STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Town of Lempster

v.

Kevin Onnela
and
Debra Onnela
and
Avangrid Renewables, LLC
and
Lempster Wind, LLC

Michael P. Courtney, Esquire
UPTON & HATFIELD, LLP
10 Centre Street, PO Box 1090
Concord, NH 03302-1090
mcourtney@uptonhatfield.com

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. _____

Town of Lempster

v.

Kevin Onnela
and
Debra Onnela
and
Avangrid Renewables, LLC
and
Lempster Wind, LLC

TOWN OF LEMPSTER EXHIBIT LIST

NOW COMES the Town of Lempster, by and through its attorneys, Upton & Hatfield, LLP, and submits the following Exhibit List:

1. Letter from Board of Selectmen to Kevin and Debra Onnela, dated May 26, 2020, re: removal of gates on Bean Mountain Road
2. Certified copy of Layout of Bean Mountain Road from State Archives
3. Layout of Bean Mountain Road from Town Records
4. Onnela Building Permit records
5. Photograph: Signs on Bean Mountain Road
6. Affidavit of Phillip Tirrell, Fire Chief, re: Layout and Bean Mountain Road
7. First Affidavit of Mary Grenier, Selectperson
8. Second Affidavit of Mary Grenier, Selectperson
9. Affidavit of Ryan Haley, Plant Manager, Lempster Wind, LLC

10. Project Tax Parcels Plan, by Lempster Wind, LLC, showing location of gates and "Access Road"

11. Survey Plans, Lempster Wind, LLC

12. Letter from Lempster Traiblazers ATV Club to Board of Selectmen, dated April 26, 2020, re: locked gates and communications with Ryan Haley, Plant Manager, Lempster Wind, LLC

13. "Chemical" Map

14. Tax Maps

SITE EVALUATION COMMITTEE DOCUMENTS, DOCKET # 2006-01

15. Decision Issuing Certificate of Site and Facility with Conditions

16. Order, Certificate of Site and Facility

17. Appendix I, Certificate of Site and Facility, Department of Environmental Services

18. Appendix II, Certificate of Site and Facility Conditions Pursuant to Agreement of Counsel for the Public and the Applicant

19. Appendix III DRAFT Agreement between Town of Lempster and Lempster Wind, LLC

20. Final Agreement between Town of Lempster and Lempster Wind, LLC

21. Application of Lempster Wind, LLC

SULLIVAN COUNTY SUPERIOR COURT DOCUMENTS, CASE # 2020-2020-CV-00112

22. Onnela Answer to Town of Lempster Complaint

23. Onnela Memorandum of Law

24. Defendants' Joint Reply

Respectfully submitted,
TOWN OF LEMPSTER
By their Attorneys
UPTON & HATFIELD, LLP

Dated: February 16, 2022

By: /s/ Michael P. Courtney
Michael P. Courtney (NH Bar #21150)
10 Centre St., P. O. Box 1090
Concord, NH 03302-1090
(603) 224-7791
mcourtney@uptonhatfield.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Declaratory Judgment was this day forwarded to Susan Geiger, Esquire (sgeiger@orr-reno.com), Robert S. Carey, Esquire (rcarey@orr-reno.com), Meredith R. Farrell, Esquire (mfarrell@orr-reno.com), and Thomas Quarles, Jr., Esquire (tquarles@devinemillimet.com), counsel of record, via electronic mail.

/s/ Michael P. Courtney
Michael P. Courtney

Exhibit 1
Lt to Onnela from BOS re 231:21-a

PLAINTIFF'S EXHIBIT F

TOWN OF LEMPSTER
856 US Route 10
PO Box 33, Lempster, NH 03605
PHONE 603.863.2698 FAX 603.863.8105
www.lempsternh.org

Board of Selectmen Conservation Commission
Highway Department
Planning Board
Tax Collector
Town Clerk
Treasurer

May 26, 2020

Kevin and Debra Onnela
1182 NH Route 10
Lempster, NH 03605

RE: Bean Mountain Road Gates

Dear Mr. and Mrs. Onnela,

We hope you are safe and well.

The Board has recently been notified by the Lempster Trailblazers ATV Club that a designated ATV trail has been blocked by two gates that cannot be opened by ATV riders. It is our understanding that the gates were installed at your request and the passcode has not been given to the traveling public. The installation of the gates has allegedly prevented access to the ATV trails for a substantial portion of the trials designated by the Board pursuant to RSA 215-A:6, IX on February 18, 2020.

New Hampshire law does not permit gates to be erected on a Class VI highway that interfere with the public's use. *See* RSA 231:21-a, I. Furthermore, any gates that are erected "must be capable of being opened and closed by users of the road." *See A Hard Road to Travel* at p. 146 (2004 edition). Unfortunately, gates have been erected on your property interfering with reasonable and lawful use of the Class VI highway.

On January 28, 1981, Building Inspector Rudolf Adler informed Mr. Onella that a building permit could not be issued because "Bean Mountain Road is a Class VI road and is officially discontinued." You were further notified that you could appeal the Building Inspector's decision to the Select Board. On March 14, 1981, a Building Permit was issued with the condition that Mr. Onella be responsible for maintaining Bean Mountain Road as a Class VI road and that "the Town of Lempster reserves all rights to subject road and connectors as a Class VI roadway." The Town is unaware of any information that suggests that Bean Mountain Road is not currently a Class VI highway today.

RSA 231:21-a grants the Board express authority to "regulate such structures to assure such public use, and may cause to be removed any gates or bars which fall into disrepair *or otherwise interfere with public use of the highway*." In the spirit of resolving this matter, please provide an explanation for the erection and use of these gates within 10 days of receipt of this letter. Please be aware that failure to allow public and ATV access may result in the Town seeking judicial intervention to ensure the safety of the public.

Thank you in advance for your cooperation.

Philip Tirrell, Chairman Mary Grenier Everett Thurber

Town of Lempster Select Board

State of New Hampshire

Department of State
Division of Archives & Records Management

I, Brian Nelson Burford, State Archivist for the State of New Hampshire, having been duly authorized by the Secretary of State, William M. Gardner, to authenticate copies of records and papers kept by the Department of State, do hereby certify that the following and hereto attached, consisting of one page, is a true copy of the original document on file at the Division of Archives & Records Management.

In Testimony Whereof, I hereto Set my hand and cause to be affixed the Seal of the State, at Concord, NH, this 13th day of September, 2021

Brian Nelson Burford
Acting State Archivist

By authority of
William M. Gardner
NH Secretary of State

N. H. HIGHWAY DEPT. Sheet.....Of.....

RIGHT OF WAY SOURCE RECORDS

.....Highway T. L. S. A. Town of Lempster

Taken from

3½ Rods ..... Lempster ..... Town
..... Sullivan ..... County
General Court Sessions Records .....

Book 2, Page 39, Year 1819

#428 30-44

EXTRACT

Survey of an highway laid out in the Town of Lempster May 1818

Beginning at the 24th N H Turnpike road 5 rods easterly from a run of water a little east of the Turnpike Gate in said town thence N 28° E 22 rods thence N 41° E 20 rods – N 44° E 18 rods – N 54° E 30 rods, N 10° E 42 rods – N 1° E 61 rods – N 25° E 43 rods – N 1° W 48 rods. – N 11° W 26 rods. N 16° W 46 rods – N 4° W 26 rods. – N 25° W 47 " N 40° W 26 " – N 28° W 32 " – N 18° W 10 " N 17° W 150 " – N 9° W 32 " – N 20° W 20 " to the road leading from Coshen to the afore named turnpike road; the aforesaid highway to be 3 1/2 rods wide and the afore described line to be the Center.

March 8, 1819 James Brigham } Selectmen
Jacob Smith }

16-37

Vol. 2. page 246 ~~3709~~

Beginning at a large hemlock stump which is in the center of the road as now travelled it being on or near the line between Acworth and Lempster Thence S 44° E 14 rods. – S 29° E 51 rods " S 16° E 22 " – S 3° E 20 rods and 15 links to Barnets land. – S 3° E 106 " thence S 7° E 40 rods to the road to a stake and stones. Afore described line the middle and the highway to be 3 rods wide.

Damages.

Moses Barnett $45.00 Hannah Beckwith $1.00

Range 80. & 82.

Eliphalet Booth } Selectmen
Hervey Metcalf } of Lempster.

I do hereby certify that the copy on this sheet is a true copy of the original document on file at the Division of Archives & Records Management, State of New Hampshire.

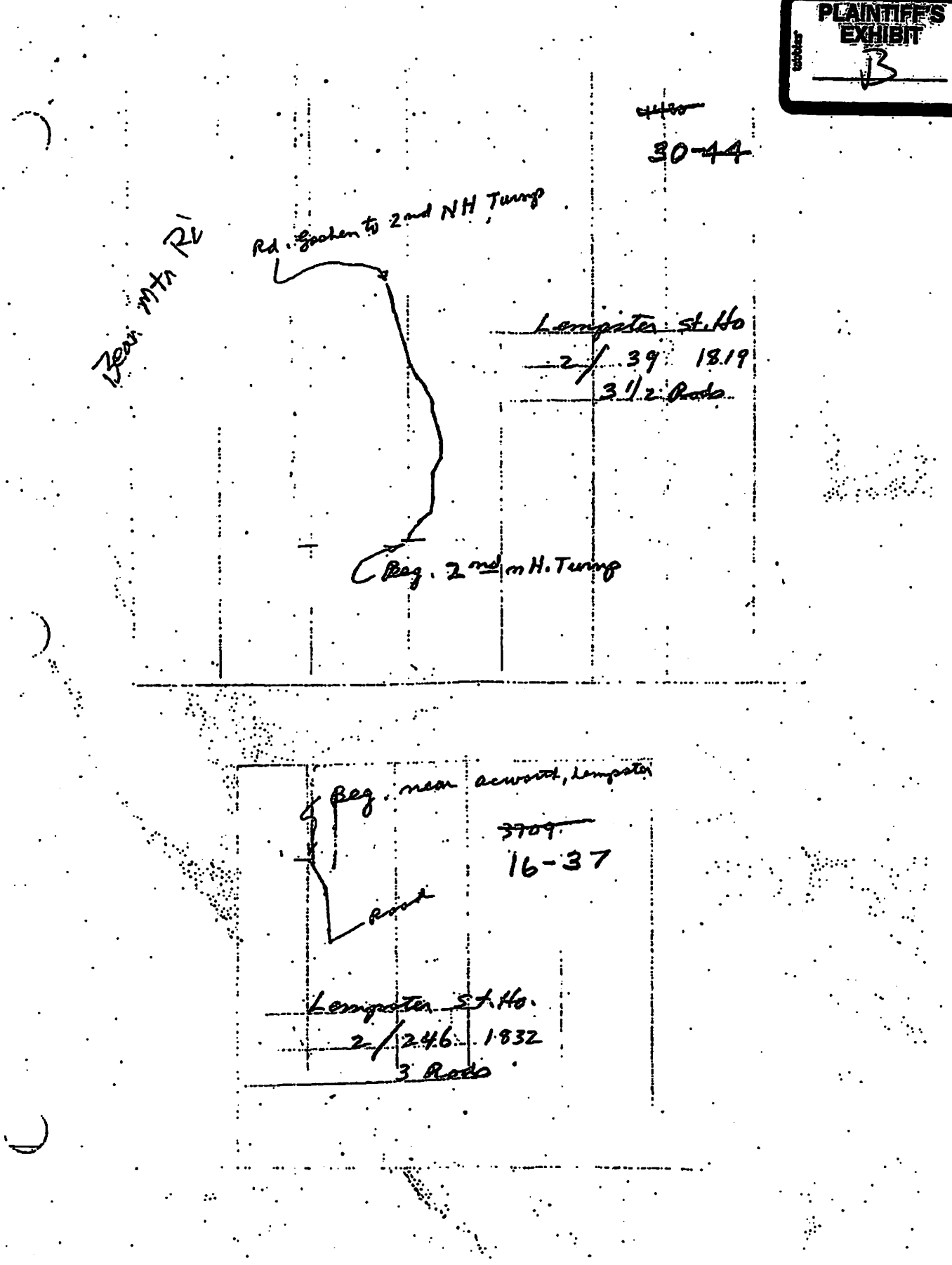
SEP 13 2021

Date

Brian Nelson Burford
Acting State Archivist

Exhibit 3
Layout - Town Records

PLAINTIFF'S EXHIBIT 13



N. H. HIGHWAY DEPT. Sheet ...... Of ......

RIGHT OF WAY SOURCE RECORDS

Highway ...... Town of Lempster

Taken from

3½ Rods Lempster Town
Cheshire County } Book 2 Page 39 Year 1819

4480 General Court Sessions Records

30-44

EXTRACT

Survey of an highway layed out in the Town of Lempster May 1818

Beginning at the 2nd N.H. Turnpike road 5 rods easterly from a sluice of water a little east of the Turnpike gate in said town. thence N 28° E 22 rods thence N 41° E 20 rods – N 44° E 18 rods – N 54° E 30 rods N 10° E 42 rods – N 1° E 61 rods – N 25° E 43 rods – N 1° W 48 rods – N 11° W 26 rods – N 16° W 46 rods – N 4° W 26 rods – N 26° W 47 " N 40° W 26 " – N 28° W 32 " – N 18° W 10 " N 17° W 150 " – N 9° W 32 " – N 20° W 20 " to the road leading from Goshen to the afore named Turnpike road. the above said highway to be 3½ rods wide and the above described line to be the Center

James Brig[illegible] } Selectmen
March 8, 1819 Jacob Smith

16-37
~~3309~~

Vol. 2 page 246

Beginning at a large hemlock stump which is in the center of the road as now travelled it being at or near the line between Acworth and Lempster Thence S 44° E 14 rods – S 29° E 51 rods " S 16° E 22 " – S 3° E 20 rods and 15 links to Barnet's land – S 3° E 106 " thence S 7° E 40 rods to the road to a stake and stones. Above described line the middle and the highway to be 3 rods wide.

Damages
Moses Barnett $45.00 Warren Beckwith $1.00

June 30, 1832.

Eliphalet Beattie } Selectmen
Hervey Metcalf } of Lempster

No.	Book	Page	Date	Width	For Layout See
3-44	1	26	1793	None	Cheshire County Records
6-44	2	356	1837	4 Rods	Lempster Town "
9-44	2	242	1842	3 "	Cheshire County "
10-44	4	75	1844	3 "	Sullivan "
17-44	—	—	1842	4 "	Washington Town "
18-44	2	91	1836	4 "	Cheshire County "
26-44	1	270	1801	3 "	Lempster Town "
27-44	2	228	1829	None	" " "
28-44	2	626	1847	3 Rods	" " "
29-44	1	357	1806	3¼ "	" " "
30-44	2	39	1819	3½ "	" " "

Survey Bean Mt Road
Extract

Lempster. Book 2 page 39 year 1819
State

Survey of an highway lay out in the Town of Lempster May 1818

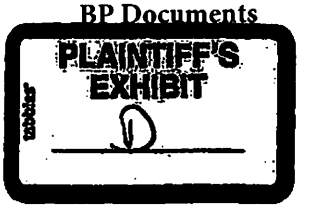
Beginning at the 2nd NH turnpike and 5 rods easterly from a run of water a little east of the turnpike gate in said town. Hence N28* E22 rods turn N41 E 20 rods-N44* E 18 rods-N54* E 30 rods, N 10* E 42 rods- N 1*. E 61 rods,-N 25*. E 43 rods-N1* W 48 rods.- N 11* W 26 rods. N16* W46 rods- N4* W 26 rods.-N26* W47 rods. N40* W 26 rods- N28* W32 rods- N18*. W10 rods N17* W150 rods- N9* W32 rods- N20* W20 rods
To the road leading from Goshen to the above named turnpike and the above named turnpike to be 3 1/2 rods wide and the above described line to be the center

March 8, 1819.

Selectman
James Bingham
Jacob Smith

699 rods or 2.3 miles long
3.5 rods or 57.75 feet wide

Exhibit 4
BP Documents



January 28, 1981

Mr. Kevin Onella
97 Summer Street
Newport, New Hampshire 03773

Dear Mr. Onella:

Regarding your application for a building permit forr a family dwelling on property located off Bean Mountain Road- please be advised that a building permit cannot be issued due to the present classification of this road. Bean Mountain Road is a Class VI road and is officially discontinued.

State law, specifically RSA 36:26 which reads in part"...no building shall be erected on any lot within any part of such municipality nor shall a building permit be issued therefore unless the street giving access to the lot upon which such building is proposed to be placed (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to that tme,...." prohibits my issuing a permit at this time.

This same statute, however, enables you to appeal this decision if you feel practical difficulty or unnecessary hardship are entailed. The appeals board may make any reasonable exception and has the power to authorize or issue a permit subject to such conditions as it may impose.

Please address your appeal to the Chairman, Lempster Board of Selectmen, P.O. Box 37, Lempster, N.H. 03606.

Sincerly,

Rudolf A. Adler
Building Inspector
Town of Lempster

cc: E. Thurber
file

Appeared in person to appeal - before Bd of Selectmen at regularly scheduled meeting 3/4/81 RAA
Bd agreed to issue with conditions -
1) leaving all rights of way to town
2) assuming no responsibility to maintain or improve road

CONDITIONAL **BUILDING PERMIT** CONDITIONAL

Lempster, New Hampshire

Number 120

Name of applicant KEVIN C. ONELLA 97 Summer St. Newport, N.H. 03773

Location of building Bean Mountain Road approx. one mile off Nichols Rd.

Type of building Post and beam (new) (Repairs)

Description and nature of remodeling or construction:

30 X 46 feet, 2 story colonial

CONDITIONS ~~SKETCH~~ CONDITIONS

Issuance of this Building Permit conveys no responsibility to the Town of Lempster, New Hampshire to repair, upgrade or maintain the roadway upon which the proposed building is to be erected. In public witness at a regularly scheduled meeting of the Lempster Board of Selectmen March 4, 1981- owner/applicant and his assigns agrees to be responsible for all maintenence of the subject roadway (Bean Mountain Road-so called) from junction of School and Nichols Roads to building site. The Town of Lempster reserves all rights to subject road and connectors as a Class VI roadway.

By order of Selectmen

Everett Thurber
Rudolf A. Adler
Charles Newton

Dated March 4, 1981

Estimated cost $ 62,100 Contractor Self

THIS PERMIT IS VOID IF CONSTRUCTION NOT STARTED IN 6 MONTHS.

I hereby apply for a building permit to cover the above described construction, agreeing to comply with the existing building ordinances of the Town of Lempster, New Hampshire.

