Are there people on the Brookfield team that have those
20 skills?

21 A. (Phillips) I'm sure, Brookfield is a large company, I'm
22 sure there are some. But, no, I'm not familiar with
23 the roadway design.

24 Q. So, do you know if anyone with those skills

[WITNESS PANEL: Cyr~Phillips]

1 participated in putting together this proposal?

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

3 Q. And, I think you also testified that you are not an
4 expert in species and those issues, is that correct?

5 A. (Phillips) No. That's correct, yes.

6 Q. Is there someone on Brookfield's team who put this
7 filing together who does have that expertise?

8 A. (Phillips) I haven't coordinated -- I haven't talked
9 with them. So, I don't know if they do or not.

10 Q. And, Mr. Cyr, is it correct that you also aren't an
11 engineer and you don't have experience with species
12 issues?

13 A. (Cyr) That's correct.

14 DIR. HATFIELD: That's all I have right
15 now. Thank you.

16 CHAIRMAN BURACK: Thank you.

17 Commissioner Scott.

18 CMSR. SCOTT: Thank you.

19 BY CMSR. SCOTT:

20 Q. I just wanted to follow up on the planting issue that
21 was being discussed. Correct me if I'm wrong, all the
22 planting you've talked about so far has all been
23 seedlings, is that correct?

24 A. (Phillips) Correct.

[WITNESS PANEL: Cyr~Phillips]

1 Q. I was just curious, now that you've had some experience
2 at the site, is there any advantage to some
3 combinations of seedlings and saplings or, you know,
4 larger plantings than just seedlings?

5 A. (Phillips) It would be hard for me to -- I don't know
6 the answer to that. I think there's, from my
7 experience, there's kind of a sweet spot, if you will.
8 That, if you start -- if you get trees that are too
9 large, and planting them, say, in the roadway portion
10 or in areas that are thin covered, the wind can
11 really -- there's too much strain on the roots. The
12 roots -- the trees are trying to transpire, and they
13 can't get the moisture, as well as wind, needing to
14 stake them out. So, it seems as though, actually, the
15 age class that was selected seems to work pretty well.
16 We have observed a difference, in terms of mortality,
17 when you compare bare root stock seedlings, as opposed
18 to those that are potted or have some soil contained
19 within their root system, it gives them a little --
20 they can survive a little better, I think, in a dry
21 summer.

22 CMSR. SCOTT: Thank you.

23 CHAIRMAN BURACK: Director Simpkins.

24 DIR. SIMPKINS: Yes. Just a question

1 following up on the tree planting to clarify.

2 BY DIR. SIMPKINS:

3 Q. Mr. Cyr, on Page 3 of your prefiled testimony, it talks
4 about "relocating any displaced topsoil and vegetation
5 to alternate locations where Granite would also plant a
6 number of trees greater than or equal to those
7 displaced." So, I guess my question is, if there's
8 areas available, additional areas available for
9 planting to mitigate the widening of the roads, do you
10 know why those areas weren't proposed for planting for
11 mitigation in the original plan?

12 A. (Cyr) I don't. I wasn't here in 2009, when this was
13 originally discussed.

14 Q. I'm just wondering about -- I assume there was a reason
15 for that area, and so now if those are planted?

16 A. (Cyr) Yes. I don't know. It's probably something --
17 (Court reporter interruption.)

18 **CONTINUED BY THE WITNESS:**

19 A. (Cyr) It's probably something that Tyler could answer
20 better than I can.

21 A. (Phillips) I can try. Again, I wasn't at the 2009
22 hearing, when that was discussed. But I think that,
23 through coordination with various vendors that may not
24 be the manufacturer, but may be the person who

[WITNESS PANEL: Cyr~Phillips]

1 performs, has the knowledge and specialized equipment,
2 in terms of being able to lift components and so forth,
3 that, in particular, the turbine pads themselves, while
4 they may have wanted to have been in reserve initially
5 and keep the entire turbine pad area clear of trees, my
6 understanding is that the contractors that performed
7 this work were able to -- of course, they would want
8 the whole area open, but, through coordination with
9 Brookfield, were able to identify locations that they
10 felt would be acceptable to plant trees and not get in
11 the way of maintenance.

12 These turbine pads were large because
13 they needed to store a number of blades and components
14 on them. Cranes had to be erected in some locations
15 and driven to these pads. I think, now, with a little
16 more pressure, these vendors have determined that there
17 are additional locations that maybe wasn't evident in
18 2009.

19 DIR. SIMPKINS: Thank you.

20 CHAIRMAN BURACK: Thank you. Director
21 Bryce.

22 DIR. BRYCE: Yes.

23 BY DIR. BRYCE:

24 Q. For either members of the panel there. It was

[WITNESS PANEL: Cyr~Phillips]

1 unforeseen that the 12-foot road width wasn't going to
2 work as planned, even though it was obvious an effort
3 to try to mitigate the impact then when establishing
4 that width. So, now, we have this unforeseen impact on
5 operations with respect to the width. However, also
6 there are indications there might be some unforeseen
7 impacts on the wildlife, the Bicknell's thrush and the
8 pine marten.

9 My question is, in the revised
10 agreement, what, if anything, was incorporated to
11 address that additional potential unforeseen impact on
12 the wildlife? Are you aware of that?

13 A. (Phillips) Well, we drafted this, we drafted the plan,
14 I believe, prior to that information coming out. The
15 results of the study I think were available -- I
16 believe the first time I saw them were this past
17 winter. We had prepared that plan initially before
18 that. And, again, I'm not -- I can't offer how our
19 vegetation plan could be used to mitigate any impacts
20 the authors felt has occurred to marten.

21 I think we viewed our scope as being,
22 again, not trying to second guess the SEC, that this
23 was a vegetation plan. So, we looked at the vegetation
24 plan, and said, you know, we can continue to operate.

[WITNESS PANEL: Cyr~Phillips]

1 It was contemplated by the SEC, in 2009, windrowing
2 topsoil and putting it back. Presumably, there is a
3 need to replant after that, although it wasn't clear.
4 We said "Listen, this seems silly." So, we listened to
5 Fish & Game and others and said "why don't we come up
6 with some alternate locations to plant." It's really
7 been limited to planting. We have not tried to -- I'm
8 not even sure that it would be the best place to do any
9 kind of mitigation in response to -- I'm not sure this
10 plan would be the best place to respond to the concerns
11 of the author of that study that indicated there's
12 mortality.

13 So, to answer your question, we haven't
14 included it. But, in part, it was prior, because of
15 the timing, and, in part, due to what we feel is our
16 limited scope in this mitigation component, and that is
17 revegetation.

18 DIR. BRYCE: Thank you.

19 CHAIRMAN BURACK: Are there other
20 questions from the panel at this time for --

21 DIR. HATFIELD: Mr. Chairman, I have one
22 additional.

23 CHAIRMAN BURACK: Yes, Director
24 Hatfield.

[WITNESS PANEL: Cyr~Phillips]

1 DIR. HATFIELD: Thank you.

2 BY DIR. HATFIELD:

3 Q. I believe earlier in response to a question you both
4 testified something to the effect of that you wouldn't
5 widen the road to 16 feet, unless events required you
6 to do so. Is that correct?

7 A. (Phillips) What I've indicated is what I understand
8 Brookfield, how they would like to proceed with
9 implementing this, if it's approved, that's been
10 discussed. Again, I can't speak for Brookfield, but
11 last I understood that was something that they felt
12 made sense. There's no sense in going to make these
13 changes until such time as they're needed.

14 Q. And, Mr. Cyr, I thought I heard you say that "the
15 Company would like to do it as soon as possible". But
16 do you agree with Mr. Phillips?

17 A. (Cyr) No, I agree with Mr. Phillips. I'm not -- I'm
18 not in a position to say, you know, when Brookfield
19 would like to do it. I personally, myself, would like
20 to do it sooner than later.

21 Q. And, have you both reviewed Dr. Kimball's testimony
22 that was filed with the SEC back in May?

23 A. (Phillips) Yes, I have.

24 Q. And, do you recall, on Page 3 of his testimony, at Line

[WITNESS PANEL: Cyr~Phillips]

1 21, he -- 20 and 21, he states "As the Windpark
2 currently stands and operates this Amendment and its
3 HER Plan possibly may better ameliorate to some degree
4 threats to the pine marten population"?

5 So, do you understand that to mean that,
6 and I know we're going to hear from him in a moment,
7 but do you read that to mean that he believes that it
8 would be preferable to move forward with the Amendment?

9 A. (Phillips) I understand him to support the Amendment.
10 I thought -- I guess, if I read this, I would think
11 about other components that we -- other opportunities
12 we sought to, in the plan, to revise to address
13 concerns of experts. One of those concerns has been,
14 in the past, because of state permits, we were required
15 to revegetate, not only with trees, but we were
16 required to plant certain grass species up there. And,
17 as I understand it, and was a participant in a phone
18 call with Dr. Kimball, that they have always been
19 against having grass up on the site, but understood it
20 was probably a permit condition. And, now, with DES,
21 at least conceptual blessing that we could use some
22 other form of stabilization, that there was an
23 opportunity to improve this plan and eliminate or
24 minimize the amount of grass expansion up on the site.

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[WITNESS PANEL: Cyr~Phillips]

1 And that, in turn, may minimize some of the indirect
2 effects that I gather may be attributable to having
3 grass up there. It may increase prey populations. It
4 may provide a corridor that's more desirable, the grass
5 might provide a corridor that's more desirable to fox
6 or coyotes, as I understand it. That would be my
7 assumption as to what he's intending there.

8 Q. So, if events do not require the widening of the road
9 or repairs or something like that, would you take the
10 steps that AMC is recommending in other parts of the
11 plan?

12 A. (Phillips) I think we already have, as a matter of
13 fact. I think we have used an alternate, going -- the
14 minute that we knew that was a concern, any other form
15 of stabilization up in that area, we immediately
16 started using the straw mulch or stump grinding,
17 something that was inert, that would still meet the
18 objectives of DES and EPA to provide stabilization, yet
19 not contribute to either bringing in some form of
20 non-native species or creating a -- some kind of impact
21 on -- or, something that might lessen the ability of
22 the trees to grow.

23 DIR. HATFIELD: Thank you. I don't have
24 anything further.

[WITNESS PANEL: Cyr~Phillips]

1 CHAIRMAN BURACK: Are there other
2 questions from any other members of the panel?

3 (No verbal response)

4 CHAIRMAN BURACK: I just have a question
5 or two here, Mr. Cyr, and perhaps Mr. Phillips.

6 BY CHAIRMAN BURACK:

7 Q. At the point that this facility were to be
8 decommissioned, would it be necessary to go in and
9 widen those roads, in order to be able to get equipment
10 in to be able to pull those materials out, the various
11 aspects of the towers, etcetera?

12 A. (Cyr) I would assume so. You know, they built a
13 34-foot wide road to assemble the site. I would assume
14 that it would require to widen the road to 34-foot to
15 get the equipment down.

16 A. (Phillips) I agree.

17 Q. If there is a lightning strike, for example, what, and
18 assuming it were to occur during the summer, which is
19 typically when we see lightning around here, how
20 quickly would the Company generally expect to be able
21 to, under the existing plan, get up there and be able
22 to peel back the vegetation and get access with a crane
23 to a tower, if it were on Mount Kelsey?

24 A. (Cyr) Depending if the equipment is available, I would

[WITNESS PANEL: Cyr~Phillips]

1 say, you know, within a week.

2 Q. Thank you. And, would that length of time be any
3 different, if this Amendment were approved? That is,
4 would you be able to get up there more quickly, if this
5 Amendment were approved?

6 A. (Cyr) I believe so, because we wouldn't have to roll
7 back the topsoil. You know, that takes, you know, it
8 takes a few days to roll that back. So, yes, I would
9 say, if the road is widened to 16-foot, we can get up
10 there quicker.

11 CHAIRMAN BURACK: Thank you. Are there
12 other questions from the panel at this time?

13 (No verbal response)

14 CHAIRMAN BURACK: Attorney Pachios --
15 or, Attorney Iacopino, do you have some questions here to
16 help the Committee?

17 MR. IACOPINO: No questions.

18 CHAIRMAN BURACK: Thank you. Attorney
19 Pachios, do you have some redirect?

20 MR. PACHIOS: Yes, I do, Mr. Chairman.

21 CHAIRMAN BURACK: Please proceed.

22 **REDIRECT EXAMINATION**

23 BY MR. PACHIOS:

24 Q. Mr. Phillips, you were asked by one of the Committee

[WITNESS PANEL: Cyr~Phillips]

1 members and by Ms. Linowes questions -- a question that
2 was predicated on the assumption that this requirement
3 to get heavy equipment up to the ridgeline and to
4 disturb revegetated areas was "unforeseen". Do you
5 recall that? Do you recall those questions?

6 A. (Phillips) I do recall the questions.

7 Q. Okay. Now, do you know who Mr. LaFrance is?

8 A. (Phillips) I do.

9 Q. Who is Mr. LaFrance?

10 A. (Phillips) He is the former owner of our company.

11 Q. Former owner of your company. And, were you employed
12 by the Company in 2009, when the Company was
13 representing Brookfield at the original SEC hearings?

14 A. (Phillips) Yes, I was.

15 Q. Okay. And, do you recall that Mr. LaFrance was
16 involved in that proceeding?

17 A. (Phillips) I do.

18 Q. Okay. Now, I'm going to ask you to take a look at the
19 Applicant's Exhibit Number 9.

20 A. (Phillips) Okay.

21 Q. Excuse me, not -- excuse me, I got the wrong exhibit.
22 Exhibit Number 12. Exhibit Number 12. Which purports
23 to be and is sections of the transcript of the
24 proceedings before the SEC in 2009. This is entitled

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[WITNESS PANEL: Cyr~Phillips]

1 "Day 3".

2 MS. MALONEY: I'm going to object that
3 this is not proper redirect. I mean, this wasn't covered
4 on cross. And, I think the record speaks for itself.
5 Mr. LaFrance isn't here. We're talking about prior
6 testimony, that is an exhibit, but I don't think it's a
7 proper subject of redirect that Attorney Pachios is
8 discussing with Mr. Phillips. I think he's just using him
9 to illustrate other parts of the record that already --
10 the exhibits that are part of the record.

11 MR. PACHIOS: I would ask -- I can do
12 this any number of ways, Mr. Chairman. One way is to ask
13 the SEC to take administrative notice of its own
14 transcript, of its own 2009 proceeding. Which is very
15 important, I think. Very important that the SEC be
16 consistent and understands what it did in 2009, and what
17 the evidence was before it in 2009. I can do it that way.
18 Or, I can put him on later, in rebuttal, and he can say
19 the same thing. So, we can get it in in any way you want.
20 Seems to me this is very easy to do.

21 MS. LINOWES: Mr. Chairman?

22 CHAIRMAN BURACK: Ms. Linowes.

23 MS. LINOWES: Thank you. I would argue
24 that the Committee made a decision to approve this Project

[WITNESS PANEL: Cyr~Phillips]

1 with 12-foot wide roads. That is what the Committee did.
2 And, to go back and relitigate what was debated back in
3 2009 is just not appropriate.

4 CHAIRMAN BURACK: Thank you.

5 CMSR. HONIGBERG: Mr. Pachios, are
6 you -- you're just challenging the premise that some
7 questions -- of some questions that this was unforeseen,
8 that's all you're doing, isn't it?

9 MR. PACHIOS: No. What I'm doing -- let
10 me just --

11 CMSR. HONIGBERG: Why don't you make an
12 offer as to what you would like to establish.

13 MR. PACHIOS: The Committee member said
14 that it's clear it was the necessity to roll back this
15 area of the road, in order to get equipment up in the
16 event of a problem, was "unforeseen". And, of course, the
17 record of the SEC's proceeding in 2009 makes it abundantly
18 clear it was not unforeseen. So that --

19 CMSR. HONIGBERG: So, the answer to my
20 question is "yes", that's what you want to establish, that
21 it was, in fact, foreseen?

22 MR. PACHIOS: Yes. And, I think that
23 evidence is important.

24 CMSR. HONIGBERG: Okay.

[WITNESS PANEL: Cyr~Phillips]

1 MR. PACHIOS: Very important.

2 CMSR. HONIGBERG: And, there's an
3 exhibit to someone's testimony that establishes that,
4 correct?

5 MR. PACHIOS: There is a -- there is the
6 transcript of the SEC proceeding, Commissioner Harrington
7 asking questions and the witness responding to the
8 questions that make it abundantly clear that that was
9 absolutely foreseen.

10 CMSR. HONIGBERG: Is there going to be
11 an objection to that transcript being part of the record
12 of this proceeding?

13 MS. LINOWES: It's already a part of the
14 record in the proceeding. But to his point, to the point
15 that Mr. -- that Attorney Pachios is saying, there's also
16 overwhelming evidence in the record that the Committee
17 heard from the Applicant in 2009 that this would not be a
18 problem, and that's why this Project was approved with the
19 12-foot wide --

20 CMSR. HONIGBERG: And, you can make all
21 the arguments -- you can make all the arguments you want
22 to make on other parts of the record, Mr. Pachios can make
23 the arguments he wants to make based on parts of the
24 record. But I think, Mr. Pachios, I don't believe you

[WITNESS PANEL: Cyr~Phillips]

1 need to ask this witness any questions about something
2 that's already in the record that you can refer to and we
3 can read.

4 MR. PACHIOS: If the record of the 2009
5 proceeding is part of the record that the Committee can
6 look at in making its decision here, and that I can use as
7 argument, I'm fine with that.

8 MS. LINOWES: And, Mr. Chairman, just to
9 reiterate, it is in all the filings, the filings that
10 Brookfield made when it submitted this request to -- for
11 this record or this docket to be opened, that information
12 is in there. Thank you.

13 CHAIRMAN BURACK: I believe that these
14 may be found variously at the Applicant's exhibits,
15 including Exhibit --

16 CMSR. HONIGBERG: Twelve.

17 CHAIRMAN BURACK: -- Applicant 12, which
18 has been premarked. Okay? So, I don't -- again, I
19 believe that's all here in the record already, Mr.
20 Pachios.

21 MR. PACHIOS: And, I just want to be
22 sure, and I think I understand this now. I don't have to
23 move the admission of this separately, in other words,
24 it's admitted and is part of the record. Or, you can take

[WITNESS PANEL: Cyr~Phillips]

1 administrative notice of your own record from 2008.

2 CHAIRMAN BURACK: I'm going to ask
3 Attorney Iacopino to address this.

4 MR. IACOPINO: Generally, because this
5 is an administrative proceeding, the Committee has
6 historically taken everything that's been submitted.
7 However, should any other party object to any of these
8 exhibits, before the end of this proceeding they should
9 let us know that they object. We received no written
10 objections prior to the -- prior to the proceeding. So,
11 if there is an issue over whether something should be
12 admitted as a full exhibit, the parties, I think the best
13 way to do it is identify what they're objecting to, and
14 then the Chair will have to hear those objections at the
15 appropriate time, before the close of the record.

16 CHAIRMAN BURACK: Thank you, Attorney
17 Iacopino. Attorney Pachios, I believe we've resolved that
18 matter for the moment. Is there any other matter that you
19 wish to address on redirect?

20 MR. PACHIOS: There is. But I just want
21 to make sure that I understand, because these exhibits are
22 going to be part of the record that you will -- will be
23 part of your record in making this decision today?

24 CHAIRMAN BURACK: That is correct. All

[WITNESS PANEL: Cyr~Phillips]

1 of the exhibits that we've received from the Applicant,
2 Counsel for the Public, as well as Windaction as an
3 intervenor, are all part of the record.

4 MR. PACHIOS: Thank you. I have a
5 couple of more questions.

6 BY MR. PACHIOS:

7 Q. Mr. Phillips, you were asked who prepared the original
8 plan, I think it was called -- it had two names, it was
9 called the "Restoration and Mitigation Plan" or
10 "Mitigation and Restoration Plan". Do you recall that?

11 A. (Phillips) I recall. Yes, I recall that.

12 Q. And, you said that your recollection was that "RMT".
13 Who is "RMT"?

14 A. (Phillips) RMT was the sitework contractor for the
15 Project.

16 Q. But wasn't this, this Restoration Plan that was adopted
17 by the SEC in 2009, an agreement that was executed by
18 the Applicant and Appalachian Mountain Club and New
19 Hampshire Fish & Game, three parties?

20 A. (Phillips) Well, perhaps I didn't understand the
21 question. There are two separate -- there are two
22 separate documents that we're referring to. There is
23 the High Elevation Mitigation Settlement Agreement,
24 which has -- which was adopted, as I understand, by the

[WITNESS PANEL: Cyr~Phillips]

1 SEC in their order. That has a condition related to
2 road widths and revegetation. That is one of the --
3 so, that's one component. The other is the development
4 by RMT of a revegetation plan that was intended to
5 address that piece of the High Elevation Mitigation
6 Settlement Agreement that related to covering the
7 roadways and revegetating them, as well as the overall
8 intent of revegetating areas projectwide that were
9 above 2,700 feet.

10 Q. Now, with respect to any changes to the restoration,
11 revegetation --

12 A. (Phillips) Right.

13 Q. -- of the area, that are inherent in what's before the
14 Committee today, which is the Amendment, that's
15 executed by New Hampshire Fish & Game, Appalachian
16 Mountain Club, and the Applicant, correct?

17 A. (Phillips) Correct.

18 Q. Okay. Now, those changes, did RMT have anything to do
19 with those?

20 A. (Phillips) The proposed changes?

21 Q. Yes.

22 A. (Phillips) No.

23 Q. In the amended plan?

24 A. (Phillips) No.

[WITNESS PANEL: Cyr~Phillips]

1 Q. Okay. Did New Hampshire Fish & Game have anything to
2 do with them?

3 A. (Phillips) Yes.

4 Q. What did they have to do with them?

5 A. (Phillips) Well, once there was -- once the first
6 maintenance event was needed, I think that Fish -- my
7 recollection was Fish & Game and DES said, you know,
8 "well, what are we going to do to minimize the impacts
9 to vegetation" --

10 MS. MALONEY: I'm going to object. I
11 understand this is an administrative proceeding, but I
12 don't know where he gains that knowledge of what Fish &
13 Game and DES said. I mean, they're not present here.
14 So, --

15 WITNESS PHILLIPS: Well, can I -- I'm
16 sorry.

17 MS. MALONEY: And, of course, it's a
18 hearsay objection. But I don't know what -- where he
19 gains this --

20 MR. PACHIOS: I can ask another
21 question.

22 CHAIRMAN BURACK: Why don't you see if
23 you can ask the question a different way.

24 MR. PACHIOS: Okay.

1 BY MR. PACHIOS:

2 Q. Were you involved in working with New Hampshire Fish &
3 Game and AMC on the Amended Restoration Plan?

4 A. (Phillips) Yes.

5 Q. Okay. Did you have any meetings with them?

6 A. (Phillips) We did.

7 Q. Okay. So, why don't you go ahead now and answer the
8 question.

9 A. (Phillips) Yes. We had a number of meetings, and in
10 which, and I think also e-mails, that indicate that
11 there was concern that we had these impacts, and they
12 were at the forefront of everyone's mind, and said, you
13 know, we reached out to Fish & Game, and they said
14 "could we consider" -- we all agreed, really, onsite,
15 that it was kind of silly to keep planting these trees
16 in the same location. And, Fish & Game had -- we
17 discussed, rather than continuing to plant trees in
18 areas that had been impacted once within a couple
19 months of having planted them, maybe there were better
20 locations. And, Fish & Game, as well as John, from
21 Brookfield, discussed the opportunity of maybe planting
22 in some locations that Fish & Game found to be desirous
23 of planting, meaning, in other words, the turbine pads,
24 which were vast open areas. That, you know, it just

[WITNESS PANEL: Cyr~Phillips]

1 seemed silly to keep planting in this one area, and
2 then you look right across from you you have this vast
3 open area, that's way far wider than the roadways, and
4 to leave those barren seemed kind of silly.

5 And, so, it's my understanding that,
6 through a bit of effort, they found a way, that is
7 Brookfield, found a way with contractors to be able to
8 plant some of the pads -- on some of the pads, as well
9 as areas that were devoid of vegetation.

10 Q. And, what about the method of revegetating that is set
11 forth in this Amended Plan? Was that, you were the
12 Brookfield representative, was that your idea, the
13 mulch?

14 A. (Phillips) No. No. As a matter of fact, we developed
15 this plan sometime earlier, and, you know, in August,
16 at least initially, getting ideas. And, in
17 coordination with AMC, I participated in the conference
18 calls, and a Brookfield representative was on there as
19 well. And, at that time, there was a discussion about
20 hay from AMC. AMC was interested in having an
21 opportunity to change part of the plan, and that was
22 they really did not like the grass being up there. So,
23 we said we would try to come up with some alternatives,
24 and we thought about some alternatives, and developed a

[WITNESS PANEL: Cyr~Phillips]

1 plan that was suitable, that they appreciated, to
2 address a concern that we hadn't considered at the
3 time.

4 Q. In your opinion, was this a collaborative effort, this
5 Amendment, a collaborative effort between Brookfield,
6 AMC, and New Hampshire Fish & Game?

7 A. (Phillips) Textbook collaborative effort, yes. That's
8 what we seek to do.

9 Q. And, the Amendment was part of the Amended Agreement,
10 High Elevation Agreement, is that correct?

11 A. (Phillips) Yes.

12 Q. Executed by three parties, Brookfield, New Hampshire
13 Fish & Game, and Appalachian Mountain Club?

14 A. (Phillips) That's my understanding, yes.

15 Q. Now, do you know whether adverse impact to the pine
16 marten was anticipated in the construction and
17 operation of this Project?

18 A. (Phillips) I can only presume so, yes. I would think
19 some impact, of course, would occur.

20 MR. PACHIOS: Okay. I'm going to ask
21 again that the Committee take official notice of these
22 exhibits, and particularly the transcripts, of both the
23 SEC deliberations in 2009 and the evidentiary portions of
24 the transcript, with respect to impacts on pine marten in

[WITNESS PANEL: Cyr~Phillips]

1 2009.

2 MR. IACOPINO: Mr. Chairman, do we have
3 a exhibit number for what you're asking the Committee to
4 do?

5 MR. PACHIOS: Yes.

6 MR. IACOPINO: Just makes it easier to
7 follow the record.

8 MR. PACHIOS: Yes. Exhibits 15 and 16.

9 MR. IACOPINO: Thank you.

10 CHAIRMAN BURACK: And, those are
11 Applicant's Exhibits 15 and 16, correct?

12 MR. PACHIOS: Yes. Yes.

13 CHAIRMAN BURACK: Thank you.

14 MR. PACHIOS: I don't have any more
15 questions, Mr. Chairman.

16 CHAIRMAN BURACK: Thank you very much.
17 Thank you very much, Mr. Pachios.

18 Ms. Linowes, do you have any redirect --
19 or, recross, I'm sorry?

20 MS. LINOWES: Thank you. I just had one
21 question.

22 CHAIRMAN BURACK: And, again, this would
23 be on a matter that Mr. Pachios has just asked about in
24 his redirect.

[WITNESS PANEL: Cyr~Phillips]

1 MS. LINOWES: Okay. I'll hold till
2 Dr. Kimball is on and I'll ask it then.

3 CHAIRMAN BURACK: Okay. Thank you.
4 Yes, Attorney Maloney.

5 MS. MALONEY: Just one question.

6 **RECROSS-EXAMINATION**

7 BY MS. MALONEY:

8 Q. Was it your testimony, Mr. Phillips, that it was Fish &
9 Game that recommended the plantings on the turbine
10 pads?

11 A. (Phillips) It was -- I can't remember exactly how it
12 occurred. We all met on site, and the idea came up.
13 So, I can't --

14 Q. So, you don't recall?

15 A. (Phillips) Well, it's not something that Brookfield, I
16 think, would volunteer to do, unless it was a
17 suggestion made by Fish & Game.

18 Q. And, you were there with Fish & Game, and who else was?

19 A. (Phillips) John Cyr, myself, and Will Staats. We had
20 multiple visits, but that was the visit which we
21 established -- we determined -- there was a
22 determination that the plan as currently proposed had
23 some -- had some room for improvement, and that this
24 was a -- we took Will Staats' suggestions about

[WITNESS PANEL: Cyr~Phillips]

1 preferable planting areas that day, took notes, and
2 started developing preliminary plans as to how to best
3 address those interests in alternate planting
4 locations.