Kevin C Onella
Signature of Applicant

Date March 14, 1981

Application (~~granted~~) (denied) 1/28/81
Granted with conditions 3/14/81

Signed Rudolf A. Adler
Building Inspector

Exhibit 5
Onnela Sign

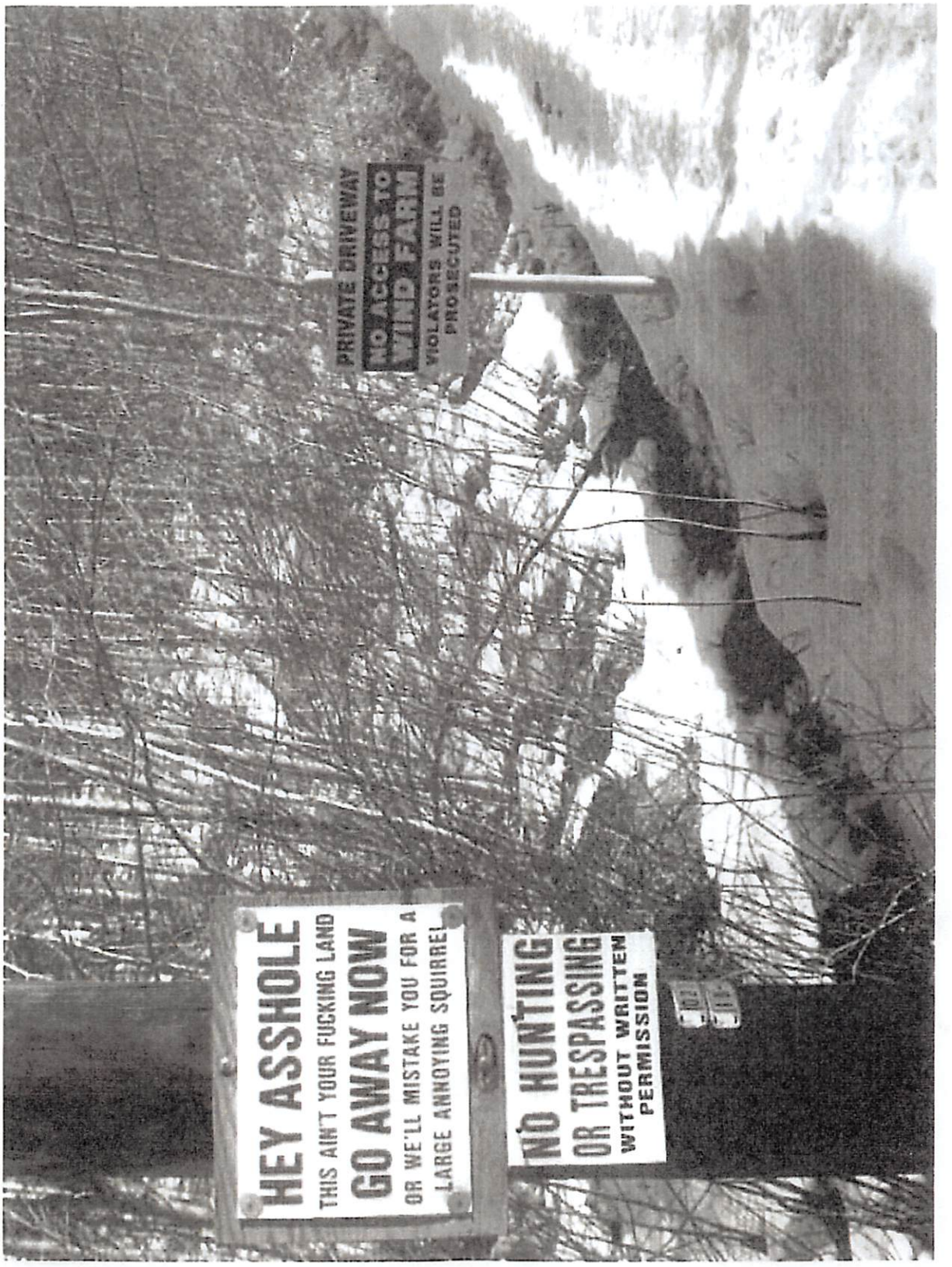


Exhibit 9

STATE OF NEW HAMPSHIRE

SULLIVAN, SS. SUPERIOR COURT

Case No. 220-2020-CV-00112

Town of Lempster

v.

Kevin Onnela, et al.

AFFIDAVIT OF PHILLIP TIRRELL

I, Phillip Tirrell, being duly sworn, do hereby depose and state as follows:

1. I am the former Fire Chief of the Town of Lempster. I served in that position from 1979-2009.

2. I am a former Selectmen of the Town of Lempster. I served in that position from 2018-2021.

3. As such, I am familiar with the facts giving rise to the above-referenced litigation.

4. Bean Mountain Road is a Class VI road laid out by the Town of Lempster in 1819. *See Pl.'s Exhibit* 1 and *Exhibit* 8.

5. On or about FEB 28 2021, I confirmed that Bean Mountain Road is laid out from the intersection of Lempster Mountain Road, also known as Second NH Turnpike, and runs to the intersection of Nichols Road, also known as the road leading from Goshen. I used a Google maps satellite measuring tool that calculated the total length of Bean Mountain Road as 2.29 miles. This is consistent with the layout as described in the *Plaintiff's Exhibit* 1 and *Exhibit* 8.

Phillip Tirrell

STATE OF NEW HAMPSHIRE
Sullivan, SS

Dated: October 13, 2021

Personally appeared the above named Phillip J Tirrell of the Town of Lempster, and made that the foregoing by him/her subscribed is true.

Robin L Cantara
Justice of the Peace/Notary Public

ROBIN L. CANTARA
STATE OF
- MY -
COMMISSION
EXPIRES
DECEMBER 19,
2023
NEW HAMPSHIRE
NOTARY PUBLIC

Exhibit 7
First Affidavit of Mary Grenier

STATE OF NEW HAMPSHIRE

SULLIVAN, SS. SUPERIOR COURT

Case No. 220-2020-CV-00112

Town of Lempster

v.

Kevin Onnela, et al.

AFFIDAVIT OF MARY GRENIER

I, Mary Grenier, being duly sworn, do hereby depose and state as follows:

1. I am a member of the Town of Lempster Board of Selectmen. As such, I am familiar with the facts giving rise to the above-referenced litigation.

2. I have read the Town's Objection to Defendants Avangrid Renewables, LLC and Lempster Wind, LLC's Motion for Summary Judgment and all of the facts stated therein are accurate and true.

3. I have read the Town's Objection to Defendants Kevin and Debra Onnela's Motion for Summary Judgment and all of the facts stated therein are accurate and true.

4. The documents attached to the Town's Objections are true and accurate copies of Town records.

5. Bean Mountain Road is a Class VI road laid out by the Town of Lempster in 1819. *See* Exhibit 1.

6. Town officials and employees have searched the Town's records and have not identified a vote of the Town Meeting to discontinue Bean Mountain Road.

7. The Town of Lempster has not agreed to the placement of the gates by the defendants on Bean Mountain Road.

Mary Grenier/Selectmen
Town of Lempster

STATE OF NEW HAMPSHIRE
Sullivan, SS

Dated: August 13, 2021

Personally appeared the above named Mary Grenier of the Town of Lempster, and made that the foregoing by her subscribed is true.

ROBIN L. CANTARA
STATE OF
- MY -
COMMISSION
EXPIRES
DECEMBER 19,
2023
NEW HAMPSHIRE
NOTARY PUBLIC

Robin L. Cantara
~~Justice of the Peace~~/Notary Public

Exhibit 8
Second Affidavit of Mary Grenier

STATE OF NEW HAMPSHIRE

SULLIVAN, SS. SUPERIOR COURT

Case No. 220-2020-CV-00112

Town of Lempster

v.

Kevin Onnela, et al.

SECOND AFFIDAVIT OF MARY GRENIER

I, Mary Grenier, being duly sworn, do hereby depose and state as follows:

1. I am a member of the Town of Lempster Board of Selectmen. As such, I am familiar with the facts giving rise to the above-referenced litigation.

2. I have read the Town's Motion for Summary Judgment and all of the facts stated therein are accurate and true.

3. The documents attached to the Town's Motion are true and accurate copies of Town records.

4. Bean Mountain Road is a Class VI road laid out by the Town of Lempster in 1819. *See* Exhibit 1 and Exhibit 8.

5. Town officials and employees have searched the Town's records and have not identified a vote of the Town to discontinue Bean Mountain Road.

6. The Town of Lempster has not agreed to the placement of the gates by the defendants on Bean Mountain Road.

7. Defendants have not erected a fence around the entire perimeter of the Project Site.

8. Section 1.9 of the Town Agreement defines "Project Site" as "property with rights as conveyed to Owner by Lease, Easement or other agreement with Participating Landowner that includes all Wind, Turbines, access roads and other facilities required for construction operation of the Wind Park."

9. Bean Mountain Road was not "conveyed to the Owner by lease or easement."

10. Bean Mountain Road was not "conveyed" to Lempster Wind by "an agreement with the Participating Landowner."

11. The Wind Park does not maintain Bean Mountain Road in the winter.

12. The Wind Park and Onnelas use Ridge Road to proceed to the Wind Park and Onnelas home.

13. Defendants Onella have erected signs at the gate on Bean Mountain Road. See Pl.'s Ex. 3.

Mary Grenier, Selectmen
Town of Lempster

STATE OF NEW HAMPSHIRE
Sullivan, SS

Dated: October 7, 2021

Personally appeared the above named Mary Grenier of the Town of Lempster, and made that the foregoing by him/her subscribed is true.

Robin L. Cantara
Justice of the Peace/Notary Public

ROBIN L. CANTARA NOTARY PUBLIC STATE OF NEW HAMPSHIRE - MY COMMISSION EXPIRES DECEMBER 19, 2023

EXHIBIT A

STATE OF NEW HAMPSHIRE

SULLIVAN, SS. SUPERIOR COURT

Case No. 220-2020-CV-00112

Town of Lempster

v.

Kevin Onnela

Debra Onnela

Avangrid Renewables, LLC

and

Lempster Wind, LLC

AFFIDAVIT OF RYAN HALEY

NOW COMES Ryan Haley, upon oath, being duly sworn, and states as follows:

1. I have been employed by Lempster Wind, LLC since 2010 and hold the position of Plant Manager.
2. Avangrid Renewables, LLC holds a 100% ownership interest in Lempster Wind, LLC, and is the member-manager of Lempster Wind, LLC.
3. My responsibilities as Plant Manager at the Lempster Wind Facility include: ensuring strict management and compliance with all company and project environmental, health and safety programs; conducting periodic safety assessments; ensuring that Lempster Wind employees receive periodic safety training; negotiating and administering third party contracts; managing crews that perform operations, maintenance and warranty activities of all Facility equipment; ensuring compliance with manufacturers'

requirements; managing implementation of capital improvement programs and retrofits; and ensuring that all relevant internal controls are followed, and that new controls are developed as needed.

4. Lempster Wind, LLC owns and operates a 24 megawatt wind-powered electricity generating facility located on the ridge line of Lempster Mountain in Lempster, New Hampshire ("Lempster Wind Facility").
5. The Lempster Wind Facility is comprised of twelve wind turbines whose towers are approximately 256 feet high.
6. I am familiar with the location of the wind turbines, access roads, gates, signs and other facilities, buildings and equipment comprising the Lempster Wind Facility.
7. The Lempster Wind Facility is located on the following parcels of land: Town of Lempster Tax Map/Parcel: 6-132,000; 9-175,111; 8-530-094; 6-218,115; and 6-034,044.
8. Lempster Wind leases property shown on Lempster Tax Map/Parcels 6-132,000, 9-175,111 and 8-530-094 from Defendants Kevin Onnela and Debra Onnela.
9. Attached to this Affidavit as Exhibit A-1 is a map depicting the locations of the above-referenced parcels, the Lempster Wind turbines/towers, Bean Mountain Road, and two gates.
10. Bean Mountain Road is an unpaved road that runs through the site of the Lempster Wind Facility and provides access to the Facility.
11. The Onnelas' house is the only year-round, permanent residence on the Lempster Wind Facility site.

EXHIBIT A

12. In November, 2008, Lempster Wind installed a gate (Gate 1 shown on Exhibit A-1) and a sign thereon near the intersection of Nichols Road and Bean Mountain Road to prevent the public from using Bean Mountain Road to access the Lempster Wind Facility.

13. In June, 2010, Defendant Kevin Onnela, with Lempster Wind's permission and approval, installed a gate (Gate 2 shown on Exhibit A-1) at the border of the Lempster Wind Facility site at the east end of Bean Mountain Road which restricts the public from using Bean Mountain Road to access the Lempster Wind Facility.

DATED this 4th day of August, 2021.

Ryan Haley

STATE OF NEW HAMPSHIRE

COUNTY OF Sullivan

On this 4th day of August, 2021, the above-named Ryan Haley personally appeared before me and subscribed and swore to the foregoing.

CINDY L. WILLIAMS
MY COMMISSION EXPIRES JULY 19, 2022
NOTARY PUBLIC NEW HAMPSHIRE

Justice of the Peace/Notary Public
My Commission Expires: July 19, 2022

Exhibit 10
Map 2006 (Gate 1 and 2 Overlay)

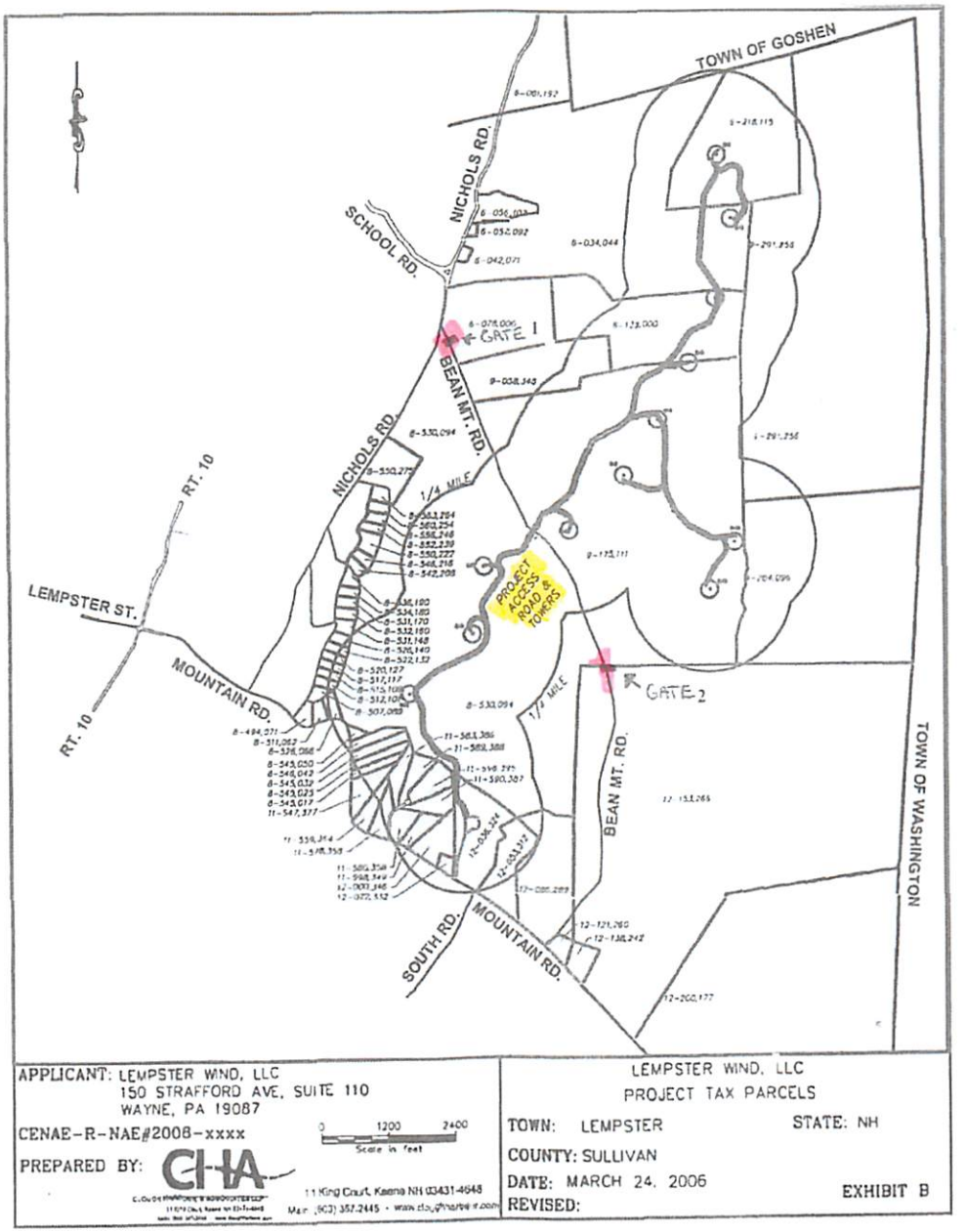
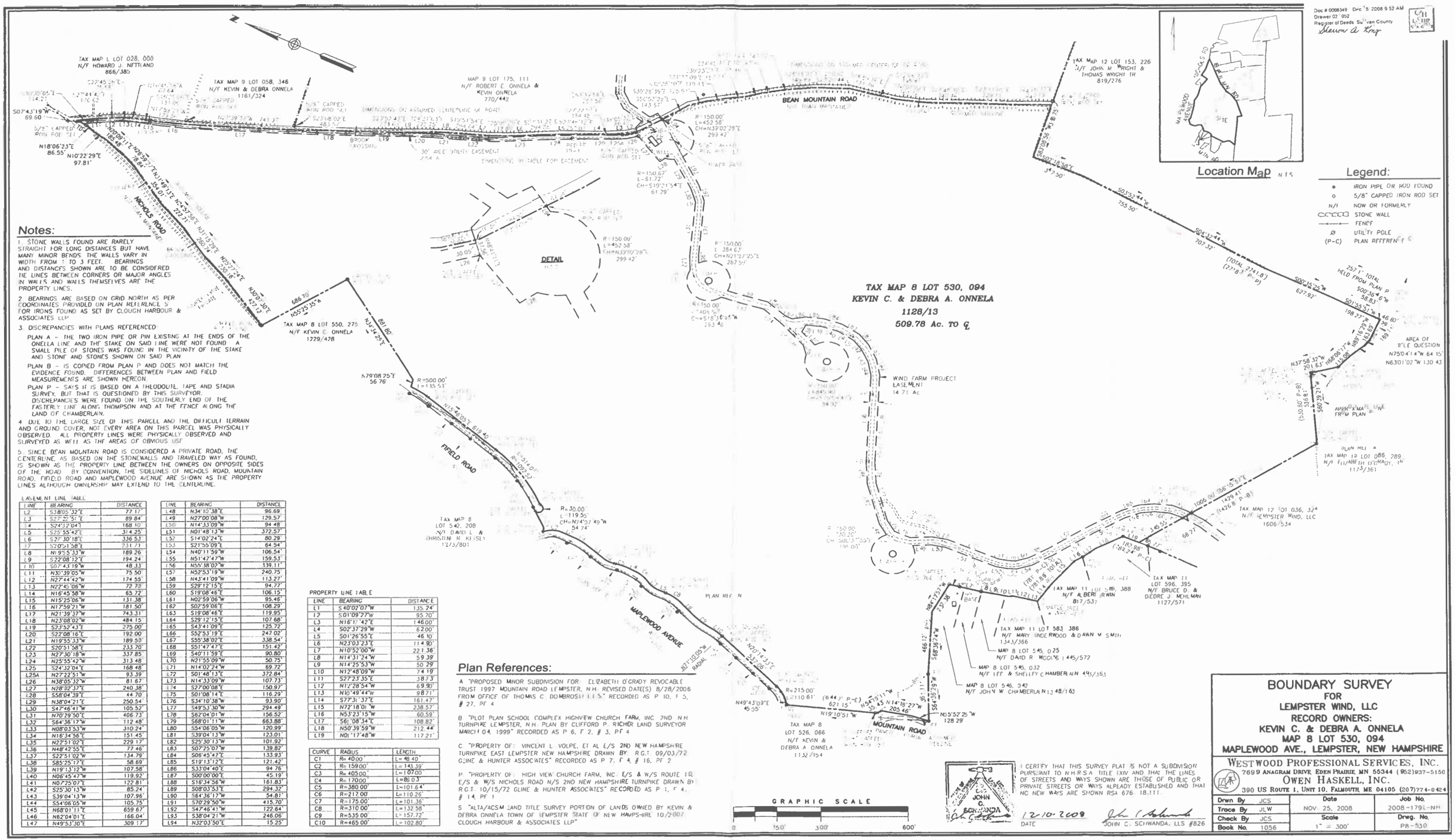


Exhibit 11
Survey Plans



Doc # 0008349 Dec 5 2008 9:52 AM
Drawer 02 052
Register of Deeds Sullivan County
Sharon A Kay

Notes:

1. STONE WALLS FOUND ARE RARELY STRAIGHT FOR LONG DISTANCES BUT HAVE MANY MINOR BENDS. THE WALLS VARY IN WIDTH FROM 1' TO 3 FEET. BEARINGS AND DISTANCES SHOWN ARE TO BE CONSIDERED TIE LINES BETWEEN CORNERS OR MAJOR ANGLES IN WALLS AND WALLS THEMSELVES ARE THE PROPERTY LINES.
2. BEARINGS ARE BASED ON GRID NORTH AS PER COORDINATES PROVIDED ON PLAN REFERENCE 5 FOR IRONS FOUND AS SET BY CLOUGH HARBOUR & ASSOCIATES LLP.
3. DISCREPANCIES WITH PLANS REFERENCED:
   - PLAN A – THE TWO IRON PIPE OR PIN EXISTING AT THE ENDS OF THE ONELLA LINE AND THE STAKE ON SAID LINE WERE NOT FOUND. A SMALL PILE OF STONES WAS FOUND IN THE VICINITY OF THE STAKE AND STONE AND STONES SHOWN ON SAID PLAN.
   - PLAN B – IS COPIED FROM PLAN P AND DOES NOT MATCH THE EVIDENCE FOUND. DIFFERENCES BETWEEN PLAN AND FIELD MEASUREMENTS ARE SHOWN HEREON.
   - PLAN P – SAYS IT IS BASED ON A THEODOLITE, TAPE AND STADIA SURVEY, BUT THAT IS QUESTIONED BY THIS SURVEYOR. DISCREPANCIES WERE FOUND ON THE SOUTHERLY END OF THE EASTERLY LINE ALONG THOMPSON AND AT THE FENCE ALONG THE LAND OF CHAMBERLAIN.
4. DUE TO THE LARGE SIZE OF THIS PARCEL AND THE DIFFICULT TERRAIN AND GROUND COVER, NOT EVERY AREA ON THIS PARCEL WAS PHYSICALLY OBSERVED. ALL PROPERTY LINES WERE PHYSICALLY OBSERVED AND SURVEYED AS WELL AS THE AREAS OF OBVIOUS USE.
5. SINCE BEAN MOUNTAIN ROAD IS CONSIDERED A PRIVATE ROAD, THE CENTERLINE, AS BASED ON THE STONEWALLS AND TRAVELED WAY AS FOUND, IS SHOWN AS THE PROPERTY LINE BETWEEN THE OWNERS ON OPPOSITE SIDES OF THE ROAD. BY CONVENTION, THE SIDELINES OF NICHOLS ROAD, MOUNTAIN ROAD, FIFIELD ROAD AND MAPLEWOOD AVENUE ARE SHOWN AS THE PROPERTY LINES ALTHOUGH OWNERSHIP MAY EXTEND TO THE CENTERLINE.

EASEMENT LINE TABLE

LINE	BEARING	DISTANCE
L2	S38°05'32"E	77.17'
L3	S27°22'51"E	89.84'
L4	S24°32'04"E	168.10'
L5	S25°55'42"E	314.25'
L6	S27°30'18"E	336.53'
L7	S20°51'58"E	231.71'
L8	N19°55'33"W	189.26'
L9	S22°08'12"E	194.24'
L10	S07°43'19"W	48.33'
L11	N30°39'05"W	75.50'
L12	N27°44'42"W	174.55'
L13	N22°45'06"W	72.79'
L14	N16°45'58"W	65.72'
L15	N15°25'06"W	131.38'
L16	N17°59'21"W	181.50'
L17	N21°39'37"W	743.31'
L18	N23°08'02"W	484.15'
L19	S23°52'43"E	275.00'
L20	S22°08'16"E	192.00'
L21	N19°55'33"W	189.53'
L22	S20°51'58"E	233.70'
L23	N27°30'18"W	337.85'
L24	N25°55'42"W	313.48'
L25	S24°32'04"E	168.48'
L25A	N27°22'51"W	93.39'
L26	N38°05'32"W	81.67'
L27	N28°32'37"E	240.38'
L28	S58°04'39"E	44.70'
L29	N38°04'21"E	250.54'
L30	S47°46'41"W	105.52'
L31	N70°29'50"E	406.73'
L32	S64°36'17"W	112.48'
L33	N08°03'53"W	310.24'
L34	N16°34'56"E	151.45'
L35	N22°51'02"E	229.17'
L36	N48°42'55"E	77.46'
L37	S22°51'02"W	134.79'
L38	S85°25'17"E	58.69'
L39	N19°13'12"W	107.58'
L40	N06°45'47"W	119.92'
L41	N07°25'07"E	122.81'
L42	S25°30'13"W	85.24'
L43	S39°04'13"W	107.96'
L44	S54°06'05"W	105.75'
L45	N68°01'11"E	659.67'
L46	N62°04'01"E	166.04'
L47	N49°53'30"E	309.17'

LINE	BEARING	DISTANCE
L48	N34°10'38"E	96.69'
L49	N27°00'08"W	129.57'
L50	N14°33'09"W	94.48'
L51	N01°48'13"W	372.57'
L52	S14°02'24"E	80.29'
L53	S21°55'09"E	64.54'
L54	N40°11'59"W	106.54'
L55	N51°42'47"W	159.53'
L56	N55°38'02"W	139.11'
L57	N52°53'19"W	240.75'
L58	N43°41'09"W	113.27'
L59	S29°12'15"E	94.77'
L60	S19°08'46"E	106.15'
L61	N02°59'06"W	95.46'
L62	S02°59'06"E	108.29'
L63	S19°08'46"E	119.95'
L64	S29°12'15"E	107.68'
L65	S43°41'09"E	125.72'
L66	S52°53'19"E	247.02'
L67	S55°38'02"E	338.54'
L68	S51°47'47"E	151.42'
L69	S40°11'59"E	90.80'
L70	N21°55'09"W	50.75'
L71	N14°02'24"W	69.72'
L72	S01°48'13"E	372.84'
L73	N14°33'09"W	107.73'
L74	S27°00'08"E	150.97'
L75	S01°08'14"E	116.29'
L76	S34°10'38"W	93.90'
L77	S49°53'30"W	294.49'
L78	S62°04'01"W	156.52'
L79	S68°01'11"W	663.88'
L80	S54°06'05"W	120.99'
L81	S39°04'13"W	123.01'
L82	S25°30'13"W	101.92'
L83	S07°25'07"W	139.82'
L84	S06°45'47"E	133.93'
L85	S19°13'12"E	121.42'
L86	S33°04'40"E	94.76'
L87	S00°00'00"E	45.19'
L88	S16°34'56"W	161.83'
L89	S08°03'53"E	294.32'
L90	S64°36'17"W	54.81'
L91	S70°29'50"W	415.70'
L92	S47°46'41"W	122.64'
L93	S38°04'21"W	246.06'
L94	N32°03'50"E	15.25'

PROPERTY LINE TABLE

LINE	BEARING	DISTANCE
L1	S40°02'07"W	135.24'
L2	S01°09'27"W	95.70'
L3	N16°17'42"E	146.00'
L4	S02°37'29"W	62.00'
L5	S01°26'55"E	46.10'
L6	N23°03'23"E	114.90'
L7	N10°52'00"W	221.36'
L8	N14°31'24"W	59.39'
L9	N14°25'53"W	50.29'
L10	N12°48'09"W	74.19'
L11	S27°23.35"E	387.3'
L12	N12°28'54"W	69.90'
L13	N16°49'44"W	98.71'
L14	S77°31'37"E	161.47'
L15	N72°18'01"W	238.57'
L16	N53°23'15"W	60.59'
L17	S61°08'34"E	108.82'
L18	N50°39'59"W	212.44'
L19	N01°17'48"W	117.21'

CURVE	RADIUS	LENGTH
C1	R=40.00'	L=48.40'
C2	R=159.00'	L=143.39'
C3	R=405.00'	L=107.00'
C4	R=170.00'	L=85.03'
C5	R=380.00'	L=101.64'
C6	R=217.00'	L=110.26'
C7	R=175.00'	L=101.36'
C8	R=310.00'	L=132.58'
C9	R=535.00'	L=157.72'
C10	R=465.00'	L=102.80'

Plan References:

A "PROPOSED MINOR SUBDIVISION FOR: ELIZABETH O'GRADY REVOCABLE TRUST 1997 MOUNTAIN ROAD LEMPSTER, N.H. REVISED DATE(S) 8/28/2006 FROM OFFICE OF THOMAS C. DOMBROSKI L.L.S." RECORDED AS P. 10, F. 5, # 27, PF. 4

B "PLOT PLAN SCHOOL COMPLEX HIGHVIEW CHURCH FARM, INC. 2ND N.H. TURNPIKE LEMPSTER, N.H. PLAN BY CLIFFORD P. RICHER LAND SURVEYOR MARCH 04, 1999" RECORDED AS P. 6, F. 2, # 3, PF. 4

C "PROPERTY OF: VINCENT L. VOLPE, ET AL E/S 2ND NEW HAMPSHIRE TURNPIKE EAST LEMPSTER NEW HAMPSHIRE DRAWN BY: R.G.T. 09/03/72 GLINE & HUNTER ASSOCIATES" RECORDED AS P. 7, F. 4, # 16, PF. 2

P. "PROPERTY OF: HIGH VIEW CHURCH FARM, INC. E/S & W/S ROUTE 10 E/S & W/S NICHOLS ROAD N/S 2ND NEW HAMPSHIRE TURNPIKE DRAWN BY R.G.T. 10/15/72 GLINE & HUNTER ASSOCIATES" RECORDED AS P. 1, F. 4, # 14, PF. 1

S "ALTA/ACSM LAND TITLE SURVEY PORTION OF LANDS OWNED BY KEVIN & DEBRA ONNELA TOWN OF LEMPSTER STATE OF NEW HAMPSHIRE 10/2007 CLOUGH HARBOUR & ASSOCIATES LLP"

GRAPHIC SCALE
0 150' 300' 600'

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO N.H.R.S.A. TITLE LXIV AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN RSA 676:18,III.

JOHN C. SCHWANDA
LLS #826

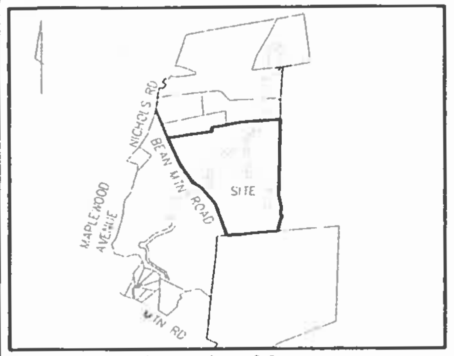
12-10-2008
DATE

JOHN C. SCHWANDA, LLS #826

BOUNDARY SURVEY
FOR
LEMPSTER WIND, LLC
RECORD OWNERS:
KEVIN C. & DEBRA A. ONNELA
MAP 8 LOT 530, 094
MAPLEWOOD AVE., LEMPSTER, NEW HAMPSHIRE

WESTWOOD PROFESSIONAL SERVICES, INC.
7699 ANACRAM DRIVE, EDEN PRAIRIE, MN 55344 (952)937-5150
OWEN HASKELL, INC.
390 US ROUTE 1, UNIT 10, FALMOUTH, ME 04105 (207)774-0424

Drawn By	JCS	Date	Job No.
Trace By	JLW	NOV. 25, 2008	2008-179L-NH
Check By	JCS	Scale	Drwg. No.
Book No.	1056	1" = 300'	PB-530



Location Map N.T.S.

Notes:

1. STONE WALLS FOUND ARE RARELY STRAIGHT FOR LONG DISTANCES BUT HAVE MANY MINOR BENDS. THE WALLS VARY IN WIDTH FROM 1 TO 3 FEET. BEARINGS AND DISTANCES SHOWN ARE TO BE CONSIDERED TIE LINES BETWEEN CORNERS OR MAJOR ANGLES IN WALLS AND WALLS THEMSELVES ARE THE PROPERTY LINES.

2. REMAINS OF WIRE FENCES WERE FOUND IN TREES AND ON THE GROUND. BEARINGS AND DISTANCES SHOWN ARE TO BE CONSIDERED TIE LINES ALONG OLD FENCES AND FENCES THEMSELVES ARE THE PROPERTY LINES.

3. DISCREPANCIES WITH PLANS REFERENCED.

PLAN O IS BASED ON A COMPASS AND TAPE SURVEY AND THE PLAN MATCHES THE FIELD MEASUREMENTS OF WALLS AND FENCES FOUND VERY WELL, WITH THE EXCEPTION OF THE FENCE ON THE NORTH LINE, WHICH MATCHES PLAN N BETTER. NO PIPES, AS SHOWN ON BOTH PLANS, WERE FOUND IN THIS AREA.

4. BEARINGS ARE BASED ON GRID NORTH AS PER COORDINATES, PROVIDED ON PLAN REFERENCE S, FOR IRONS FOUND AS SET BY CLOUGH HARBOUR & ASSOCIATES LLP.

5. DUE TO THE LARGE SIZE OF THIS PARCEL AND THE DIFFICULT TERRAIN AND GROUND COVER, NOT EVERY AREA ON THIS PARCEL WAS PHYSICALLY OBSERVED. ALL PROPERTY LINES WERE PHYSICALLY OBSERVED AND SURVEYED AS WELL AS THE AREAS OF OBVIOUS USE.

6. SINCE BEAN MOUNTAIN ROAD IS CONSIDERED A PRIVATE ROAD, THE CENTERLINE, AS BASED ON THE STONEWALLS AND TRAVELED WAY AS FOUND, IS SHOWN AS THE PROPERTY LINE BETWEEN THE OWNERS ON OPPOSITE SIDES OF THE ROAD. BY CONVENTION, THE SIDELINES OF NICHOLS ROAD, MOUNTAIN ROAD, FIFIELD ROAD AND MAPLEWOOD AVENUE ARE SHOWN AS THE PROPERTY LINES ALTHOUGH OWNERSHIP MAY EXTEND TO THE CENTERLINE.