5 MS. MALONEY: Okay. That's it.

6 MS. LINOWES: I'm sorry. Mr. Chairman,
7 I just want to object to that one statement that
8 "Brookfield would not have volunteered that option, so it
9 must have come from New Hampshire Fish & Game." Fish &
10 Game is not here. And, we've seen in the past with
11 statements by the Applicant's witnesses regarding to
12 things that Fish & Game said were not, or other agencies,
13 are not necessarily true. So, --

14 MR. PACHIOS: Objection. And, I ask
15 that it be stricken from the record. She has no basis to
16 make that accusation. None.

17 MS. LINOWES: I'm not saying that anyone
18 is mis -- is --

19 MR. PACHIOS: I ask that it be stricken
20 from the record, Mr. Chairman.

21 CHAIRMAN BURACK: I will take that
22 request under consideration. I'm not going to rule from
23 the Bench on this at this time. I would just point out
24 for the parties that we are not, as a general matter, in

[WITNESS PANEL: Cyr~Phillips]

1 SEC proceedings, subject to the rules of evidence. We
2 tend to -- we tend to take all evidence in, to listen to
3 it, and to give it such weight as we determine is
4 appropriate. But I would ask the parties to all please
5 focus on questions and statements that are directly
6 relevant to the proceeding itself.

7 With that, is there any other --
8 Mr. Iacopino, did you have any statements you wish to
9 share with the Committee at this time?

10 MR. IACOPINO: No, sir.

11 CHAIRMAN BURACK: Thank you.

12 DIR. HATFIELD: Mr. Chairman?

13 CHAIRMAN BURACK: Yes. Director
14 Hatfield.

15 DIR. HATFIELD: Thank you. I actually
16 had a question for counsel. On March 11th, you filed the
17 Amendment with a signature page that was only signed by
18 one party. Have you since filed a fully executed copy?

19 MR. PACHIOS: Yes. All three parties
20 have signed and is filed with the Committee.

21 DIR. HATFIELD: Thank you.

22 CHAIRMAN BURACK: Director Bryce, you
23 all set? Okay. I'm going to suggest that we take a
24 ten-minute break at this time. I'm going by the clock in

[WITNESS: Kimball]

1 the back of the room. It's currently 11:15 by that clock.
2 We will regather here at 11:25 or so, and then we will
3 resume at that time with -- I believe it is Mr. Kimball,
4 is that correct?

5 MR. PACHIOS: Yes.

6 CHAIRMAN BURACK: Dr. Kimball? Okay.
7 So, we'll take a break until 11:25. Thank you.

8 (Recess taken at 11:15 a.m. and the
9 hearing reconvened at 11:30 a.m.)

10 CHAIRMAN BURACK: Okay. We will resume
11 here. Attorney Pachios, would you please call your next
12 witness.

13 MR. PACHIOS: Dr. Kimball.

14 (Whereupon **Kenneth D. Kimball** was duly
15 sworn by the Court Reporter.)

16 **KENNETH D. KIMBALL, SWORN**

17 **DIRECT EXAMINATION**

18 BY MR. PACHIOS:

19 Q. Dr. Kimball, would you please state your full name and
20 address for the record.

21 A. Kenneth Kimball. And, my working address is at Pinkham
22 Notch. And, my home address is in Jackson, New
23 Hampshire.

24 Q. Okay. And, you filed pre-filed testimony and

[WITNESS: Kimball]

1 supplemental pre-filed testimony, is that correct?

2 A. That is correct.

3 Q. So, those are Exhibits -- Applicant Exhibits 3 and 4.

4 If you were to testify orally on direct examination

5 today, would that be your testimony?

6 A. That is correct.

7 MR. PACHIOS: Okay. Dr. Kimball is

8 available for examination.

9 CHAIRMAN BURACK: Very well. Thank you.

10 Ms. Linowes, I believe that you have first questions here.

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

12 you.

13 CMSR. HONIGBERG: Ms. Linowes, just

14 before you start. Dr. Kimball, just put that where it's

15 convenient for you. Put that microphone where it's

16 convenient. You can bend it up.

17 WITNESS KIMBALL: Can you hear me from

18 here?

19 CMSR. HONIGBERG: You can bend it up, so

20 that it's closer to your mouth, so you don't have to lean

21 forward. Make it comfortable for yourself.

22 WITNESS KIMBALL: How's that?

23 CMSR. HONIGBERG: Whatever is

24 comfortable for you.

[WITNESS: Kimball]

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

2 Thank you.

3 **CROSS-EXAMINATION**

4 BY MS. LINOWES:

5 Q. Dr. Kimball, you were part of the SEC proceedings
6 involving the original approval of GRP?

7 A. The Appalachian Mountain Club was, yes.

8 Q. Okay. And, did you actually testify?

9 A. No. Dr. Publicover did.

10 Q. Okay. And, what is your role today regarding GRP?

11 A. The Appalachian Mountain Club had signed the Agreement.

12 We were asked to make some revisions to the High
13 Elevation Restoration Plan. And, we worked with Fish &
14 Game and the Applicant with some of those revisions.

15 Q. And, are you hired as a consultant for GRP to present
16 today?

17 A. We have received zero dollars from GRP.

18 Q. So, AMC has not received any money from GRP?

19 A. That is 100 percent correct.

20 Q. And, you have not received any money to appear here
21 today?

22 A. That is correct.

23 Q. Okay. So, you are not representing GRP?

24 A. No. We're representing AMC. We were asked to put in

[WITNESS: Kimball]

1 testimony, because we had agreed to the changes, and we
2 agreed to do that.

3 Q. Agreed --

4 A. To put in pre-filed testimony.

5 Q. -- by whom? But agreed at the request of Brookfield?

6 A. Yes.

7 Q. Okay. But, if I understand you correctly, you cannot
8 speak for Brookfield?

9 A. I am not here to speak for Brookfield. That is
10 correct.

11 Q. Okay. And, on Page 6 of your testimony, which is
12 Applicant's Exhibit 3 [4?], about five lines from the
13 bottom, you state "The New Hampshire Fish & Game was
14 the lead in designing and implementing the High
15 Elevation Restoration Plan as described". Is that
16 your -- that is -- that sounds a little bit different
17 from what we heard from the prior witness. So, it was
18 Fish & Game that was the lead on the original HER?

19 A. Yes. There seems to be a little confusion out there.
20 The Certificate the way that I recall that was issued
21 appointed Fish & Game to develop the High Elevation
22 Plan. Embedded in the High Elevation Plan was the
23 12-foot road width. The 12-foot road width was part of
24 the Settlement Agreement that became part of the

[WITNESS: Kimball]

1 Certificate that was issued. And, that's the --

2 (Court reporter interruption.)

3 **CONTINUED BY WITNESS KIMBALL:**

4 A. That is the connection between those two pieces.

5 BY MS. LINOWES:

6 Q. Okay. So, the --

7 A. And, that is the reasons why we were then asked to
8 participate in the amendments to the High Elevation
9 Plan, because the SEC had notified the Applicant that
10 they also needed the AMC to agree to those changes,
11 because it did affect the 12-foot width, which was part
12 of the Settlement Agreement.

13 Q. You said "the SEC" had notified you?

14 A. Yes, through Mr. Iacopino. Actually notified the
15 Applicant that they needed to reach out to the
16 Appalachian Mountain Club, if the High Elevation Plan
17 was going to be amended, and particularly the 12 to
18 16-foot section.

19 Q. Okay. Now, is it -- I don't know if you can answer
20 this question, but I'll ask it anyway. Do you know why
21 Fish & Game isn't here to talk about it, since they're
22 an integral part of this?

23 A. I cannot speak for the Fish & Game Department.

24 Q. Have you had conversations with members of Fish & Game

[WITNESS: Kimball]

1 and do you have -- regarding their not being here or
2 being here?

3 A. No. The only conversations that we had with Fish &
4 Game were relative to the proposed changes and some of
5 the modifications that AMC had requested.

6 Q. Okay. Now, prior to your participation in the original
7 GRP Project as it was approved, reviewed and approved,
8 I believe that AMC had indicated that it had experience
9 with wind energy projects. Is that -- would that be an
10 accurate statement?

11 A. Had we been involved in other wind projects? The
12 answer is "yes".

13 Q. Correct. And, what would those be?

14 A. Several in Maine. Do you want --

15 Q. Yes, if you have the names.

16 A. Black Nubble, Redington, Sisk, and Kibby.

17 Q. And, you were involved with all of those all prior to
18 GRP?

19 A. Yes. I believe that is correct.

20 Q. And, now, Kibby would be -- now, at least Kibby would
21 be one project that would be similar in terms of
22 elevation?

23 A. Yes.

24 Q. Okay. So, coming into the process, and having been an

[WITNESS: Kimball]

1 individual or part of an entity that negotiated the
2 High Elevation Restoration Plan, did it occur to you
3 that there might be an issue with reducing the road
4 down to 12 feet?

5 A. We did not negotiate the High Elevation Plan.

6 Q. So, what was your role in that?

7 A. As I mentioned in the beginning, the Certificate, when
8 it was issued, charged the New Hampshire Fish & Game
9 Department to work on the development of the High
10 Elevation Plan. Within the High Elevation Plan was the
11 road width of 12 feet. When the High Elevation Plan
12 was proposed to be changed to 16 feet, because that was
13 part of the Settlement, we were asked to come in, as I
14 mentioned before.

15 Q. Dr. Kimball, let me just ask you in terms of timing.
16 What was the timing for when the High Elevation
17 Restoration Plan was prepared?

18 A. The High Elevation Plan, if my recollection is correct,
19 was prepared in 2010.

20 Q. So, after the permit was issued?

21 A. That is my -- that is correct. It did not exist when
22 the permit was issued.

23 Q. And, you know, that as you may or may not know, the
24 permit or the Certificate was granted to GRP in the

[WITNESS: Kimball]

1 Summer of 2009. Do you recall that?

2 A. Yes, I do.

3 Q. Okay. So, if the 12-foot wide width roads was not
4 really part of the discussion until 2010, why is it
5 specifically referenced in the High Elevation --
6 rather, throughout the permit itself? And, wasn't it
7 part of the High Elevation Mitigation Settlement
8 Agreement?

9 A. My recollection was is that, in discussions that were
10 actually initiated between Fish & Game and the
11 Applicant at that time, --

12 Q. Excuse me, at what time?

13 A. This would have been during the discussions between
14 Fish & Game and the Applicant about a potential
15 settlement to mitigate for some of the impacts up
16 there.

17 Q. And, what --

18 A. Which would have been in early 2009, if my recollection
19 is correct. And, it came forth a proposal to have a
20 12-foot road width as one of those conditions. That is
21 not a condition that AMC asked for. It was a condition
22 that came forth between the Applicant and the Fish &
23 Game Department. That then became embedded in the
24 Settlement Agreement that then became part of the

[WITNESS: Kimball]

1 Certificate.

2 Q. And, you signed the Settlement Agreement, not you, but
3 AMC signed the Settlement?

4 A. That is correct. AMC did.

5 Q. So, you were a party to a document that was signed
6 between Fish & Game, the Applicant, and AMC, that
7 stated "the road widths would be narrowed to 12 feet",
8 is that correct?

9 A. That is correct.

10 Q. Okay. At that time, at any time, leading up to your
11 signing -- AMC signing that document, did you raise
12 objections to the road widths being narrowed to
13 12 feet?

14 A. We did not.

15 Q. Were you aware that there might be a problem with the
16 roads narrowed to 12 feet?

17 A. It was not a primary concern of ours at that time.

18 Q. Why was the road narrowed to 12 feet?

19 A. That was some -- that was a number that came forth
20 between Fish & Game and the Applicant.

21 Q. So, you never -- that was never --

22 A. That was not a requirement that AMC requested.

23 Q. The concept of "narrowing the roads", was that
24 desirable or not desirable?

[WITNESS: Kimball]

1 A. It is desirable.

2 Q. Okay. And, I want to actually ask you a question with
3 regard to something that Mr. Phillips had said. He had
4 stated under -- on rebuttal that, and perhaps in
5 reference to a question from the Committee, that
6 revegetation will begin at the next point when road
7 widening would occur next. So, it wouldn't be
8 something that they would go out and do right now, or
9 rather wait until the need was there. Those trees that
10 are currently existing in that 4-foot wide area,
11 wouldn't there be a desire to preserve those trees and
12 move them somewhere else now or as soon as possible?

13 A. Obviously, the best thing is to keep them there. I
14 mean, because you're trying to narrow the road width
15 that is there. Now, you have a trade-off question of
16 "do you leave those trees there to act as a protective
17 buffer for the vegetation that's trying to come in
18 behind, between that section and where the forest
19 actually exists?" Or, "do you pick up and move those
20 and try to move forward with some of the
21 recommendations that New Hampshire Fish & Game had in
22 trying to reestablish on the pads?" That's the
23 trade-off between those two.

24 Q. Okay. Is there -- so, you're not making any

[WITNESS: Kimball]

1 recommendation. You're just saying that it's --

2 A. I'm not making a recommendation on those.

3 Q. Okay. And, what I'd like to do is to draw your
4 attention to some of the photographs that were taken on
5 the site walk. And, these would be in -- this would be
6 Exhibit PC 4.

7 A. I guess I'll need to be provided with those, because I
8 don't believe that I've had those provided before.

9 MS. LINOWES: I don't have them with me.
10 And, I'm just trying to find some copies that I can let
11 him use.

12 CHAIRMAN BURACK: Well, why don't we
13 take a minute here and try to find those photos. I would
14 ask you, Mr. Linowes, if there are particular exhibits
15 that you wish to use in examining a witness or
16 cross-examining a witness, you really need to have
17 prepared those ahead of time and be ready, so that we can
18 make efficient use of every parties' time here.

19 (Atty. Iacopino handing document to Ms.
20 Linowes and Ms. Linowes providing
21 document to the witness.)

22 MS. LINOWES: My apologies,
23 Mr. Chairman. I thought that, since he was a witness for
24 Brookfield, that they would provide him with all of the

[WITNESS: Kimball]

1 documents he needed.

2 MR. IACOPINO: Mr. Chairman, I would
3 just point out, the exhibit that he's referencing, that he
4 has in front of him now is a 75-page exhibit. So, I think
5 we should make sure, if the parties are going to refer to
6 portions within it, they refer to the photo number, I
7 think would be the best way to refer to it. It's PC 4,
8 and then photo number whatever.

9 MS. LINOWES: It will be the first photo
10 of Mr. Gray's list. And, I believe that would be in the
11 beginning.

12 WITNESS KIMBALL: You're talking about
13 the top photo, is that correct?

14 MS. LINOWES: Correct.

15 CHAIRMAN BURACK: Is it Photo 1?

16 MS. LINOWES: I believe it's Photo 1.

17 CHAIRMAN BURACK: How it's labeled in
18 the left-hand corner?

19 MS. LINOWES: And, it should show a
20 picture of the road, along with -- so what appears to be
21 mulch narrowing the road, do you see that, and then some
22 seedlings?

23 CHAIRMAN BURACK: Yes. Proceed with
24 your question.

[WITNESS: Kimball]

1 MS. LINOWES: Thank you.

2 BY MS. LINOWES:

3 Q. There are many pictures in the stack that look like
4 that. Do you remember the site looking like that?

5 A. Yes, I do.

6 Q. Okay. So, that, in that area that we're looking at,
7 that mulch area is what width there? That what are we
8 talking about there?

9 A. I'm assuming that this is the 12-foot road, and the
10 four-foot, I don't -- I mean, there's no reference
11 point on the photo here, but correct me if I'm wrong
12 there.

13 Q. Okay. So, now, we're standing on the wide -- the
14 person who took the photo is standing on a wider road,
15 and then it narrows by four feet, or more?

16 A. I'm assuming that's what this picture is showing.

17 Q. Okay. So, now, when you're talking about preserving
18 those trees in the four-foot area, so that it can
19 provide a protective buffer as time goes on, exactly
20 how much of a protective buffer are we talking about?
21 And, how long will it take for those trees to grow
22 before they could even have a hope of being a
23 protective buffer?

24 A. I think the actual question, but you can turn me

[WITNESS: Kimball]

1 around, if you would so desire, but the question that
2 we were asked is "whether it made that much difference
3 to expand the road from 12 to 16 feet, and to try to do
4 some other corrections out there?" And, --

5 Q. And, that's not the question in front of you right now.
6 The question I'm asking you is, Mr. Phillips stated "it
7 would be better to leave everything in place until the
8 need was there", and you said it will be -- you stated
9 "well, it's a question of whether we should leave
10 everything there and allow for those trees to offer a
11 protective buffer or move them now?" So, I'm just
12 trying to understand how much of a protective buffer
13 are those trees offering today?

14 A. If you looked out a decade or so, they potentially
15 would offer a protective buffer. And, if you didn't
16 have to remove them for the next decade, because you
17 did not have to bring equipment up there, then you
18 would gain that advantage. If it turns out, in four,
19 five, or six years that you had to plow this up, then
20 they wouldn't offer much at all. So, it's time
21 relative to when you would have to remove these as to
22 where the real answer to that question would be.

23 Q. So, how tall do you think those trees will be in ten
24 years?

[WITNESS: Kimball]

1 A. These are fir and spruce. They probably could be five,
2 six, seven, eight feet tall. They are in an open area,
3 not having to compete, so that their growth rate would
4 not be impeded. Some species, like spruce, can lay
5 dormant and not grow for much time, I mean, grow at all
6 for long periods of time, and then, once opened up,
7 will grow rather fast.

8 Q. I could understand that if we were talking about an
9 environment that was more tame. But what is the
10 situation with the wind up there, and the weather?

11 A. Where this picture is taken, you still have a fairly --
12 a forest that still is retaining a fair amount of
13 stature here. So that I think the kinds of numbers
14 that I gave you would not be unreasonable.

15 Q. But, as you go up on Kelsey, would you say the same?

16 A. That is correct, because you are shifting over from
17 biotic competition to abiotic being a driving factor.
18 And, your trees, at the very high elevations, are going
19 to grow at a slower rate or they are going to be
20 stunted.

21 Q. And, would these trees that are on the road do better
22 or worse if they were replanted on the turbine pads?

23 A. I'm not sure I understand the question, to be honest
24 with you.

[WITNESS: Kimball]

1 Q. With the conditions, the weather conditions, the wind
2 conditions, the openness of the turbine pad, allow for
3 those trees to fare better or worse than they are on
4 the road?

5 A. They would fare better here than on the turbine pads,
6 because the turbine pads are on the ridge where the
7 winds are the strongest.

8 Q. So, the High Elevation Restoration Plan, which calls
9 for removing trees from the road, widening the road,
10 and replanting them or planting new trees on the
11 turbine pads, is going to be a better circumstance or a
12 worse circumstance?

13 A. Actually, I think, ecologically, you would gain more in
14 the turbine pad area, because, if I'm looking at this
15 picture correctly, you are lower down on the 2,700-foot
16 elevation area, where you're down into probably is the
17 spruce-fir zone. As you move up into the higher zone,
18 you're moving up to where the spruce are going to drop
19 out, and you're going to be moving into the fir zone.
20 The fir zone is one that has higher ecological value
21 and is of more concern in the Heritage Program.

22 Q. I don't think --

23 A. And, so that there would be more to be gained in trying
24 to restore the very highest elevation areas.

[WITNESS: Kimball]

1 Q. I don't think that was my question. My question was,
2 which trees, where, when you're talking about "siting
3 trees", "planting trees", where are they going to fare
4 better, on the turbine pads and the roads? And, I
5 believe you testified that they would do better on the
6 roads.

7 A. Your picture here is down in the lower part of the
8 2,700, where they are going to grow faster most likely.

9 Q. Okay. There are many, many pictures in that document.
10 I'm just showing one picture.

11 A. Yes.

12 Q. And, if we could talk -- if we can envision that that
13 is all that this -- or, let me ask you, do you recall
14 the layout of the trees like that? Do you recall
15 seeing the roads that looked like that?

16 A. The answer is "yes".

17 Q. And, do you recall seeing in nearly identical or very
18 similar conditions as we went up Kelsey, into the
19 higher elevation?

20 A. Yes. I believe that is correct.

21 Q. So, can we at least establish that this picture can,
22 even though you're talking about it being a lower
23 elevation, it's representative of what we saw on the
24 road all the way along? Is that -- can we establish

[WITNESS: Kimball]

1 that?

2 A. As a generalization, yes.

3 Q. Thank you. And, that the trees on the pads versus the
4 trees on the roads, where would they be most protected?

5 A. That's hard to determine. Because, if you have a long
6 linear stretch of road here, the wind may actually work
7 on them faster, as opposed to the --

8 Q. Do you know --

9 A. The way the wind -- the way the wind works on the
10 mountain, where topography is very, very important to
11 take a look at, is it can be quite variable as to where
12 the areas are going to be exposed the most or the
13 least. And, so, there's not a simple answer to the
14 question the way that you're asking it.

15 Q. Then, Dr. Kimball, if that's the case, do you recall
16 that kind of analysis going into play when the decision
17 was made to revegetate in other places?

18 A. No, it was not.

19 Q. Then, let me go on then. In Exhibit App. 7, this would
20 be the SEC Order and Certificate of Site and Facility
21 itself. And, on Page 14, Paragraph 2, the Site
22 Evaluation Committee wrote: "The Applicant reached an
23 agreement with New Hampshire Fish & Game and AMC to
24 provide for certain high elevation mitigation described

[WITNESS: Kimball]

1 [herein]. Thus, the Applicant contends that any
2 adverse environmental impacts have been sufficiently
3 addressed." And, now, you said that you were not
4 involved with the negotiation on the High -- the
5 Settlement Agreement, is that correct?

6 A. That is incorrect. I was there, along with Dr.
7 Publicover, during the negotiations of the Settlement
8 Agreement.

9 Q. What was it you were not part of then? I'm sorry, I
10 misunderstood.

11 A. Dr. Publicover was our expert witness and supplied the
12 prefiled and the testimony during the hearing itself.

13 Q. I understand that. But you had stated earlier today
14 you were not part of the negotiations of something.
15 Was it the Settlement Agreement or did I confuse that
16 with the High Elevation Restoration Plan?

17 A. The latter.

18 Q. Okay. So, you were involved in the negotiations for
19 the Settlement Agreement?

20 A. Yes, I was.

21 Q. And, was it your understanding as well that the
22 Settlement Agreement turned the Project from being
23 unreasonably adverse into just adverse or not adverse
24 at all?

[WITNESS: Kimball]

1 A. That is the conclusion that we came to, yes, at this
2 time.

3 Q. And, I understand that there are a lot of components to
4 the High Elevation Settlement Agreement, but we're
5 talking specifically about the 12-foot wide. Did
6 you -- that wasn't -- you're saying that was not a
7 recommendation of AMC?

8 A. The exact width of 12 feet, that is correct.

9 Q. Okay. Now, in Applicant -- excuse me, in that same
10 exhibit, on Page 17, it states that, at Page -- on
11 Paragraph 3, "AMC's concerns were largely addressed",
12 regarding the Project, other than decommissioning.
13 That's what it says. Is that your recollection? Is
14 that what the Certificate states?

15 A. That's correct.

16 Q. Okay. And, did AMC request a rehearing of the SEC
17 proceeding?

18 A. My memory says "no". I could be proven wrong, but
19 that's what my memory is.

20 Q. Okay. Now, also, in Section VI of the decision, again,
21 Exhibit App. 7, "Analysis of Findings", in Section B,
22 which is in the middle of Page 27, the Committee wrote:
23 "The Subcommittee discussed in particular the
24 possibility of prohibiting the construction of turbines

[WITNESS: Kimball]

1 on Mount Kelsey or Dixville Peak as part of a smaller
2 project that would have less high elevation impact."

3 And, it goes on to say, in the next paragraph, "in the
4 absence of the Settlement Agreement, it would have had
5 considerable difficulty in approving the Project". Do
6 you recall that being the case, the concerns?

7 A. That's a good generalization, yes.

8 Q. So, the Settlement Agreement was pretty important?

9 A. Yes, it was.

10 Q. And, every component of it was important?

11 A. Yes, but not equally.

12 Q. Now, do you think it's reasonable that people are
13 raising concerns now that, if the Settlement Agreement,
14 in its entirety, was forefront and appears to have been
15 a significant component for the Committee in deciding
16 whether it should approve the project, that reopening
17 it to modify it might raise some concerns for people?

18 A. Every group has -- is right to its own opinions, yes.

19 Q. Okay. One more, if you bear with me for a moment.

20 Okay. And, then, just one other -- just a couple more
21 questions. This is in regard to the dieback that was
22 witnessed at the Project site. Can you explain what
23 the "dieback" is?

24 A. It's not unnatural, particularly in these high

[WITNESS: Kimball]

1 elevations, if you have an opening, that the wind,
2 icing events, those types of things, will cause
3 deterioration of some of the canopy at the leading
4 edge.

5 Q. And, how far back will that go?

6 A. Again, there is no single answer to that, because it
7 depends upon the exposure, where microtopography can
8 have it go in some distance or it might go in a very
9 shallow distance.

10 Q. So, just so I'm clear, we're talking about a swath of
11 trees -- or, a swath of clearing occurred within a
12 forested area. Now, those trees that are on the edge
13 had been exposed to elements, the wind, the rain, the
14 environment, in a way that they had not previously, and
15 they could die as a result of it?

16 A. Yes, they could.

17 Q. And, when they die off, that leaves the trees behind
18 them exposed?

19 A. Yes. That is correct.

20 Q. Which could possibly cause those trees to die?

21 A. That is correct, but --

22 Q. And, that's what you're saying, we don't know how far
23 that can go, but it can go --

24 A. Actually, you have a pretty good idea, because you can

[WITNESS: Kimball]

1 take a look at the history of how fir waves work.

2 Q. Now, you just said that you can't tell. So, now, can
3 we tell --

4 A. Well, you were asking me for an exact answer, of which
5 there is not an exact answer. But you have opened up
6 habitat, and you would expect regeneration to start to
7 happen with those trees that died out. It's not as
8 though it would be left as a dead zone forever.

9 Q. Would it be decades again, like what we talked about --
10 what you talked about earlier?

11 A. That is correct, if you take a look at fir waves.

12 Q. Okay. And, so, when you looked at those, when you were
13 at the site, and there are photographs within the
14 testimony, but, when you say that dieback, it didn't
15 surprise you?

16 A. Not at all.

17 Q. And, as I recall, there was -- Dr. Publicover had
18 specific testimony where he raised that concern back in
19 2009, is that correct?

20 A. Yes, we did.

21 Q. Okay. And, -- okay. Then, just one last question for
22 you. I'm looking at Exhibit WG-3. This, and you don't
23 need to have it in front of you, I'll explain what it
24 is. But this is supplemental testimony by Stantec

[WITNESS: Kimball]

1 witnesses, Adam Gravel and Steve Pelletier, who were
2 representing Noble Environmental at the time the
3 Project was going through the proceedings. And, I'm on
4 Page 9 of 56, at the bottom of the page. And, in this,
5 here he says "The turbine strings along Mount Kelsey
6 and Dixville Peak ridgelines will not represent a
7 physical barrier to marten movement on the mountains."
8 And, then, he says "Subsequent to vegetation clearing,
9 the access road along the ridgeline will be revegetated
10 to allow for a 12-foot wide roadbed. The roads will be
11 infrequently traveled and restricted for motorized
12 traffic." And, then -- so, it appears that they also
13 -- that Noble Environmental and Stantec were also very
14 supportive of the 12-foot wide road. Would that be
15 correct?

16 A. That could be correct.

17 Q. He used that as explaining that the -- the ability of
18 marten to easily cross the road. Was that a factor
19 back then?

20 A. I can't speak for him.

21 Q. Do you recall that being of something that was -- that
22 wide roads might lead to -- create some hesitation on
23 the part of martens to cross roads versus narrow roads?

24 A. I see pine martens showing up in our driveway at times

[WITNESS: Kimball]

1 at my office, moving around. I think the major concern
2 normally with roads is traffic fatalities, which is not
3 going to be an issue with this road here.

4 Q. So, could we leave it at 34 feet wide?

5 A. The narrower you can make it, the better, because
6 you're trying to restore the natural ecosystem as best
7 you can, understanding that this Project was going to
8 have an impact.

9 Q. Okay. Natural ecosystem for what? Is that -- I mean,
10 we had the species of the pine marten --

11 A. Well, you're -- well, why don't you rephrase your
12 question.

13 Q. You're saying that the benefit of restoring the road
14 back to be narrower than 34 feet was to help restore
15 the natural ecosystem for what?

16 A. Your spruce-fir forest and the species, and to try to
17 reduce as much as possible the type of habitat that
18 would bring in species that might not normally be
19 there.