Plan References:

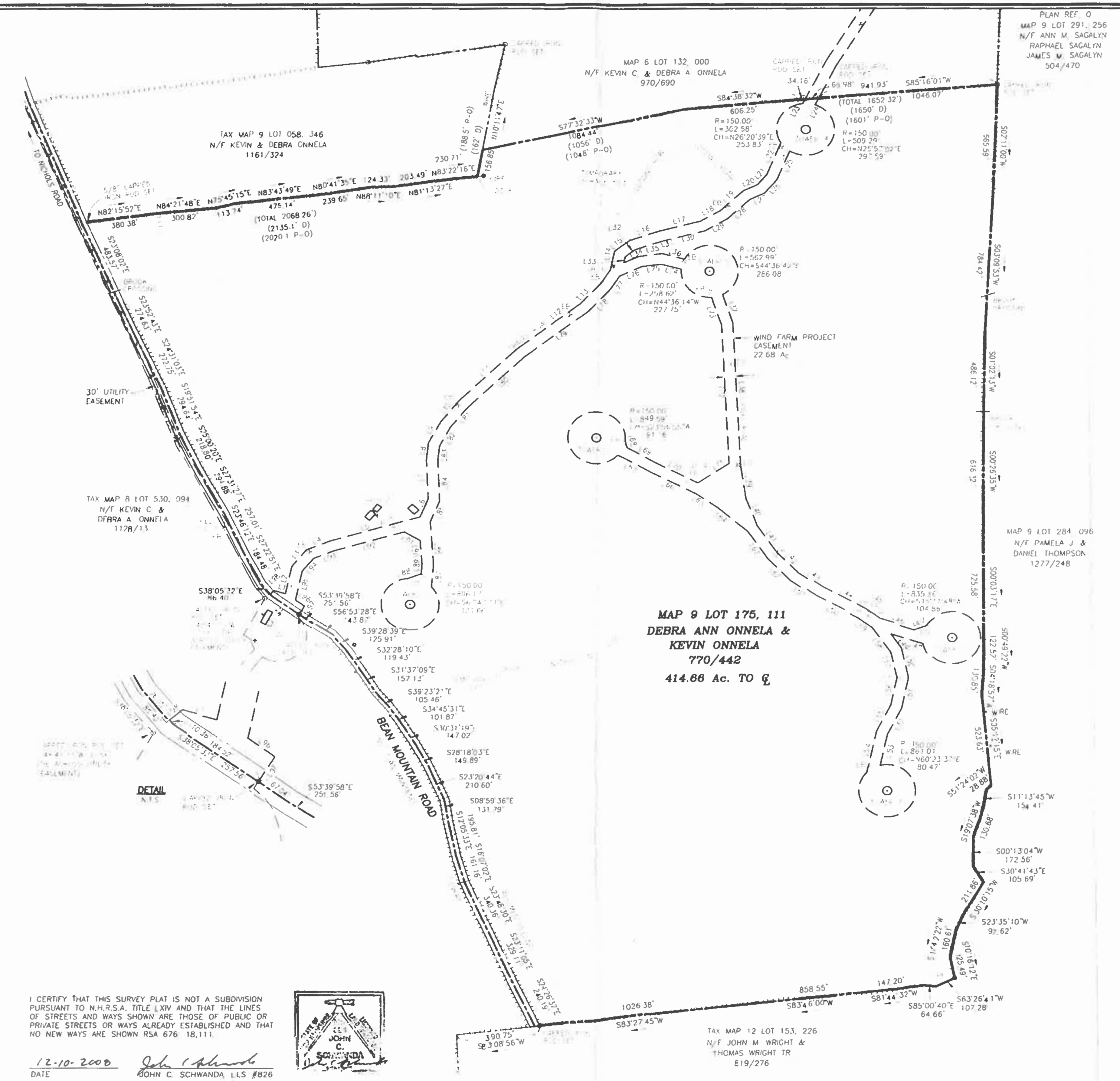
M "HODGEMAN LOT LEMPSTER, N.H. W.F. BRECKENRIDGE 1-7-47 FOR INFO PURPOSES ONLY DONATED BY W F B" RECORDED AS # 680, PF 4

N "LAND IN LEMPSTER N.H. DEEDED TO E.A. HACKWELL BY THE DRAPER CORPORATION DECEMBER, 1940" RECORDED AS BOOK 1 PAGE 279

O "BOUNDARY SURVEY FOR LAND VEST INC. EAST LEMPSTER, N.H. JOHN C. CALHOUN, JR., L.S. FOR INFORAMTIONAL PURPOSES ONLY DONATED BY WALTER F. BRECKENRIDGE L.L.S." RECORDED AS # 719, PF 4

Q. "MAP SHOWING DRAPER CO. LANDS IN TOWNS OF LEMPSTER, WASHINGTON, GOSHEN & NEWBURY STATE OF N.H. A.D. TEARE SURVEYOR 1917 COPY BY K.S. ROCKWELL 4/2/68 FOR INFORMATIONAL PURPOSES ONLY DONATED BY WALTER F. BRECKENRIDGE L.L.S." RECORDED AS # 1456, PF 4

S "ALTA/ACSM LAND TITLE SURVEY PORTION OF LANDS OWNED BY KEVIN & DEBRA ONNELA TOWN OF LEMPSTER STATE OF NEW HAMPSHIRE 10/2007 CLOUGH HARBOUR & ASSOCIATES LLP"



Legend:

●	IRON PIPE OR ROD FOUND
○	5/8" CAPPED IRON ROD SET
N/F	NOW OR FORMERLY
⊂⊃⊂⊃	STONE WALL
Ø	UTILITY POLE
(D)	DEED
(P-O)	PLAN REFERENCE O

GRAPHIC SCALE

0 150' 300' 600' 1200'

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO N.H.R.S.A. TITLE LXIV AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN RSA 676: 18,111.

12-10-2008
DATE

JOHN C. SCHWANDA LLS #826

JOHN C. SCHWANDA

LINE	BEARING	DISTANCE
L1	N73°13'48"W	63.38'
L2	N12°00'00"E	180.13'
L3	S39°20'38"W	126.72'
L4	S68°05'40"W	136.95'
L5	S73°33'20"W	485.07'
L6	S22°18'35"W	111.47'
L7	S02°05'48"E	226.58'
L8	S06°12'13"W	98.34'
L9	S28°14'21"W	137.95'
L10	S38°51'21"W	158.95'
L11	S45°48'04"W	428.85'
L12	S52°10'37"W	422.24'
L13	S42°24'08"W	158.23'
L14	S11°22'56"W	110.78'
L15	S52°07'57"W	97.67'
L16	S71°10'23"W	171.88'
L17	S75°26'21"W	219.28'
L18	S59°55'36"W	121.07'
L19	S46°35'56"W	166.76'
L20	S64°44'50"W	83.98'
L21	S40°11'39"W	76.18'
L22	S21°39'23"W	197.34'
L23	S26°14'36"W	29.56'
L24	S26°14'36"W	43.94'
L25	N21°39'23"E	180.13'
L26	N40°11'39"E	99.03'
L27	N64°44'50"E	87.45'
L28	N46°35'56"E	164.19'
L29	N59°55'36"E	136.25'
L30	N75°26'21"E	225.21'
L31	N71°10'23"E	159.59'
L32	N52°07'57"E	65.32'
L33	N11°22'56"E	35.42'
L34	S65°26'00"W	86.55'
L35	S82°14'14"W	124.03'
L36	N74°37'59"W	122.93'
L37	N17°50'27"W	174.89'
L38	N02°32'51"W	824.06'
L39	N08°17'37"W	192.02'
L40	N20°22'22"W	167.47'
L41	N34°01'43"W	183.37'
L42	N42°54'14"W	164.27'
L43	N54°14'28"W	154.60'
L44	N60°57'07"W	252.20'
L45	N52°43'36"W	94.69'
L46	N71°36'50"W	193.72'
L47	S69°07'05"W	69.18'
L48	S71°36'50"E	177.93'
L49	N34°28'05"W	97.97'
L50	N12°47'33"W	175.92'
L51	N12°22'04"E	184.13'
L52	N26°34'17"E	166.18'
L53	N12°10'40"E	182.33'
L54	S12°10'40"W	243.52'
L55	S26°34'17"W	166.28'
L56	S12°22'04"W	163.27'
L57	S12°47'33"E	151.05'
L58	S34°28'05"E	170.9[illegible]'
L59	S52°43'36"E	90.54'
L60	S60°57'07"E	251.40'
L61	S54°14'28"E	164.07'
L62	S42°54'14"E	174.89'
L63	S34°01'43"E	187.76'
L64	S48°40'44"E	210.51'
L65	S55°05'17"E	144.00'
L66	S62°25'33"E	257.54'
L67	S59°46'53"E	205.71'
L68	S14°14'24"E	42.89'
L69	N59°46'53"W	184.24'
L70	N62°25'33"W	240.22'
L71	S56°07'12"W	199.53'
L72	S02°32'51"E	800.68'
L73	S17°50'27"E	169.25'
L74	S74°37'59"E	109.83'
L75	N82°14'14"E	102.89'
L76	N65°26'00"E	127.60'
L77	N33°00'59"E	99.89'
L78	N42°24'08"E	166.29'
L79	N52°10'37"E	424.03'
L80	N45°48'04"E	421.87'
L81	N38°51'21"E	149.74'
L82	N28°14'21"E	120.70'
L83	N06°12'13"E	82.30'
L84	N02°05'48"W	235.20'
L85	N22°18'35"E	131.87'
L86	N03°49'09"W	242.67'
L87	N04°08'09"E	134.47'
L88	N68°06'59"E	72.51'
L89	S04°08'09"W	57.63'
L90	S03°49'09"E	134.60'
L91	S57°33'44"E	95.08'
L92	N73°33'20"E	380.56'
L93	N68°05'40"E	118.71'
L94	N39°20'38"E	96.75'
L95	N12°00'00"E	169.35'
L96	N53°09'41"W	59.71'
L97	N32°03'50"E	55.94'
L98	S48°41'11"W	30.05'

Doc # 0008350 Dec 15 2008 9 52 AM
Drawer 02 - 053
Register of Deeds Sullivan County
Sharon A. Krig

BOUNDARY SURVEY
FOR
LEMPSTER WIND, LLC
OWNERS OF RECORD:
DEBRA ANN ONNELA & KEVIN C. ONNELA
MAP 9 LOT 175, 111 BEAN MOUNTAIN ROAD
LEMPSTER, NEW HAMPSHIRE

WESTWOOD PROFESSIONAL SERVICES, INC.
7699 ANAGRAM DRIVE, EDEN PRAIRIE, MN 55344 (952)937-5150
OWEN HASKELL, INC.
390 US ROUTE 1, UNIT 10, FALMOUTH, ME 04105 (207)774-0424

Drwn By JCS	Date NOV. 25, 2008	Job No. 2008-179-NH
Trace By JLW		
Check By JCS	Scale 1" = 300'	Drwg. No. P9-175
Book No. 1056		

Exhibit 12
Letter from ATV to BOS

LEMPSTER TRAILBLAZERS ATV CLUB

156 LOVEJOY RD

LEMPSTER, NH 03603

April 26,2020

To the Board of Selectmen,

I have two reasons for writing this letter. The first is to thank you for the use of several Class 6 roads for ATV trails. It is amazing to see the views from some of the areas that we have traveled.

I am afraid the second reason is not as nice. Upon driving these trails to start marking and cleaning them up, we have run into a snag.

One trail, Bean Mountain Road, now has been gated off with not one, but two gates.

The first gate we ran across was on the side of Coach Road. This gate requires a code to open. When one of our members talked to Ryan Haley from Advanced Renewables about working around this, he explained that Kevin Onnela had requested that it be installed.

We then approached Mr. Onnela about the gate. He informed us that Bean Mountain Road was never a town road and therefore not a Class 6 road and that he has the right to gate it. Since then he has also locked the gate that he has on the Mountain Road side. By doing this he has cut off our access to a long stretch of our trails plus our access to Coach Road.

We wanted to bring this to your attention and hope that together we can work out this problem.

Thank you,

Wesley Ash

Wesley Ash, President

Lempster Trailblazers ATV Club

603-863-9047

M/C/P To send To
Justin Richardson

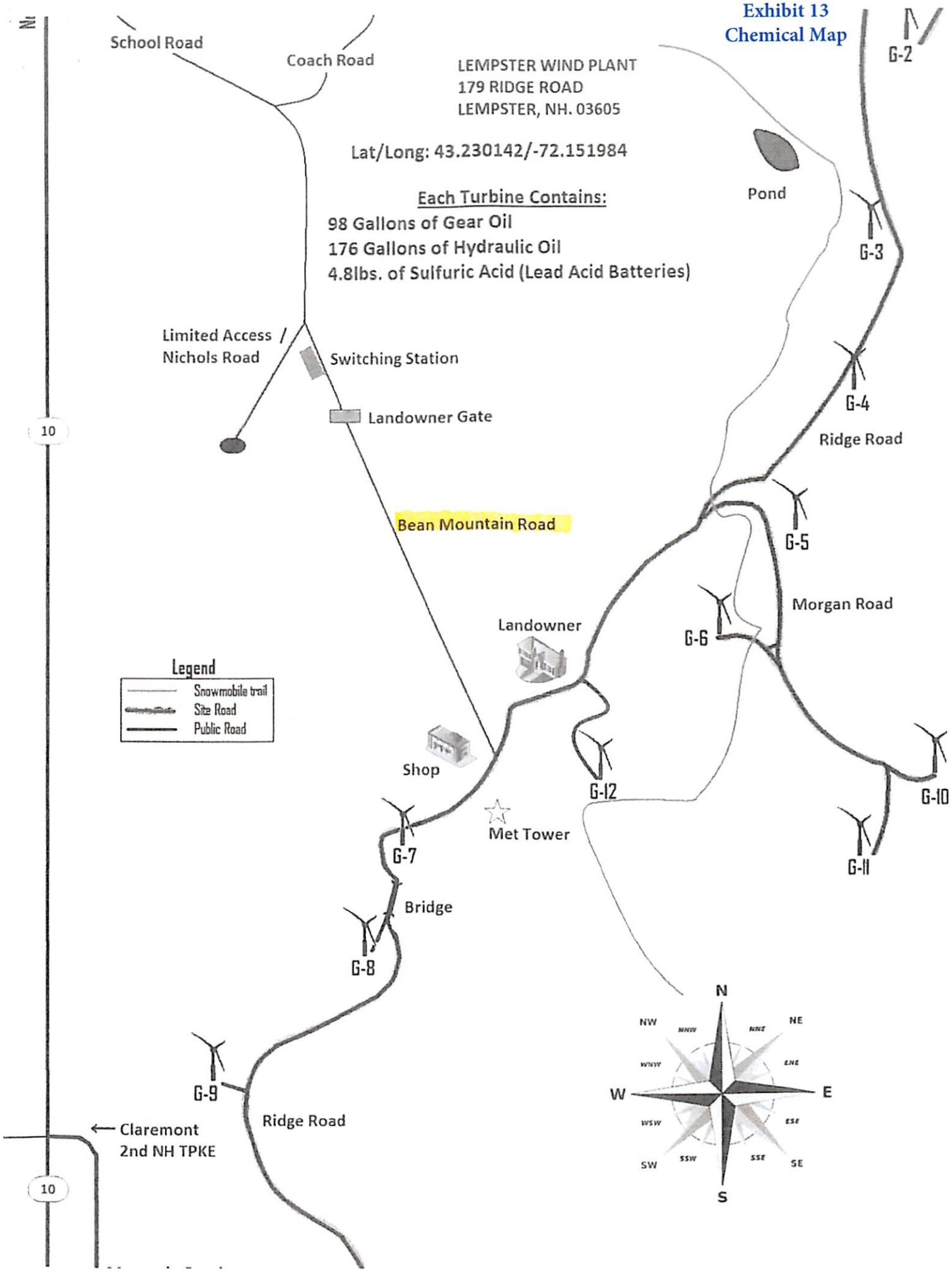


Exhibit 13
Chemical Map
LEMPSTER WIND PLANT
179 RIDGE ROAD
LEMPSTER, NH. 03605
Lat/Long: 43.230142/-72.151984
Each Turbine Contains:
98 Gallons of Gear Oil
176 Gallons of Hydraulic Oil
4.8lbs. of Sulfuric Acid (Lead Acid Batteries)
School Road
Coach Road
Pond
G-2
G-3
G-4
G-5
G-6
G-7
G-8
G-9
G-10
G-11
G-12
Limited Access /
Nichols Road
Switching Station
Landowner Gate
Ridge Road
Bean Mountain Road
Morgan Road
Landowner
Shop
Met Tower
Bridge
Legend
Snowmobile trail
Site Road
Public Road
N
NE
E
SE
S
SW
W
NW
NNW
NNE
ENE
WNW
WSW
ESE
SSW
SSE
10
Claremont
2nd NH TPKE

Exhibit 7

Tier II
Emergency and Hazardous Chemical Inventory
Specific Information by Chemical

Reporting Period: January 1 to December 31, 2020
Page 1
Printed: February 10, 2021

Facility: Avangrid Renewables - Lempster

FACILITY NAME AND LOCATION:
Avangrid Renewables - Lempster
Dept: Wind Operations - Field Services
179 Ridge Road
Lempster, NH 03605 USA
Emergency 24-Hour Phone Number: 866-351-5657
County: Sullivan
Fire District: Lempster FD
Latitude: 43.230142
Longitude: -72.151984
MAILING ADDRESS:

Town of Lempster

☑ All facility information (not including chemical information) is identical to last year's submission

IDENTIFICATION NUMBERS:
Dun & Bradstreet: 94-7376422
NAICS: 221115 (Wind Electric Power Generation)
SIC: 4911 (ELECTRICAL SERVICES)

Is the facility manned? ☑ Manned ☐ Unmanned
Maximum No. of Occupants: 12

REGULATORY INFORMATION:
Subject to Emergency Planning under Section 302 of EPCRA (40 CFR part 355)? ☐ Yes ☑ No
Subject to Chem. Accident Prevention under Section 112(r) of CAA (40 CFR part 68, Risk Mgmt. Pgm.)? ☐ Yes ☑ No

CONTACT INFORMATION:

Davis, Steven
Title: EHS Specialist, Region 3
Contact Type(s): Tier II Information Contact
Address: 1125 NW Couch Street, Suite 700, Portland, OR 97209 USA
Phones: 24-hour: 418-303-8602
Email: steven.davis@Avangrid.com

Haley, Ryan
Title: Plant Manager
Contact Type(s): Emergency Contact, Owner / Operator
Address: 590 Groton Hollow Road, Rumney, NH 03266 USA
Phones: 24-hour: 815-915-3862 Work: 603-863-7384
Email: ryan.haley@avangrid.com

Operations, Remote
Title: NCC
Contact Type(s): Emergency Contact
Address: 1120 NW Couch St, Portland, OR 97209 USA
Phones: 24-hour: 1-866-351-5657 Emergency: 503-796-6931
Email: RemoteOperations@avangrid.com

CHEMICAL INVENTORY INFORMATION:

Facility: Avangrid Renewables - Lempster (continued)

Mixture or Product Name: Gear oil
CAS #:
EHS: ☐ Yes ☑ No
☐ Pure ☑ Mixture
☐ Solid ☑ Liquid ☐ Gas
☐ Identical to previous year
☐ Trade secret

PHYSICAL HAZARDS:
☐ Explosive
☑ Flammable (gases, aerosols, liquids, or solids)
☐ Oxidizer (liquid, solid, or gas)
☐ Self-reactive
☐ Pyrophoric (liquid or solid)
☐ Pyrophoric gas
☐ Self-heating
☐ Organic peroxide
☐ Corrosive to metal
☐ Gas under pressure (compressed gas)
☐ In contact with water emits flammable gas
☐ Combustible dust

HEALTH HAZARDS:
☐ Acute toxicity (any route of exposure)
☑ Skin corrosion or irritation
☐ Serious eye damage or eye irritation
☐ Respiratory or skin sensitization
☐ Germ cell mutagenicity
☐ Carcinogenicity
☐ Reproductive toxicity
☐ Specific target organ toxicity (single or repeated exposure)
☐ Aspiration hazard
☐ Simple asphyxiant

☐ Hazard not otherwise classified

AMOUNTS:
☐ Below Reporting Thresholds
Maximum Amount: 10,951.6 pounds Maximum Amount code: 06 (10,000-24,999 pounds)
Average Daily Amount: 10,012.316 pounds Average Daily Amount code: 06 (10,000-24,999 pounds)
Max amount in largest container: 684 pounds
Days on site: 365

STORAGE LOCATIONS:
Confidential: ☐ Yes ☑ No

Location Description: O&M building: shop area
Container Type: Steel drum Pressure: Ambient pressure Temperature: Ambient temperature
Amount: 150 gallons

Location Description: Wind turbine - nacelle
Container Type: Other Pressure: Ambient pressure Temperature: Ambient temperature
Amount: 90 gallons

MIXTURE COMPONENTS:

Name: highly refined mineral oil CAS #: 64742-62-7 ☐ EHS
Max Amt Code: Component Percentage: 5 (by weight)

Name: phosphoridthioic acid CAS #: 68649-42-3 ☐ EHS
Max Amt Code: Component Percentage: 5 (by weight)

STATE-SPECIFIC CHEMICAL DATA FIELDS FOR NH:
☑ Ships via Trucks
☐ Ships via Tank Trucks

Facility: Avangrid Renewables - Lempster (continued)

☐ Ships via Rail Car
☐ Ships via Tank Car
☐ Ships via Pipeline
☐ Ships via Barge
☐ Ships via Other Shipment Mode
Other shipment mode:
Frequency of Shipment: 2
Shipment Frequency Period: Year
Maximum capacity per single vessel: 300
Maximum Shipment Qty (lbs): 2,280
Average Shipment Qty (lbs): 404
Physical State in Transit: Liquid
Carrier: Dennison Lubricants Worcester
Comments (please provide both the primary and alternate routes of travel): Maintenance occurs semi annual, and oil in the equipment is "topped-off", so the plant does not go through a lot of oil. They typically have one to two drums onsite. Materials are delivered by Dennison Lubricants Worcester delivered using route 10.