20 Q. The narrower the better?

21 A. The narrower the better, yes.

22 Q. Okay. And, then, --

23 MS. LINOWES: Okay. Then, I'm all set.

24 Thank you. Thank you, Mr. Chairman.

[WITNESS: Kimball]

1 CHAIRMAN BURACK: Thank you very much,
2 Ms. Linowes. We will now turn to Counsel for the Public,
3 because I believe that Commissioner Samson is not here.
4 So, please proceed.

5 MS. MALONEY: Okay. I guess it's just
6 after noon. So, good afternoon, Mr. Kimball.

7 WITNESS KIMBALL: Thank you.

8 BY MS. MALONEY:

9 Q. As part of the Settlement Agreement, it had a number of
10 components. And, you just testified that some were
11 more important than others?

12 A. That is correct.

13 Q. And, would it be fair to say, with respect to AMC, that
14 the acquisition of conservation land and money to
15 purchase conservation land that State agencies could
16 purchase, that that was more important to AMC than the
17 Restoration Plan?

18 A. It was more important than the 12-foot, yes.

19 Q. Than the High Elevation Restoration Plan that was
20 proposed at the time of the Certificate?

21 A. Yes.

22 Q. And, it's more important to you today than the Amended
23 Plan, correct?

24 A. Yes.

[WITNESS: Kimball]

1 Q. And, one of the goals of the Restoration Plan itself
2 was to accelerate the reforestation of that area, for
3 both the -- you know, the old growth subalpine forest
4 and for the species that inhabited there, is that
5 correct?

6 A. That is correct.

7 Q. And, you would agree that there have been some adverse
8 impact to the species as a result of the studies that
9 were done?

10 A. Yes.

11 Q. You indicated that your concern with the roads is
12 traffic. Now, when we get into the nitty-gritty of the
13 impact --

14 A. No. That's not what I said.

15 Q. Well, okay. Strike that. I'm moving in a different
16 direction. When we get into the -- one of the issues
17 with regard to, for example, the pine marten was -- is
18 the introduction of predators, is that correct?

19 A. Yes.

20 Q. And, is it fair to say that they -- that those
21 predators are using that road to reach the above
22 2,700 feet, where they didn't before, they didn't have
23 access before?

24 A. The winter studies there suggested that, yes, it was

[WITNESS: Kimball]

1 facilitating their movement up there.

2 Q. Okay. So, I'm sort of curious as -- well, would you --
3 do you oppose control studies of the restoration
4 protocols to determine how the reforestation can be
5 accelerated? Do you oppose that?

6 A. Would I oppose it? No.

7 Q. Okay. And, do you oppose longer term studies on the
8 impacts of the construction and maintenance of the
9 windpark on populations of the pine marten and the
10 Bicknell's thrush?

11 A. Would I oppose gaining further knowledge? No.

12 Q. Right. Do you oppose studying how the factors that are
13 causing the adverse impacts, other than loss of
14 habitat, might be mitigated?

15 A. Again, I would not oppose gaining further knowledge.

16 Q. Okay. Did you really have expectations that the
17 Restoration Plan was going to work?

18 A. I think it gets down to what do you mean by "is it
19 going to work?" Is it going to restore this area back
20 to where it was naturally before this Project? The
21 answer is "no". It is the reasons why we required,
22 before we agreed to the Settlement, that there would be
23 significant offsite mitigation, because we realize that
24 it was not 100 percent fixable at this site with a

[WITNESS: Kimball]

1 project of this magnitude.

2 Q. So, you questioned the whole restoration effort?

3 A. No, I did not question it. You're basically trying to
4 minimize in that area as best you can, an area that you
5 know is going to be impacted, which is different than
6 to say that "I think I can bring it back to where it
7 was before the Project."

8 Q. Okay. I know you've taken issues with some of
9 Dr. Kilpatrick's opinion. But, in essence, wouldn't
10 his recommendations benefit the restoration of -- the
11 restoration efforts on Mount Kelsey?

12 A. I think there are various elements to his
13 recommendations, but some of them suggested that what
14 we were recommending would actually be negative. I
15 disagree with that part.

16 Q. Well, let's just take that aside. I'm looking at his
17 suggested mitigations. And, you are familiar with
18 them, correct?

19 A. Yes. I was somewhat confused with his last one, which
20 I believe was canine control. And, there was some
21 language there about "electric fences" and so forth. I
22 was scratching my head on that one.

23 Q. Well, I suppose he can explain that to the Committee.

24 A. Yes.

[WITNESS: Kimball]

1 Q. But, apart from that, we have a situation where, I
2 mean, there are two threatened species that are being
3 adversely impacted by this development, correct?

4 A. Correct.

5 Q. And, we have before the Committee an Amended
6 Restoration Plan, correct?

7 A. Correct.

8 Q. And, you would have no objection if this Committee
9 included some of Dr. Kilpatrick's recommendations, to
10 make it perhaps more robust and to put a little more
11 monitoring, strengthen the monitoring aspects of it,
12 you wouldn't have any problem with that?

13 A. Possibly, because I was a little confused as to what
14 some of his recommendations were. But, if I recall
15 correctly, and you can correct me if I'm wrong here,
16 one of the elements that we requested to be removed was
17 using grass. And, grass was recommended in the
18 beginning in part because of the concerns about serious
19 erosion. But, normally, in a restoration effort,
20 particularly when you're in a habitat of concern, you
21 do not want to be introducing foreign species, of which
22 grass, and none of the species of grass that were there
23 are native to that area. And, once the erosion control
24 component was under control, it did not make sense for

[WITNESS: Kimball]

1 us, to the AMC, to be still trying to introduce a
2 non-native species into that area.

3 Q. I appreciate that. But what I just asked you about,
4 the control studies of the restoration protocols, you
5 don't have any problem with that?

6 A. I would have to see what the actual design was.

7 Q. Well, absolutely.

8 A. Yes.

9 Q. They would have to be designed, correct? So, a little
10 bit more effort, a little bit more work would have to
11 be put into these plans, correct?

12 A. Yes.

13 Q. Could you describe the impact on the edge and what
14 negative impacts the edge has on -- that has been
15 created by this development has had on the habitat?

16 A. The edge effect, and with wind farms, and this has
17 been, even when it was brought out earlier in the
18 National Academy of Science is, is that you can
19 actually create a corridor for species that normally
20 weren't there to come in. That is one of the impacts
21 you can have. Another one, and particularly when
22 you're moving into an environment like this, which is
23 driven in part by abiotic factors, such as wind and
24 icing, you can actually have some dieback from some of

[WITNESS: Kimball]

1 the trees, but it's not as though that's going to be a
2 permanent factor.

3 Q. I had some questions about the suggestion that they
4 plant the planting of trees on the turbine pads. And,
5 doesn't that create edge all around?

6 A. Yes. But what it also does is reduce the fetch
7 distance of the wind --

8 (Court reporter interruption.)

9 **CONTINUED BY WITNESS KIMBALL:**

10 A. The fetch distance.

11 BY MS. MALONEY:

12 Q. So, you think that outweighs the negative impacts of
13 attracting a different species?

14 A. Yes. You would actually gain two things. You would
15 decrease the fetch distance as to how it can work on
16 that area, and you may reduce the distance for the wind
17 to penetrate into the forest adjacent to it.

18 Q. Okay.

19 A. So, mathematically, it's correct. The edge could be
20 increased. But, ecologically, there are some gains by
21 trying to replant forest into an area that does not
22 exist in that habitat.

23 Q. When you were -- and, you were up at the site visit in
24 August, were you not?

[WITNESS: Kimball]

1 A. Yes, I was.

2 Q. Okay. And, did you see evidence of browsing of the
3 seedlings?

4 A. I was not certain whether I was looking at browsing,
5 and you would have to ask the Applicant here, but,
6 because this stock was from a nursery, there is the
7 possibility that some of these may have actually been
8 trimmed, which is not unusual.

9 Q. But would you -- would you object to the Revised Plan
10 including some mitigation to reduce the browsing, if
11 that is occurring?

12 A. First, I'd want to verify that you're seeing intensive
13 browsing. And, I don't have the actual answer to that
14 question there. The second question is, I'm not sure
15 what you do. The two species most likely that you
16 would expect to be browsing there would be snowshoe
17 hare and moose. And, they typically are going to
18 browse on the twiggy materials during the winter, and
19 go to more succulent vegetation during the summer.

20 Q. Okay. I have a question about the actual -- the
21 adverse impacts to the marten and the Bicknell thrush.
22 To what extent does the Amended Plan address issues
23 other than habitat that could be adversely affecting
24 them? For example, the noise or -- well, why don't you

[WITNESS: Kimball]

1 try to answer that.

2 A. The High Elevation Restoration Plan I think was
3 primarily asking how you could minimize the impact
4 relative to the vegetation and try to get it -- to try
5 to accelerate its regeneration, because the
6 regeneration was going to happen in the zone. This was
7 an attempt to try to accelerate it.

8 Q. So, it was really just focused on that reforestation of
9 the habitat?

10 A. That is correct.

11 Q. But I think the studies went further than that, isn't
12 that correct? I mean, the studies addressed other
13 adverse impacts.

14 A. What -- excuse me, which studies?

15 Q. Didn't the Fish & Game study address possible impacts
16 of noise?

17 A. Not to my knowledge.

18 Q. No? Okay. Do you think that would be useful, a useful
19 part of a high elevation mitigation plan?

20 A. Again, the more knowledge that you can gain, the better
21 you're going to be. It would be -- it would be hard to
22 refute that.

23 Q. So, you wouldn't have any objection to that?

24 A. I'm not objecting to it, no.

[WITNESS: Kimball]

1 MS. MALONEY: Okay. I have nothing
2 further.

3 CHAIRMAN BURACK: Thank you very much.
4 We'll turn now to the Committee, to see if the Committee
5 has questions of Dr. Kimball?

6 CMSR. SCOTT: I do.

7 CHAIRMAN BURACK: Director Scott.

8 CMSR. SCOTT: I've been a commissioner
9 for awhile, but thank you.

10 CHAIRMAN BURACK: Commissioner.

11 Commissioner Scott. I stand corrected.

12 CMSR. SCOTT: Good afternoon,
13 Dr. Kimball.

14 BY CMSR. SCOTT:

15 Q. Regarding the studies, the language that went back
16 between Attorney Maloney and you, I just wanted to --
17 you said words like "didn't oppose" and "didn't
18 object". Do you think the additional studies are
19 needed?

20 A. Would they benefit our knowledge base? Yes, they would
21 be. Were they a requirement that we asked for? No.

22 Q. Going back earlier to my questioning of Mr. Phillips
23 and Mr. Cyr, you know, I think my first question to
24 them was the time frame to widen, add the extra

[WITNESS: Kimball]

1 four feet. And, what I think I heard is, there was an
2 acceptance that it would be done as needed, not
3 immediately. If we were to put a condition in to that
4 effect, basically, that such widening would only happen
5 as needed and to those sections that are needed, is
6 that -- would that make sense to AMC also?

7 A. Yes, it would. I mean, as I mentioned before, I
8 believe that there's a trade-off there. And, how that
9 trade-off is going to play out would be dependent on
10 when they would next need to come up there to do major
11 work to remove it. And, I can't answer that question,
12 because I don't know the answer.

13 Q. And, you suggested -- is there a -- let me ask you
14 another question you probably can't answer. Is there a
15 minimum timeframe by which these samplings -- excuse
16 me, these seedlings would have a positive impact, as
17 far as, you know, if they're seven years old, they will
18 probably be more effective than not?

19 A. If I'm understanding your question correctly, and
20 correct me if I'm wrong here, is you're asking about
21 what size tree to put out there? Yes. I think the one
22 thing is, you don't want to put a tall 10 or 12,
23 15-foot tree out there, just because you don't have the
24 base for the roots to keep it established, and then you

[WITNESS: Kimball]

1 would start to run the risk of windthrow. You would
2 want that plant to be smaller, so that it could really
3 get its roots in and established. But you are in an
4 area where windthrow is not uncommon.

5 Q. Okay. And, again, you've interpreted my -- what I
6 didn't say well, that's where I was going, is I had
7 asked Mr. Phillips, I think, you know, "should we be
8 looking at seedlings or saplings?" Is there an
9 advantage to the slightly larger or variations of tree
10 plantings?

11 A. You could probably put larger trees in closer to where
12 the existing canopy is, because part of the way that
13 that forest operates there is to try to grow up
14 together, because you're getting self-protection from
15 the trees adjacent to it, because you are in a windy
16 environment. If you put a very large tree out in the
17 opening itself, it's going to -- the potential for
18 windthrow, *etcetera*, is going to be much greater. So,
19 if you were going to take a step like that, you would
20 probably want to grade -- have a gradation of the
21 taller trees, the older trees that you were putting in
22 closer to the forest, and the smaller ones coming out.

23 Q. And, on a similar vein, the discussion you had
24 regarding the "dieback", you said that will "regenerate

[WITNESS: Kimball]

1 eventually". Is that an area also where plantings
2 should be done?

3 A. I would say no, because, if you take a look at how fir
4 waves happen, you get these organized zones of dieback,
5 and then you'll get the seedlings coming in underneath.
6 And, they're called "fir waves", because they actually
7 start to migrate up the mountainside as they're dying
8 back, and they tend to die somewhat in an even-aged
9 structure as they're proceeding. And, those things
10 typically are functioning on a probably 80 to 100 year
11 cycle.

12 Q. So, paraphrase perhaps, it wouldn't be necessarily
13 productive to do plantings in that area where the
14 dieback is happening?

15 A. I think you could use your time and energy better than
16 that.

17 CMSR. SCOTT: All right. Thank you.

18 CHAIRMAN BURACK: Commissioner
19 Honigberg.

20 CMSR. HONIGBERG: Thank you,
21 Dr. Kimball. I've got a couple of questions, based in
22 part on what Commissioner Scott was just asking you.

23 BY CMSR. HONIGBERG:

24 Q. Do you have access to the pictures that were -- I think

[WITNESS: Kimball]

1 they're a set of exhibits, a whole bunch of pictures?

2 Can you find those?

3 CHAIRMAN BURACK: Again, we --

4 **BY WITNESS KIMBALL:**

5 A. Again, as I say, it's the first time I've seen it. So,
6 you'll have to bring me to the picture that you want me
7 to take a look at.

8 BY CMSR. HONIGBERG:

9 Q. I just want to make sure you had the packet?

10 A. I do have a packet in front of me.

11 Q. Flip just a few pictures in to Photo 4.

12 MR. IACOPINO: For the record, that's
13 Public Counsel 4.

14 BY CMSR. HONIGBERG:

15 Q. Exhibit Public Counsel 4, and then the photo labeled
16 "Photo 4 - Chris Gray (8/29/2014)".

17 A. I would love to get there, but I'm not sure which is
18 Photo 4, because these don't have any numbers on them.
19 So, somebody is going to have to guide me there.

20 (Chairman Burack handing document to the
21 witness.)

22 WITNESS KIMBALL: Okay.

23 BY CMSR. HONIGBERG:

24 Q. I see three rows of trees that were planted along

[WITNESS: Kimball]

1 there. Do you see what I'm looking at?

2 A. Yes, I do.

3 Q. Is this an example of the gradation you were just
4 talking about with Commissioner Scott, that the
5 smallest ones are closest to the road and taller ones
6 are closer to the treeline?

7 A. No. Actually, I think what I was saying to
8 Commissioner Scott is, he was asking, relative to, if
9 we were to put in larger trees, where would you put
10 them? I would recommend that you would put them up
11 closer to where the actual forest line is.

12 Q. Another question about the same picture. Is there a
13 point at which these trees can't be moved anymore? If
14 they get taken out, they just have to be killed?

15 A. You mean, to pick them up and transplant them someplace
16 else?

17 Q. Yes.

18 A. Obviously, nurseries pick up full-grown trees and move
19 them. But, if you were going to move these, it would
20 make sense probably to do it before they get too tall.

21 Q. How tall is "too tall"? Are we talking about the kind
22 of things --

23 A. Well, you would actually be focusing in on two things,
24 one is the root structure and the other is the height

[WITNESS: Kimball]

1 of the tree itself. It's not as though the plant is
2 forgetting its bottom half. But, if you were actually
3 planning on moving these, as opposed to moving this
4 duff over and then putting in new trees at the turbine
5 sites, because I think that's the two elements that you
6 have in play here. Is if these had grown for six or
7 eight or ten years, and then you were talking about
8 moving this material over to put it on the turbine
9 site, you're probably back at putting in new trees at
10 that point.

11 Q. Thank you. That's helpful. Do you have an
12 understanding of, under the Proposed Plan, how much of
13 what we see in this photo would be different? How
14 would this photo be different after the Plan is put in
15 place?

16 A. Well, as was discussed earlier this morning, what is
17 now being proposed is to leave this until you had to
18 restore it.

19 Q. Right. Assuming the first time they have to go up.

20 A. The first time. Then, you would see that this road
21 would be wider by 4 feet.

22 Q. Is that one, the first row of these trees? Is it the
23 second row of these trees? I don't have a good sense
24 of the scale of this picture.

[WITNESS: Kimball]

1 A. Well, I probably got the same sense as you do, because
2 I didn't take these photos. But if I look at the very
3 leading edge where you're coming into it, and if that's
4 12 feet, and then you came across on this distance
5 here, it looks like this is another 12 feet, roughly,
6 to me. Then, you would take, you know, whatever, a
7 portion of that to get the four feet.

8 CMSR. HONIGBERG: Thank you.

9 CHAIRMAN BURACK: Yes, Ms. Bailey.

10 MS. BAILEY: Thank you.

11 BY MS. BAILEY:

12 Q. You mentioned, or maybe in response to a question, that
13 the winter study suggests that the road was
14 facilitating access to predators?

15 A. That's right. The compaction makes it easier for them
16 to get up there.

17 Q. Yes. Do you have an opinion on, if the road were
18 widened to 16 feet, if that would make access greater?
19 Would there be more predators or would it be the same?

20 A. I'm -- you know, my professional judgment would be, is
21 the major factor is that you've compacted this out.
22 You can have that happen with skimobile -- Ski Doo
23 trails.

24 Q. So, it's not going to make a difference whether it's 12

[WITNESS: Kimball]

1 feet or 16 feet for this?

2 A. In the winter, no. And, in fact, I would -- Brookfield
3 can better answer this than I, but I suspect they would
4 not be going up with a crane in the middle of the
5 winter where they would really need to compact it out
6 to that width. But they would be going up to do
7 periodic servicing. So, I'm not sure. But, again, ask
8 Brookfield that question.

9 Q. Brookfield has already been on, though. So, what
10 you're saying then is, they're not likely to plow the
11 road to 16 feet in the winter?

12 A. I can't answer. But, I think, relative to the amount
13 of maintenance that they're doing right now is probably
14 giving more than adequate compaction for these
15 predators to move up at this time of year.

16 Q. So, it's not likely that there's going to be any
17 difference between 12 or 16?

18 A. No. But, obviously, I wouldn't expand that out to say
19 "it doesn't matter, if you went out to 300 feet."

20 MS. BAILEY: All right. Thank you.

21 CHAIRMAN BURACK: Thank you. Director
22 Muzzey.

23 BY DIR. MUZZEY:

24 Q. You spoke about the benefit of planting in the Tier 1

[WITNESS: Kimball]

1 areas near the turbines?

2 A. Yes. That was actually a recommendation that came from
3 Fish & Game. But, yes, we do see benefit in it.

4 Q. Right. And, the idea has been proposed that the
5 material taken from the access roadsides would be used
6 to accomplish that in the Tier 1 areas?

7 A. Yes. Let me just take a step back. When this proposal
8 came to us, Fish & Game and Brookfield had had
9 discussions for a while. And, Fish & Game was
10 basically recommending to try to reduce the area in the
11 turbine pads themselves. When we were asked to be
12 engaged in this, we took a look at it and said "Well,
13 actually, we don't want to just simply focus in on the
14 turbine pads. But are there some ways that we could
15 try to reduce the use of non-native species in this
16 area? And, are there ways that we could use some of
17 these trees in some of these linear quarters to try to
18 bring the forest in again, so that we're making it as
19 natural as possible?" And, that is the recommendation
20 that we made. Fish & Game concurred with our change in
21 that recommendation, and then proceeded forth. I'm not
22 sure that I answered your question, but I wanted to
23 give you the history.

24 Q. Sure. But my question is, do you think the Tier 1

[WITNESS: Kimball]

1 areas could be restored to a more natural state using
2 materials other than those that would be taken along
3 from the roadside, the roadsides of the access roads?

4 A. If I'm understanding your question is, would it be even
5 better if you left this stuff here and then brought
6 new --

7 Q. No. No. No, I'm just wondering if there are materials
8 and plantings available that could be used in those
9 Tier 1 areas that wouldn't necessarily come from the
10 roadsides? Could those materials be available from
11 other sources?

12 A. That would be in addition to what had been agreed to
13 the Plan.

14 Q. Uh-huh.

15 A. So, I'm not sure I fully understand your question. I'm
16 not trying to dodge it, but I'm not sure I fully
17 understand it either.

18 Q. Well, it grows out of the idea that was mentioned this
19 morning, that the roads would not be widened to 16 feet
20 unless it was necessary.

21 A. Yes.

22 Q. Now, the idea has also been proposed that there could
23 be additional plantings in the Tier 1 areas. So, if
24 the roads did not need to be widened to 16 feet, then

[WITNESS: Kimball]

1 that material wouldn't be available for the Tier 1
2 areas.

3 A. The way that it was described this morning, that is
4 correct.

5 Q. Right. So, my question then is, are there other
6 materials out there that could be appropriately used in
7 the Tier 1 areas?

8 A. Yes. You'd have to go get a new source at that point.

9 Q. But, I mean, that could be done without bringing in
10 materials from lower elevations or that type of thing
11 that wouldn't be desirable?

12 A. You would have to ask Brookfield that. But there is a
13 limited supply here, because they have used it.

14 DIR. MUZZEY: Okay. Thank you.

15 CHAIRMAN BURACK: Other questions from
16 the Committee members?

17 (No verbal response)

18 CHAIRMAN BURACK: Okay. Dr. Kimball, I
19 do have a few questions here.

20 BY CHAIRMAN BURACK:

21 Q. I just want to ask this again. I think I'm clear on
22 this, but I want to make sure that we all understand.
23 AMC participated in the negotiation of the High
24 Elevation Mitigation Settlement Agreement, with Fish &

[WITNESS: Kimball]

1 Game and Brookfield, or, actually, at the time,
2 Brookfield was not involved originally, it was the
3 original proponent to the Project, is that correct?

4 A. That is correct.

5 Q. Okay. And, having said that, AMC did not participate
6 in the preparation of the original High Elevation
7 Restoration Plan?

8 A. That is correct.

9 Q. All right. Thank you for that clarity here. However,
10 AMC has now been contacted, and you have now provided
11 input, with respect to this Revised High Elevation
12 Restoration Plan that's dated March 3, 2014?

13 A. That is correct.

14 Q. All right. Do you have a copy of that available to
15 you?

16 A. Yes, I do. I'll just have to move this stuff out of
17 the way.

18 Q. What I'd like to do is just walk through this with you,
19 and understand which elements of this you believe
20 should be, if the Committee were to approve this
21 requested amendment to the Certificate, which elements
22 in here you believe could and should appropriately be
23 implemented within the next growing season, and which
24 elements of this you would expect would not -- it would

[WITNESS: Kimball]

1 not be beneficial to implement in the next growing
2 season, but, presumably, instead when there is next a
3 need to widen the road?

4 A. Okay. And, you're talking about the March 3rd, 2014?

5 Q. I'm talking about the March 3, 2014.

6 A. Okay.

7 Q. I believe that is the very latest version of this
8 document.

9 A. Right. I just wanted to make sure I was looking at the
10 same document.

11 Q. All right. Are you aware of a later version of this
12 document?

13 A. No, I'm not. I just --

14 Q. Okay. Thank you.

15 CMSR. SCOTT: That's number 6, right?

16 CHAIRMAN BURACK: So, we're -- yes. I'm
17 actually looking at this as an exhibit to -- I'm seeing it
18 as an exhibit, I believe, to Tyler Phillips' testimony,
19 but I believe there is also -- the pre-filed testimony, I
20 believe this is also a separate exhibit. Do you have it?
21 It is Exhibit --

22 CMSR. HONIGBERG: I think it's the
23 Applicant 6.

24 CHAIRMAN BURACK: Applicant's Exhibit 6.

[WITNESS: Kimball]

1 So, if you all wish to look there.

2 BY CHAIRMAN BURACK:

3 Q. So, the first component of this Plan relates to
4 "Minimization of Temporary and Permanent Disturbances".
5 Can you -- and I believe this relates most directly to
6 this issue of taking the road from 12 feet out to
7 16 feet, and possibly wider in certain curves. Is that
8 correct?

9 A. That's correct.

10 Q. And, it is -- is it your opinion that that work would
11 best be done when there is an actual need to do it, in
12 terms of an actual event that requires taking cranes up
13 there, or should this be done sooner than that in
14 anticipation of such a need?

15 A. I think, as I answered that question before, I don't
16 think there's a clear-cut answer to which of those two
17 is most favorable, because it really depends upon the
18 time that you would need to come back. You could go
19 either way on that and be right or wrong. And, the
20 only reason that I say that is, is that, if it turns
21 out that you went a lot of years before you needed to
22 go from the 16 to the 12, then it may be preferable for
23 Option A. If it turns out that, within two or three
24 years, then it would preferable to just move that stuff

[WITNESS: Kimball]

1 right now. I can't tell you when the next repair job
2 is going to require that.

3 Q. If -- and let me just ask you a hypothetical situation
4 here. If the need were to arise late in the season,
5 late in a summer season, for example, and you had to
6 peel the road back in areas to 16 feet, do you -- are
7 you compromised in your ability to then take those
8 soils and those trees and replant them at higher
9 elevations that late in the season or is that not going
10 to matter?

11 A. The thing that's going to compromise you relative to
12 transplanting the trees is that typically, and
13 particularly with balsam fir, and this is well known,
14 because balsam fir is one of the most commonly used
15 species for Christmas trees and so on and so forth that
16 is reared. But you typically want to be doing that
17 transplanting before budbreak or when it's gone into
18 dormancy in the fall. You typically do not want to be
19 transplanting them after budbreak, because you'll get a
20 better survival rate.

21 Q. And, budbreak would typically occur when, early spring?

22 A. At those higher elevations there, it depends on the
23 time that spring comes in, but it could be late May,
24 into early mid June.

[WITNESS: Kimball]

1 Q. So, you'd either want to transplant prior to that time
2 or --

3 A. That is correct. And, that is why, when Brookfield
4 approached us and they wanted to try to get this plan
5 approved, they actually wanted to put these trees in
6 before budbreak.

7 Q. And, if you can't get it done before budbreak, is there
8 a time in the fall when you can?

9 A. Then it would make more sense to wait till fall to put
10 them in, when the tree has gone dormant again. And,
11 that's pretty standard for transplanting a lot of
12 trees.

13 Q. Thank you. Okay. Is there anything further with
14 respect to Item 1 of this Plan that you have further
15 opinions about with respect to the timing?

16 A. No, I don't.

17 Q. Okay. The next second item that we have not really had
18 any questions or discussion about relates to
19 "Restricted Access". My understanding is, and I'm
20 wondering if this is your understanding as well, that
21 the permanent access gates are, in fact, already in
22 place?

23 A. That's my understanding.

24 Q. So, would there, from your perspective, would there be

[WITNESS: Kimball]

1 any change or would there be any change between the
2 original Plan and this amended Plan?

3 A. No.

4 Q. Okay. Thank you. The next item is the "Stabilization
5 and Re-vegetation" piece. Can you speak to what you
6 think the best timing might be on these efforts?

7 A. I think the key thing here was not so much on timing,
8 as to get away from using grass, which is what we
9 focused in on here. But, again, if you were going to
10 do this, and if you're laying down mulch, then you're
11 not concerned about when the grass can come in to play
12 its role in erosion control. So, you have more
13 flexibility there, when you're using mulch over grass.

14 Q. Let's talk about this grass issue for a moment. Is it
15 your understanding that this Plan would require that
16 the places where grass is planted now have that grass
17 taken up and replaced or covered with mulch? Or, is
18 this simply a requirement that, as new areas are
19 planted, that they be planted with mulch and not with
20 grass?

21 A. The latter.

22 Q. Thank you. And, what about the use of straw? There
23 was some discussion of straw.

24 A. Yes. I mean, hay is basically cut where it still has

[WITNESS: Kimball]

1 the seed with it. So, you have the potential, again,
2 introducing species that are not normally there. Straw
3 is usually going to come in without the seed, and the
4 reasons why we would recommend straw over hay.

5 Q. Thank you. Okay. That was the first part of the
6 "Stabilization and Re-Vegetation" piece. And, now,
7 moving to the next page, the top of the second page --
8 or, the next page of the document that's discussing
9 this issue of stabilization/re-vegetation, is where we
10 get to this discussion that we've had some questions on
11 already relating to planting in three different areas;
12 one on portions of the turbine pads, another in areas
13 where there is no natural or planted seedlings present,
14 known as the "Tier 2" areas, and the third in areas
15 where natural seedlings may exist, those are the Tier 3
16 areas. What would be your recommendation in terms of
17 the timing of these efforts?

18 A. Tier 2 and Tier 3, you could do any time. And, the
19 times that you would want to put those trees in, as I
20 mentioned before, is when the trees are dormant is the
21 best time to be putting those in. Tier 1, if I am
22 recalling correctly, is somewhat dependent upon getting
23 the organic material from the road to move it up onto
24 the pads. And, consequently, that's tied in somewhat

[WITNESS: Kimball]

1 with the timing that you would put those trees in at
2 that site, at those sites.

3 Q. So, to be clear then, what you're suggesting here is
4 that it's your understanding that what the agreement
5 contemplates is that the only soils that would be used
6 for replanting on the turbine pads are soils or other
7 materials that would come off of the areas cleared on
8 the roadways?

9 A. It is my understanding that they may need to try to get
10 additional material, but the quantity would be
11 dependent as you're making those changes, is my
12 understanding.

13 Q. If there were additional materials available, would
14 there be any reason not to go ahead and plant this
15 coming spring in the turbine pads?

16 A. I would see no reasons.

17 Q. Thank you. Let's turn then to these subsections here,
18 just looking to see if you have any further thoughts on
19 these pieces. The first is the "Grading" piece, that
20 describes how materials would be graded and stockpiled,
21 and also does mention "supplemental native soils
22 procured, if needed." And, do you have any further
23 comments or recommendations with respect to the timing
24 on that or other aspects of that?

[WITNESS: Kimball]

1 A. I do not.

2 Q. What about with respect to "Soil Preparation"? Do you
3 have any further comments or recommendations on that?

4 A. No. I mean, I think the only thing here is is that you
5 want to essentially be trying to fertilize to favor
6 trees over a fertilization scheme that might have
7 favored before for grasses.

8 Q. Let's turn to next the item, "Tree Seedlings for
9 Restoration". You've answered a number of questions
10 about this. This is recommending that typically "3 to
11 4 year maturity, balsam fir and red spruce be planted
12 at a spacing of approximately 7 feet on center". Is
13 that consistent with what your recommendation would be?

14 A. Actually, this was a recommendation that came out with
15 Fish & Game, but we have no concerns with it.

16 Q. Thank you. And, let's turn to Item (d) here now,
17 "Moisture for" -- or, I'm sorry, "Mulch for Moisture
18 Retention and Stabilization". Do you have any
19 particular comments with respect to this section?

20 A. Actually, I think the way that we're recommending
21 mulch, *etcetera*, as opposed to just putting down grass,
22 would also reduce the risk of freeze-thaw ejecting --

23 (Court reporter interruption.)

24 **CONTINUED BY WITNESS KIMBALL:**

[WITNESS: Kimball]

1 A. Freeze-thaw cycles ejecting the plants. When you don't
2 have good protective organic soils on top of that, your
3 soils can start to change temperature rather quick, and
4 that can set up, particularly in a moist environment
5 like this, where you get a lot freeze-thaw action,
6 which can eject the seedlings. And, so, putting mulch
7 down can reduce that impact.

8 BY CHAIRMAN BURACK:

9 Q. Thank you.

10 A. And, that is commonly used in nurseries, I believe, for
11 the same reasons, yes.

12 Q. And, the thickness of the mulch that we're talking
13 about here is roughly?

14 A. I think four inches, I believe, yes.

15 Q. Thank you. Could you also speak to in the -- toward
16 the bottom half of that second paragraph in this
17 Subsection (d) on "Mulch for Moisture Retention and
18 Stabilization". There's a line that reads "As an
19 alternative, straw mulch will be applied where new
20 organic material is placed or disturbed and will have
21 the additional benefit of lowering the albedo", that's
22 a-l-b-e-d-o, "and retaining moisture of the organic
23 material." Can you help us understand what albedo is
24 in this context?

[WITNESS: Kimball]

1 A. Albedo is the reflectance back out of light.

2 Q. So, straw mulch would actually reflect less than what?

3 A. Essentially, what you're going to have here is a
4 combination of the straw mulch, as well as the darker
5 organic material underneath. And, it's going to
6 approximate a little bit closer to what the natural
7 soil would be out there.

8 Q. And as opposed to what as an alternative?

9 A. If you just have straw mulch out there and grass coming
10 up through, because this -- basically, your organic
11 layer has been removed when they constructed the road.
12 So, what you're doing now is coming back and laying
13 over organic material that is closer to what the parent
14 top layer of the soil would have been. And, the straw
15 mulch here is, from my recollection here, is going to
16 be used in some areas where, if you're not putting that
17 down, you're using that for erosion control, but you're
18 not using hay.

19 Q. Thank you. Let's just turn to the last page here of
20 this document then, at least the text, without -- not
21 looking at the attachments. The section on
22 "Monitoring" that describes "the Environmental Monitor
23 will include qualitative checks on planted areas during
24 inspections and determining the need for replanting."

[WITNESS: Kimball]

1 And, looking for a "annual monitoring of seedling
2 survival for two years". And, looking at a "75 percent
3 survival rate to determine successful tree
4 establishment". What would be your recommendation on
5 the timing of this kind of review and monitoring?

6 A. My interpretation of this is is that, if you were at
7 the end of two years and you did not have 75 percent
8 survival, then you're monitoring would need to continue
9 on until you got 75 percent, if my interpretation is
10 correct, because we're not the monitoring agency, nor
11 do we have any powers to monitor. If my interpretation
12 is wrong there, and just at the end of two years
13 nothing happens, then that would be -- that would not
14 be appropriate. But, if you got 75 percent survival,
15 and you are going to start to get natural regeneration
16 in this area, this is not unreasonable.

17 Q. Thank you. And, then, inherent in that, what you just
18 said, I understand to be a notion that, if you don't
19 get 75 percent survival, you would need to plant new
20 trees in order to have additional trees to monitor to
21 try to get there. Is that right?

22 A. That is correct.

23 Q. And, then, the last section relates to "Maintenance".
24 And, I think this is primarily related to maintenance

[WITNESS: Kimball]

1 of the roadway itself. What's your understanding, and
2 the extent to which that might require trimming of
3 trees, what's your understanding of what the timing
4 would be on these kinds of activities?

5 A. I don't know what the timing is. But one of the
6 suggestions that we did make is, in some areas, where
7 you just worried about clearance of vehicles versus a
8 tree being there, it made more sense to just cut the
9 tree off at several feet high, so that you gain the
10 clearance without having to remove the root structure.
11 And, these being predominantly balsam fir, anybody
12 that's climbed in the mountains and you get into the
13 krummholtz, where those trees are constantly being
14 trimmed, that's the same species we're talking about
15 here. And, if you go along some of the logging roads
16 where they will clear adjacent to it for visibility,
17 they will cut these trees off at these heights, but the
18 trees don't die. So, at least what you're doing is
19 getting that growth to come back quicker.

20 Q. Thank you. I just want to turn finally to your
21 supplemental testimony. And, there was a question
22 asked of you that reads, and I'm just looking to see
23 what -- it's on the penultimate page of your
24 supplemental testimony dated October 23, 2014. There's

[WITNESS: Kimball]

1 a rather lengthy question that reads "Do you agree with
2 Dr. Kirkpatrick", I believe it may be "Dr. Kilpatrick,
3 "that "in his opinion that the proposed changes to the
4 plan will do nothing to improve the efficacy of the
5 plan and may actually make things worse" and he goes
6 onto say "In addition, the high elevation restoration
7 plan associated with this mitigation seems to suffer
8 from lack of planning, poor implementation, development
9 of protocols that are based on beliefs rather than
10 knowledge."?"

11 That was the question. I don't want to
12 go through your entire response to that. I think it
13 speaks for itself. But I'm particularly interested in
14 a statement that you made that reads "NHFG", New
15 Hampshire Fish & Game, "and AMC's proposed changes to
16 the amended HER", which is the document we've just been
17 talking about here, "are a reasonable form of what is
18 commonly known as adaptive management in restoration
19 work." Can you explain further what you mean by that?
20 What is "adaptive management" in this context?

21 A. Well, "adaptive management" is that you set out a goal
22 as to what you're trying to achieve. You've learned
23 certain elements as you've started to proceed that
24 certain things are working. And, there may be certain

[WITNESS: Kimball]

1 things that you don't need to continue to do. And, you
2 would take that information, and if you're going to
3 revise the plan, you would take that information into
4 account and make some revisions to the plan.

5 Q. And, the revisions would be made in order to try to
6 achieve a better result than might have been achieved
7 by simply sticking with the original plan?

8 A. That is correct. That is correct.

9 Q. Thank you. And, so, I gather then that it is your
10 opinion that the Amended HER Plan that we have just
11 walked through the details of, is -- would be an
12 improvement upon the existing High Elevation
13 Restoration Plan?

14 A. That is correct.

15 CHAIRMAN BURACK: Thank you. Are there
16 other questions from members of the panel? Commissioner
17 Scott.

18 CMSR. SCOTT: I have a quick follow-up,
19 hopefully, on the issue of the reuse of organic material.

20 BY CMSR. SCOTT:

21 Q. Is there an issue or a problem if the grass-containing
22 material was reused also? Does that pose a problem?

23 A. I would not recommend using it.

24 Q. And, in your opinion, does this revised plan envision

[WITNESS: Kimball]

1 using that?

2 A. My understanding is a lot of that material that would
3 be reused would be in this piece that we've been
4 looking at in this photos here, which I do not believe
5 have been grassed. I may be incorrect on that. But
6 they obviously have not set grass down as of this year.

7 Q. So, in your view, the grass -- replanting of -- reuse
8 of material with grass is not an issue, it sounds like,
9 in this context?

10 A. Yes.

11 Q. And, my other question is, Commissioner Burack and I
12 took slightly different tacks about, you know, "should
13 we require the widening only when and if needed or
14 should we do it now?" And, you expressed some
15 ambivalence it seemed. Is the -- the benefit, in your
16 opinion, to doing now, that would be ensuring that the
17 seedlings can be replanted without issue?

18 A. Yes. I mean, I think the advantage of doing it now
19 would be that you would accelerate the time over which
20 the pads would recover. Whereas, what you have in the
21 road right now is you don't have any idea at all
22 whether you're going to pull that up in one year or 20
23 years from now. So, you'll have a better known outcome
24 going to the pads now than you do with the road. But,

[WITNESS: Kimball]

1 if it turned out that they never had to change the
2 road, then why undo what you just did? And, that's the
3 trade-off that you have out there. And, I wish I could
4 give you a clean answer between those two, but that's
5 the trade-off that exists there.

6 Q. Not part of the plan right now, but, if we were to
7 require new plantings in the pads, and not to change --
8 not to dig up the existing until it's needed, would
9 that be the best of both worlds, in your opinion?

10 A. It would be hard not to say anything but "yes, that
11 would be the best of both worlds."

12 CMSR. SCOTT: Thank you.

13 CHAIRMAN BURACK: Attorney Iacopino.

14 MR. IACOPINO: Thank you.

15 BY MR. IACOPINO:

16 Q. Do you believe there would be sufficient indigenous
17 material, though, to do that in the best of both
18 worlds, I mean, in that scenario?

19 A. That's the challenge. Because we are, when you get up
20 into the higher elevation areas, there's a shortage of
21 indigenous material out there. And, you could get
22 stump grindings, those types of things, from lower
23 elevation, but the more that you're moving down, the
24 greater you increase the risk of bringing up species

[WITNESS: Kimball]

1 that aren't naturally there. And, so, you're playing
2 that risk factor.

3 But could you go down and just get
4 balsam fir trees from lower elevations and grind them
5 up and bring them up? Yes, you could. If you start
6 bringing up the roots as well, then there is the
7 potential that you would start to bring up species that
8 may not normally be there. And, then, the second
9 question to that is some of these species you may bring
10 up and they just can't survive in that environment, but
11 you're running that experiment, which is not the kind
12 of experiment you normally want to be running in a
13 restoration effort.

14 Q. Okay. Let me ask you this. At the time that the AMC
15 signed off on Applicant's Exhibit 5, which is the
16 Amendment to the High Elevation Mitigation Settlement
17 Agreement, what was your understanding of what -- how
18 this was going -- of how it would be accomplished, if
19 approved? Did you understand that it would be on a "as
20 needed" basis, as has been discussed in the prior
21 testimony today, or did you think that the roads would
22 all just be rolled back to the 16 feet and the new
23 plantings in the Tier 1 areas and the whole program
24 undertaken as one development?

[WITNESS: Kimball]

1 A. I was under the impression that they were going to
2 actually go to 16 feet now.

3 MR. IACOPINO: Okay. Thank you. No
4 further questions.

5 CHAIRMAN BURACK: Thank you. I think,
6 in light of the hour, we are going to take a break here
7 now. It is ten minutes of 1:00, by the -- or so, by the
8 clock in the back of the room, which I realize may be a
9 couple of minutes slow even. But what I'd like to do, if
10 we can, is to keep ourselves to roughly a 45-minute break,
11 and be back here, if we possibly can, by 1:30, no later
12 than 1:35, so that we can resume our proceedings. And, I
13 believe that, in the interest of time, what I'd like to be
14 able to do next, when we come back, is turn to
15 Windaction's --

16 CMSR. HONIGBERG: Are they going to have
17 redirect?

18 CHAIRMAN BURACK: Are you -- do you have
19 any need for redirect, Attorney Pachios?

20 MR. PACHIOS: I love the way you posed
21 that, Mr. Chairman.

22 (Laughter.)

23 MR. PACHIOS: I may want to ask two
24 questions or three. But I ask the questions very quickly.

[WITNESS: Kimball]

1 CHAIRMAN BURACK: We'll see what we can
2 do to accommodate some very brief redirect of Dr. Kimball
3 when we return. But, then, again, I'd like to be able to
4 turn to Windaction's testimony, and then to Counsel for
5 the Public's witnesses as well. Because, again, we'd very
6 much like to see if we can get to resolution on this by
7 4:00 this afternoon. Okay. Thank you all.

8 **(Lunch recess taken at 12:52 p.m. and**
9 **the hearing resumed at 1:35 p.m.)**

10 CHAIRMAN BURACK: Okay, everyone, let's
11 resume here.

12 Attorney Pachios, do you, in fact, have
13 any very brief redirect, or can we dispense with that?

14 MR. PACHIOS: No, we can't dispense with
15 it, Mr. Chairman. I'll get fired by my client.

16 CHAIRMAN BURACK: Well, we'll ask Dr.
17 Kimball to return briefly to the stand here.

18 **REDIRECT EXAMINATION**

19 **BY MR. PACHIOS:**

20 Q. Dr. Kimball, where is the topsoil going to come -- in
21 the plan that you've agreed to, where is the topsoil
22 going to come from that would go under the turbine
23 pads?

24 A. It was my understanding that that topsoil and so forth

[WITNESS: Kimball]

1 would come from that 4-foot stretch, was my
2 understanding.

3 Q. And is it important to you that the topsoil that goes
4 in the turbine area come from a high-elevation area?

5 A. That is preferable, if there is sufficient supply.

6 Q. And do you know of another supply other than the
7 topsoil that's on the roadway in the high-elevation
8 area?

9 A. I'm not saying there isn't one there, but I don't know
10 of any.

11 Q. You don't know of any other one.

12 A. But I haven't looked, either.

13 Q. Yeah.

14 A. But it would be hard to find?

15 Q. It would be hard to find.

16 A. Yes.

17 Q. And it would be preferable to use high-elevation
18 topsoil to go under turbine pads?

19 A. That is the most preferable way to proceed.

20 Q. Okay. And what is -- is there a danger of using
21 topsoil from some other low-elevation source?

22 A. The risk that you're running when you're using foreign
23 material is that you'd have seed forests and so forth
24 with species that normally don't belong up there.

[WITNESS: Kimball]

1 Q. So, would that be -- that could be -- as I understand
2 your testimony, that could be a problem if you couldn't
3 use the topsoil on the roadway above 2700 feet that's
4 there now that you would roll back. If you couldn't
5 use that on the turbine pads, that could be a problem;
6 right?

7 A. Yes, it could be.

8 Q. Yeah, okay.

9 A. I don't want to say it will be, but you are introducing
10 species up there that may have a difficult time making
11 a go of it because it's a tough environment. But
12 you're running that risk.

13 Q. Right. Okay.

14 You -- AMC and New Hampshire Fish & Game
15 and the Applicant are signatories to the existing
16 agreement; correct?

17 A. Yes. You're talking about the settlement agreement?

18 Q. Yes.

19 A. Yes.

20 Q. The existing agreement.

21 A. Yup.

22 Q. Now, the same three parties are seeking to amend the
23 agreement; correct? Or we're -- the Applicant is
24 seeking to amend.

[WITNESS: Kimball]

1 A. That's correct.

2 Q. I'm sorry. The Applicant is seeking to amend it. And
3 the agreement has been amended -- has been executed by
4 the same three parties; right?

5 A. That is correct.

6 Q. Okay. So, is it fair to say that Appalachian Mountain
7 Club is satisfied with the agreement that is before the
8 SEC for approval?

9 A. Yes, or we would not have signed it.

10 Q. Okay. I have no further questions.

11 CHAIRMAN BURACK: Thank you. What I'd
12 like to do now is -- Dr. Kimball, thank you very much --
13 is turn to Ms. Linowes to present your testimony.

14 (Witness Kimball excused.)

15 MS. LINOWES: Thank you.

16 CHAIRMAN BURACK: And Susan will swear
17 you in here.

18 **(WHEREUPON, LISA LINOWES was duly sworn**
19 **and cautioned by the Court Reporter.)**

20 CHAIRMAN BURACK: Please proceed.

21 WITNESS LINOWES: Thank you, Mr.

22 Chairman.

23 **LISA LINOWES, SWORN**

24 **DIRECT EXAMINATION STATEMENT**

[WITNESS: Linowes]

1 WITNESS LINOWES: For the record, my
2 name is Lisa Linowes. The testimony that is before you I
3 submitted on September 15, 2014. And there are two minor
4 corrections that I would like to make to the testimony, if
5 that would be okay.

6 CHAIRMAN BURACK: Why don't you tell us
7 where the corrections are that you would make.

8 WITNESS LINOWES: Okay. The first one
9 is on Page 3 of 6. It's a typographical error. The
10 second line on the top of the page should read, "require
11 revegetated areas along the road to be rolled back." That
12 should be in past tense.

13 CHAIRMAN BURACK: "Rolled back," not
14 "roll back."

15 WITNESS LINOWES: Correct.

16 CHAIRMAN BURACK: Thank you.

17 WITNESS LINOWES: Yes, that's right.

18 And the other, on Page 5 of 6, there
19 is -- in the fourth paragraph there are -- just under the
20 indented paragraph I have a Footnote 4 under the last
21 sentence. That Footnote 4 really should refer not to that
22 last sentence, but it should be pulled up to... it should
23 be pulled back to the sentence just prior; so, after the
24 word "marten." That last sentence was my own testimony

[WITNESS: Linowes]

1 and not reflective of Mr. Gravel's or Mr. Pelletier's
2 testimony.

3 And other than that, I'm ready for any
4 questions.

5 CHAIRMAN BURACK: So you adopt this
6 testimony as if you were giving it in full today?

7 WITNESS LINOWES: That's correct.

8 CHAIRMAN BURACK: Thank you.

9 All right. We will turn first to the
10 Applicant and then to Counsel for the Public for
11 cross-examination here.

12 **CROSS-EXAMINATION**

13 **BY MR. PACHIOS:**

14 Q. Ms. Linowes, you're not a biologist; right?

15 A. That's correct.

16 Q. You're not a forester.

17 A. Correct.

18 Q. You have no particular training or experience in the
19 scientific fields that are applicable to the issues
20 here today -- that is, the wind park and its impacts --
21 is that correct?

22 A. With regard to biology and forestry, that's correct.
23 With regard to wind energy generation, the siting of
24 projects, that is not correct.

[WITNESS: Linowes]

1 Q. Well, when I asked you those questions, you implied
2 that you didn't bring to the table scientific
3 information, but that you were in the business of
4 tracking wind energy development and its general
5 impacts. And specifically, you said, The only area
6 that you will hear me talk about my opinion, which is
7 an informed opinion, is when I'm talking to you about
8 the policies associated with renewable energy --
9 specifically the renewable energy market, the REC
10 market, and the costs and economics of wind.

11 Do you say that's inaccurate what you
12 told me?

13 A. No, that's not inaccurate. When we were discussing
14 that -- and to be clear, that was during one of the
15 technical sessions -- that was talking -- you were
16 specifically asking me about biology and -- the biology
17 and the forestry. I am well-schooled in the issues
18 surrounding the impacts of wind energy siting.

19 Now, it is true that I speak -- I'm
20 invited to speak on a fairly regular basis on the
21 issues related to the REC market, renewable energy
22 credit market, RPS policies and federal subsidiaries as
23 they apply to wind energy and other renewables.

24 Q. Well, which answer do you prefer? The one that I just

[WITNESS: Linowes]

1 read that you gave me at the tech session or the one
2 you're giving now? I'll take either one.

3 A. The one I'm giving you now.

4 Q. Okay. So that's a different answer.

5 MR. PACHIOS: Okay. I have no further
6 questions.

7 WITNESS LINOWES: Thank you.

8 **CROSS-EXAMINATION**

9 **BY MS. MALONEY:**

10 Q. Hi. Good afternoon. Could you summarize your points,
11 the weak points you think are in the high-elevation
12 restoration plan.

13 A. The biggest issue that I have with it is that it's
14 not -- it appears that the Applicant, with or without
15 Fish & Game's -- it's not clear to me how much Fish &
16 Game participated in this -- but did not seem to apply
17 any analysis when it decided where the siting of the
18 trees would be. They basically said, Oh, here, we'll
19 put -- the premise was: We need to revegetate in a way
20 that the Project can still operate, rather than how can
21 the Project operate around the vegetation plans. And
22 so the -- I don't know where there has been, and I
23 can't tell where there's been compromise there. It's
24 more along the lines of: We can't work with this.

[WITNESS: Linowes]

1 Let's change the plan. And then, when that plan was
2 proposed, there was no real analysis on the best places
3 to put the trees, just where can we put the trees to
4 make up for it.

5 Q. And you're basing that on reviewing the plans? Or what
6 have you --

7 A. Through the plans and the testimony that's been -- the
8 testimony that's been filed and the technical sessions
9 that we've had.

10 The other issue that I have with it is
11 there has been no substantiation as to how often this
12 is going to be needed to be rolled back. And there's
13 an awful lot of effort here for a potential zero chance
14 of having it be done. We've heard of 50 lightning
15 strikes, of which only one required a tractor vehicle
16 to come in that would actually impact the size of the
17 road, the road issue. So it's not like this is a
18 common occurrence. The Project has been operating for
19 two years, going on three years in December.

20 Q. You indicate that your experience is with different
21 wind farms. That's what you were bringing to the table
22 here. Do you have any additional information or any
23 study of any wind farms that would indicate how many
24 times are these kinds of major repairs?

[WITNESS: Linowes]

1 A. If you listen to the wind industry -- okay. First of
2 all, let me say that the wind industry does not make
3 that information publicly available. So the only
4 information that we do have are cases where there's
5 been a failure and it's been picked up in the press
6 because someone nearby saw it happen or it just got to
7 the press. So there's no way to really fully
8 understand the number of incidents where we've had
9 catastrophic failures, and when those catastrophic
10 failures occur, how often -- actually, if it were
11 catastrophic, it would require a tractor-trailer. I
12 just have no way of knowing that. Apparently, these
13 impacts from natural weather conditions -- icing,
14 lightning -- happen far more frequently than we are
15 aware, because that would never get -- no one was hurt;
16 there was no obvious damage to any public. So it's not
17 going to get reported in any way unless the Applicant
18 or the owner of the Project reports it. So I have no
19 way of knowing that.

20 MS. MALONEY: Okay. Thank you. I have
21 nothing further.

22 CHAIRMAN BURACK: No further questions?
23 Very good.

24 Thank you very much, Ms. Linowes.

[WITNESS: Linowes]

1 WITNESS LINOWES: Thank you.

2 CHAIRMAN BURACK: Oh, I'm sorry. I'm
3 sorry. I spoke too soon. It's a good thing that I have
4 Commissioner Honigberg next to me, because he and others
5 on the panel may well have questions for you.

6 So let's turn to the panel here and see
7 if panel members have questions. And Commissioner
8 Honigberg does have questions.

9 CMSR. HONIGBERG: I was afraid I was
10 going to lose my chance, Mr. Chairman.

11 **INTERROGATORIES BY CMSR. HONIGBERG:**

12 Q. Ms. Linowes, I'm interested in asking you something you
13 can't possibly know. But you are here opposing this
14 proposal, and you obviously think that there's
15 something else going on here. I have to tell you, my
16 immediate reaction to what I hear from the Applicant is
17 that they feel like they have to do this because
18 there's a risk, and that they wouldn't be doing it if
19 they didn't think there's a risk because it's going to
20 cost them a lot of money to do this. So I'm wondering
21 why you think they want to do this. Because this will
22 cost them a significant amount of money to make the
23 changes that they're proposing here. So, what do you
24 think is going on?

[WITNESS: Linowes]

1 A. Well, that's a really good question. I think it's the
2 opposite. If the Project -- the real concern is that
3 it's going to cost a lot of money to keep the plan as
4 it currently is. They're anticipating -- they have
5 some kind of expectation that there's going to be a
6 failure, and they're going to have to roll back the
7 road and then revegetate again. It's that cost -- you
8 know, where it's only happened once early in the
9 project. The expectation is it's going to happen
10 repeatedly and that that cost over and over again to
11 roll back and revegetate is the issue. I think this is
12 going to reduce costs for them significantly, or they
13 think it will.

14 Q. And the cost that it will reduce is the revegetation
15 cost.

16 A. Correct.

17 Q. Okay.

18 A. And if I may, there was -- I mean, the worry -- part of
19 what I am really concerned about here, and maybe not --
20 let's not talk about this application, but in general.
21 Coming back to the SEC after so much time and effort
22 was put into defining what this Project will be back
23 years ago, and then to come back and say we can't work
24 with something on an agreement that was fundamental to

[WITNESS: Linowes]

1 whether or not the Project was approved, that is what
2 is driving me today. And I worry that there will be a
3 precedent set in the future as well.

4 Q. I understand that concern, and I certainly appreciate
5 the notion that there was a settlement here, and you're
6 asking to reopen that arrangement. But I'm wondering
7 what you think an appropriate course of action for an
8 Applicant is, then, if, after operating for a certain
9 amount of time they determine that there's something
10 wrong, or a better solution exists to the problem that
11 they have. How should they proceed in that
12 circumstance?

13 A. That's a very good question. I think the only avenue
14 is to come back to the SEC. What I would have hoped in
15 this circumstance is that more thought would have gone
16 into the plan and more justification for why they had
17 to go take this route. And I don't think that -- I
18 mean, my testimony speaks to the fact that there hasn't
19 been enough justification to show the risk is high.
20 And if the risk is high, there hasn't been enough
21 thought that went into the actual layout of the plan.

22 We heard that there is a way to have --
23 there is a way to lay out where these trees should go
24 so that they have the best opportunity for survival. I

[WITNESS: Linowes]

1 think we heard that putting them on the turbine pads is
2 probably not -- well, I think you might hear later this
3 afternoon as well, that exposes them to the most amount
4 of weather up there, and maybe that's not the best
5 place to put them. But is that the only place you
6 could put them? I don't know.

7 So that's what I would expect. And I
8 hope that this Committee would consider placing
9 conditions on -- rather than approving the plan as it
10 is, if that's where this is going, place conditions
11 that more work be done. We have time for more work to
12 be done about the best locations for where these trees
13 should be.

14 CMSR. HONIGBERG: Thank you very much.

15 WITNESS LINOWES: Thank you.

16 CHAIRMAN BURACK: Commissioner Scott.

17 CMSR. SCOTT: Thank you.

18 **INTERROGATORIES BY CMSR. SCOTT:**

19 Q. And good afternoon. Thanks for coming. Obviously, one
20 of the questions I've been grappling with is in the
21 context of, if we do agree to the amendment in the
22 widening, you know, my question I've been asking
23 everybody is timing and when. Do you have an opinion
24 on that?