Mixture or Product Name: Hydraulic Oil
CAS #:
EHS: ☐ Yes ☑ No
☐ Pure ☑ Mixture
☐ Solid ☑ Liquid ☐ Gas
☐ Identical to previous year
☐ Trade secret

PHYSICAL HAZARDS:
☐ Explosive
☐ Flammable (gases, aerosols, liquids, or solids)
☐ Oxidizer (liquid, solid, or gas)
☐ Self-reactive
☐ Pyrophoric (liquid or solid)
☐ Pyrophoric gas
☐ Self-heating
☐ Organic peroxide
☐ Corrosive to metal
☐ Gas under pressure (compressed gas)
☐ In contact with water emits flammable gas
☐ Combustible dust

HEALTH HAZARDS:
☐ Acute toxicity (any route of exposure)
☐ Skin corrosion or irritation
☐ Serious eye damage or eye irritation
☐ Respiratory or skin sensitization
☐ Germ cell mutagenicity
☐ Carcinogenicity
☐ Reproductive toxicity
☐ Specific target organ toxicity (single or repeated exposure)
☐ Aspiration hazard
☐ Simple asphyxiant

☑ Hazard not otherwise classified

AMOUNTS:
☐ Below Reporting Thresholds
Maximum Amount: 16,811.2 pounds Maximum Amount code: 06 (10,000-24,999 pounds)
Average Daily Amount: 16,485.084 pounds Average Daily Amount code: 06 (10,000-24,999 pounds)
Max amount in largest container: 706.8 pounds
Days on site: 365

STORAGE LOCATIONS:
Confidential: ☐ Yes ☑ No

Facility: Avangrid Renewables - Lempster (continued)

Location Description: O&M building
Container Type: Steel drum Pressure: Ambient pressure Temperature: Ambient temperature
Amount: 90 gallons

Location Description: Wind turbine - nacelle
Container Type: Other Pressure: Ambient pressure Temperature: Ambient temperature
Amount: 83 gallons

Location Description: Wind turbine - yaw deck
Container Type: Other Pressure: Ambient pressure Temperature: Ambient temperature
Amount: 93 gallons

MIXTURE COMPONENTS:

Name: highly refined petroluem oils CAS #: ☐ EHS
Max Amt Code: Component Percentage: 98 (by weight)

Name: proprietary additive CAS #: ☐ EHS
Max Amt Code: Component Percentage: 2 (by weight)

STATE-SPECIFIC CHEMICAL DATA FIELDS FOR NH:
☑ Ships via Trucks
☐ Ships via Tank Trucks
☐ Ships via Rail Car
☐ Ships via Tank Car
☐ Ships via Pipeline
☐ Ships via Barge
☐ Ships via Other Shipment Mode
Other shipment mode:
Frequency of Shipment: 2
Shipment Frequency Period: Year
Maximum capacity per single vessel: 836
Maximum Shipment Qty (lbs): 836
Average Shipment Qty (lbs): 836
Physical State in Transit: Liquid
Carrier: Old Dominion
Comments (please provide both the primary and alternate routes of travel): Maintenance occurs semi annuall, and oil in the equipment is "topped-off", so the plant does not go through a lot of oil. They typically have 1 to two drums onsite. Materials are delivered by Old Dominion, a freight carrier via route 2.

State/local fees: None

☑ I have attached a site plan
☐ I have attached a list of site coordinate abbreviations
☐ I have attached a description of dikes and other safeguard measures

Facility: Avangrid Renewables - Lempster (continued)

Certification (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information in pages 1 through 5, and that based on my inquiry of those individuals responsible for obtaining this information, I believe that the submitted informaton is true, accurate, and complete.

Signature

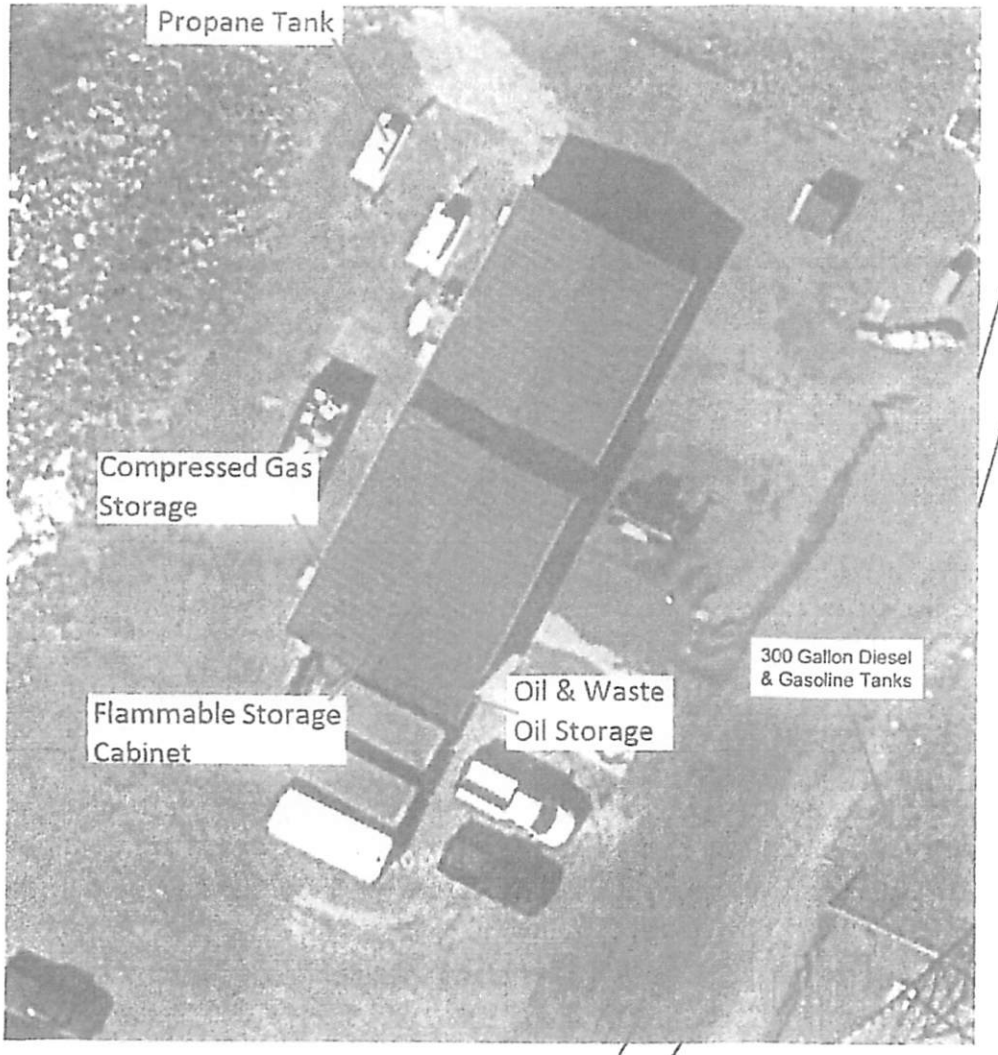
02/10/2021
Date signed

Ryan Haley / Plant Manager
Name and official title of owner/operator OR owner/operator's authorized representative

Lempster Wind Plant
179 Ridge Road
Lempster NH, 03605

LAT/LONG
43.230142/-72.151984

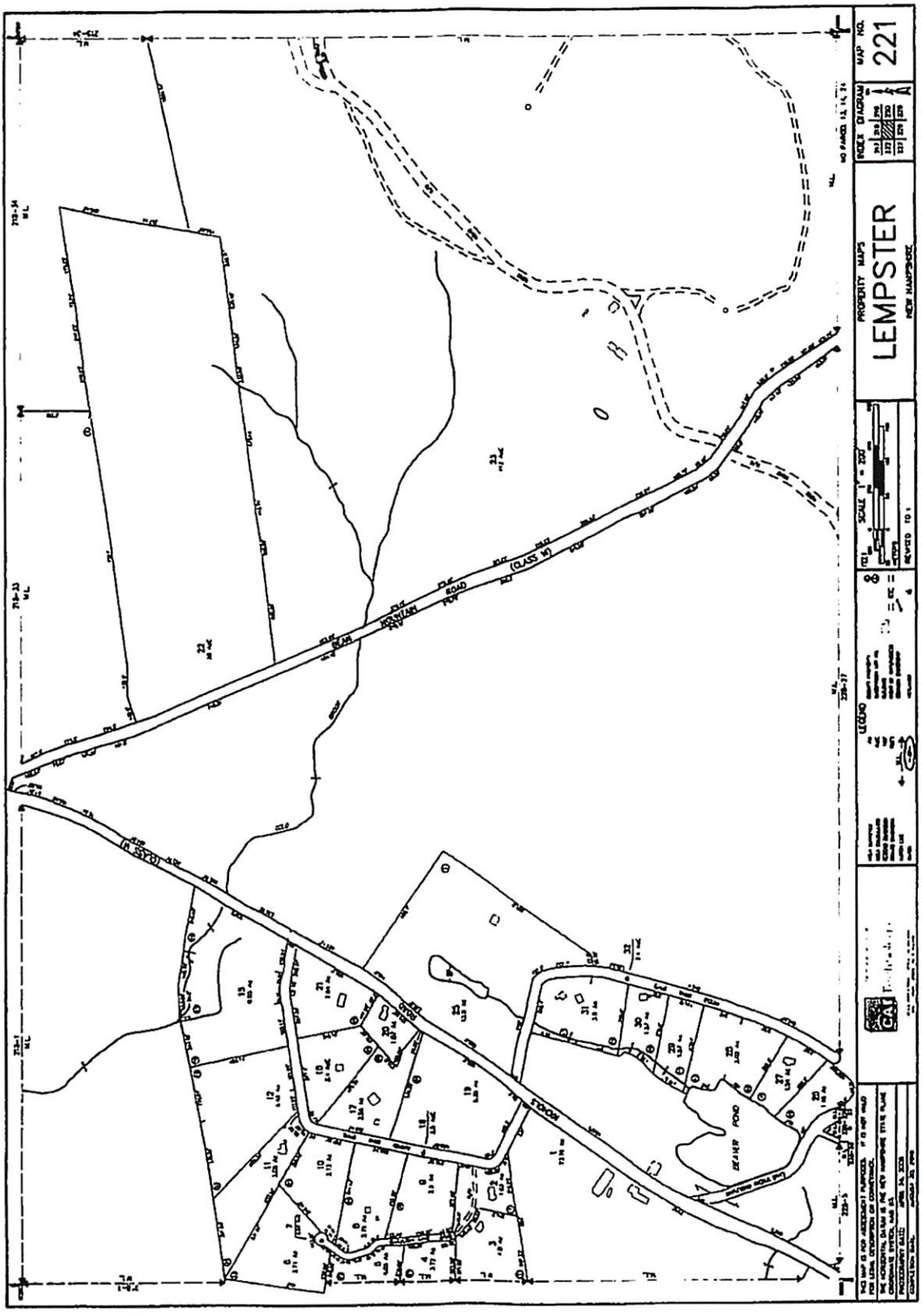
Bean Mountain Road

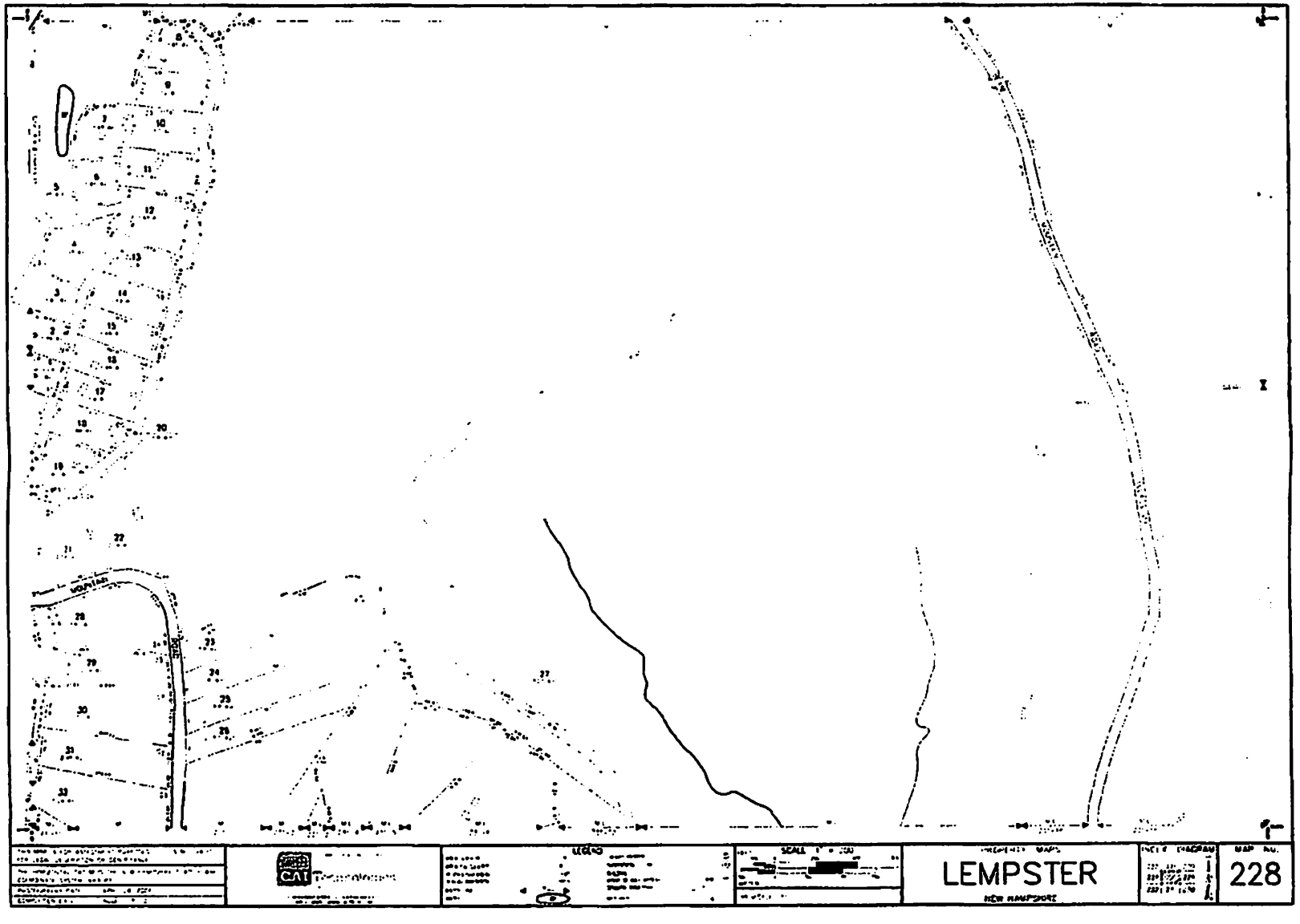


Ridge Road

Ridge Road

Exhibit 14
Tax Maps




LEMPSTER
NEW HAMPSHIRE
228

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

DOCKET NO. 2006-01
APPLICATION OF LEMPSTER WIND, LLC

DECISION ISSUING CERTIFICATE OF SITE AND FACILITY WITH CONDITIONS

JUNE 28, 2007

APPEARANCES: Susan S. Geiger, Esq. of Orr & Reno for the Applicant; Peter C.L. Roth, Esq., Senior Assistant Attorney General, Counsel for the Public; Harold T. Judd, Esq. for the Town of Lempster; Richard D. Webb and Lisa Linowes for the Consolidated Intervenors; and Jaye Pershing Johnson, Esq. of Gardner Fulton & Waugh for the Town of Goshen.

TABLE OF CONTENTS

I. APPLICATION

On August 28, 2006, Lempster Wind, LLC, (the Applicant) filed an application for a Certificate of Site and Facility (Application) to construct and operate a 24 megawatt (MW) wind powered electric generation facility consisting of twelve wind turbines rated at 2 MW each on several tracts of land located in Lempster, New Hampshire (Project or Facility). The Application contained information identifying the Applicant, as well as its parent companies; setting forth the state of incorporation and the address and principal place of business of the Applicant, as well as the names of its principal directors, officers and stockholders; and identifying the Applicant as the owner of the project. It also contained statements of assets and liabilities and income statements for the Applicant and its parent companies. Additionally, the Applicant set forth information concerning its financial, technical and managerial capabilities.

The Applicant identified itself as a Delaware limited liability company, registered to do business in New Hampshire. The Applicant is a wholly owned subsidiary of Community Energy, Inc., (CEI) a Delaware corporation with its principal place of business in Wayne, Pennsylvania. The Application asserts that Iberdrola Renewable Energies USA Ltd. owns 100% of CEI. See Exh. App. 1 (Application Volume I), p. 19. Iberdrola Renewable Energies USA Ltd., in turn, is wholly owned by Iberdrola, S.A., a Spanish multi-national corporation engaged in the generation, transmission, distribution and marketing of electricity and natural gas. See, Exh. App. 1 (Application Vol. I), p. 6, 18.

The Applicant asserts that, along with its parent companies, it has sufficient financial, technical and managerial capability to successfully construct and operate the Facility. CEI, which was founded in 1999, has participated in the development of at least six wind farms totaling 250 MW of capacity in New York, Illinois and the middle Atlantic region. The Applicant also asserts that CEI has more than three billion kilowatt hours of wind energy sales under contract with residential, business and institutional customers across the United States. CEI claims to be the first company to develop a 2-MW scale wind turbine facility in the United States, located at Bear Creek, Pennsylvania. Exh. App. 1 (Application Vol. I), p. 21. The Applicant also asserts that its parent company is presently developing approximately 2,000 MW of wind energy in twelve states. *Id.* The Applicant claims that Iberdrola, S.A., presently manages almost 3,500 MW of wind power, is the world leader in wind power generation, and has more than 500 employees in the area of renewable energy. The Applicant avers that Iberdrola's vast resources in the wind power generation industry will be incorporated into the project if a certificate of site and facility is granted. Exh. App. 1 (Application Vol. I), p. 21; Exh. App. 1, Appdx. 13.