[WITNESS: Linowes]

1 A. Yes, I do. I mean, I don't have an objection -- well,
2 my objection to the idea of waiting until the event
3 occurs, I do have an objection to that, because if you
4 do have a failure, you're going to want to expedite
5 that process. If you can get the crane up there
6 tomorrow, you'll do it, which means that those trees
7 that are sited there today will be wiped out. And I
8 think that at least that 4-foot width, let's move the
9 trees today while they're young, if they're alive, and
10 give them the best opportunity to survive, rather than
11 leave them there, and then, in the heat of trying to
12 resolve a failure on the turbines, we just wipe them
13 out. I don't think that that's a necessary step. And
14 so my recommendation is to do it as soon as possible,
15 if you're going to do it.

16 CMSR. SCOTT: Thank you.

17 CHAIRMAN BURACK: Thank you. Other
18 questions from members of the panel?

19 (No verbal response)

20 CHAIRMAN BURACK: Very good. Thank you,
21 Ms. Linowes.

22 WITNESS LINOWES: Thank you very much.

23 CHAIRMAN BURACK: All right. We will
24 now turn to Counsel for the Public to present your

[WITNESS PANEL: Kilpatrick~Gray]

1 witnesses.

2 MS. MALONEY: Counsel for the Public
3 would call Dr. William Kimball and Christopher Gray --
4 William Kilpatrick and Christopher Gray. Sorry.

5 CHAIRMAN BURACK: While they're coming
6 up, I just want to confirm that Commissioner Samson is not
7 here. He's not arrived. I do not see him here.

8 MR. IACOPINO: He also sent a letter
9 indicating he was not going to participate any further.

10 CHAIRMAN BURACK: He did? Okay. So we
11 do not anticipate Commissioner Samson's further
12 involvement or participation in the proceeding.

13 **(WHEREUPON, WILLIAM KILPATRICK AND**
14 **CHRISTOPHER GRAY were duly sworn and**
15 **cautioned by the Court Reporter.)**

16 **WILLIAM KILPATRICK, SWORN**

17 **CHRISTOPHER GRAY, SWORN**

18 **DIRECT EXAMINATION**

19 **BY MS. MALONEY:**

20 Q. Dr. Kilpatrick, you submitted both your testimony and
21 the report dated September 15, 2014, which is Counsel
22 for the Public's Exhibit 1, and also Supplemental
23 Testimony dated 10/23/2014. Do you adopt that
24 testimony as part of your testimony today?

[WITNESS PANEL: Kilpatrick~Gray]

1 A. (Dr. Kilpatrick) I do.

2 Q. And Mr. Gray, you submitted testimony to the Committee
3 on September 15, 2014. Do you adopt that testimony as
4 your testimony before the Committee today?

5 A. (Mr. Gray) I do.

6 CHAIRMAN BURACK: Thank you. Your
7 witnesses are ready now?

8 MS. MALONEY: They're ready.

9 CHAIRMAN BURACK: Very good. Attorney
10 Pachios.

11 MR. IACOPINO: Actually, I believe we
12 were going to have Ms. Linowes begin cross-examination.

13 CHAIRMAN BURACK: Oh, were we I'm sorry?
14 Yes, we were. You're right. Ms. Linowes.

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

16 **CROSS-EXAMINATION**

17 **BY MS. LINOWES:**

18 Q. Mr. Gray, in your testimony, which is Exhibit PC 2, on
19 Page 4, Lines 3 through 8, you state that when you
20 visited the site, that the replanted trees appeared
21 "commonly browsed" -- that's a quote -- and that,
22 "There were stretches in the replanting where over 50
23 percent of the trees were dead and/or missing
24 completely." Now, that's different from what

[WITNESS PANEL: Kilpatrick~Gray]

1 Mr. Phillips testified to earlier today. Now, he also
2 said that he was kind of eyeballing it. And I would
3 like to have you comment on what you saw when you were
4 at the site.

5 A. (Mr. Gray) Yes. So, on the site visit, obviously, all
6 the -- or the majority of the new treatment with the
7 bark grindings, the majority of those trees were still
8 alive because they had been in one to two months. But
9 with the older, the previous planting method with the
10 grass that had been grown up, there was -- there were
11 definitely stretches -- obviously, this is just
12 qualitative -- but there were obvious large stretches
13 where over 50 percent of the trees had -- were missing,
14 for the most part. Some of them were, you know, just
15 dead trees. But most of them were missing entirely.
16 And especially the higher we went up, it appeared that
17 there was significant "browsing," with a lot of the --
18 a lot of these saplings had no branches off the main
19 stem. Either -- you know, there might have been a few
20 up on top, probably growth from that summer, and then
21 some down probably below where the snow level was, but
22 nothing in between. And that was evident in a number
23 of places that we stopped.

24 Q. So, now, Mr. Tyler [sic] testified that he thought that

[WITNESS PANEL: Kilpatrick~Gray]

1 the Project had satisfied the 75-percent threshold
2 survival rate of the two-year or --

3 (Court Reporter interrupts.)

4 Q. The 75-percent threshold for survival rate at the site.
5 So, you would disagree with that?

6 A. (Mr. Gray) Obviously, this is just my -- what I
7 visually -- from what I saw. I would say it might be
8 below 75 percent. But it would be ideal to have a more
9 quantitative approach, where you actually counted the
10 trees, if you knew how many were initially planted
11 there -- which from earlier testimony I'm not sure we
12 do know how many were planted there -- and have a more
13 systematic way of determining whether there's
14 75 percent or not. But my opinion is that it was
15 likely below 75 percent.

16 Q. So, would you make a recommendation that, if the
17 Committee were to proceed with approving this plan,
18 that the high-elevation restoration plan be expanded to
19 include -- to at least require a method of validating
20 the 75 percent? So, rather than what -- right now, we
21 don't know how that was done, other than what Mr.
22 Phillips testified to this morning.

23 A. (Mr. Gray) Yes, it would be nice to have a more
24 quantitative method other than -- I visited the site

[WITNESS PANEL: Kilpatrick~Gray]

1 several times, and it looks like there's 80 to
2 85 percent of trees. That's a very subjective way of
3 determining it. It'd be nice to have a more
4 quantitative method for that.

5 Q. You also said, in Question 6 of your prefiled
6 testimony -- I don't have the page number there -- but
7 you state that Tier 1 areas have high levels of
8 exposure to wind and sun. It is your expectation that
9 trees in the Tier 1 area will fair better than those
10 you already witnessed at the site along the road -- or
11 I'm sorry. Is it your expectation that trees in the
12 Tier 1 area will fair better than those you witnessed
13 along the sides of the road?

14 A. (Mr. Gray) So, the Tier 1 areas are located on the
15 pads, which are very exposed to sun, wind and ice. So
16 I would expect lower survivorship there.

17 Q. And is that -- okay. Thank you.

18 And then one other question for you.
19 With regard to -- this is a comment by Mr. Phillips
20 during the technical session. So this is in the
21 transcript from July 24th. I don't know if that's in
22 the record. But let me just state what it says very
23 quickly.

24 He said that there are enough trees

[WITNESS PANEL: Kilpatrick~Gray]

1 growing up through the rock -- this is along the edges
2 of the road and the pads, turbine pads -- that this
3 site appeared to naturally regenerate; albeit, it will
4 vary. The site just had a pretty good propensity to
5 naturally revegetate. Is that your sense when you
6 saw -- when you looked at the site?

7 A. (Mr. Gray) Overall, I would say there were certainly
8 areas where there was good regrowth. But I would say
9 the majority was not -- I mean, there were small
10 seedlings. But we're looking at decades for regrowth
11 in those areas. And no, you know, there was -- some of
12 those areas were set aside as Tier 2 and Tier 3 to be
13 replanted to help increase the speed of that
14 regeneration. But overall, I would say the majority of
15 the verges of the road were not regrowing very swiftly.

16 Q. Now, those trees that you saw naturally revegetated
17 versus the seedlings, you could see from the
18 photographs they're maybe six to eight inches tall.
19 How high were the other, those new self-revegetated --

20 A. (Mr. Gray) There were locations where they may have
21 been -- there were several areas along the side of the
22 road, probably 50 to 100 feet of good regrowth.
23 Probably just the soil or the substrate there was best
24 for growth.

[WITNESS PANEL: Kilpatrick~Gray]

1 Q. So you're not talking about a hundred feet tall; right?

2 A. (Mr. Gray) No, no. Hundred feet worth of road. Sorry.
3 Hundred feet on the side of the road.

4 Q. Linear.

5 A. (Mr. Gray) Yeah, along the roadway where there were
6 pockets of regrowth that may have been two to three,
7 maybe even four feet high, but no higher than that.
8 But limited. Those areas were very limited.

9 Q. Okay. Thank you.

10 And Dr. Kilpatrick, in your -- let's
11 see. In the conclusion of your report -- this is in
12 Exhibit PC 1, Page 9 at the bottom, you state that the
13 adverse impacts of this wind park on the population --
14 I'm sorry. Step back, step back. That the adverse
15 impacts are "unreasonable." That was -- that you --
16 the actual sentence is, "The adverse impacts of this
17 wind park on the populations of American martens and
18 Bicknell's thrush on Mount Kelsey were unreasonable."

19 Now, in that case, do you mean
20 "unreasonably adverse"? Is that what you're saying,
21 that they are "unreasonably adverse impacts"?

22 A. (Dr. Kilpatrick) That's correct. I think there's a
23 very low probability that either species will survive
24 on site long term.

[WITNESS PANEL: Kilpatrick~Gray]

1 Q. Okay. So if the... are you saying that the Project,
2 when it was approved in 2009, it was approved with the
3 -- the position of the Site Evaluation Committee at
4 that time was that the impacts were either not adverse
5 or just adverse, not unreasonably adverse, and you're
6 saying that now it is moved into the "unreasonably
7 adverse"? Is that what you're saying?

8 A. (Dr. Kilpatrick) I think there are now additional
9 information that suggests that the impacts are greater
10 than what they previously were thought to potentially
11 be. I think there was also an image that was presented
12 on how the recovery reforestation would take place to
13 revegetate down to a 12-foot road width. And I
14 certainly had an image of what that would look like.
15 Now, after knowing more about the Project, regardless
16 of whether it's 16 feet or 12 feet, I know that's not a
17 possible scenario to ever obtain.

18 Q. So you're saying that, even if we were -- if the
19 Committee were to agree to a 16-foot-wide road, there's
20 still things that need to be changed in order to make
21 you think that the impacts are at least adverse, but
22 not unreasonably adverse?

23 A. (Dr. Kilpatrick) Absolutely.

24 Q. So it's not a question of the width of the road

[WITNESS PANEL: Kilpatrick~Gray]

1 anymore; it's a question of the plan for revegetation?

2 A. (Dr. Kilpatrick) Yes. I think the plan for
3 revegetation has some serious flaws in the plan.

4 Q. But you think -- I think what you're saying -- what I
5 think I'm hearing you saying is there might be other
6 things, too.

7 A. (Dr. Kilpatrick) Absolutely.

8 Q. Now, you had mentioned during the technical session
9 that you had conversations with New Hampshire Fish &
10 Game about this plan. Was that Will Staats?

11 A. (Dr. Kilpatrick) That's correct.

12 Q. Was there anyone else at Fish & Game you spoke with?

13 A. (Dr. Kilpatrick) John Kanter.

14 Q. Okay. And did they indicate they were happy with the
15 revegetation plan?

16 A. (Dr. Kilpatrick) I would not describe it as being
17 "happy" with the plan. But I would agree that it was
18 somewhat what it has been characterized here, that they
19 thought this was a -- they were trying to find a
20 solution --

21 MR. PACHIOS: Mr. Chairman, he's not
22 here to testify -- he may testify differently about what
23 his opinion is and what he said. And I don't think we
24 should have hearsay from this witness about what this

[WITNESS PANEL: Kilpatrick~Gray]

1 other person's opinion is.

2 CHAIRMAN BURACK: Thank you. Thank you
3 for your comment there. Again, as I pointed out, we are
4 not following strictly the Rules of Evidence here. We all
5 understand that there may be hearsay evidence that in a
6 court of law perhaps would not be admissible. In this
7 context, we have already done it today, and we will allow
8 people to testify as to what their conversations were.
9 And we will accord to that testimony such weight as we
10 feel is appropriate. Please proceed.

11 MS. LINOWES: Thank you.

12 A. (Dr. Kilpatrick) In response, I would say I don't think
13 Mr. Staats was particularly happy. But he was trying
14 to come to a solution, given that the Project was built
15 and that there was a restoration plan, to find some way
16 to potentially increase the rate at which revegetation
17 took place.

18 BY MS. LINOWES:

19 Q. As the plan is proposed today with the revegetation of
20 the turbine pads, pulling back of the road, are we
21 going to be back here in two years finding out that
22 those trees aren't working either and we need to come
23 up with something else or -- where do you think this is
24 going to be, based on what you see so far?

[WITNESS PANEL: Kilpatrick~Gray]

1 A. (Dr. Kilpatrick) Well, it appears to me that there has
2 not been very substantial planning into the
3 restoration; that there's been a plan that was adopted,
4 then it was felt that it didn't fail -- or that parts
5 of it failed. It was in a very short time scale, not
6 really a long time scale. So, maybe it's a yearly
7 variant, maybe it's not. But then the plan changes.
8 We've heard, then, that there's not really good
9 quantification of the data that's collected. So I
10 don't know that we know what's working and what's not
11 working. When I've asked for studies supporting the
12 various concepts in the restoration plan, I've not been
13 really provided with any literature or any data that
14 supports the idea that these will in any way increase
15 the rate of reforestation.

16 Q. Okay. That's helpful. Thank you.

17 So, in your report -- again, this is
18 PC 1 exhibit -- at the end of your report, which would
19 be Page 10, you have suggested mitigations. And one of
20 them says "develop" -- this is the first one --
21 "Develop a restoration plan that is knowledge-based and
22 incorporates a funded study with an experimental design
23 that will allow increasing the knowledge of restoration
24 of high-elevation forest."

[WITNESS PANEL: Kilpatrick~Gray]

1 I worry, when I see something like that,
2 is we're talking about an expansive study that's not
3 going to necessarily resolve what's here but just put
4 on the back of the Applicant, build a big study.

5 Is there something in the -- is there --
6 if I take the words "knowledge-based restoration
7 plan" -- I mean, is there something more that can be
8 done that you can tell us that the Committee could
9 contemplate today?

10 A. (Dr. Kilpatrick) Certainly. There's a natural
11 experiment that's been set up on this site. So we have
12 several different treatments of reforestation taking
13 place here. So we have the original plantings that
14 were done under one set of conditions. We have a
15 different set of conditions that have been used in last
16 year's planting with the bark mulch. And we have,
17 then, the stratification at different elevations and
18 different exposures to climatic conditions that have
19 been built into the natural environment where this
20 experiment is taking place. So a forester could come
21 in and do a block plan study to evaluate the success of
22 survivorship, plant growth, et cetera, from each of
23 those treatments under different environmental
24 conditions, and then we would learn something about how

[WITNESS PANEL: Kilpatrick~Gray]

1 to do restorations at such a site for future
2 conditions.

3 Q. Does that have to be something that is multi-year, or
4 is it something that they could evaluate today, based
5 on the way the winds blow and --

6 A. (Dr. Kilpatrick) Again, because of site variability,
7 seasonal variability, climatic weather variability, it
8 would definitely have to be a multi-year study.

9 Q. But could it -- I mean, this is a project that's going
10 to be in place for 20 years or better. So you're
11 saying that there's something that could be of benefit
12 for this project as well?

13 A. (Dr. Kilpatrick) Absolutely.

14 Q. I think I'm almost -- now, I did want to ask you
15 regarding some of the questions regarding the grass,
16 that it's now recommended that it be eliminated, that
17 the plantings that are there today were attracting
18 rodents and possibly encouraging other predators
19 accessing the site.

20 If the Project -- and how -- given the
21 well-defined roads that are in the Project, the minimal
22 amount of replanting relative to the road itself,
23 whether they use mulch or replant grass, is there any
24 difference in your mind with regard to the predation

[WITNESS PANEL: Kilpatrick~Gray]

1 that's happening up there today? I mean, is it going
2 to happen, no matter what?

3 A. (Dr. Kilpatrick) Yes, it's going to happen, no matter
4 what. So, the creation of the edge that increased the
5 abundance of rodents -- so they liked that edge
6 habitat. That's well established in the literature,
7 that there are species that really respond to it. The
8 grass itself is not -- will not have a large impact on
9 the rodents for a number of years. Eventually, if the
10 grass remains, there will be a species that will
11 eventually colonize and use that habitat. But it's
12 going to be a number of years before it makes its way
13 up to that elevation. It does occur on high peaks
14 where there have been roadways or ski trails developed
15 in there, et cetera. But the real movement of the
16 predators coming in is by the compacted area during the
17 wintertime that allows some of this travel corridor.
18 And they're there at that time of year. They're
19 certainly feeding on rodents, but they're also
20 predatory on the pine martens and, more importantly,
21 they're competing for the same food that would normally
22 be available for the pine martens. If the predators
23 weren't there, then the edge could have some positive
24 effects, like along the fir wave, where there is

[WITNESS PANEL: Kilpatrick~Gray]

1 increased rodent population that are very beneficial.

2 But here, because the predators are getting up there,

3 that positive impact then is negated.

4 Q. And are the pine martens leaving the site?

5 A. (Dr. Kilpatrick) They're shifting their activity

6 patterns off of the ridge line. That's what the

7 Serach -- Siren thesis showed. They're still present,

8 but they're shifting most of their activity away from

9 that corridor, and certainly showed increased predation

10 and possible starvation once the road was built up

11 there.

12 Q. Will that continue, or will that settle down?

13 A. (Dr. Kilpatrick) I think it will continue. There's

14 good evidence that they're moving into lower-quality

15 habitat, which then is going to affect the

16 reproduction. And so I think the population will

17 dwindle and decline with time.

18 Q. And also, according to the study that was done by Curry

19 and Kerlinger -- this would have been pre- and

20 post-construction surveys at Kelsey and others in

21 September 18, 2012 -- they found a significant decline

22 in avian abundances not only at the turbine points

23 where they were expected, but also the slope points.

24 A. (Dr. Kilpatrick) Yes.

[WITNESS PANEL: Kilpatrick~Gray]

1 Q. So it's not just the pine martens.

2 A. (Dr. Kilpatrick) It's not.

3 Q. And they said this indicated that the removal of the
4 habitat along the ridge lines affected bird communities
5 downslope in areas where habitat was not physically
6 disturbed.

7 So, is there anything in the restoration
8 plan that can resolve that, or is this just a data
9 point that we have to be conscious of when we build
10 projects at elevations like this? What are --

11 A. (Dr. Kilpatrick) I think the data point we have to be
12 aware of, that we expected it to change the bird
13 community. Maybe it's occurred a little more
14 drastically than was expected. And it's going to
15 especially displace the forest interior bird species,
16 and in favor, then, of those species that like the
17 edge, more general species that are adapted to living
18 in that habitat. And, of course, birds, being volant,
19 are easy to colonize the area quite rapidly.

20 Q. What was that?

21 A. (Dr. Kilpatrick) Flying. Volant. Fly.

22 Q. Oh, okay.

23 So, is there -- you had recommended also
24 in your suggestions -- again, this is on Page 10, and

[WITNESS PANEL: Kilpatrick~Gray]

1 this is No. 2, and also looks like No. 3 -- provide
2 additional funding for post-construction study of
3 American martens on Mount Kelsey, and then, also on 3,
4 provide additional funding for post-construction
5 studies of Bicknell's thrush.

6 How do you tie these recommendations
7 into the restoration plan? Or is this the right docket
8 to do that, or do you think a second docket should be
9 opened to evaluate the environmental impacts of the
10 Project?

11 A. Hmm.

12 Q. And do you think, I mean, clearly think there is a
13 need?

14 A. (Dr. Kilpatrick) Yeah. So I was hired and asked to do
15 one thing. So I haven't really considered the
16 possibility of a second docket to consider that. But I
17 think, since this project has made such an adverse
18 impact on these two state-threatened species, that,
19 again, we need to use that destruction of the habitat
20 to learn more about the long-term impact on these two
21 species. So I can make predictions of what's going to
22 happen to those, but it would be very interesting to
23 see at different points in time what is really
24 happening to the populations. Are they declining? Are

[WITNESS PANEL: Kilpatrick~Gray]

1 they recovering? Are there differences in sex ratios,
2 et cetera? You know, we can predict how they're going
3 to behave. Right now, we have only one year of data
4 post-construction from the two studies that were done.
5 So it would be very interesting to get additional years
6 of post-construction studies so that we have a better
7 idea of what the negative impacts really are.

8 Q. If I tell you just that, according to the certificate,
9 as it was approved back in 2009, the Applicant's
10 required to conduct at least breeding bird surveys in
11 one, three and five years after construction -- I have
12 only seen one. Have you seen any additional? That
13 would involve the Bicknell's thrush; correct?

14 A. (Dr. Kilpatrick) I have... I don't know. So there
15 certainly have been -- Kerlinger's Group certainly have
16 done some additional studies. So there is a 2012,
17 there's a 2013 and a 2014 report.

18 Q. Those are bird-bat mortalities for --

19 A. (Dr. Kilpatrick) Right. Those are primarily mortality
20 studies. They do have some point surveys within them,
21 which is a typical way of surveying birds. But
22 certainly there hasn't been the highly dedicated types
23 of studies as were originally done for Bicknell's
24 thrush and for the American marten.

[WITNESS PANEL: Kilpatrick~Gray]

1 Q. Thank you very much.

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

3 CHAIRMAN BURACK: Thank you very much,
4 Ms. Linowes.

5 And we'll now turn to the Applicant for
6 cross-examination of these witnesses.

7 **CROSS-EXAMINATION**

8 **BY MR. PACHIOS:**

9 Q. So, Dr. Kilpatrick, you were retained to come and tell
10 the SEC about your opinion of the restoration plans,
11 the original one and the amended one; correct?

12 A. (Dr. Kilpatrick) I was asked to review the situations
13 that developed from the mitigation agreements in the
14 original awarding of the certificate of operation for
15 this site, to review the studies that had been
16 conducted, and to review the original restoration plan
17 and the amended restoration plan in that light.

18 Q. When I previously asked you that question, my question
19 was -- my understanding -- your answer was: "My
20 understanding of what I was hired to provide was an
21 assessment of the agreed-upon restoration plan" --
22 meaning, the original one -- "and the proposed amended
23 restoration plan."

24 I said, "Both of them?"

[WITNESS PANEL: Kilpatrick~Gray]

1 You said, "Both of them."

2 And that's what you told me you were
3 hired to do. Is that not true?

4 A. I believe I expanded upon that in my supplemental
5 testimony.

6 Q. Well, we can go into your supplemental testimony. Why
7 don't you tell us, then, how this statement that you
8 made to me about what you were hired to do is not quite
9 accurate.

10 A. Well, I don't know what the reference was prior to
11 that, so I don't know the scope in which we were -- the
12 question was asked.

13 Q. Was mit -- "QUESTION: Was mitigation part of the scope
14 of your engagement? That is... what was your
15 engagement?" What were you supposed to tell us in your
16 report and opine on?

17 MS. MALONEY: Sorry to interrupt.

18 Counsel, could you tell me where you're --

19 MR. PACHIOS: That's in the transcript
20 of the tech session, examination of Dr. Kilpatrick at Page
21 81, at the bottom.

22 MS. MALONEY: Which tech session?

23 MR. PACHIOS: The one in which he was
24 examined.

[WITNESS PANEL: Kilpatrick~Gray]

1 CHAIRMAN BURACK: Do you have the date
2 on that, please?

3 MR. PACHIOS: Let's see. The date was
4 October 9th.

5 CHAIRMAN BURACK: And this is an exhibit
6 to -- or is it not an exhibit?

7 MR. PACHIOS: This is not an exhibit.
8 I'm just trying to -- I just want to move quickly. This
9 will not be a long cross-examination. But I have a
10 problem here, because I read this, and I thought this was
11 what he was hired to do, and now he's saying it's
12 something different. And he's asked, can I then tell him
13 what the preceding questions were and what the context is.
14 So I'm going to take the time to do that.

15 A. (Dr. Kilpatrick) I would appreciate if I could see it
16 and review it.

17 BY MR. PACHIOS:

18 Q. Well, why don't I give it to you right now.

19 A. (Dr. Kilpatrick) All right.

20 Q. Right here is where I started.

21 (Witness reviews document.)

22 A. (Dr. Kilpatrick) Okay.

23 Q. Did you read the next page?

24 A. (Dr. Kilpatrick) Yes.

[WITNESS PANEL: Kilpatrick~Gray]

1 Q. Okay. Now, is that inaccurate, your answer to that
2 question --

3 A. (Dr. Kilpatrick) No --

4 Q. -- that I posed?

5 A. (Dr. Kilpatrick) -- but you start by saying --
6 referring to an e-mail where I was asked to address
7 mitigation.

8 Q. I'm asking --

9 A. (Dr. Kilpatrick) Want me to point it out to you?

10 Q. No. I wasn't referring to any e-mail. What I was
11 asking you is, what were you hired to do? That was my
12 question.

13 A. (Dr. Kilpatrick) And the context in which you asked the
14 question in the statement before, you asked me
15 specifically regarding an e-mail from the Counsel for
16 the Public regarding mitigation.

17 Q. I didn't intend to ask about e-mails. I asked you --
18 I'm only asking you what were you hired to do. I
19 don't -- we're not going to get into an argument here.

20 A. (Dr. Kilpatrick) Okay.

21 Q. That's the question. You're the answerer.

22 A. (Dr. Kilpatrick) Okay.

23 Q. What were you hired to do? You answered with a rather
24 lengthy answer. And I said -- well, I understood from

[WITNESS PANEL: Kilpatrick~Gray]

1 what you previously told me in the tech session that
2 you were hired to compare the two restoration plans.
3 Is that untrue or not?

4 A. (Dr. Kilpatrick) I was asked to consider mitigation in
5 regards to those two restoration plans, and I think
6 that's how I answered the question before.

7 Q. Were you hired to compare the two restoration plans?

8 A. (Dr. Kilpatrick) I was hired to do more than that.

9 Q. And what is the "more"?

10 A. (Dr. Kilpatrick) I was hired to look at the
11 high-elevation mitigation agreement and the proposed
12 change to that agreement and their restoration plans
13 that are associated with both of those. I was also
14 asked to look at the reports that had been submitted on
15 pre- and post-construction surveys, to look at the
16 studies that had been part of the mitigation settlement
17 or mitigation agreement, and to write a report
18 evaluating the mitigation that had been accomplished on
19 Mount Kelsey.

20 Q. And can you describe the mitigation plan? What were
21 the elements of the mitigation plan?

22 A. (Dr. Kilpatrick) There were several. So, there was one
23 that has little to do with Mount Kelsey: This is to
24 provide properties for an off-site conservation. There

[WITNESS PANEL: Kilpatrick~Gray]

1 was a limitation to future cutting on Mount Kelsey,
2 other than what was necessary for the development of
3 this Project. There was an agreement to place a
4 certain number of acreage in an environmental easement
5 turned over to the fish and wildlife service -- or New
6 Hampshire Fish & Game. There was an agreement for the
7 funding of specific studies under the discretion of New
8 Hampshire Fish & Game: One on Bicknell's thrush, one
9 on American martens. And there was this agreement,
10 then, to develop a reforestation plan to reforest the
11 vegetation as quickly as possible to road widths of 12
12 feet.

13 Q. Have you read the SEC's 2009 decision and looked at the
14 transcript of the deliberations to familiarize yourself
15 with the evidence before the SEC with respect to the
16 impacts that you're discussing in this proceeding?

17 A. (Dr. Kilpatrick) No, I have not.

18 Q. Okay. Do you know generally that the SEC record in
19 2009 contained a great deal about the adverse impact on
20 wildlife deriving from this Project?

21 A. (Dr. Kilpatrick) I'm aware of some of the testimony
22 that was given, yes.

23 Q. About that?

24 A. (Dr. Kilpatrick) Yes.

[WITNESS PANEL: Kilpatrick~Gray]

1 Q. Are you generally aware -- having not read the decision
2 and transcript, are you generally aware that the SEC
3 concluded that the mitigation plan was sufficient to
4 conclude no unreasonable adverse impact?

5 A. (Dr. Kilpatrick) I read that statement, yes, in their
6 decision.

7 Q. Okay. Are you familiar with the position of the AMC
8 and the New Hampshire Fish & Game with respect to the
9 original 2009 mitigation agreement and restoration
10 plan?