The proposed facility is located on privately owned land along the ridgeline of Lempster Mountain, which runs from the northeast to the southwest, parallel to New Hampshire Route10. The Application indicates that the project will be located on five separate parcels of privately owned land, which are identified on the Lempster tax map as Parcels 6-132000, 9-175111, 8-530094, 6-218115, and 6-034044. Access is available to the site from the property of Kevin and Debra Onella on Bean Mountain Road in Lempster, New Hampshire. See Exh. App. 1 (Application Vol. I) p. 23-24. The project site will include approximately 35 to 40 acres and the project access road, which is estimated to be five miles long. See Exh. App. 1 (Application Vol.

I) p. 23-24. The Applicant provided various maps, photographs and other documentation identifying the location of the project. The Application also contained information identifying natural resources and wildlife at the site.

The Application identified certain wetlands and surface waters on the site. Attached to the Application is a New Hampshire Department of Environmental Services (DES) Standard Dredge and Fill Permit Application, which had been filed with the Wetlands Bureau of DES. Exh. App. 1 (Application Volume I) Appdx. 8. The Application also included an application for Alteration of Site Specific Terrain and an application for a Section 401 Water Quality Certificate, both of which were filed with the Water Division of DES. Along with its alteration of terrain application, the Applicant filed a storm water pollution prevention plan, which included a number of erosion control measures, and maintenance and inspection measures. Exh. App. 1 (Application Volume I) Appdx. 9 and 10. On March 14, 2007, the Applicant filed a supplement to its Application with correspondence from Clough Harbor & Associates to the Water Division of DES advising that the alignment of the haul road for the project had been changed, resulting in the elimination of almost all of the wetland impact, with the exception of one wetland area.

The Applicant reports that it has performed approximately three years of wind testing in the location of the site and has measured average wind speeds of 15 to 18 miles per hour. Based on the nature of the equipment to be used and the wind speeds, the Applicant estimates that the facility will have a 37% to 40% capacity factor, producing 70,000 to 80,000 kilowatt hours per year, which is equivalent to the average annual usage of 10,000 to 12,000 households. Exh. App. 1 (Application Vol. I), p. 26-29.

The Application indicates that the wind turbines to be used are Gamesa G87 models. Each turbine will consist of a rotor 280 feet in diameter, a cell (containing gear box shifters and generator), and a tower approximately 256 feet tall constructed out of tubular steel. The weight of each wind turbine unit is expected to be 303 tons. Each turbine will also include: a remote control system that will permit monitoring the operation of the unit in real time and will also permit communication with weather measurement instrumentation at the site; a predictive maintenance system and a transformer capable of converting the electricity generated at 690 volts to 34.5 kilovolts; and braking systems and lightening protection systems. Exh. App. 1 (Application Vol. I), p. 28. The electricity generated by each turbine will be collected by a series of underground cables that will deliver the electricity to the metering station at the intersection of Bean Mountain and Nichols Roads. At that point, the facility will interconnect with the Public Service Company of New Hampshire (PSNH) 34.5 kilovolt distribution line. The minimum wind speed necessary to operate the turbines is eight miles per hour and the cut off wind speed for braking is 55 miles per hour. Exh. App. 1 (Application Vol. I), p. 29.

The Application asserts that a system impact study would be conducted to determine if construction of the facility would have any significant impact on the stability, reliability or other characteristics of the New England power grid. On March 14, 2007, in the supplement to its Application, the Applicant presented a system impact study performed by E. Pro Engineering and Environmental Consulting, LLC, concluding that the facility would have no significant system impact on the stability, reliability and operating characteristics of the New England bulk power transmission system. Exh. App. 3 Appdx. 9.

The Applicant contends that it has sufficient financial, technical and managerial capability to construct and operate the Project. The Applicant relies also upon its parent

companies' capabilities in its assertion. The Project is backed by the financial resources of Iberdrola, S.A., a multinational corporation which, as of June 30, 2006, held total assets of $32,013,000,000 euros. See, Exh. App. 1 (Application Vol. I), Appdx. 1. The Applicant asserts that, for the six-month period ending June 30, 2006, Iberdrola S.A. had total revenue of $5,496,600,000 euros and a net profit of $817,800,000 euros. The Applicant also claims that it will be able to draw on the technical and managerial resources of Iberdrola S.A., which presently manages almost 3,500 MW of wind power and is the largest wind power generator in the world. See, Exh. App. 1 (Application Vol. I), Appdx. 2, p. 3.

II. PROCEDURAL BACKGROUND

On December 1, 2005, the New Hampshire Site Evaluation Committee (Committee) received a letter from the Selectmen of the Town of Lempster (Sullivan County), New Hampshire, requesting "an initial site inspection" of a wind powered electric generation facility proposed in Lempster. On March 30, 2006, the Selectmen of the abutting Town of Washington requested that the Committee "review the significant wind energy project proposed for a prominent ridgeline in Lempster." On April 10, 2006, the Committee received a petition to review the project signed by 122 registered Lempster voters and certified by the Lempster Town Clerk. The petition was presented to the Committee by Teresa Spada and Dorothy Hathaway, both residents of Lempster.

Treating the correspondence from the Towns of Lempster and Washington as petitions defined by R.S.A. 162-H:2, X-a and XI (c), the Committee held hearings on June 21, 2006, and July 6, 2006, to determine whether the proposed facility should require the issuance of a Certificate of Site and Facility as set forth at R.S.A. 162-H: 1 et. seq.

On June 30, 2006, CEI filed a Motion for Jurisdiction and for a Condensed Procedural Schedule. The Motion for Jurisdiction requested that the Committee assert jurisdiction over the project pursuant to R.S.A. 162-H: 2. After hearing from the parties, the Committee determined that asserting jurisdiction over the proposed facility would be consistent with the legislative findings and purposes set forth in R.S.A. 162-H:1. On July 6, 2006, the Committee voted unanimously to assert jurisdiction over the proposed facility. On August 28, 2006, Lempster Wind, LLC filed a formal Application for Certificate of Site and Facility.

On October 2, 2006, the Committee held a public meeting at which time it reviewed the Application. The Committee was informed by Harry Stewart, Director of the Water Resources Division of the Department of Environmental Services, that the permit applications[1] filed with DES had been deemed administratively complete. The Committee was also informed that no other state agency with jurisdiction over the proposed facility had noted any insufficiency in the Application[2]. The Committee reviewed the Application and determined that it complied with R.S.A. 162-H: 7, III, IV and V. It was further determined that the Application provided sufficient information to enable the Committee to carry out the purposes of the statute. The Committee determined that the Application was complete for the purposes of R.S.A. 162-H and therefore voted unanimously to accept the Application.

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[1] A Standard Dredge and Fill Application, a Site Specific Application, and a Request for Section 401 Water Quality Certification were filed with the appropriate bureaus within the Department of Environmental Services. See, Exh. App. 1, Appdxs. 8, 9, 10.

[2] The Application implicates the jurisdiction of the Water Management Bureau, Wetlands Bureau and the Site Specific Program of the Department of Environmental Services as well as the Department of Transportation. The facility does not implicate the jurisdiction of the Air Resources Division of the Department of Environmental Services. On September 15, 2006, counsel for the Committee advised each state agency, in writing, of the existence of the Application before the Committee. In addition, notification of the Application was provided to the United States Army Corps of Engineers and the Upper Valley/Lake Sunapee Regional Planning Commission.

On October 30, 2006, the Committee conducted a site visit and public informational hearing at the Goshen-Lempster Cooperative School located in Lempster. Notice of the public hearing and site visit was published in compliance with RSA 162-H:10, I. Members of the

Committee traveled to various locations in Lempster to view the ridgeline and the site of one of the proposed wind turbines. The locations were all sites where the Applicant had taken photos for the purpose of photo simulations, which were later shown at the public informational hearing and entered as exhibits at the adversarial proceedings. See Public Information Hearing, Exh. 1; Exh. App. 4-14.

At the public informational hearing, the Applicant presented information about the Project to the Committee and to the public. See, RSA 162-H:10, I. The Applicant's representatives also answered questions from the public about the proposed project. See Transcript, October 30, 2006, p. 41-51. After public questions about the project, the Committee took public comment. See, Transcript, October 30, 2006, p. 51-69. All members of the public who wished to speak about the proposed project were permitted to do so. The Committee has continued to receive public comment, in the form of letters and emails, and time has been set aside at various meetings and hearings to take oral comments from the public.

On November 30, 2006, the Committee convened a public meeting to consider a variety of procedural matters regarding the conduct of adversarial hearings. The Committee issued a procedural order on December 22, 2006, resolving outstanding motions and establishing a procedural schedule for discovery, testimony and the adversarial hearings.

III. INTERVENTION AND HEARINGS

The Committee received a number of requests to intervene in the proceedings, both before and after the filing of the formal Application. The Committee, for the most part, granted

the requests for intervention. The Committee did, however, consolidate the participation of certain intervenors for the purpose of the adversarial hearings after determining that they shared similar interests or sought similar relief. See, R.S.A. 541-A:32, III; N.H. CODE OF ADMINISTRATIVE REGULATIONS, JUS - 809.01.

Correspondence from the Board of Selectmen of the Town of Lempster initiated the Committee's pre-application review in this docket. Thereafter, the Town of Lempster, through Planning Board Member Mark Adams, filed a petition to intervene as a full party. The motion to intervene was granted by order dated September 23, 2006. On September 28, 2006, attorney Harold T. Judd filed his appearance on behalf of the Town of Lempster, which participated throughout the proceedings.

Teresa Spada and Dorothy Hathaway presented the aforementioned citizens' petition to the Committee. By order dated September 23, 2006, Ms. Spada and Ms. Hathaway were allowed to intervene jointly in the proceedings. After the Committee asserted jurisdiction over the Application neither Ms. Spada nor Ms. Hathaway participated in the proceedings.

Richard Webb filed a motion to intervene on May 25, 2006, asserting an interest in the outcome of the proceeding based upon the proximity of property owned by his family to the proposed project site. Mr. Webb's motion to intervene was granted by order dated September 23, 2006, and he participated, *pro se*, throughout the proceedings. His intervention was consolidated with other intervenors pursuant to a December 22, 2006 order.[3]

Deborah Stone filed a request to intervene on June 7, 2006. Ms. Stone is a resident of Lempster and asserts that she has been active in town affairs. Ms. Stone's motion to intervene

[3] The Committee, on its own motion, determined that Richard Webb, Deborah Stone, Jeffrey Dwyer and Lisa Linowes shared similar views or represented similar interests and therefore required that their presentations, cross examinations and oral argument be consolidated, but permitted each party to present its own brief.

was granted by order dated September 23, 2006. Although involved in the preliminary proceedings, Ms. Stone did not participate in the adversarial hearings.

Jeffrey Dwyer filed a motion to intervene in the proceedings on June 7, 2006. Mr. Dwyer resides on property abutting the proposed project. Mr. Dwyer's motion to intervene was granted by order dated September 23, 2006. Although involved in the preliminary proceedings, Mr. Dwyer did not participate in the adversarial hearings.

Elizabeth O'Grady filed a motion to intervene on June 7, 2006. Ms. O'Grady is the Trustee of the Elizabeth O'Grady Revocable Trust. The trust owns property located at 397 Mountain Road, Lempster and abuts the proposed site[4]. On September 26, 2006, attorney Derek Lick filed an appearance on behalf of Ms. O'Grady but withdrew as counsel on January 3, 2007. Although involved in the preliminary proceedings, Ms. O'Grady did not participate in the adversarial hearings.

The Town of Washington filed a letter, on March 30, 2006, asking the Committee to review the proposed project but it did not seek to intervene. By letter dated September 14, 2006, the Town of Washington requested that the Applicant be required to post a bond to cover damage to roads caused by heavy equipment during the construction or decommissioning of the project "should the Route 31/Lempster Mountain Road route be chosen." The Applicant subsequently informed the Committee that the Route 31/Lempster Mountain Road route will not be used by construction or decommissioning vehicles. See, Transcript, March 28, 2007, p. 202; Exh. Lempster C.

Lisa Linowes filed a petition to intervene as a party in the proceedings on September 25, 2006. Ms. Linowes is neither a resident of Lempster nor a property owner in Lempster. The

[4] The trust owns the property in which both Ms. O'Grady and Mr. Dwyer reside.

Committee found that Ms. Linowes did not qualify as an intervenor by right under R.S.A. 541-A:32, I, but the Committee exercised its discretion, under R.S.A. 541-A:32, II, to allow Ms. Linowes to intervene. Ms. Linowes is the co-founder of an organization called Industrial Wind Action. Her intervention was consolidated with other intervenors and she participated, on a *pro se* basis, throughout the proceedings.

On November 8, 2006, the Committee received correspondence from the Town of Goshen requesting that the Committee assess the impacts of the proposed project as they pertain to the power line and utility pole replacement through the Town of Goshen. Eventually, the Town of Goshen, through its counsel, filed a petition to intervene on January 16, 2007. On January 22, 2007, the Town of Goshen clarified that it sought to intervene in the proceedings for the limited purpose of addressing the replacement poles and wires to be installed in the Town of Goshen. Transcript, January 22, 2007, p. 35. Public Counsel supported Goshen's motion. After hearing objections from the Applicant and PSNH, the Committee granted the Town of Goshen's motion to intervene on a limited basis related to the issue of the effects on the electrical distribution lines and utility poles in Goshen. PSNH was granted intervention for the sole purpose of objecting to the Town's motion to intervene.

Finally, RSA 162-H:9, I provides that the Attorney General shall appoint an assistant attorney general as counsel for the public. In this docket, by letter dated June 20, 2006, the Attorney General appointed Senior Assistant Attorney General Peter Roth as Public Counsel. Public Counsel's obligation is to represent the interest of the public by seeking to protect the quality of the environment and seeking to assure an adequate supply of energy. RSA 162-H: 9, I. Counsel to the Public is accorded all of the rights, privileges and responsibilities of an attorney representing a party in a formal action. Public Counsel participated throughout the proceedings.

On March 26, 27, 28, and April 9, 2007, the Committee conducted adversarial hearings. The Applicant provided testimony from eight witnesses. Mr. Webb and Ms. Linowes testified in opposition to the Application and shared the task of cross-examining other witnesses, but filed separate briefs. The Town of Lempster presented two witnesses, Selectman Everett Thurber and William Murgatroy, Jr., who testified in favor of the Application, subject to an agreement between the Town of Lempster and the Applicant. The Town of Goshen presented Selectmen James Carrick and John Wirkaala to testify about the Town of Goshen's position with respect to the proposed replacement of utility poles and electric distribution wires in Goshen. Both Public Counsel and the Town of Lempster negotiated agreements with the Applicant setting forth various conditions that were submitted for the Committee's consideration.

On May 7, June 20, and June 28, 2007, the Committee met publicly to deliberate on the Application. At the June 20, 2007 meeting, the Committee denied various motions to strike filed by the Applicant and the Consolidated Intervenors regarding materials submitted after the close of the adversarial hearings. The Committee determined that the materials were either responsive to record requests made by the Committee or were permissible pursuant to RSA 162-H:10, III and would be accorded the weight appropriate to materials not provided under oath or subject to cross-examination. The Committee also determined that, in light of its action on the motions to strike, that the Applicant's motion to close the record was moot.

IV. POSITIONS OF THE PARTIES

A. Applicant

The Applicant supports its Application with the testimony of the following witnesses.

- Jeffrey Keeler, New England Director for CEI
- Gilbert Chauny, Director of Finance, Business Evaluation and Planning, Iberdrola USA
- Carl DeLoof, Midwest Construction Supervisor, Iberdrola USA
- Inigo Malo deMolina Lezama Leguizamon, an engineer employed by Iberdrola USA

- Martin L. Risley, a professional engineer employed by Clough Harbor & Associates
- Lloyd Pasley, a mechanical, chemical and process engineer employed by Superna Energy, LLC
- Robert D. Roy, a certified wildlife biologist employed by Woodlot Alternatives, Inc.
- S.B. Wicker, Jr., Manager of Supplemental Energy Sources Development for PSNH

The Applicant takes the position that it has demonstrated that a Certificate of Site and Facility should be issued for the siting, construction and operation of the Project. The Applicant argues that it has more than adequate financial, technical and managerial capabilities in order to construct and operate the project. The Applicant also asserts that it has considered and presented other alternatives to the Committee but that the proposed project as contained in the Application is the most reasonable alternative. The Applicant contends that the Project will not unduly interfere with the orderly development of the region either through the siting of the proposed Project in Lempster, New Hampshire or, the upgrade of the electric distribution lines that will occur as a result of the Project both in Lempster and in the Town of Goshen, New Hampshire.

The Applicant also argues that the Project, as proposed, will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment or public health and safety. Finally, the Applicant argues that the construction and operation of the site and facility is consistent with the state energy policy as set forth at RSA 378:37. The Applicant has also entered into separate agreements with the Town of Lempster and Public Counsel through which it promises to abide by certain conditions. Believing that it has satisfied all of the statutory criteria, the Applicant requests that the Committee issue a Certificate of Site and Facility for the Project as proposed in its Application.

B. Public Counsel

Public Counsel commissioned an environmental review performed by Epsilon Associates, Inc., which includes a noise analysis, viewshed analysis, an analysis of avian and endangered species, a shadow flicker analysis, ice shedding analysis, and a wind resource assessment. For the most part, the Epsilon environmental review confirmed similar studies prepared by the Applicant. Public Counsel and the Applicant entered into an agreement stipulating to certain conditions pertaining to the protection of avian species, noise, ice shedding, and public access.

Finally, Public Counsel and the Applicant agreed that, as a condition of the Certificate, the Applicant shall donate a certain parcel of land known as Tax Parcel 12-036, 324 Earl's Lane, to an appropriate entity for conservation purposes and subject to a conservation easement. Public Counsel, in the light of the conditions negotiated, ultimately took the position that certificating the Project is a sound policy choice, and one that appropriately balances environmental impact and energy development.

C. Town of Lempster

The Town of Lempster presented the testimony of two Selectmen, Everett Thurber and William Murgatroy, Jr. The Town also negotiated an agreement with the Applicant, which governs a number of aspects of the construction and operation of the proposed facility. The Town, with the benefit of the conditions contained in its agreement, agrees with the Applicant and Public Counsel that the Project should be issued a certificate of site and facility.