11 A. (Dr. Kilpatrick) Please restate the question.

12 Q. Are you familiar with the position taken by both the
13 Appalachian Mountain Club and New Hampshire Fish & Game
14 with respect to the mitigation agreement --

15 A. (Dr. Kilpatrick) Other than --

16 Q. -- and plan of restoration?

17 A. (Dr. Kilpatrick) Other than being signatories to the
18 agreement?

19 Q. What they said in their testimony, what they presented,
20 what they submitted to the SEC in support of it, are
21 you familiar with that?

22 A. (Dr. Kilpatrick) Yes.

23 Q. What did they submit?

24 A. (Dr. Kilpatrick) I believe a very limited agreement to

[WITNESS PANEL: Kilpatrick~Gray]

1 this.

2 Q. Just the agreement. You haven't seen anything other
3 than the agreement. Do you know whether they gave
4 testimony in support of the original plan?

5 A. (Dr. Kilpatrick) I do know that some of the testimony
6 from the Fish & Game Department was removed.

7 Q. It what?

8 A. (Dr. Kilpatrick) Some of the testimony that was given
9 was essentially asked to be removed from the record.
10 Is that not the case?

11 Q. Well, I'm not here to answer questions, okay.

12 A. (Dr. Kilpatrick) That's my understanding. I may be
13 wrong, but that's my understanding.

14 Q. So my question again is: Do you know what New
15 Hampshire Fish & Game and Appalachian Mountain Club
16 said publicly in this proceeding and filed documents in
17 support of the high-elevation mitigation plan and
18 restoration plan? Do you know that? If you don't,
19 just say "No." We're going to move on.

20 A. (Dr. Kilpatrick) I've read it, but I don't remember it,
21 off the top of my head. That's what I can say.

22 Q. Do you know what role New Hampshire Fish & Game and
23 Appalachian Mountain Club had in putting together the
24 mitigation plan, the original mitigation plan?

[WITNESS PANEL: Kilpatrick~Gray]

1 A. (Dr. Kilpatrick) I know they worked to develop an
2 agreement that --

3 Q. They participated in the agreement?

4 A. (Dr. Kilpatrick) That's my understanding, yes.

5 Q. Okay. And do you know that New Hampshire Fish & Game
6 was very much involved in developing the specifics of
7 the restoration plan?

8 MS. MALONEY: I'm going to object to
9 this line of questioning. I mean, Dr. Kilpatrick has a
10 certain area of expertise. And New Hampshire Fish & Game
11 is not here. That's been evident all day. So it's sort
12 of an interesting way to try to get that in, but I
13 understand the cross-examination -- maybe let's ask him
14 what he did review. I don't know. But this is -- I'm
15 going to object to this line of questioning. He's not an
16 expert as to everything New Hampshire Fish & Game did.

17 CHAIRMAN BURACK: Attorney Pachios, can
18 you bring us to a point on this examination here?

19 MR. PACHIOS: I want to know what he --
20 he's formed opinions. He's testifying with respect to
21 those opinions. I want to know what information he has on
22 which to base those opinions. I'm entitled to ask that.
23 I don't understand the objection at all.

24 CHAIRMAN BURACK: You're certainly

[WITNESS PANEL: Kilpatrick~Gray]

1 entitled to ask. And maybe you can simply ask him that
2 way: "On what did you rely" --

3 BY MR. PACHIOS:

4 Q. Do you understand that the restoration plans which you
5 are criticizing were designed in part by New Hampshire
6 Fish & Game?

7 A. (Dr. Kilpatrick) Yes.

8 Q. Okay. Now, you don't -- and you have testified that
9 both Appalachian Mountain Club and New Hampshire Fish &
10 Game have participated in the new agreement, the
11 amended restoration plan. But you don't think that
12 they designed a very effective restoration plan, do
13 you?

14 A. (Dr. Kilpatrick) I do not.

15 Q. Okay. You don't think they knew what they were doing,
16 do you?

17 A. (Dr. Kilpatrick) They certainly have not shown that
18 they knew what they were doing.

19 Q. Okay. You agree with Mr. Roth, the Assistant Attorney
20 General for the State of New Hampshire, that the
21 mitigation plan and the restoration plan are, quote, a
22 farce, unquote, don't you?

23 A. (Dr. Kilpatrick) After seeing the pictures from the
24 site visit, I would have to concur.

[WITNESS PANEL: Kilpatrick~Gray]

1 Q. You do agree that they're a "farce." You agree with
2 Mr. Roth that they're a "farce"; correct?

3 A. (Dr. Kilpatrick) As they have been implemented, yes.

4 Q. Now, you've never seen this wind park, have you?

5 A. (Dr. Kilpatrick) I have not.

6 Q. Do you know whether Dr. Kimball and Mr. Staats are
7 familiar with the wind park?

8 A. (Dr. Kilpatrick) I know that Will Staats is.

9 Q. Were you here this morning when Dr. Kimball said he's
10 been there, maybe, he said, a hundred times?

11 A. (Dr. Kilpatrick) I was here.

12 Q. So you know he said that; right?

13 A. (Dr. Kilpatrick) I do.

14 Q. Okay. So, you've never been there. They've been
15 there. They were tasked with coming up with this
16 restoration plan. But you think it's a bad restoration
17 plan; correct?

18 A. (Dr. Kilpatrick) That's correct.

19 Q. Okay. You're a zoologist; correct?

20 A. (Dr. Kilpatrick) That's correct.

21 Q. You study animals in their habitat.

22 A. (Dr. Kilpatrick) That's correct.

23 Q. Can you tell me what an ecologist is?

24 A. (Dr. Kilpatrick) An ecologist is somebody that studies

[WITNESS PANEL: Kilpatrick~Gray]

1 the environment.

2 Q. Can you tell me what the difference is between a
3 restoration ecologist and a conservation ecologist is?

4 A. (Dr. Kilpatrick) I've never heard of conservation
5 ecologist. I've heard of conservation biologist. But
6 I don't know the term "conservation ecologist."

7 Q. Or the term "restoration ecologist."

8 A. (Dr. Kilpatrick) I've heard of restoration ecologist.

9 Q. What's a restoration ecologist?

10 A. (Dr. Kilpatrick) Well, I would assume it would be a
11 person who studies and designs experiments to learn
12 about how restoration of environment should be carried
13 out.

14 Q. But you're not an expert on restoring the forest;
15 right?

16 A. (Dr. Kilpatrick) No, but I have a lot of experience in
17 looking at data and making assessments of whether
18 decisions and studies are being based upon data, or
19 they're just being based upon beliefs of what will
20 happen.

21 Q. Well, let me read you a statement. And I'll tell
22 you -- I'll identify the source of the statement and
23 then ask you whether you agree with the statement.

24 This is from the well-known legal source

[WITNESS PANEL: Kilpatrick~Gray]

1 Wikipedia. And it is the Wikipedia entry for
2 "restoration ecology." And it says -- don't feel bad,
3 Dr. Kilpatrick. I didn't know any of this either. I
4 was shocked not to know it. But it says both
5 conservation biology and restoration -- excuse me --
6 ... "both conservation biology and restoration ecology
7 have an unfortunate temperate terrestrial bioregion
8 bias. This issue is probably the result of these
9 fields developing in the geopolitical north, and both
10 fields should attempt to reconcile this bias."

11 Now, here's the statement, the next
12 statement. I want to know whether you agree with it.
13 The bias "may be because plants tend to dominate most
14 (terrestrial) ecosystems, restoration ecology has
15 developed a strong botany" -- "botanical bias because
16 it's about plants; whereas, conservation biology is
17 more strongly zoological." You agree with that?

18 A. (Dr. Kilpatrick) I think there's certainly some truth
19 to that statement, yes.

20 Q. And you know that Dr. Kimball is a botanist; correct?

21 A. (Dr. Kilpatrick) I read that on his CV, yes.

22 Q. So you're not what this would describe as a restoration
23 ecologist; correct?

24 A. (Dr. Kilpatrick) That's correct.

[WITNESS PANEL: Kilpatrick~Gray]

1 Q. In your opinion, is Dr. Kimball a restoration -- let me
2 finish. In your opinion, is Dr. Kimball a restoration
3 ecologist?

4 A. (Dr. Kilpatrick) No.

5 Q. Okay. And why do you say that?

6 A. (Dr. Kilpatrick) I see nothing in his publications that
7 lead me to believe that he has any experience in
8 restoration ecology.

9 Q. You don't think that he has any experience in
10 high-elevation vegetation and habitat in the New
11 Hampshire mountains?

12 A. (Dr. Kilpatrick) Yes, I think he does, but it's
13 primarily related to climatic conditions, atmospheric
14 conditions. I see little to suggest that he has a lot
15 of knowledge regarding restoration.

16 Q. And you have none; right?

17 A. (Dr. Kilpatrick) I'm not a restoration ecologist. I
18 certainly can evaluate restoration plans.

19 I asked Dr. Kimball specifically for the
20 scientific studies, the data on which these restoration
21 plans were based. He provided me with almost nothing.

22 Q. Are you -- did you talk to Mr. Staats from New
23 Hampshire Fish & Game?

24 A. (Dr. Kilpatrick) Yes, I did.

[WITNESS PANEL: Kilpatrick~Gray]

1 Q. You think he's all wet, too?

2 A. (Dr. Kilpatrick) No, I don't. But Mr. Staats is a
3 biologist for New Hampshire Fish & Game. He has a
4 boss. His boss has political agendas as well. So all
5 of his opinions he is not free to express. I often
6 differ in my opinions from state biologists, and that's
7 because I don't have a political filter that my
8 evaluations have to pass through.

9 Q. Can you tell the SEC on what projects you've been
10 engaged to present expert testimony with respect to
11 revegetation plans?

12 A. (Dr. Kilpatrick) I have not given testimony on
13 revegetation plans. I have given testimony on how to
14 mitigate conservation of habitat for wildlife.

15 Q. And where was that?

16 A. (Dr. Kilpatrick) Those were in Vermont.

17 Q. And that was with respect to impacts on animals; right?

18 A. (Dr. Kilpatrick) Correct. But it was maintenance of
19 habitat for those animals.

20 Q. Okay. Now, your previous experience did not involve
21 damage to forest habitat occurring as a result of
22 cutting a road through the forest; right?

23 A. (Dr. Kilpatrick) No.

24 Q. And your testimony in Vermont was not about

[WITNESS PANEL: Kilpatrick~Gray]

1 revegetation, but about identifying the adverse impacts
2 on wildlife; correct?

3 A. (Dr. Kilpatrick) I have also provided testimony on
4 mitigation plans for maintenance of habitat for
5 endangered species.

6 Q. All right. So let's wrap this up, Dr. Kilpatrick. The
7 thrust of your report is the restoration plans;
8 correct?

9 A. (Dr. Kilpatrick) That would not be my summation of my
10 bulk of my testimony.

11 Q. All right. The width of the road was not the thrust of
12 your report, was it?

13 A. (Dr. Kilpatrick) No. The width of the road has only a
14 limited impact.

15 Q. Now, with respect to revegetation, you disagreed with
16 Appalachian Mountain Club and New Hampshire Fish & Game
17 on how -- what kind of revegetation should occur;
18 correct?

19 A. (Dr. Kilpatrick) It's not that I -- it appears to me
20 from evaluating the information that I've been provided
21 is that they don't have a plan for the restoration of
22 the habitat. They just try one thing, they don't like
23 the results they get, they try something else. They're
24 not collecting any data. They're not even -- know the

[WITNESS PANEL: Kilpatrick~Gray]

1 number of trees they planted. They don't know what
2 proportion have died. They are gaining no information.

3 Q. Now --

4 A. (Dr. Kilpatrick) I've asked them, "What evidence do you
5 have that this is going to do anything to accelerate
6 the reforestation over the natural recovery of the
7 vegetation?" They have not been able to provide me
8 with any such information.

9 Q. Okay. You know that the SEC delegated, after the
10 proceeding in 2009, as part of the proceeding in 2009,
11 delegated to New Hampshire Fish & Game responsibility
12 for developing with the Applicant this revegetation
13 plan; correct?

14 A. (Dr. Kilpatrick) I understand that.

15 Q. Okay. Now, in your report, you don't propose a better
16 way to revegetate, do you?

17 A. (Dr. Kilpatrick) I propose that if they're going to do
18 this, that at least they do it in a planned and
19 systematic fashion so that in the future we know
20 something about how restoration should be done.

21 Q. But you don't specifically, in your testimony, in your
22 report, in your answers to questions in this
23 proceeding -- you have not said, here's how -- I'm an
24 expert. Here's how they ought to revegetate. You have

[WITNESS PANEL: Kilpatrick~Gray]

1 not done that; correct?

2 A. (Dr. Kilpatrick) I have not. But I have pointed out
3 the problems I think they have with parts of their
4 plans.

5 Q. Yeah. You've said it's a farce; correct?

6 A. (Dr. Kilpatrick) I said the way it has been implemented
7 is a farce.

8 Q. Is it true that your conclusion in this report --
9 you've been hired to come in and give us your opinion.
10 In the end, your opinion is that there should be more
11 studies?

12 A. (Dr. Kilpatrick) That, in part, is what I think should
13 be done. That is a major part. But I think the damage
14 to this environment has occurred. I think that one of
15 the very positive things that could happen from that is
16 to have additional studies, where additional
17 information could be obtained to better understand the
18 impacts of such development, better understand how
19 reforestation plans could be implemented. But I also
20 think there needs to be some addressing of one of the
21 major issues especially impacting the American marten,
22 and that is this corridor that's allowing the
23 carnivores to move up and down. And again, this would
24 be a study, to an extent. But there are ways that have

[WITNESS PANEL: Kilpatrick~Gray]

1 been used, electrical fencing, that have been
2 successful in keeping carnivores out of certain areas.
3 I think it would be challenging, but I think with solar
4 panels it could be attempted. And I think we might
5 gain some ways of knowing how this could be done, or if
6 it could be done.

7 Q. Yeah. Do you understand that the impacts to wildlife
8 that you're describing were impacts that were brought
9 to the attention of the SEC in 2009 and that everybody
10 agreed that there would be adverse impacts to wildlife?
11 You understand that?

12 A. (Dr. Kilpatrick) I understand that that was brought,
13 that there would be adverse impacts. I'm not sure
14 that -- to the best of my knowledge, we now have
15 additional information that shows the extent of that
16 adverse impact.

17 Q. Okay.

18 MR. PACHIOS: Could I have 30 seconds,
19 Mr. Chairman?

20 CHAIRMAN BURACK: Yes, and then I would
21 like to wrap this up, please.

22 (Discussion among counsel for the
23 Applicant.)

24 MR. PACHIOS: No more questions.

[WITNESS PANEL: Kilpatrick~Gray]

1 CHAIRMAN BURACK: Thank you very much.
2 Attorney Maloney, do you have any redirect here?

3 MS. MALONEY: Well, don't you --

4 CHAIRMAN BURACK: Oh, I'm sorry. Once
5 again, Attorney Honigberg would like to ask some
6 questions.

7 CMSR. HONIGBERG: No, actually, I don't
8 have questions, but others may.

9 CHAIRMAN BURACK: No? But others on the
10 panel may have questions of these witnesses. So, members
11 of the Committee? Director Simpkins.

12 **INTERROGATORIES BY DIR. SIMPKINS:**

13 Q. Yeah. This question is for Mr. Gray or Dr. Kilpatrick.

14 Mr. Gray, I've heard you say that you
15 witnessed what you believe is higher mortality than
16 what was testified to earlier. You didn't believe that
17 75 percent of the trees had made it.

18 A. (Mr. Gray) I can't say for sure because it's just
19 visual observation. But from what I saw, it did not
20 look like there was 75 percent. It would be nice if
21 there was a quantitative way to tell that.

22 Q. So my question is -- and Dr. Kilpatrick, you had
23 mentioned that the current plan's not working as
24 implemented. And I noticed in Counsel for the Public's

[WITNESS PANEL: Kilpatrick~Gray]

1 Exhibit 4, which is a series of photos, there's a bunch
2 of photos, and it appears that many of them you took
3 yourself, Mr. Gray. I was wondering, are there any
4 photos you could point the Committee to that show this
5 high mortality or that the seedlings are not --

6 A. (Mr. Gray) I would have to take a minute to look
7 through.

8 Q. Okay. I didn't know if you remembered, since you took
9 several of the photos --

10 A. (Mr. Gray) Yeah, I know approx --

11 Q. -- if there were particular --

12 (Court Reporter interrupts.)

13 DIR. SIMPKINS: He said he took many of
14 the photos. I didn't know if he knew of certain ones that
15 would show that mortality, 'cause there's a lot of photos
16 in there.

17 (Witnesses review photographs.)

18 A. (Mr. Gray) It's going to take a moment. I know where
19 they are in the sequence of photos. I just... this one
20 doesn't contain -- it only contains four of my photos I
21 submitted.

22 CHAIRMAN BURACK: I believe there may be
23 another volume there that has --

24 MR. IACOPINO: Which one are you looking

[WITNESS PANEL: Kilpatrick~Gray]

1 at? What's the title on the front?

2 WITNESS KILPATRICK: "Volume 1, Counsel
3 for the Public Exhibits."

4 CHAIRMAN BURACK: If you're looking for
5 Counsel for the Public 4, you can likely find it -- I know
6 my volume went over to the table and hasn't come back.

7 MR. IACOPINO: I think that's what he's
8 looking at.

9 CHAIRMAN BURACK: I don't believe so.
10 No, they're full-page photos. Those are they.

11 (Witnesses review photographs.)

12 A. (Dr. Kilpatrick) Photo 17. This was in kind of the
13 annotated list of photos I provided.

14 BY DIR. SIMPKINS:

15 Q. Okay. Three trucks in the background --

16 A. (Dr. Kilpatrick) Right. You can see some spots where
17 there's no trees being present there. I mean, you can
18 see the lines coming down and then big gaps, if you
19 understand the photograph.

20 Give you a good example. The following
21 photo shows some of that also, kind of stunted...

22 (Witnesses review photographs.)

23 A. (Dr. Kilpatrick) Photo 27 shows a good example of
24 browsing, too, that took place. See the tree right up

[WITNESS PANEL: Kilpatrick~Gray]

1 front there that's missing --

2 Q. Yeah.

3 A. (Dr. Kilpatrick) -- kind of the interior row of limbs?

4 DIR. SIMPKINS: Thank you.

5 CHAIRMAN BURACK: Do you have other
6 questions, Director Simpkins?

7 DIR. SIMPKINS: No, that's all.

8 CHAIRMAN BURACK: Other questions from
9 members of the panel? I'm sorry. Just come down the row
10 here then. Commissioner Scott.

11 CMSR. SCOTT: Thank you. Hopefully
12 quickly.

13 **INTERROGATORIES BY CMSR. SCOTT:**

14 Q. Mr. Gray, earlier on you mentioned the lack of a
15 systematic approach to determining the 75 percent or
16 what percent for the tree survival. I was just
17 curious. Is there an accepted methodology that you
18 suggest to be used?

19 A. (Mr. Gray) To begin with, you need to know how many you
20 planted. And I'm not sure a definite number of
21 trees -- a definite number is known, at least from what
22 I know and from the earlier testimony today -- or the
23 earlier questioning today. I don't know if there's a
24 number that's known of how many were planted, so it's

[WITNESS PANEL: Kilpatrick~Gray]

1 going to be very difficult to then get a number that
2 you can be sure of.

3 But a methodology from what -- you know,
4 given what we have, you know, some estimate of the
5 number of trees that were planted, a good methodology
6 would be to randomly select certain locations along the
7 replanting and get the number that were -- that you
8 have. If you take a certain distance, and you would
9 know how many should be there and then count how many
10 are there, and you do that randomly along so you don't
11 introduce bias and then see from there if you have
12 75 percent or not.

13 Q. Because when you do have a failure of a seedling to
14 survive, the carcass, if you will, of the plant's still
15 there, right, so you can see it?

16 A. (Mr. Gray) In some cases. In that Photo 17, there are
17 a number of trees that are just gone. And I assume --
18 I don't know. But I assume that's possibly extensive
19 browsing.

20 Q. Okay. And Dr. Kilpatrick, in your recommendations, you
21 talk about there should be a greatly increased number
22 of trees planted, if I recall right?

23 A. (Dr. Kilpatrick) That's correct.

24 Q. Given that, can you give me -- I don't need an exact

[WITNESS PANEL: Kilpatrick~Gray]

1 number, but an order of magnitude. When you say "a
2 great number more," what are you talking about?

3 A. (Dr. Kilpatrick) I would say four or five times the
4 number of trees that are being planted now. And I
5 would recommend, you know, what you kind of alluded to
6 at one point, of introducing trees of some different
7 age classes within this so that we get a more complex
8 type of forest structure rather than essentially a mono
9 culture or plantation of similar age and similar-spaced
10 trees recovering. We would like something with greater
11 complexity to it.

12 Q. And in doing that, you've heard this concern raised
13 about topsoil. Do you feel that's a valid concern?

14 A. (Dr. Kilpatrick) I do. I feel that's a valid concern.
15 I had the same concern about the use of stump grindings
16 that were being brought in from lower elevations, that
17 these could have unintended consequences of bringing in
18 pathogens or seeds that we don't know what the impacts
19 are going to have. So I think it's wise to use things
20 from on site when at all possible.

21 Q. Okay. So, given that concern, am I interpreting
22 correctly that you feel increasing greatly the number
23 of plantings outweighs the disadvantage of not being
24 able to use topsoil from a higher elevation?

[WITNESS PANEL: Kilpatrick~Gray]

1 A. (Dr. Kilpatrick) I do. I think there's a lot of places
2 where they could supplement planting and just plant
3 things thicker than they are planting them now, where
4 they already have re-established top soils.

5 You know, I have no -- I think it's very
6 unlikely that the plantings that take place on top of
7 the pads themselves are going to be successful. I
8 think there's going to be a very low survivorship
9 there. So I'd like to see some data before there was a
10 lot of effort put into doing that.

11 Q. And for both uses -- I've asked every other panelist,
12 so I'll ask you two also -- to the extent that we allow
13 the widening, do you have an opinion on the timing?
14 Should it be done, you know, in an orderly fashion
15 sooner, or should we wait until the widening is
16 actually needed?

17 A. (Mr. Gray) I can't speak to either way. It would need
18 to be... yeah, I don't know which would be best.

19 Q. That's fair enough.

20 A. (Dr. Kilpatrick) I think inevitably it's going to come
21 to a situation where they're going to have 16-foot
22 roads or wider. So I would do it sooner rather than
23 later. I think to -- I mean, seems like to me you
24 could remove that 4 feet that's right near the road and

[WITNESS PANEL: Kilpatrick~Gray]

1 just extend it another 4 feet in the opposite direction
2 using that same material to replant them right there.

3 Q. Okay. Thank you.

4 CHAIRMAN BURACK: Director Muzzey, you
5 have a question?

6 DIR. MUZZEY: Yes.

7 **INTERROGATORIES BY DIR. MUZZEY:**

8 Q. We've discussed two studies of martens: One
9 pre-construction in 2000 and then one post-construction
10 in 2013. And looking at your report, it appears that,
11 although the numbers of martens did not decrease, they
12 increased; they had shifted.

13 A. (Dr. Kilpatrick) Correct.

14 Q. Now, I'm not familiar with the habits of martens. Is
15 that typical behavior, that they would shift, or is
16 that not typical?

17 A. (Dr. Kilpatrick) Well, I think it is typical, in that
18 they would shift in response to this fragmentation that
19 took place. Without that fragmentation, I don't think
20 it's typical at all, that they would not have shifted
21 away from that situation. And I think what they're
22 really avoiding then are the predators that are being
23 brought in there by the packed snow conditions,
24 allowing them to move up there. So there's less

[WITNESS PANEL: Kilpatrick~Gray]

1 resources for them for food because the predators are
2 getting food. And there's also greater danger, a
3 landscape of fear that they tend to change their
4 behavior and avoid that area because of the abundance
5 of predators there.

6 Q. Could that --

7 A. (Dr. Kilpatrick) Does that answer your question?

8 Q. Could there have been any other factors that might have
9 caused the population to shift?

10 A. (Dr. Kilpatrick) Well, you know, certainly the
11 pre-construction survey is pretty short, so it doesn't
12 have a lot of information. The survey that was done
13 during construction suggested that the martens
14 certainly did move out of the area, probably avoiding
15 the noise, all the work activity. But then, once the
16 construction was completed, they did recover, but they
17 didn't recover to the full extent of their activity
18 patterns as pre-construction. So that's kind of the
19 data that's available on this. Again, I think that,
20 you know, a longer-term study would be very useful to
21 get -- we've got one year of post-construction surveys.
22 Could it be something else? Obviously, yes, it could
23 be other environmental factors. So, multi-year-type
24 survey work might show that this is really an

[WITNESS PANEL: Kilpatrick~Gray]

1 abnormality in the data, and we're totally wrong about
2 the conclusions we're drawing from that. But this is
3 what we have.

4 Q. Okay. Thank you.

5 CHAIRMAN BURACK: Are there other
6 questions from members of the panel?

7 (No verbal response)

8 CHAIRMAN BURACK: No questions from
9 members of the Committee at this time. Okay.

10 Did you have something on redirect?

11 MS. MALONEY: Just briefly.

12 MR. IACOPINO: Mr. Chairman, I had a
13 couple questions.

14 CHAIRMAN BURACK: Oh, I'm sorry.
15 Attorney Iacopino.

16 **CROSS-EXAMINATION**

17 **BY MR. IACOPINO:**

18 Q. Dr. Kilpatrick, you were asked some questions -- I
19 forgot who asked you questions -- about your
20 communications with Will Staats from Fish & Game. How
21 many times did you speak to Mr. Staats?

22 A. (Dr. Kilpatrick) I had one major conversation with him
23 about the site. I probably spoke with him four times,
24 but most of those were just, "I'm not going to be in

[WITNESS PANEL: Kilpatrick~Gray]

1 the office," "This is not a good time." Nothing of
2 substance in those other conversations.

3 Q. So you spoke with him once substantively.

4 A. (Dr. Kilpatrick) That's right.

5 Q. And was that by telephone or face-to-face?

6 A. (Dr. Kilpatrick) That was by telephone.

7 Q. Had you ever met Mr. Staats prior to your telephone
8 conversation with him?

9 A. (Dr. Kilpatrick) Yes, I have.

10 Q. And how had you previously known him?

11 A. (Dr. Kilpatrick) I've known Will for a long time as a
12 biologist. He was the first person that actually got
13 me hired as a consultant involving the development of a
14 wind project.

15 MR. IACOPINO: No further questions.

16 CHAIRMAN BURACK: Thank you. Attorney

17 Maloney.

18 **REDIRECT EXAMINATION**

19 **BY MS. MALONEY:**

20 Q. Yeah, I just wanted to, in that regard, follow up. You
21 had talked about -- you had referenced that testimony
22 had been withdrawn. I think what you were referencing
23 was in the settlement agreement, where both the AMC and
24 Fish & Game had originally submitted testimony in

[WITNESS PANEL: Kilpatrick~Gray]

1 opposition to the wind farm, indicating that there was
2 "unreasonable adverse impact." That testimony was
3 withdrawn. Is that what you were referencing?

4 A. (Dr. Kilpatrick) That was what I was referencing. And
5 I think that reflects the feelings of -- I shouldn't
6 say. You know, that was an opinion that was based upon
7 the biology that was available at the time. Then, I
8 think the other agreements that were made also have the
9 political filter which they come through.

10 Q. And when you're referencing "political filter," that
11 there was the conservation aspects of it --

12 A. (Dr. Kilpatrick) Absolutely.

13 Q. -- as opposed to the emphasis on the restoration plans.

14 A. (Dr. Kilpatrick) Absolutely. Of what the mitigation
15 for the recovery of the species should be.

16 Q. And just to follow up on your opinions with regard to
17 reforestation, certainly when you study species,
18 obviously the habitat is an important part of that;
19 correct?

20 A. (Dr. Kilpatrick) Absolutely. And that's much of what I
21 have tried to examine is looking at what in the state
22 of Vermont is called "critical wildlife habitat"; so,
23 habitat that's required for the survival of a
24 threatened or endangered species.

[WITNESS PANEL: Kilpatrick~Gray]

1 Q. And with respect to this site and the current state of
2 the restoration, you sort of described it as sort of
3 "multiple experiments" going on there now; correct?

4 A. (Dr. Kilpatrick) Correct. You have natural
5 recolonization. You have the first restoration plan
6 that has been implemented. You have the revised
7 restoration plan that has been implemented. You could
8 do the experiments to see if rodent populations are
9 different in those different habitats. You can look at
10 the difference of survivorship of plants in those.