D. Consolidated Intervenors

The Consolidated Intervenors generally oppose the siting, construction and operation of the Project. Both Mr. Webb and Ms. Linowes testified before the Committee, and each submitted a number of exhibits. Mr. Webb argues that the Applicant has failed to prove by a

preponderance of the evidence that the Project will not have an unreasonable adverse effect on aesthetics, the natural environment, and public health and safety. He also argues that the Applicant has failed to prove that the Project will not unduly interfere with the orderly development of the region. Similarly, Ms. Linowes opposes the siting, construction and operation of the Project for a number of reasons. She claims that the development of the Project is not consistent with traditional patterns of development in the area. She also argues that the road design and stormwater management plan are under-designed for a project of this size. Ms. Linowes contends that the various wildlife studies conducted by the Applicant, including its avian and bat studies, are methodologically flawed and fail to comply with guidelines of the United States Fish and Wildlife Service. Ms. Linowes and Mr. Webb both oppose the certificating of the facility and, alternatively, argue for a number of conditions. Ms. Linowes asks as well that the Committee make numerous "findings of fact."[5]

E. Town of Goshen

The Town of Goshen presented the testimony of two selectmen, John Wirkaala and James Carrick. Goshen takes no position with respect to whether the facility should be issued a certificate, but it opposes the plans of PSNH to upgrade the utility lines that, as a result, will run through the Goshen village. Goshen asserts that the replacement poles will be larger and contain more cable than the existing system. They claim that the replacement poles and additional cable will unduly interfere with the orderly development of the town and have an unreasonable adverse impact on the aesthetics of the village core area of the Town of Goshen. Goshen also asserts that the replacement poles and additional cabling violate the various

[5] At its public meeting on June 20, 2007, the Committee noted that specific findings of fact are arguably obviated by a comprehensive written decision. Nonetheless, the Committee considered and ruled on each of the proposed findings. See Attachment A for a summary of the Committee's disposition of each proposed finding.

from a regional, state, or local perspective. *Id.* The Water Division recommended that a Wetlands Permit be approved, subject to19 general and specific conditions. Exh. App. 21, Attachment 1.

On April 14, 2006, the Applicant filed, with the Water Division of DES, a Site Specific Permit application and a Stormwater Pollution Prevention Plan. The site specific application sought authority to disturb 1,100,000 square feet (approximately 25 acres) of land for the construction of approximately five miles of access roads, electric cable conduit and service pads for twelve wind turbines. See, Exh. App.1 (Application Vol. 1) Appdx. 9. The Applicant later submitted a revised set of erosion control plans and a supplemental drainage summary reflecting revisions as a result of the realignment of the proposed access roads. On March 20, 2007, the Water Division issued recommended findings and conditions on the Site Specific Permit. The Division recommended that the Committee approve the proposal to disturb approximately 25 acres of land at the site to construct the access roads, electric cable conduit and service pads for the turbines. The Division found that water quality degradation will not occur as a result of the proposed project but it did recommend that ten conditions be imposed. Exh. App. 21, Attachment 2.

The Applicant filed its request for a 401 Water Quality Certificate on August 11, 2006, identifying the surface water subject to the water quality certification as scattered wetlands on Lempster Mountain ridgeline, drainage basins, Richardson Brook, Ashuelot River, Beaver Brook, Cold Brook, May Pond, Babb Brook and Dodge Pond. The Applicant asserted that there would be no appreciable withdrawal or discharge during the construction or operation phases of the project. The Applicant further averred that there would be no discharges or other impacts

that would alter the water quality standards below their present classification, Class B. Exh. App. 1 (Application Vol. I), Appdx. 10

On February 28, 2007, the Applicant filed its revised project design plans and Stormwater Pollution Prevention Plan, as well as additional information in response to questions from the Watershed Management Bureau of the Water Division of DES. Exh. App. 3 Appdx. 3. On March 20, 2007, the Water Division issued its recommended findings and conditions for the issuance of a 401 Water Quality Certificate. Exh. App. 21, Attachment 3.

Although the Applicant asserts that no party challenged the recommended findings and conditions issued by the Water Division pertaining to the Wetlands Permit, the Site Specific Permit and the 401 Water Quality Certificate, Ms. Linowes argued that the Stormwater Pollution Prevention Plan is under-designed for the location and scale of the proposed project. See, Linowes Brief at p. 7. She states that there have recently been two 100-year flood events in New Hampshire and that many small towns in the state require at least a 25-year storm analysis.

The Applicant asserts that the testimony of its expert, Martin Risley, a registered engineer, confirms the recommended findings of the Water Division. Mr. Risley testified that the proposed roads and turbine service pads may increase peak runoff flows at the proposed site. However, he notes that the overall size of the watershed is more than adequate to accommodate the increased runoff. Mr.Risley further relies upon the detailed soil erosion and sediment controls contained within the Stormwater Pollution Prevention Plan in order to protect against degradation of water quality from runoff. Exh. App. 9, p. 5.

The Committee, having considered the evidence, finds that the Applicant has minimized the impacts of the proposed site on wetlands. Based upon the revised road alignment, the proposed facility will impact only one small wetland with an area of less than 1,500 square feet.

The Committee adopts the findings and conditions recommended by the Water Division as they pertain to the issuance of a Standard Dredge and Fill Permit. The Water Division shall issue the permit with the recommended conditions. The Wetlands Permit and its conditions shall be included in the Certificate of Site and Facility.

With respect to the Alteration of Terrain Permit, the Committee shares some of Ms. Linowes' concerns about the capacity of the Stormwater Pollution Prevention Plan. The proposed site, for the most part, is undeveloped. It is impossible to predict the size of storms or the rapidity of snow melt that may occur over the course of the project life. The Committee has determined to require the Applicant to re-design the Stormwater Pollution Prevention Plan, including its soil erosion and sediment control criteria to accommodate a 25-year storm event. This condition will be added to the existing findings and conditions recommended by the Water Division on both the Alteration of Terrain Permit and the 401 Water Quality Certificate. The Water Division shall issue the Alteration of Terrain Permit and the 401 Water Quality Certificate subject to the additional condition. Both permits and their respective conditions shall be part of the Certificate of Site and Facility.

Additionally, the Committee, as part of the Certificate of Site and Facility, attached hereto as Attachment B, delegates the authority to monitor the construction and operation of the proposed facility to the Water Division for compliance with the terms and conditions of the Standard Dredge and Fill Permit, the Alteration of Terrain Permit, and the 401 Water Quality Certificate. See, RSA 162-H:4, III. The Water Division is also delegated the authority to specify the use of any technique, methodology, practice, or procedure designed to ensure compliance with the terms and conditions of the Standard Dredge and Fill Permit, the Alteration of Terrain Permit and the 401 Water Quality Certificate. See RSA 162-H:4, III-a.

B. Available Alternatives

Pursuant to RSA 162-H:16, IV, the Committee is tasked with determining if available alternatives have been considered with respect to the siting of a proposed energy facility and it has heard evidence with respect to such alternatives. Jeffrey Keeler, Project Director for the Applicant, testified that the present site was chosen after consideration of alternative sites, meeting initial criteria, in Croyden, Newbury and elsewhere within the Town of Lempster, New Hampshire. Exh. App. 5, p. 5-6; Transcript, March 26, 2007, p. 142-144. The proposed site was chosen because of its remoteness, its significant wind resources, its proximity to an efficient interconnection with the electric grid at the distribution level, and the availability of suitable tracts of land. *Id.*

In addition, the record reveals that the Applicant has considered various configurations with respect to the placement of the turbines and other associated equipment within the confines of the proposed site. Furthermore, the Applicant has scaled down the overall size of the proposed project in order to efficiently interconnect to the existing grid. Transcript, March 26, 2007, p. 144.

Other than suggesting that ridgelines are, in general, inappropriate for the placement of wind facilities, and championing offshore wind power development, the Consolidated Intervenors do not present any evidence that more appropriate alternatives exist to the siting of the proposed wind facility pursuant to the Application.

The Committee finds that the Applicant has engaged in a reasonable process in examining alternative sites and that it has made a reasonable determination in its selection of the Lempster site. The Committee also finds that the location of the proposed site, its significant wind resources, the availability of sufficient undeveloped acreage, and the proximity of the site

to an efficient interconnection point to the electrical distribution grid render the proposed site a reasonable location among available alternatives for construction of the proposed Facility.

Pursuant to RSA 162-H:16, IV, the Committee is also required to have fully reviewed the environmental impact of the site. That review is reflected *supra*, in the section discussing State Permits, and *infra*, in the section discussing Adverse Effects.

C. Statutory Criteria

1. Financial, Technical and Managerial Capability

The owner of the proposed project, Lempster Wind, LLC, is a subsidiary of Iberdrola S.A., a multi-national corporation headquartered in Madrid, Spain. Iberdrola S.A. owns 100% of an entity known as Iberdrola Renewable Energy which, in turn, owns Iberdrola Renewable Energy USA. Iberdrola Renewable Energy USA is a 100% owner of CEI which owns the applicant, Lempster Wind, LLC. Iberdrola S.A. and its subsidiaries intend to finance the construction and operation of the proposed project directly off its balance sheet. Transcript, March 26, 2007, p. 150-151; 153; Exh. App. 6, p. 3. At the end of 2006, Iberdrola S.A. reported total assets in the amount of $33,061,000 euros, or approximately $44.3 billion US and net profit of $1,666,300,000 euros, or approximately $2 billion US[6]. App. Exh. 25; see also, Transcript March 26, 2007, p. 151. The testimony of Gilbert Chauny also revealed that Iberdrola, S.A. carries insurance capable of covering losses in the event of a force majeure, as well as liability and construction insurance. Exh. App. 6, p. 3-4; Transcript, March 26, 2007, p. 151-152.

The Project is expected to cost approximately $40 million for equipment, construction and commencement of operations. Exh. App. 6, p. 3. The Applicant anticipates initial funding from Iberdrola, S.A. in an amount of approximately $850,000 for operation of the facility.

[6] See Applicant Exhibit 25; see Application, Appendix 1. The conversion from euros to United States dollars was

Transcript, March 26, 2007, p. 151. In addition to being able to completely fund the construction and operation of the proposed facility from its balance sheet, Iberdrola, S.A.will seek out a long term purchase power agreement for the project and will sell renewable energy credits. These are additional positive financial factors and Iberdrola, S.A. intends to proceed with construction of the facility whether it can sell renewable energy credits or not. See, Transcript, March 26, 2007, pp. 54-55; 58-60. It should also be noted that Iberdrola, S.A.is likely to bring in a passive investor to make use of the federal production tax credits because it is a foreign corporation and is not eligible for the tax credits. See, Transcript, March 26, 2007, p. 153-154.

Iberdrola, S.A. employs over 500 employees in the area of renewable resources and currently operates approximately 3,400 MW of wind power generation. Exh. App. 1 (Application Vol. I), Appdx. 1; Exh. App. 6. The Iberdrola companies, moreover, have committed to exceed 10,000 MW of wind energy, worldwide, by the year 2011. See, Exh. App. 6, p. 2. Iberdrola, S.A. also owns and operates other types of electric generation facilities, including hydro-electric (9,000 MW), combined cycle technology (6,000 MW), nuclear (3,300 MW), coal (2,800 MW), oil (1,200 MW), and co-generation (400 MW). Exh. App. 1 (Application Vol. I), Appdx. 1. Additionally, CEI was named one of the world's 100 most sustainable companies for two years in a row and it has been involved in the development and financing of over 250 MW of wind power projects in the United States. See, Exh. App. 6, p. 4. It is also important to note that the Iberdrola subsidiary companies will be supported by a separate engineering subsidiary, wholly owned by Iberdrola S.A. Exh. App. 6, p. 4.

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done on May 31, 2007 using an exchange rate of 1.34190 United States dollars to one euro.

Based on the uncontroverted evidence presented in this proceeding and summarized above, the Committee finds that the Applicant has adequate financial, technical and managerial capability to assure construction and operation of the Lempster facility in continuing compliance with the terms and conditions of the certificate as issued.

2. Orderly Development of the Region

RSA 162-H:16 IV(b) requires that the Committee find that the site and facility "will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning committees and municipal governing bodies."

The Applicant asserts that the proposed facility is consistent with the current character of the Town of Lempster and that the operation of the proposed facility will not interfere with that character or ongoing land uses in the area. See, Exh. App. 1 (Application Vol. I), p. 62; Exh. App. 5, p. 8-9. The Applicant also observes that there are no zoning laws in the Town of Lempster and that, before the commencement of these proceedings, the Applicant had already secured building permits from the Town of Lempster for the proposed facility. See, Exh. App. 1 (Application Vol. I), p. 62. The Applicant further notes that it reached a comprehensive agreement with the Town of Lempster addressing issues of local concern. See, Exh. Lempster C. The Applicant asserts that this agreement demonstrates the views and concerns of the municipality of Lempster and its governing bodies. Likewise, the Applicant asserts that the agreement with the Town of Lempster addresses and satisfies the primary concerns raised by the Upper Valley/Lake Sunapee Regional Planning Commission, namely, visual impacts, fire protection/emergency response and decommissioning. Moreover, the Applicant contends that

the Regional Planning Commission has expressed support for clean renewable energy within the region, and that the proposed project is consistent with that view.

Both Public Counsel and the Town of Lempster agree with the Applicant that the proposed facility will not unduly interfere with the orderly development of the region as demonstrated by the stipulations and agreements made between Public Counsel and the Applicant, and between the Town of Lempster and the Applicant. The Consolidated Intervenors take two positions with respect to this issue. Mr. Webb, in his closing brief, suggests that the Committee cannot determine if the proposed project unduly interferes with the orderly development of the region without evaluating how this particular project will "fit in with the thousands of other turbines which could be lining our region's ridgelines after the Lempster project is approved". See, Webb Brief May 3, 2007. Ms. Linowes argues that the development of the proposed facility is inconsistent with the current rural and undeveloped nature of the area and, therefore, is of an inappropriate scale for the surrounding area. Linowes Brief, p. 7-9.

The preponderance of the evidence in the case indicates that the proposed facility will not unduly interfere with the orderly development of the region. In fact, aspects of the project can assist in the orderly development of the region. For instance, the project will deliver power directly to the existing distribution grid at existing voltage in the region without the need to obtain new rights-of-way. This increases the amount of electricity available to the distribution grid and, with the addition of the 3-phase line, will allow options for future users of 3-phase power in the area.

Additionally, in the absence of a zoning ordinance, the Town has negotiated an agreement with the Applicant that addresses project security, emergency response, construction period requirements, noise restrictions, setbacks, and decommissioning. Through this

agreement, the Town has obtained concessions from the Applicant that would not be applicable in the absence of the zoning ordinance and thus provides the Town of Lempster assurances regarding orderly development during both the construction and operational phases of the project.

The Committee notes that the Applicant has submitted a number of exhibits concerning various viewsheds and depicting the turbines. Although the turbines will be visible from various vantage points, the Committee cannot find that such visibility alone will interfere with the orderly development of the region. The Committee also notes that the turbine towers will require some lighting pursuant to regulations of the Federal Aviation Administration. The Upper Valley/Lake Sunapee Regional Planning Commission has expressed some concerns with the nature of that lighting. The Applicant, in response to those concerns, has provided the Regional Planning Commission and this Committee with information concerning the possible aviation lighting configurations. Specifically, the Applicant indicates that the FAA regulations will likely require that turbines 1 and 9 have safety lighting. Additionally, the Applicant expects that at least three other wind turbines will be fitted with safety lighting in order to comply with the FAA's minimum spacing requirements. It was also established that lighting would only be required at night and that the Applicant would not activate the lighting during the day. Finally, the Applicant indicates that it is also investigating, with the FAA, the use of technologies to limit ground level light pollution. See, Exh. App. 14.

Aviation safety is an important factor in ensuring that the project does not unduly interfere with the orderly development of the region. The Committee finds that the proposal of the Applicant as to safety lighting at the project reasonably addresses local and regional concerns. The Committee also notes that the agreement with the Town of Lempster adequately

addresses the concerns that the Regional Planning Commission has with respect to fire protection/emergency response and decommissioning.

The Committee finds that the facility will not unduly interfere with the orderly development of the region, taking into consideration the views of the Town of Lempster, the Upper Valley/Lake Sunapee Regional Planning Commission and the Consolidated Intervenors. The Committee notes that the argument that it must consider the probable location of other wind power generation facilities that may be proposed in the future before determining whether the proposed facility should be sited is impractical and unworkable. Such an approach, in effect, could prohibit the Committee from considering any wind projects until all possible wind project applications were filed with the Committee.

3. Adverse Effects

a. Aesthetics

(i.) Shadow Flicker

The Application alerts the Committee to a phenomenon called "shadow flicker," which is defined as the "alternating change in light intensity or shadows created by the moving turbine blades when back-lit by the sun." Exh. App. 1 (Application Vol. 1) p. 53. Shadow flicker is primarily an aesthetic issue but one exhibit submitted by the Consolidated Intervenors suggests that it may be a public health issue as well. See, Exh. Int. E-4, p. 1.

The Applicant studied the potential for shadow flicker resulting from the proposed facility. See Exh. App. 2 (Application Vol. II) App. 28. In that study, the Applicant's consultant, Superna Energy, used standard assumptions and specific data regarding the terrain in the project area, meteorological data for the area, and the proposed turbine dimensions. The study determined that areas which would receive 30 hours or more per year of shadow flicker were

located in very close proximity to the turbines themselves. The areas encompassing Nichols Road, Maplewood Drive, Guilford Lane, Fifield Drive and Sugarhouse Drive were projected to receive not more than 10 to 20 hours per year of shadow impact. Areas of particular interest, such as the Goshen Lempster School, the Lempster Town Hall, Pillsbury State Park, the Webb residence and the Dwyer/O'Grady residence, were projected to experience less than ten hours of shadow impact in an average year. See Exh. App. 2 (Application, Vol. II) Appdx. 28.

The Applicant's shadow study has not been challenged by any party. The brief reference in Exh. Int. E-4 to the effect of shadow flicker on motion sensitive people is insufficient for the Committee to make a finding or conclusion in that regard. Thus, the Committee finds that the proposed facility will not have an unreasonable adverse impact on either aesthetics or public health and safety as a result of shadow flicker or shadow impacts.

(ii.) Viewsheds

In determining whether the Project will have an unreasonable adverse effect on aesthetics, the Committee considers the effects on the viewshed in the region. The Applicant argues that the viewshed impact is not unreasonable because the turbines are obstructed from view by geographic features or vegetation for most residences within one mile of the Project. The Applicant also asserts that the turbines are confined to an isolated area, will be non-obtrusive in color and lit only to the minimum extent required for aviation safety. Applicant's Brief, p. 30. The Consolidated Intervenors, however, question how building twelve towers on two miles of scenic ridgeline cannot have an adverse effect on aesthetics. Webb Brief, p. 2. The Consolidated Intervenors do not cite expert testimony in the record but rely instead on a paper from the United Kingdom, which does not contain source references. Exh. Int. E-20.