11 Q. Apart from your disagreement with the Tier 1 planting
12 on the pads, I mean, you aren't suggesting that --
13 well, rather, you're suggesting to continue with the
14 restoration. You suggested we plant additional trees,
15 I assume in those same fashion, except not every
16 4 feet, or however they have done that.

17 A. (Dr. Kilpatrick) Correct.

18 Q. And that these restoration experiments be studied.

19 A. (Dr. Kilpatrick) Be monitored and be -- you know, be
20 able to have statistical analysis to show whether
21 they're having a sufficient or substantive
22 effect/impact, or if they're doing nothing.

23 Q. And what would you estimate is an appropriate time for
24 monitoring the reforestation plans? A time period.

[WITNESS PANEL: Kilpatrick~Gray]

1 A. (Dr. Kilpatrick) Again, I think I would like to see it
2 done in multiple-year situations. So, I think two
3 years is way too short of a period. But I would think
4 something like every 5 years, maybe, over a 20-year
5 period would give some really good information about
6 what the success of the restoration might be.

7 MS. MALONEY: Okay. I have nothing
8 further.

9 CHAIRMAN BURACK: Thank you very much.

10 It is now almost 3:15. And again, I
11 think this is doable, and I'm going to ask everybody's
12 cooperation to try to get us here. What I'd like to do in
13 a moment is -- gentlemen, first, thank you very much.

14 (Panel witnesses excused.)

15 CHAIRMAN BURACK: -- ask each of the
16 three parties to make closing summary statements here.
17 And I'll provide an opportunity first for Wind Action to
18 do so, and then Counsel for the Public, and finally the
19 Applicant. I will ask each of you to please keep your
20 statements or closing summaries to five minutes or less.
21 And then I will ask the Committee to begin discussions of
22 this matter, to see if we're in a position to be able to
23 deliberate. And we'll likely ask Attorney Iacopino to
24 provide us some upfront guidance, in terms of for the

1 Committee, for our consideration as we're deliberating.

2 I'm going to assume that there is no
3 objection to striking the identification on all the
4 exhibits. In other words, all the exhibits will be taken
5 as exhibits in this proceeding.

6 (No response.)

7 CHAIRMAN BURACK: No objections? Very
8 good. Okay. Thank you.

9 If we could, let's proceed to our
10 closing summaries. And Ms. Linowes, please start.

11 **CLOSING STATEMENTS**

12 MS. LINOWES: Thank you, Mr. Chairman.
13 I didn't have a chance to really prepare anything. I'll
14 say very quickly, then, this Project went through
15 significant review in 2009. There was a lot of debate
16 over whether or not it should be built because of the
17 environmental impacts. As we heard from the decision --
18 as I stated earlier, as written in the decision, the
19 Committee stated that this Project would be very hard to
20 approve but for the high-elevation settlement agreement,
21 which included revegetating the roads back to 12 feet.
22 There was clearly a concern about the impacts of habitat
23 with the pine marten, Bicknell's thrush and other species.
24 Now we're being asked, after a very short period of time,

1 to reopen that plan and to relax the requirements, and
2 without much in the way of study to evaluate if this is
3 the best way to move forward and, also, without a good
4 understanding of whether or not it's necessary.

5 I do not think the Applicant has met the
6 threshold for opening the plan. I think more time is
7 needed to understand what the impacts are and, if the
8 Committee is so inclined, to allow for the revegetation to
9 be widened, to reduce [sic] it by 4 feet to allow for a
10 much more systematic approach, that we could gain from it
11 and actually have a better survival rate on the trees.
12 Thank you.

13 CHAIRMAN BURACK: Thank you very much.

14 MS. MALONEY: Mr. Chairman, I think
15 that, as Counsel for the Public, what we're looking for is
16 as much information as possible to make informed
17 decisions. And I think that's what we tried to do here.
18 I was struck by a lot of witnesses unable to answer a lot
19 of questions, witnesses on behalf of the Applicant. And,
20 quite frankly, I would have liked to have seen a lot more
21 answers, to have proper corporate representatives here who
22 could have answered some of these questions. For example:
23 What is their experience at other wind turbines? That
24 kind of information wasn't even forthcoming.

1 With respect to the -- it's just, I
2 think, when these certificates are initially granted,
3 there is a lot more public attention at that time. And I
4 think that when you come back, it's less on the public's
5 radar because the communities or adjacent communities have
6 been impacted. You know, they've already been impacted,
7 so they're not -- their attention and focus isn't there as
8 much as it is initially. So that's why I think it's
9 really important to have as much information as possible
10 available now. And like I said, I was disappointed.
11 There was a lot of questions that couldn't be answered.

12 With respect to -- obviously, we had Dr.
13 Kilpatrick and Mr. Gray testify with respect to the
14 reforestation plan. And we think it's an appropriate time
15 to add some additional information, and, for the
16 Committee's benefit, to take a look at these plans, take a
17 second look at them now, because clearly there's been
18 environmental impact. And I know the Committee was aware
19 of that when they granted the certificate. But based on
20 some studies taken, there have already been some
21 additional adverse impacts to two species in New Hampshire
22 that have been threatened, that are threatened species.

23 You know, the AMC and, obviously, New
24 Hampshire Fish & Game do very good work in the state. But

1 I think, as Dr. Kimball testified, their emphasis was on
2 the conservation aspects of it, and the land that was
3 appropriated for conservation and conservation easements,
4 and less so on the restoration plan. And so it was with
5 that in mind that the Public Counsel asked Dr. Kilpatrick
6 to testify and take a look at these and look at the
7 habitat, particularly in light of the adverse impacts on
8 the two threatened species. And so we would ask the
9 Committee to take into consideration some of the
10 recommendations that were made.

11 What's problematic about all of the
12 testimony that was given on behalf of the Applicant is
13 there really -- nobody is sort of minding store there as
14 to how this reforestation plan is working. They haven't
15 determined a proper way and proper protocols for
16 evaluating whether they're doing it.

17 And from an economic point of view, I
18 mean, I think it's true, if they're granted this
19 application -- or they're granted this amendment, they can
20 expand the road, and they don't have to go back and
21 reforest every time they have to do this. So there is a
22 significant economic advantage to the Applicant in
23 approving this amendment. But I think, in terms of
24 economics, there's also a waste of money and time and

1 effort if this isn't working and if it doesn't pan out.
2 And I think that those kinds of things -- to have a more
3 robust plan, to have some work put in on the actual
4 monitoring and measuring the results and then doing
5 something with that information if it's not working, then
6 to continue to cooperate, so whatever goal posts that are
7 set for the plan are accomplished.

8 And as Counsel for the Public, we would
9 ask the Committee to seriously consider Dr. Kilpatrick's
10 recommendations and to include -- if the Committee decides
11 to grant the Applicant's motion and amendment, I would ask
12 that some of those protocols be adopted by the Committee
13 as well.

14 CHAIRMAN BURACK: Thank you very much,
15 Attorney Maloney.

16 Now turn to you, Attorney Pachios.

17 MR. PACHIOS: Thank you, Mr. Chairman.
18 This is -- you know, you distill this down, and this has
19 been going on for nine months. Here's how it started: We
20 found out because of these two casualties that were
21 referred to that equipment has to go up to the ridge lines
22 sometimes when you have a very serious repair issue. That
23 was anticipated in 2009. You'll see that in, I think it's
24 No. 12 or No. 9 -- we referred to it earlier -- the

1 colloquy with Mr. Harrington about that: What are you
2 going to do if you have to have equipment? We have to go
3 up, tear up the revegetated area and then replant again.
4 And that's going to happen. If there were no amendment,
5 we'd go up, replant after the damage and start all over
6 again. That's not a good way to get a mature forest.

7 So, testimony has been that, in
8 discussions with New Hampshire Fish & Game, they said,
9 Wait a minute. This doesn't make sense, because you're
10 going to plant and then tear it up. You're going to do
11 that periodically. Nobody can predict how often or even
12 why. But casualties occur. So this seemed to be a
13 practical solution that was discussed with New Hampshire
14 Fish & Game.

15 In the process of deciding, look, let's
16 do it once, and then we can let the replanted
17 area/revegetated area grow without further disturbance,
18 there was discussion about some changes to the
19 revegetation plan. And my client was amenable.

20 Let me say that, had, in this
21 proceeding, the scope of the proceeding included whether
22 or not there was some economic advantage for my client to
23 come in here and go through this and ask for this
24 amendment, we would have addressed that. We would have

1 had a witness here to tell you that, if you don't want to
2 do it, we'll withdraw the application and we'll do it the
3 way it was anticipated in 2009, right in your very own
4 record. When the equipment has to go up, it goes up, and
5 then we revegetate afterwards. Who knows how many times
6 it's going to happen over the next 20 years. But the
7 problem is, even if it only happens a few times, it
8 means -- if it doesn't happen for five years from now,
9 five years from now, that growth is going to be more
10 mature, and it's going to be destroyed. So that's why New
11 Hampshire Fish & Game and AMC and Brookfield came in here
12 with an amended agreement -- an amendment to the agreement
13 that you adopted, their agreement in 2009.

14 But I want to emphasize, if anyone
15 thinks that Brookfield's money is the issue here of what
16 they want to spend, open it up, if you want affidavits,
17 whatever you want, and we'll cover that issue. That is
18 not the issue. This is a practical solution and, at the
19 time when we started, we thought a simple one. However,
20 to be sure, it is an opportunity for opponents of wind
21 power, opponents to this Project, to kind of re-litigate
22 some things and say let's get some more conditions; here's
23 a great opportunity.

24 So I want to say about that, Mr.

1 Chairman, if there's going to be a lot more conditions,
2 if -- you know, we have to assess that against the
3 practical purposes of widening the road from 12 to 16 feet
4 and determine whether death by a thousand cuts of things
5 that people might think about to impose on this Project is
6 better or worse than not having a practical solution to
7 the problem, and simply destroying and revegetating,
8 destroying and revegetating. So it's a pretty simple
9 process for us. But we do want the opportunity, if you
10 say to us, Look, you have your choice: We're either going
11 to reject your application to widen the road from 12 to
12 16 feet, which even Dr. Kilpatrick said is not the issue
13 here, whether that road is -- there are many other issues
14 he points to, he says, but 12 to 16 feet, which is what
15 brought us here today, is not the issue here.

16 So we would like to know whether you
17 would consider that. I mean, if you're going to -- at
18 least allow us to withdraw if we're to have a lot of
19 trouble here. It is a practical thing we're seeking.
20 We're doing it on the basis of discussions with New
21 Hampshire Fish & Game. We did not expect that this would
22 proceed as this has proceeded. No problem with that.
23 It's a public process, and we understand that. But we do
24 need to make an assessment. And we are willing, frankly,

1 to do it the way it was proposed in 2009: Destroy,
2 revegetate.

3 CMSR. HONIGBERG: I have a question,
4 Attorney Pachios. There's been discussion with each
5 witness about whether the agreement specifies the changes
6 being made immediately, all at once, or only as needed.
7 Where are we on that? Where is the Applicant on what the
8 plan would be to make these modifications if the agreement
9 takes effect?

10 MR. PACHIOS: Well, from our point of
11 view, we think -- and again, this is just practical. We
12 have no economic stake in this. We think that it makes
13 sense to do it before the growth, you know, gets up there.
14 And both Ms. Linowes and Dr. Kilpatrick said the same
15 thing. You know, if you're going to do it, why wait until
16 it's mature growth, and then you're chopping down the
17 mature growth. So I think 0we think it makes more sense
18 to do it, if you give permission, sooner, depending on
19 season of the year and planting time and so forth.

20 CMSR. HONIGBERG: So, is that three
21 years? That the plan would be to do a third each year,
22 and if there's an event that requires you to do it in a
23 different place, you take care of that and modify the plan
24 accordingly?

1 MR. PACHIOS: Oh, I think you do it all
2 at once. Yeah, I think you do it all at once. One
3 construction project to widen that road by 4 feet.

4 CMSR. HONIGBERG: Okay. I mean, it had
5 not been clear to me, and I don't think it had been clear
6 to a lot of us what the actual plan was.

7 MR. PACHIOS: It would just be, if we
8 have permission, if the amended plan gets accepted, that's
9 what's being presented is an amended plan.

10 CMSR. HONIGBERG: Thank you.

11 MR. PACHIOS: And if that gets accepted,
12 we just go do the Project, weather and climate and
13 planting season accommodating.

14 CHAIRMAN BURACK: So if I could just
15 point a finer point on that. If the Committee were to
16 approve it, would it be the goal of the Company or the
17 plan of the Company to accomplish the proposed work in
18 calendar year 2015, whether before the summer season or
19 after the summer season?

20 (Discussion among Applicant parties.)

21 MR. PACHIOS: I'm told, depending on
22 availability of the trees, there are -- there is an
23 exhibit in here before you that says that 5,605 trees were
24 planted, and there's another exhibit that tells you the

1 additional trees that will be planted. And we have to buy
2 the trees. But we would do the -- we would certainly
3 widen the road and do the plantings at the same time and
4 try to get the trees.

5 CHAIRMAN BURACK: So if trees were not
6 available in 2015, then you would seek to have them
7 available in 2016? Is that -- would that be a fair
8 understanding?

9 MR. PACHIOS: Yes.

10 CHAIRMAN BURACK: Thank you, Attorney
11 Pachios.

12 Okay. Are there any other questions
13 that anybody has for any of the counsel to understand
14 their positions? Ms. Bailey.

15 MS. BAILEY: So I thought your testimony
16 originally was that you would do it as needed. But based
17 on the conversation today, it's better for you -- and
18 nobody seems to object -- doing it sooner rather than
19 later.

20 MR. PACHIOS: Yes.

21 MS. BAILEY: What about the trees?
22 Since you're not doing it in the immediacy of an
23 emergency, the trees that are already planted in that
24 first 4 feet, would they get replanted, or would they just

1 get --

2 MR. PACHIOS: They would get replanted.
3 Yes, they would be moved and replanted.

4 MS. BAILEY: All right.

5 MR. PACHIOS: And they would be
6 replanted to areas, other areas that New Hampshire Fish &
7 Game will designate besides the turbine pads.

8 MS. BAILEY: So, maybe some of them
9 would be moved back to the last 12 feet of the, you
10 know --

11 MR. PACHIOS: Yes. But there are other
12 places. As I understand it -- and they can correct me --
13 there are other places on the mountain where New Hampshire
14 Fish & Game says they would like to see some more trees,
15 because there was logging on that mountain until your 2009
16 decision. And so they have other areas. And look, if
17 it's a matter of trees -- I think I can speak for the
18 Company -- all New Hampshire -- they have a great working
19 relationship with New Hampshire Fish & Game. If New
20 Hampshire Fish & Game goes to Brookfield and says, hey --
21 two years from now, three years from now, five years from
22 now and says, Okay, we did all of this in 2015. Can you
23 give us another 500 trees up here? They'd do it. They
24 have a great working relationship with them. They want to

1 plant trees.

2 MS. BAILEY: Thank you.

3 MS. LINOWES: Mr. Chairman, can I
4 comment on something?

5 CHAIRMAN BURACK: Ms. Linowes, very
6 briefly, and then we're going to close this, and I want to
7 go to deliberations.

8 MS. LINOWES: I just want to make a
9 quick point, that I'm very uncomfortable about this, the
10 Company working it out with Fish & Game. I think if
11 anything is going to happen like that, the Committee
12 should put something in the -- a request, at least, that
13 reports back to the SEC on anything that's happening into
14 the future with regard to monitoring. Thank you.

15 CHAIRMAN BURACK: Thank you very much.

16 Okay. We're going to close the formal
17 hearing portion of this proceeding, and we're going to
18 move to deliberations. I want to thank all the witnesses
19 and counsel and parties for their participation in the
20 proceeding today. I think it's been very helpful to the
21 Committee's understanding of the matter before us. In a
22 moment, we'll go around the table, and I'm going to give
23 an opportunity for each member of the Committee -- and
24 we'll start on one side and work around to the other

1 side -- each member of the Committee to discuss the matter
2 and share their thoughts on this. Let's get a general
3 sense of what, without necessarily staking out specific
4 positions at this moment, what issues people heard, what
5 matters they think there is agreement on or not, and then
6 we will, at an appropriate time, see if somebody would
7 like to make a motion. If seconded, we would then discuss
8 further what is important to understand.

9 For those who have not participated in
10 these types of matters before, we do all of our
11 deliberations in public here. It's very important that we
12 effectively make a record based on everything that we've
13 heard in testimony today and seen in all of the exhibits
14 that would support whatever our decision is as a body. We
15 will then take a -- once we've had full discussion on it,
16 we'll take a vote, or as many votes as necessary to get us
17 to an agreed-upon position. It takes a majority. So
18 there are 10 of us here; so there would be at least 6
19 members supporting a particular outcome for us to reach a
20 decision. Once we have done that, we would then ask our
21 counsel, Attorney Iacopino, to draft a decision based on
22 all the evidence we've heard and the analysis that we've
23 done here. That decision and draft would be reviewed by
24 the Committee, and once we're all satisfied that it fully

1 and accurately reflects our determinations here, we would
2 then all sign that, and it would be released. But again,
3 that written opinion would be really consistent with and
4 to follow-up on the actual vote that we take here today.

5 I would point out that, because that
6 decision must reflect particular citations to the record,
7 until we actually have the transcripts from the
8 proceeding, counsel will not be able to assist us in
9 getting that drafted. So that process can take a little
10 while to complete.

11 With that, Attorney Iacopino, could you
12 kindly give the Committee some guidance here with respect
13 to the legal standards that apply and that the Committee
14 has historically used in looking at amendments to existing
15 certificates.

16 MR. IACOPINO: Yes. The statute, our
17 enabling statute, RSA 162-H, does not have any specific
18 provision that governs the standard that the Committee
19 should apply when there's an application to amend a
20 certificate. However, historically, the Committee has
21 considered that to be a decision that is based upon "good
22 cause" in the discretion of the Committee. And the
23 Committee has also historically reviewed whether or not
24 the proposed amendment would cause or -- cause the

1 original finding, that there had been "no unreasonable
2 adverse impacts" in any of the particular areas, to be no
3 longer valid. In other words, if the amendment were to --
4 in this particular case, if the Committee were to find
5 that the amendment would cause an unreasonable adverse
6 impact, under your historical way of dealing with these
7 things, you would obviously find that this -- you would
8 not grant the amendment.

9 So, basically, it's a two-step process:
10 Is there good cause for the amendment, and does it in fact
11 upset the prior finding that there would be no
12 unreasonable adverse impact, in this case, on the natural
13 environment, which appears to be the only subject that has
14 been in the record here today.

15 The burden of proof to demonstrate that
16 to you, of course, rests with the proponent; in this case,
17 it's the Applicant.

18 CHAIRMAN BURACK: Thank you, Attorney
19 Iacopino.

20 Any questions for Attorney Iacopino with
21 respect to this? He'll remain available to us as we
22 deliberate, certainly.

23 With that, again, what I'd like to do is
24 just get some general discussion, first, before we turn to

[DELIBERATIONS]

1 seeing if somebody would like to make a motion.

2 Would someone like to start the
3 discussion? Commissioner Scott?

4 * * * * *

5 **SITE EVALUATION COMMITTEE DELIBERATIONS**

6 CMSR. SCOTT: Thank you. Given the
7 discussion and the testimony, I do think, with
8 modification, the revised plan does seem to be an
9 improvement on our original certificate. So I think we do
10 meet that hurdle. I do have some suggestions that I
11 wouldn't mind seeing, so I'll throw those out now.

12 CHAIRMAN BURACK: Why don't you, please.

13 CMSR. SCOTT: I'm interested in perhaps
14 adding that we would require the submission of a plan or a
15 protocol to be submitted within some time frame, perhaps
16 90 days, to demonstrate how the 75-percent survival would
17 be quantified. I have to agree that I have no reason to
18 doubt the testimony, but the, "Gee, it looked like more
19 than that" didn't seem to quite be good enough to meet our
20 certificate. So I'd like to see that more formalized in
21 the form of a plan. I guess the question would be: Plan
22 submitted to whom? The SEC? The Fish & Game? Who would
23 be -- I'd hate to have to reconvene this "august body" in
24 the future to --

[DELIBERATIONS]

1 CHAIRMAN BURACK: I believe that,
2 typically in those kinds of matters, the Committee has
3 delegated authorities but has asked that copies of items
4 be provided to the Committee so that the Committee is
5 aware that the submittals have been made. That would be
6 one standard way.

7 Attorney Iacopino, any thoughts on that?

8 MR. IACOPINO: That is within your
9 authority.

10 CHAIRMAN BURACK: Thank you.

11 CMSR. SCOTT: That would work for me.

12 And following kind of the very last part
13 of the discussion, I have no doubt that the Applicant
14 would work with Fish & Game. But what I'm thinking is a
15 way to, again, maybe formalize the approach on, if there's
16 additional needed plantings, maybe a report each year or a
17 requirement that every year that the Project work with
18 Fish & Game on any needed additional plantings. And maybe
19 as a way to keep the reporting down, it would be if the
20 Applicant didn't want -- didn't meet the Fish & Game
21 request, that Fish & Game said, for instance, we need an
22 additional 300 here, maybe that's what would be recorded,
23 that there was a request made on a yearly basis from Fish
24 & Game, but it was not met because... so, maybe by

[DELIBERATIONS]

1 exception. But I think that perhaps would meet that,
2 formalize that desire, and perhaps that would meet closer
3 to Ms. Linowes' concern also.

4 And the last area, a little bit more
5 loose, but I'm wondering: Is there a way to -- and does
6 this -- the question to me would be: Does this need to be
7 more formalized? But we had discussion over one of the
8 issues for additional plantings being the limitation on
9 the amount of high-elevation topsoil available or material
10 available. That seemed up in the air, whether there was
11 or was not additional material. And that obviously seemed
12 to be a factor in how much additional plantings were
13 practical. So I would like to encourage that that be
14 looked at more formally also.

15 So, those are my three suggestions or
16 amendments -- my suggested amendments to the revised plan.

17 CHAIRMAN BURACK: Thank you.

18 Director Simpkins, do you want to share
19 your thoughts at this moment?

20 DIR. SIMPKINS: Sure. I also think it
21 makes sense to have a modified plan with the widening. It
22 doesn't sit right with me that we're reforesting an area,
23 and every time a large truck needs to go up it's going to
24 basically set that back to zero. So I think it makes

[DELIBERATIONS]

1 sense in the modified plan. Since the area is being
2 mitigated by planting additional areas on the pads, the
3 area that's going to be reforested under the plan remains
4 essentially the same. So I don't believe it would have
5 any more of an adverse impact to the environment than the
6 original plan had because the area will stay the same.

7 I also agree with what several of the
8 folks testified today, that the sooner, the better. I
9 think it makes sense that, the sooner we get those new
10 trees planted, the sooner they'll provide the benefits
11 that they're intended to provide.

12 I do like Commissioner Scott's
13 suggestions, because I think one of the themes that has
14 come up here several times is it would be nice to have
15 more feedback on how the reforestation is working. So,
16 some type of report back or something more official on
17 what the survival rate is or the mortality rate, depending
18 on how you look at it, I think would be appropriate.

19 CHAIRMAN BURACK: Thank you. Director
20 Muzzey.

21 DIR. MUZZEY: Thank you. I agree with
22 several of the statements that have been made, although
23 I've also been concerned with the perception that we heard
24 today from a number of parties, that things are not being

[DELIBERATIONS]

1 very closely monitored or reported to the public.

2 One small suggestion I have is that,
3 with the amended plan, that the plan actually specify the
4 goal of the restoration. That may help the public better
5 understand the purpose of the plan and what it's
6 specifically meant to accomplish.

7 I had read in both the 2010 plan, as
8 well as the more recent amended plan, that there would be
9 monitoring first on a biennial basis and then on an annual
10 basis. So, my expectation was that that would be a
11 written monitoring report. And so I do recommend that
12 some sort of written monitoring report be done and
13 available for the public.

14 And also, to strengthen the portion of
15 the report that discusses the survival rate, we have
16 75 percent as the goal, but there's nothing on what
17 happens if that goal is not reached, and that does get to
18 some of the things that Mr. Scott presented. So I would
19 agree with that, that we need more information on that as
20 well in the plan. Those are my thoughts.

21 CHAIRMAN BURACK: Thank you very much.

22 CMSR. HONIGBERG: I don't think I
23 disagree with anything that my predecessors have said.
24 I've been sitting here feeling like there was a failure of

[DELIBERATIONS]

1 imagination when the original agreement was put into
2 effect; that the notion that a road this narrow would be
3 able to support any significant truck going up there.
4 There had to be a recognition that that was going to be a
5 problem. And the notion that you were going to reforest
6 every time, in retrospect, as you've been describing it
7 today, seems almost ridiculous. And that's almost the
8 standard you're presenting to us, that it is ridiculous to
9 have us continue to do what we all thought was the right
10 thing four years ago. And so I'm just fearful that
11 there's another lack of imagination today, that we are
12 dismissing concerns of the intervenors and the Public
13 Counsel by going ahead. From what I heard, mainly I think
14 from the Public Counsel's witnesses, there's an active,
15 live experiment going on. And the ability to take
16 advantage of that live experiment could be valuable. It
17 could be valuable to the Applicant, could be valuable to
18 other applicants, and it could be valuable in other ways
19 to the state as well.

20 So I would encourage, assuming this goes
21 forward, for the Applicant to work with Public Counsel
22 perhaps, or Public Counsel's witnesses directly, to take
23 advantage of the opportunity that may be presented here,
24 for everyone's benefit.

[DELIBERATIONS]

1 I do think, having heard Attorney
2 Iacopino's description of the standard, I think the
3 Applicant properly has met that standard, although it's
4 close. I think that the obligation to come forward with a
5 complete picture for the Committee was close here. I
6 think there were, as Public Counsel pointed out, a number
7 of questions that I expected the witnesses would be able
8 to answer. I expected that knowledge base to be here and
9 present for the Committee's consideration and for the
10 public's consideration. I would have thought that during
11 the course of discovery, after the testimony was
12 presented, that sufficient questioning would have been
13 made at that time that would have given the Applicant the
14 clue that there were questions going to be asked, that it
15 would be valuable for them to be able to answer.

16 But I do think that, even with those
17 concerns, like I said, I think they probably meet the
18 standard for having this change made. That's how I feel
19 right now, subject to hearing comments from the rest of
20 the panel.

21 CHAIRMAN BURACK: Thank you,
22 Commissioner Honigberg.

23 Director Hatfield.

24 DIR. HATFIELD: Thank you, Mr. Chairman.

[DELIBERATIONS]

1 I agree with a lot of what Commissioner Honigberg just
2 said. I was disappointed that we couldn't get more
3 details from the Company's witnesses.

4 And it's also troubling that the SEC
5 delegated certain responsibilities to an agency that's not
6 before us and that also will have an ongoing role, because
7 they are the agency who deals with wildlife. And, you
8 know, I know that they suffer from extreme lack of
9 resources, like many of us do, but, you know, it really
10 would have been helpful to hear directly from Fish & Game,
11 and also to understand, you know, their thoughts on
12 especially some of the suggested additional mitigation
13 ideas that Dr. Kilpatrick had.

14 Specifically, I agree with Commissioner
15 Honigberg and others who said this is a live experiment
16 that's unfolding before us, and it just seems like a shame
17 to not be very intentional about capturing data to both
18 inform the future of this Project, as well as
19 decommissioning, and other projects that come before the
20 SEC that are potentially this large or at this elevation.

21 I do appreciate the ideas that several
22 SEC members so far have raised, and I think they make
23 sense. I think, generally, formalizing the monitoring
24 that needs to be done is definitely needed. I think

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1 having -- the fact that the Company's proposing
2 qualitative monitoring on issues that are this important
3 doesn't feel like it's enough. We need quantitative
4 information. And I would agree that we need to establish
5 regular reporting requirements that are posted on the SEC
6 Web site so that the public can keep up with what's
7 happening. That's all I have for right now.

8 CHAIRMAN BURACK: Thank you. Ms.
9 Bailey.

10 MS. BAILEY: Thank you. I don't think
11 that we're being asked to relax requirements. I think
12 experience from the Project has already shown that it's
13 really likely that replanting along the road will never
14 reach full maturity, and what they're asking us to do is
15 give the replanting a chance to meet full maturity. And
16 so I think that's a good idea. It doesn't seem, from the
17 questions that I asked, that changing the road width from
18 12 feet to 16 feet is going to have any impact, or very
19 little impact on the environment. And so I don't think
20 that there's going to be a big change in the -- I don't
21 think that the amendment will create an "unreasonable
22 environmental impact," any greater than the original
23 certificate already did.

24 So I think what we're talking about is

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1 looking back at the impact that the original certificate
2 already created, and I think that what we really need to
3 discuss is the conditions that we're asking the Applicant
4 to agree to and accept so that we don't make it
5 cost-prohibitive for them to actually do the replanting
6 that seems to make sense. That said, I agree with a lot
7 of what has been said about the reporting, and especially
8 the quantitative analysis of the trees that survive and
9 don't survive. I think delegating to the New Hampshire
10 Fish & Game is probably a good idea, but I also like
11 Director Hatfield's idea about reporting and putting it on
12 the SEC Web site.

13 I don't know how I feel about the live
14 experiment issue and whether we should require a lot more
15 studies, new studies that haven't already been agreed to
16 or directed.

17 CHAIRMAN BURACK: Thank you. Mr.
18 Oldenburg.

19 MR. OLDENBURG: Thank you. It makes
20 sense to me, especially considering the fact that,
21 eventually, just based upon, you know, two events in the
22 last four years or so that have occurred that required
23 tractor-trailers or trains go up the mountain, it makes
24 sense to widen it to accept that. I understand -- one of

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1 the things that I was hesitant about in the beginning was,
2 you know, the original ruling and the requirement that was
3 accepted as 12 feet. Why would we want to change that?
4 But hearing the testimony, it makes perfect sense to me.
5 Doesn't make any sense at all to have to roll back and
6 revegetate every time you have a major maintenance event.

7 I also agree with the fact of creating a
8 survival plan and coming up with a way of measuring
9 75 percent. I would also suggest maybe that in the
10 restoration plan we don't plant trees in an area that
11 might have to be disturbed in the future if the road
12 actually had to be widened. I don't know if that can
13 happen or not. But it just doesn't make sense to pull up
14 all the vegetation just to have to replant it every so
15 often. I don't know if it's more than just the 4 feet or
16 not. But to me, the modified plan makes sense.

17 CHAIRMAN BURACK: Thank you. Director
18 Wright.

19 DIR. WRIGHT: I probably don't have a
20 lot new to add. I think, being an engineer, it's probably
21 inevitable that equipment's going to fail over time. I
22 didn't hear a lot of testimony about whether 12 feet or
23 16 feet was going to make much of a difference in terms of
24 the overall impacts on the site. It seems that Fish &

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1 Game, AMC and the Applicant came up with a reasonable
2 agreement to facilitate some other plantings that weren't
3 originally intended. So I think that's a positive.

4 I like some of Commissioner Scott's
5 suggestions regarding some additional monitoring and
6 maybe -- I also like the idea of Fish & Game having some
7 sort of periodic discussions with the Company about
8 whether additional plantings need to be done in the
9 future, and I think that should be somehow reported back
10 to the SEC, not necessarily for approval, but just as for
11 the public information. So I guess that's all I have
12 right now.

13 CHAIRMAN BURACK: Thank you. Director
14 Bryce.

15 DIR. BRYCE: Mr. Chairman, thank you.
16 First, I thought it was a little disappointing that, back
17 when the Project was originally started, they didn't
18 foresee that they were really going to need 16 feet wide.
19 But probably it's not as disappointing as having to send
20 up those trucks with that expensive equipment more
21 frequently than they thought they were going to have to.
22 So I think this is being done out of necessity and not
23 understanding the nature of the environment that they're
24 operating it.

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1 I have two major areas of issues. I
2 think one of them has been covered by others to some
3 extent. First is the degree to which we revisit the
4 mitigation agreement; and the second is, you know,
5 ensuring the adequate establishment of the planted trees.

6 Regarding the first one, it was a little
7 difficult for me to understand whether or not we were
8 talking about the whole mitigation agreement and we were
9 renegotiating that entire agreement, or whether or not we
10 were just looking at the 2-foot, you know, change in the
11 width of the road. And I would say that the information
12 that was provided was adequate to assess whether or not
13 the road width should change 2 feet. But I would agree
14 that it's not adequate to renegotiate the mitigation, the
15 entire mitigation agreement. But I don't believe that
16 that was the purpose of what we were doing -- what we were
17 here to do today. That's already been done. It's just a
18 request in my mind at an operational level.

19 And certainly, there's much to be
20 learned from what we heard today: The importance of
21 monitoring and getting that information out, sharing it
22 and understanding what repercussions it might have on
23 future decisions. But I think when the original order was
24 written, it did not include that you're going to do all

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1 this monitoring and then you're going to re-evaluate what
2 you're going to do going forward. That's not my
3 understanding of what the original order was. So -- not
4 that that isn't an important concept to keep in the back
5 of our minds on how is this information going to be used
6 going forward in the Project and in existing projects and
7 in future projects. So that's my sort of the difference
8 between the mitigation agreement and then renegotiating
9 the mitigation agreement and what I thought we were
10 talking about today.

11 And the second is the establishment of
12 planted trees. First, there are -- there should be --
13 it's not that big a deal to go out and actually
14 scientifically measure the success of those trees. My
15 understanding is they do it extensively up in Maine when
16 they do tree planting. They send check crews out to
17 measure the mortality rates of seedlings. So there's all
18 kinds of protocols that are -- I'm sure there's all kinds
19 of protocols out there that you can use to statistically
20 determine the success rate of those trees, and I don't
21 think that's that difficult to get. Fish & Game would
22 have access to that through themselves or through other
23 agencies like ours, for example, over at DRED.

24 My second -- so that should definitely

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1 be done. The second is that I'm not sure about two years,
2 in terms of establishing vegetation. You know, that was
3 in the original order. I'm not sure it's fair to go back
4 and revisit that. But, you know, in some settings, it
5 takes a little bit longer than that to really know that a
6 tree's established. And so, you know, that one's -- you
7 know, I'm not sure what's going to happen. You know, if
8 at four years, you know, you get 90-percent mortality,
9 what happens? Hopefully the Company will come back and
10 say, Yeah, but our intent was to get that revegetated, so
11 we're going to take care of it.

12 Certainly do it as soon as possible,
13 agreeing with the other parties. You know, and I would
14 say give three years -- 15, 16, and even 17. We're
15 talking about the life spans of trees. So I don't think
16 an extra year is going to make a whole heck of a lot of
17 difference, and then we don't have to come back here and
18 revisit because something happened out of control, like
19 weather, a bad wet summer, whatever. So, you know,
20 whether it's two years or four years, to me it doesn't
21 really matter. So I would -- with the exception of --
22 certainly with the exception of the measurement process,
23 incorporating something regarding the measurement process,
24 and a more robust measurement process, I would support the

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1 Applicant's request.

2 CHAIRMAN BURACK: Thank you. Director
3 Forbes.

4 DIR. FORBES: Coming in last, it's hard
5 not to repeat everything that's been said. I certainly
6 agree with Commissioner -- or Director Wright. I haven't
7 heard a lot about the width being an issue. It's more
8 criticism of the existing plan, and playing "Monday
9 morning quarterback" to that is a little easy to do. But
10 I think, moving forward, I would support the concept of
11 widening it.

12 And when I think of Commissioner Scott's
13 idea of doing more study of the 75-percent survival, I
14 would hope for it to be more than just a counting of the
15 threshold of whether you made it or not. I'd like to
16 think that there could be some analysis of what succeeded
17 and where, what impacted the survival rates. We heard
18 some testimony today about the factors that could
19 influence the survival. And when you work towards
20 replanting these trees, keeping in mind the results of
21 what you've learned through that 75-percent study would be
22 important. I would hate to see us just move trees at the
23 direction of Fish & Game or anyone else without the
24 benefit of the knowledge that could be gained from that

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1 study. So I would encourage the study occur first to
2 determine survival and some analysis of that study of the
3 rates that -- or the impacts that might have led to
4 greater survival in some areas or impacted fatalities.
5 So, with that, I would certainly support the width
6 increase, though.

7 CHAIRMAN BURACK: Thank you. And I'll
8 just very quickly summarize my views.

9 I believe that, overall, the Applicant
10 has demonstrated good cause, although, as at least one
11 party indicated, it is something of a close question. But
12 at the end of the day, I believe it is inevitable that
13 they will have to go back up there on one or more
14 occasions in the future. And for the reasons that we've
15 heard today, it would make more sense if amendments need
16 to be made to the road, to do those sooner rather than
17 later. The overall environmental impact is less. I think
18 we've heard from Dr. Kimball that, from his perspective,
19 this was an improvement on the original plan and really
20 constitutes a form of adaptive management that we really
21 should be encouraging parties to be thinking about and not
22 be saying, well, because the certificate at one time
23 locked us into a certain way of doing things, that's just
24 the way we have to do it. I don't think we want to

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1 encourage parties to feel that once a decision is made,
2 there is no opportunity to think about better ways to do
3 the work and accomplish the goals. So I would also
4 support the request, but subject to at least some of the
5 kinds of modifications that have been discussed here
6 today.

7 And what I'm going to suggest we do here
8 is I'm going to attempt to very quickly summarize where I
9 think we are and see if anybody wishes to make any tweaks
10 to these. I would then ask to see if there's a motion to
11 consider what has been proposed.

12 And I would say, Attorney Pachios, I'm
13 sure I and others are not unmindful of your statement that
14 the Applicant came here requesting approval of a certain
15 thing, and if it turns out that certain thing is going to
16 be turned into, at this season of the year, a tree that
17 has many other things on it -- you know where I was going
18 to go with that -- I understand that the Company may say,
19 Well, if that's where we are, that may not be a place we
20 want to go. But let's see if we have a sense of something
21 that could address as much as possible the concerns that
22 have been raised today.

23 So here's what I think we've heard: I
24 think we've heard that the Committee would support

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1 approval of the request -- I'm looking for the actual
2 petition here itself. Here we go -- approval of an
3 amended high-elevation restoration plan, subject to
4 certain conditions. The first would be that, within,
5 going to suggest 90 days here, the Company would
6 prepare -- in consultation with a qualified forester,
7 would prepare a protocol to demonstrate how it would
8 actually quantify the achievement of the 75-percent
9 survival rate, and that that protocol would also include
10 some level of analysis to identify for those areas where
11 75 percent is not being achieved, what may be the
12 contributing factors; and likewise, where it is being
13 achieved, what may be the contributing factors, again,
14 with an eye towards trying to learn something from all of
15 this to help further guide future decisions relating to
16 the revegetation and reforestation of the disturbed areas
17 here.

18 The second element would be to ask the
19 Company to conduct an evaluation, with appropriate experts
20 as necessary, to determine if there would be additional
21 topsoil available to be able to undertake additional
22 plantings of disturbed areas.

23 A third item would be to ask that the
24 Company submit -- or have an annual conversation with New

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1 Hampshire Fish & Game -- and I might suggest that
2 Appalachian Mountain Club be added to that group as
3 well -- to discuss whether there appear to be any
4 opportunities for additional plantings, for the Company,
5 at its discretion, to consider whether it would undertake
6 such additional plantings.

7 And the fourth item would be that the
8 Company make all -- make good-faith efforts to secure the
9 necessary seedlings to be able to undertake the proposed
10 initial widening of the road out to 16 feet and other
11 revegetation during calendar year 2015 at appropriate
12 times, based on the testimony we heard regarding when it's
13 best to move trees and when it's best to leave them in the
14 ground, and that, if that work cannot be conducted in
15 2015, that it be conducted as soon as practicable in 2016.

16 I think that that's a summation of the
17 key conditions that we had discussed here as a committee
18 that seemed to be mentioned by perhaps two or more of the
19 parties.

20 Any thoughts on that? Is that a fair
21 summary of where we are? Ms. Bailey.

22 MS. BAILEY: The one thing that I think
23 that you didn't get -- or it may be embedded in here, but
24 not explicitly -- is what they do if they find out that

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1 they don't reach the 75-percent survival rate. Is that
2 when they would talk to Fish & Game about replanting? Or
3 even if they got to the 75 percent, would they talk to
4 Fish & Game about replanting?

5 CHAIRMAN BURACK: I believe that the
6 sense of the group was that we would be expecting that
7 there would be an annual conversation with Fish & Game,
8 looking at where they were relative to the report. And
9 certainly if they were below 75 percent, the expectation
10 would be that they would be looking to do additional
11 plantings to be able to get there. If they were above
12 that level, I think at that point it becomes much more
13 discretionary with the Company as to whether or not they
14 would do any additional planting.

15 MS. BAILEY: Okay. So that makes sense.
16 So then, the 75-percent survival rate
17 for 20 years? For 5 years? Forever? What are we talking
18 about? Do we need to be specific?

19 CHAIRMAN BURACK: I think it depends on
20 the length of the monitoring. And I'm going to turn to
21 our two forest -- yeah, Ms. Hatfield.

22 DIR. HATFIELD: I think in what's
23 proposed, the Company says that Granite will provide
24 annual monitoring of seedling survival for two years.

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1 CHAIRMAN BURACK: Yes. And I think what
2 we heard from Director Bryce, and possibly from Director
3 Simpkins, is a concern as to whether or not that is too
4 short a period of time to be able to establish this.

5 As foresters, what is your sense of
6 this?

7 DIR. BRYCE: I can't really necessarily
8 speak to that. In some, like in a Christmas tree
9 plantation, a year -- you know, once you get it in the
10 ground, it shows up a year later, you know you're probably
11 okay. In this environment, I don't really know.

12 If I can add another comment. But I'm
13 not sure it's appropriate -- whether or not it's
14 appropriate, given the original decision, to require them
15 to accept that obligation for a longer time period. But
16 it just varies by situation. And Brad can add to that if
17 he likes.

18 DIR. SIMPKINS: Well, in regards to the
19 legal point that Director Bryce just brought up, about
20 whether it's appropriate to change that or not, I won't
21 weigh in on that. But certainly two years, I mean, it
22 seems like it would be a fairly short period in this
23 environment. It's a very harsh environment. And so, you
24 know, two years -- and things grow very slowly there.

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1 It's a very short growing season at that elevation. So,
2 two years does seem fairly short. What would be an
3 appropriate number of years? Certainly you wouldn't want
4 to go out too far, because there's going to be natural
5 mortality all the time, like it occurs in the forest
6 anyways. So that's not really a definitive answer, but...
7 two years seems a little short. But it is in the original
8 plan. So, whether it's appropriate to change that or
9 not...

10 CHAIRMAN BURACK: Well, would it be
11 appropriate to say there would be two years following the
12 time that the revegetation occurs? Two years from the
13 time that the trees -- that the road is widened and trees
14 are moved and replantings occur?

15 DIR. BRYCE: Mr. Chairman, the question
16 for me is, are they -- they're obligated to monitor for
17 two years; correct?

18 CHAIRMAN BURACK: Correct.

19 DIR. BRYCE: But are they obligated by
20 the decision to actually establish vegetation in that
21 area? Because if they're obligated to establish, then it
22 kind of doesn't matter because they have to come back,
23 regardless. And that's what I don't know. And that
24 might -- I don't really know, having not read the -- you

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1 know, have the order and decision handy. Maybe Mike can
2 help with that.

3 CHAIRMAN BURACK: Attorney Iacopino, do
4 you have the original --

5 MR. IACOPINO: I'm getting to it.

6 CHAIRMAN BURACK: While he's searching
7 for that, again, to try to get us to closure here quickly,
8 does anyone have anything else they've identified here?
9 If not, I want to try to move us to see if there is a
10 vote -- a motion and a vote. Yes.

11 DIR. MUZZEY: I have a question of
12 clarification, and it gets back to what Ms. Bailey talked
13 about as well.

14 Will there be that expectation that they
15 will -- and this may be Director Bryce's question as
16 well -- that they will replace vegetation if they don't
17 reach the 75-percent survival rate?

18 CHAIRMAN BURACK: Attorney Iacopino is
19 checking.

20 DIR. MUZZEY: Because that may be in the
21 original order?

22 MR. IACOPINO: I'm checking. But if you
23 all recall, the restoration plan itself was decided after
24 the issuance of our order. I'm checking the order to see

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1 if there was anything in there. Although, I believe it
2 simply said that they were to consult with Fish & Game and
3 establish a revegetation plan.

4 DIR. BRYCE: Mr. Chairman. Over here.

5 CHAIRMAN BURACK: I'm sorry. Director
6 Bryce.

7 DIR. BRYCE: So I'm reading, I believe,
8 the proposed agreement. And it says, "Successful tree
9 establishment will be at 75-percent survival rate."

10 CHAIRMAN BURACK: Yes.

11 DIR. BRYCE: So I think that answers
12 that question. But I think it's significant enough to
13 make sure we're all on the same page on that. So,
14 regardless of how many years, it's 75 percent. That's the
15 way I would interpret that, if I'm reading the right
16 document.

17 DIR. HATFIELD: So if I understand your
18 point, you could almost -- and we should be clear if this
19 is where we're going. You could almost read this to say
20 Granite will provide annual monitoring for two years, or
21 until 75 -- there's a 75-percent survival rate. I mean,
22 that doesn't have an end on it, though.

23 DIR. BRYCE: Yeah. Well, it's not clear
24 that -- well, if you read -- does the survival rate occur

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1 for that two-year period during the monitoring, or does it
2 occur in perpetuity. This is not going to occur in
3 perpetuity, because those trees, if they're fir, when
4 they're 80 years old or 60 years old, they're going to
5 start dying anyway.

6 CHAIRMAN BURACK: Attorney Iacopino, any
7 further --

8 MR. IACOPINO: Just about. I'll just
9 read the relevant portion of the order for you. It says
10 the Subcommittee recognizes that revegetation will be an
11 important part of the construction process for this
12 Project and that areas above 2700 feet will be -- will
13 present the greatest challenge to revegetation; therefore,
14 once construction above 2700 feet is complete, the Project
15 shall be revegetated in accordance with a plan to be
16 developed by the Applicant, in conjunction with New
17 Hampshire Fish & Game. The plan must address
18 re-establishment of endemic species, including spruce and
19 fir within the restored right-of-way. The plan must
20 include provisions for planting of seedlings and the
21 application of organic matter to best support successful
22 restoration. And then, subsequent to actual construction,
23 they apparently did this.

24 We have the plan, the original

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1 restoration plan, which I haven't gotten to yet. I'll go
2 back.

3 CHAIRMAN BURACK: Director Muzzey.

4 DIR. MUZZEY: This may be just a
5 question of what we all understand "survival rate" to be.
6 So, from a forester's perspective, when that type of
7 statement is in a monitoring -- is in a monitoring clause,
8 do you assume that they'll be replanting if they don't
9 reach that 75-percent rate? It's not stated because
10 that's the common assumption?

11 DIR. SIMPKINS: Well, really --

12 DIR. BRYCE: He's the director of
13 Forests and Lands now.

14 [Laughter]

15 DIR. SIMPKINS: Yeah, it really depends
16 on what you're monitoring for. So, you know, here in New
17 Hampshire, in the New Hampshire forest ecosystem, we do
18 very little planting because there's so much natural
19 regeneration. So, you know, this is a "horse of a little
20 different color," where we're saying you must have
21 75-percent survival rate. So the question is: How long
22 are we saying you have to have that survival rate? You
23 can have an insect outbreak, a native insect outbreak, in
24 a couple years. Is it up to the Applicant now if an

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1 insect comes in and kills those trees? Are they obligated
2 to make sure there's always 75-percent survival? Do they
3 have to replant after a natural disturbance, such as an
4 ice storm or wind throw? So those are -- I was not here
5 during the original deliberations in 2009, so I'm not
6 exactly sure what the original intent was.

7 CHAIRMAN BURACK: If I may, I'm going to
8 propose an approach here that perhaps will help us to find
9 a path forward here.

10 Given that the original order, as
11 Attorney Iacopino read it to us, effectively delegates the
12 detailed oversight of work on this matter to the New
13 Hampshire Fish & Game Department, I'm going to suggest
14 that we effectively leave the delegation there, and we
15 create an expectation at the end of two years there will
16 be a report by the Company, consistent with the annual
17 reports they're doing already to Fish & Game, with respect
18 to progress toward this 75-percent survival rate goal.
19 And again, we leave it with Fish & Game to determine
20 whether or not adequate progress has been made or not,
21 with the exception that, if Fish & Game feels that there
22 remain significant issues to be addressed, that that
23 concern would be brought here to the Committee. But
24 otherwise, we leave it with Fish & Game as it sits

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1 currently under the terms of the order. Attorney
2 Iacopino.

3 MR. IACOPINO: Would you like me to
4 compare the two provisions, from the 2010 plan and the one
5 that's proposed for you at this point?

6 CHAIRMAN BURACK: That would be helpful.
7 Sure. Thank you.

8 MR. IACOPINO: The 2010 plan which is
9 contained in Applicant's exhibit -- I'm sorry -- I think
10 Public Counsel's 16, I believe, Page 3, post-construction,
11 there's a section dealing with monitoring. The relevant
12 paragraph says, following construction, the operator, GRP,
13 will provide a biannual monitoring of seedling survival
14 for two years. Successful tree establishment will be a
15 75-percent survival rate.

16 The new -- the revised plan, Applicant
17 6, is a little bit more detailed, not much, but says,
18 during construction -- sorry -- following construction,
19 Granite will provide annual monitoring of seedling
20 survival for two years. Successful tree establishment
21 will be a 75-percent survival rate. It's almost the same
22 wording. I think there's one little change, but... so,
23 essentially, they've carried that over into the new
24 revised plan.

[DELIBERATIONS]

1 CHAIRMAN BURACK: Thank you.

2 Commissioner Honigberg.

3 CMSR. HONIGBERG: My sense is that the
4 appropriate way to proceed is the way Commissioner Burack
5 suggested a moment ago, which is to delegate this to Fish
6 & Game. And I think there's a number of common-sense
7 readings of this. But the most common sense, the most
8 obvious is that they were going to plant 5600 trees, and
9 success is that 4200 of them are surviving after two
10 years. I think every two years they look around and
11 there's not 4200 trees, they'll plant more trees to get to
12 4200. But I think that's kind of what the logic
13 underlying this agreement would seem to call for.

14 CHAIRMAN BURACK: You're saying that
15 after the first two years, that that would occur, and
16 after that there's nothing more.

17 CMSR. HONIGBERG: I think that's right.

18 CHAIRMAN BURACK: That's the way I would
19 read it and understand it as well. And I think the only
20 question we've been wrestling with a little bit here is
21 whether or not this change in the plan resets the clock.

22 And Attorney Pachios, I would just ask
23 you, from the standpoint of your client, would your client
24 be prepared to do two more years of monitoring from this

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1 point after the clock is reset?

2 MR. PACHIOS: Yes. Mr. Chairman, I
3 think that is what the amended plan calls for, that we
4 already agreed to that with New Hampshire Fish & Game.

5 CHAIRMAN BURACK: Okay. That's helpful
6 to understand. And again, I'm not trying to enter into
7 negotiations here. But I just want to ask, is there
8 anything that you heard me describe as conditions that
9 this Committee is considering that, from the standpoint of
10 your client, would be extraordinarily problematic? I hope
11 the answer is "No."

12 MR. PACHIOS: Well, you're important
13 because you're the chairman and the Commissioner and so I
14 don't want to disappoint you. So the answer is "Yes."
15 I'm only sorry, as they are, that New Hampshire Fish &
16 Game isn't here, because Mr. Staats is on that mountain
17 all the time, and he knows whether 75 percent is -- but
18 he's not here. So these are fine.

19 CHAIRMAN BURACK: Thank you very much.

20 Okay. With that, do I need to restate
21 the motion? Would that be helpful? And then I'm going to
22 ask somebody to -- we all understand what they are?
23 Somebody want to move it?

24 DIR. HATFIELD: Just one thing I think

[DELIBERATIONS]

1 is missing is anything about -- are they providing the
2 reporting just to Fish & Game? Because there was some
3 general agreement that it would be good to make sure that
4 that information was available to the public, perhaps
5 through the SEC's page for this docket.

6 CHAIRMAN BURACK: Yes. If I failed to
7 state that, I think that would be an important
8 understanding, that such reports would go to Fish & Game,
9 with a copy to the SEC, and we would then post it on the
10 Web site to be available to all interested parties. So I
11 trust that form of public disclosure is not going to be a
12 problem or an issue for the Company.

13 DIR. HATFIELD: And just for disclosure
14 of where I'm at, I don't think that two years is
15 sufficient. I was actually surprised in the photographs
16 how small those seedlings are. And I think the -- while
17 they weren't under oath, we have heard from two people on
18 the panel who have familiarity with forestry. And I
19 personally don't feel like that's enough time. But if
20 it's the will of the Committee, you know, I'm not going to
21 make a different motion. But I just wanted to let you
22 know that.

23 CHAIRMAN BURACK: Is there a motion
24 consistent with the summary that I provided earlier, and

[DELIBERATIONS]

1 including the modification that Director Hatfield provided
2 earlier, that the reporting that's done to Fish & Game
3 would also be provided to SEC and would be publicly
4 posted? Somebody wish to make that motion?

5 MS. BAILEY: So moved.

6 CHAIRMAN BURACK: Thank you, Ms. Bailey.

7 CMSR. SCOTT: Second.

8 CHAIRMAN BURACK: All right. We have a
9 motion that's based on the summary I provided earlier,
10 seconded by Commissioner Scott. Is there further
11 discussion of this motion?

12 (No verbal response)

13 CHAIRMAN BURACK: All right. If not,
14 I'd like to do a roll call vote if we could, please.
15 Attorney Iacopino, could you just call the roll for us,
16 please.

17 MR. IACOPINO: I can. Director Forbes.

18 DIR. FORBES: Aye. Yes.

19 MR. IACOPINO: Director Bryce.

20 DIR. BRYCE: Aye.

21 MR. IACOPINO: Director Wright.

22 DIR. WRIGHT: Yes.

23 MR. IACOPINO: Director Oldenburg.

24 MR. OLDENBURG: Yes.

[DELIBERATIONS]

1 MR. IACOPINO: Engineer Bailey.

2 MS. BAILEY: Yes.

3 MR. IACOPINO: Director Hatfield.

4 DIR. HATFIELD: No.

5 MR. IACOPINO: Commissioner Honigberg.

6 CMSR. HONIGBERG: Yes.

7 MR. IACOPINO: Director Muzzey.

8 DIR. MUZZEY: Yes.

9 MR. IACOPINO: Commissioner Scott.

10 CMSR. SCOTT: Aye.

11 MR. IACOPINO: Director Simpkins.

12 DIR. SIMPKINS: Yes.

13 MR. IACOPINO: Mr. Chair.

14 CHAIRMAN BURACK: Yes.

15 (Vote taken by roll call.)

16 MR. IACOPINO: So it's 10 to 1.

17 CHAIRMAN BURACK: Thank you very much.

18 Okay. We appreciate the very good work
19 of the Committee on this matter. We're going to stay
20 right where we are. I apologize, but we have one more
21 matter we have to get through here.

22 I want to thank all the parties to this
23 proceeding for your participation and your assistance to
24 the Committee.

[DELIBERATIONS]

1 I'm going to ask you, please -- you're
2 welcome to stay. This is still a public session, but we
3 have one more matter we need to consider and decide today
4 relating to a funding plan that we must submit a proposal
5 on to the Legislature by the first of December. And I'm
6 going to turn to Commissioner Honigberg to lead our
7 discussion of this matter.

8 Thank you. So we stand adjourned in
9 this proceeding.

10 ***(Whereupon the hearing was adjourned at***
11 ***4:23 p.m.)***

[DELIBERATIONS]

1 C E R T I F I C A T E

2 I, *Steven. E. Patnaude*, a Licensed Shorthand
3 Court Reporter and Notary Public of the State of New
4 Hampshire, do hereby certify that the foregoing is a
5 true and accurate transcript of my stenographic
6 notes of these proceedings taken at the place and on
7 the date hereinbefore set forth, to the best of my
8 skill and ability under the conditions present at
9 the time.

10 I further certify that I am neither attorney or
11 counsel for, nor related to or employed by any of
12 the parties to the action; and further, that I am
13 not a relative or employee of any attorney or
14 counsel employed in this case, nor am I financially
15 interested in this action.

16

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18 Steven E. Patnaude, LCR
19 Licensed Shorthand Court Reporter
20 N.H. LCR No. 52 (RSA 310-A:173)

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[DELIBERATIONS]

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C E R T I F I C A T E

I, *Susan J. Robidas*, a Licensed Shorthand Court Reporter and Notary Public of the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of these proceedings taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action; and further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

Susan J. Robidas, LCR/RPR
Licensed Shorthand Court Reporter
Registered Professional Reporter
N.H. LCR No. 44 (RSA 310-A:173)