The issue to be determined by the Committee is whether the Project will have an unreasonable adverse effect on aesthetics. The Project's proposed wind turbines are just under 400 feet high and will have some effect on the viewshed in the region. However, the statutory issue presented to the Committee is whether the effect is unreasonably adverse.

The Applicant's consultant, Louis Berger Group (LBG), performed a "worst case" study to determine the visibility of the turbines over a three mile radius. Exhibit App. 2, Appendix 29. The study assumed the absence of trees, buildings and other ground features. The study includes all areas within three miles where even one foot of blade tip should be visible. See, Exh. App. 2, Appendix 29. Despite their height, the turbines will not be visible in many areas, especially to the north and east of the Project. The Committee has also reviewed exhibits documenting the existing wind turbines at the Bear Creek facility in Pennsylvania and the photo simulations for the instant Project. Exh. App. 2, Appendix 22 and Exh. App. 4-14. Additionally, members of the Committee viewed the ridgeline on Lempster Mountain while on the October 30, 2006 site visit. Having reviewed the evidence, the Committee finds that, subject to conditions contained in the Lempster Agreement, the Project will not have an unreasonable adverse effect on aesthetics.

b. Historic Sites

The Applicant submitted, as part of the Application, a Memorandum of Understanding on Cultural and Historic Resources Work Scope, dated April 12, 2006. Exh. App. 2 (Application Vol. II) Appdx. 29. The Memorandum represents the Applicant's obligation as agreed with the Division of Historical Resources (DHR) to conduct an Archeological Phase 1-a Survey and a Survey of Project Viewshed and Area of Potential Effect. The Phase 1-a Survey requires, *inter alia*, field testing in areas of ground disturbance and collaboration with cultural groups. The

survey of project viewshed is designed to determine the impact of the Project on historic sites within three miles of the Project. *Id.* The Applicant's consultant has conducted a field investigation of historic sites. The investigation identified 141 properties within the Project Viewshed Area of Potential Effect. Twenty-seven of the properties fell within the Lempster Street Historic District, which is eligible for treatment as a National Register historic district. Exh. App. 3 Appendix 12. Five additional properties are listed on the National Register and eight additional properties appear to meet the criteria for the National Register. *Id.* The status report prepared by LBG indicates that the Project is separated from the historic properties "by horizontal distance and altitude." LBG reports that the Project does not introduce any new elements into the immediate setting of any property of historical significance. LBG also found that the Project does not impact any characteristics that would qualify a historic property for inclusion on the National Register. *Id.* Therefore, LBG concludes that the Project imposes no adverse impact on historic resources and its opinion is uncontradicted in the record. Finally, the Applicant reports that it continues to work with DHR in surveying and determining if any aspect of the proposed facility will have an impact on historic sites or cultural resources.

The Committee recognizes that the discovery and identification of historic sites and cultural resources can be a fluid process. Thus, certain conditions are necessary to ensure that construction and ultimate operation of the proposed facility does not interfere with any historic sites or cultural resources. In this regard, the Applicant, as a condition of its certificate, will be required to: 1) continue its consultations with the DHR and comply with all agreements and memos of understanding with that agency; 2) complete its Phase 1-a archeological survey and provide copies to DHR and the Committee; and, 3) undertake a Phase 1-b archeological survey in all archaeological sensitive areas and file the reports of the survey with DHR and the

Committee. Additionally, in the event that new information or evidence of a historic site, or other cultural resources, are found within the project site, the Applicant shall immediately report said findings to the DHR and the Committee. The foregoing conditions shall attach to the Certificate of Site and Facility. The Committee hereby delegates to the DHR the authority to determine what methods, studies, surveys or other techniques, practices or procedures shall be employed in conducting the Phase 1-a and Phase 1-b surveys and any further surveys, studies or investigations in the event that archeological resources are discovered at the project site.

c. Air and Water Quality

RSA 162-H:16, IV(c) also requires that the Committee determine if the Project will have an unreasonable adverse effect on air and water quality. The Project will create no air emissions and thus will not have an adverse impact on air quality. In fact, it can reasonably be argued that the electricity produced by the Project will displace the use of fuels at other plants which do, in fact, negatively affect air quality. Section V. A of this Decision addresses the issue of water quality. For the reasons set forth therein, the Committee finds that the proposed Facility, subject to the conditions referred to in Section V. A, will not have an unreasonable adverse effect on water quality.

d. Natural Environment

Over the course of the proceedings, the Committee has considered extensive evidence about the impact of the proposed facility on the natural environment. Most of the evidence centered on the impact of the proposed facility on birds and bats, and its impact on the interior forest habitat. The Committee has had the opportunity to review the studies conducted by the Applicant's experts and by consultants for Public Counsel. The Committee has also reviewed

the concerns expressed by the United States Fish and Wildlife Department (USFW) and Consolidated Intervenors.

The Applicant submitted a document entitled "Phase I Avian Risk Assessment 2004" authored by Curry & Curlinger, which reaches two general conclusions. See, Exhibit App. 4-20; see also, Exh. App. 2 (Application Vol. II) Appendix 30. First, there is a potential for forest nesting birds to be displaced and/or disturbed by the construction of the project and the presence of the turbines but, at the time of the report, the matter had not been studied completely. See, Exhibit App. 4-20, p. 32. Second, based upon the literature and information obtained from the site, there is sufficient information to assess the risk of avian collision mortality and there is little likelihood of biologically significant levels of collisions. See, Exhibit App. 4-20, p. 32.

The Applicant also commissioned the Louis Berger Group, who prepared a document entitled "Pre and Post Construction Avian Survey Monitoring and Mitigation" dated August 2006. See, Exhibit App. 4-20, and Exh. App. 2 (Application Vol. II) Appendix 31. This report primarily designates a plan for future pre-construction and post-construction wildlife mitigation activities but does not assess the risk to avian or other wildlife populations. This document asserts that the literature in general does not support significant direct or indirect impacts on birds at most wind farms. See, Exhibit App. 4-20, p. 2.

The Committee reviewed as well the "Fall 2006 Survey of Bird and Bat Migration - Final Report, January 2007" authored by Woodlot Alternatives, Inc., and filed as a supplement to the application. See, Exhibit App. 3, Appdx. 10. As part of this report, Woodlot Alternatives conducted a nocturnal avian migration radar study. The study concluded: 1) there is limited avian mortality risk during the fall migration season; 2) the nocturnal avian migration patterns are similar to other sites in the region; and 3) the majority of migration during the period study

was at levels well above the height of the proposed turbines. See, Exhibit App. 3, Appdx. 10. The Fall 2006 survey of bird and bat migration also included an acoustic bat study. That study concluded that (a) the species found by the study were the species of bat that were expected to be found in the area, and (b) there was an overall low detection rate on ridge top sites compared to the valleys and other known micro-habitats such as ponds in the area. Exh. App. 3, Appdx. 10.

The Committee received an additional study entitled "Lempster Wind Farm Wildlife Habitat Summary and Assessment, March 2007" (Summary and Assessment), which was also authored by Woodlot Alternatives, Inc. See, Exhibit App. 3, Appdx. 10. This study came to the following conclusions with respect to bird populations.

1. There is no full time residency of endangered species or bird species of conservation concern.
2. The habitat in the area of the proposed facility is already widely harvested.
3. The overall impact of the proposed project on avian species is expected to be minimal based upon documented low rates of collision related mortality.

With respect to bats, this study concluded that the information collected on site indicates low levels of bat activity compared to other areas, especially those areas where there are high rates of documented bat mortality. See, Exhibit App. 3, Appdx. 10, p. 25. The wildlife habitat summary also concluded that there will be little effect on mammals because forest harvesting is already widespread in the area throughout the project site and many mammals have longer home ranges and greater tolerances for habitat disturbances and variability. See, Exhibit App. 3, Appdx. 10, p. 26. Finally, the wildlife habitat summary found that the effect of the project on amphibians and reptiles would be the area of greatest concern. However, the study concluded that existing forest harvesting has already impacted the area and resulted in the habituation of these species. Also, the study concluded that there will be a very small risk of road kill to

amphibians and reptiles due to the remoteness of the location and the light travel that is expected on the roads within the project. See, Exh. App. 3, Tab 10, p. 26.

The Consolidated Intervenors argue that the studies provided by the Applicant are insufficient or methodologically flawed. The Consolidated Intervenors also argue that the Applicant's studies fail to encompass adequate pre-construction time frames and that there will be a more significant impact on avian species and wildlife than asserted by the Applicant. The Consolidated Intervenors also suggest that the road work to be done on the site will be greater than asserted by the Applicant in its application, and will dangerously fragment the forest habitat.

The Committee finds that the studies submitted by the Applicant are thorough and persuasive. The studies were also expounded upon by Robert Roy, a certified wildlife biologist who testified during the proceedings. See, Exh. App. 10 (Prefiled Testimony of Robert Roy), Exh. App. 13 (Supplemental Prefiled Testimony of Robert Roy) and Transcript, March 27, 2007, p. 187-274, Transcript March 28, 2007, p. 18-46. Mr. Roy has conducted approximately forty wildlife assessments for wind turbine development sites as well as seasonal radar migration studies along the East coast in locations from Maine through West Virginia. He is certified as a wildlife biologist by the Wildlife Society and has been involved in this area since 1992. Moreover, his testimony revealed an extensive knowledge of both wildlife biology and the use of modern technology to document and inventory avian species. Consequently, the Committee finds Mr. Roy's testimony to be credible.

During the course of these proceedings, there has been much discussion regarding the USFW guidance that wind turbine developers obtain three years of pre-construction data as a standard for determining the presence and/or magnitude of bird and bat migration in areas of

high seasonal concentrations. The Consolidated Intervenors rely heavily on the USFW and also upon a letter from Michael J. Bartlett of the Supervising New England Field Office of USFW, which has been entered as public comment in this case. See, Exh. App. 37 and 38.

It is important to note, however, that the USFW's guidance with respect to the length of time for pre-construction surveys is a recommendation and not a requirement. Furthermore, USFW has stated that its guidelines are "voluntary and interim in nature". See, Exhibit PC-17. The Director of the United States Fish and Wildlife Service issued a memo on April 26, 2004, indicting that the guidance is intended to be "general in nature and apply with local interpretation based on local conditions." Likewise, specifically addressing pre and post-construction studies, the Director has written:

> As an example, the guidance recommends 3 years of data as a standard for determining the presence and/or magnitude of bird and bat migration in areas of high seasonal concentrations. This recommendation is not intended to be a strict requirement for all areas, or if a shorter collection period can be expected to yield sufficient data. Likewise, recommending the use of acoustic, radar and infrared detection equipment as mentioned in the guidelines is not a strict requirement at all locations and under all conditions. However, where risk is considered sufficiently high and available data and/or local knowledge indicate that weather variations, changing flight paths, or variable timing of migration warranted it, 3 years of data collection using the most appropriate tools available should remain standard. The guidance states that the intended time frame for post-construction monitoring (recommended at all sites) is not expected to exceed 3 years. This does not mean that 3 years of monitoring should be recommended at all sites. A single year of monitoring through all seasons may indicate that one year is sufficient, or that additional monitoring is needed. Again, professional evaluation of the local situation is required. See, Exhibit PC-16.

The testimony of Mr. Roy and the studies provided by the Applicant demonstrate several relevant points. The studies performed by the Applicant's consultants do not identify the project area as an area of high seasonal concentrations and the testimony of Mr. Roy is persuasive that the data collected thus far is sufficient to reasonably estimate the presence and/or magnitude of bird and bat migration in the area of the proposed facility. Therefore, the facts do not indicate a

sufficiently high risk, and available data does not warrant three years of data collection. Moreover, Mr. Roy and Woodlot Alternatives, Inc. have considerable experience in conducting such surveys and, based on their professional evaluation of the local situation, the Committee finds that a longer pre-construction survey is not necessary. Finally, the Committee recognizes that Public Counsel and the Applicant have offered a proposed certificate condition regarding avian species protection.

The proposed condition on avian species addresses a number of issues that will serve to mitigate any adverse effects. The agreement calls for: (a) formation of a technical committee; (b) reporting of the spring 2007 avian survey results; (c) post-construction avian and bat mortality surveys, for a period of two years following commercial operation of the wind turbines and including spring and fall migration seasons, using protocols reviewed and approved by the technical committee; (d) technical committee ability to comment on the reports; (e) technical committee option to recommend additional investigations and work collaboratively to address concerns identified in the report from the post-construction surveys; (f) Counsel for the Public ability to petition the Site Evaluation Committee, if the technical committee cannot achieve general consensus on the issue of avian mortality; (g) appropriate Site Evaluation Committee action within its jurisdiction if it determines that the project has an unreasonable adverse impact on any avian species; and (h) acknowledgment that the Applicant is still subject to all rights and liabilities under the federal migratory bird treaty act or other applicable law. See, Exhibit PC 20. The Committee finds that the proposed condition concerning avian species protection will assist in protecting against unreasonable adverse effects from the proposed facility on avian species and, therefore, adopts it as a condition of the certificate.

The Applicant has met its burden to demonstrate that interior forest fragmentation will not have an unreasonable adverse effect on the natural environment. As indicated by Mr. Roy, much of the proposed facility area has been logged and heavily harvested. There are already significant areas of edge habitat and most mammals will be able to habituate to any additional habitat fragmentation. Likewise, the Committee finds that there will not be an unreasonable adverse effect on amphibians and reptiles inasmuch as the roads within the project area are remote and will not be highly traveled.

In addition, the Applicant has consulted with the Department of Resources and Economic Development's Natural Heritage Bureau (NHB). NHB identified no exemplary natural communities or rare plants or mammals at the site. Exh. App. 1, p. 55; App. 3 Appdx. 10, p. 3. A study conducted by botanist Arthur Haines confirmed these findings with respect to rare, threatened or endangered plants. Exh. App. 3, Appendix 10 (Summary and Assessment, Appdx. A).

Based upon the studies conducted at the site of the proposed facility, and the testimony of Mr. Roy, the Committee determines that the construction and operation of the proposed facility will not have an unreasonable adverse effect on the natural environment as it pertains to birds, bats, mammals, amphibians and reptiles. Further, the Committee finds that any additional habitat fragmentation that occurs will not have an unreasonable adverse impact on the natural environment at the facility site.

e. Public Health and Safety

(i.) Ice Throw

The Committee heard considerable evidence regarding the issues of ice throw or shedding, and blade fragment shedding. On the one hand, the Applicant acknowledges that such

events can occur but argues that they are relatively rare and minor. See Exh. App. 1 (Application Vol. I) p. 45, 48. On the other hand, the Consolidated Intervenors claim that the potential for significant ice throws and blade fragment throws is serious. They rely, in large part, upon theoretical "worst case calculations" derived from the work of Professor Terry Matilsky. See, Exh. Int. E-11. The Applicant, however, relies upon operational experience, mechanical safeguards, industry standards, and calculations performed by Professor Henry Seifert. See, Exh. App. 2, Appdx 24.

The Consolidated Intervenors assert that the project has the capacity to throw large chunks of ice and/or blade fragments a considerable distance. However, on cross-examination Mr. Webb acknowledged that his own and Professor Matilsky's calculations were based upon theoretical assumptions; do not include corrections for lift or vertical topography (elements which may result in larger throw calculations); and do not consider air resistance or drag (elements which may result in smaller throw calculations). When asked about conditions where there was no air resistance, he explained that such conditions exist only in a vacuum. Transcript, March 28, 2007, p. 63-64. Mr. Webb agrees that his calculations do not account for the aerodynamics of every piece of ice or debris that might get thrown from a turbine blade and he recognizes that every piece of ice or debris would not be in an airfoil shape. Transcript, March 28, 2007, p. 108. Furthermore, Mr. Webb's calculations do not take into account that for blades to be turning at top speed there has to be a strong wind in a direction perpendicular to the direction of the rotation that could cause thrown ice to tumble and break up or place it on a curved path instead of a straight line. Id., p. 95.

Under cross-examination by Public Counsel, Mr. Webb relied on a wind turbine accident report authored by the Caithness Windfarm Forum, which appears to be a compilation of

summaries from press or internet reports. See Exh. Int. E-10. Moreover, the information about ice throw or blade fragment throws does not confirm the contention that lengthy throws of heavy projectiles are likely. See Transcript, March 28, 2007, p. 117-124. Finally, the Consolidated Intervenors do not consider either the operational experiences of the Applicant and the wind power industry or the various mechanical controls contained within the turbines.

The Applicant has the experience of operating more than 3,400 MW of wind generated electricity and it states that the vast majority of ice shedding occurs when ice on the blades begins to thaw and then drops to the ground in the vicinity of the turbine. Exh. App. 8, p. 8. The Applicant also reports its experience that when ice is thrown from a turbine blade it usually breaks into tiny pieces and lands within three hundred feet of the turbine. Exh. App. 8, p. 8. The Applicant further asserts that ice is only thrown by the blades when it is at the tip of the blade and the blade is running at a very high rotational speed. Exh. App. 8, p. 8.

In order to prevent ice throw, the Applicant states that the turbines are outfitted with a safety control system that can sense an imbalance in the weight of the blades and adjust the pitch of the blade to slow down the rotational speed and avoid throwing ice. Additionally, if there are very heavy amounts of ice frozen to the blades the turbines will not operate at all. Exh. App. 8, p. 9; Exh. App. 1 (Application Vol. I) p. 46. The Applicant also stated that icing decreases the efficiency of the blades and results in turbine output being lower than expected for a given wind speed. Such a decrease in expected output is detected by the monitoring system and, when combined with ambient temperature low enough to allow ice formation, results in the turbine being automatically placed in its low or stopped safe mode. Transcript, March 26, 2007, p. 139. Similarly, the system will detect blade failures, placing the turbine in a safe mode and automatically shutting it down. Transcript March 27, 2007, p. 74-75.

The Applicant also employs substantial setbacks from residences and roadways as a safety factor against injuries from ice throw or blade failure. The applicant relies upon an industry standard of 1.1 times the tower height adjacent property lines or 440 feet for the Gamesa G 87 turbines. Transcript March 27, 2007, p. 76. In addition, the Applicant has entered into agreements with both Public Counsel and the Town of Lempster concerning setback distances and ice shedding conditions. Pursuant to the Town of Lempster Agreement, the Applicant has agreed that turbines will be set back: at least three times the turbine height from any non-participating land owner's occupied building; at least 1.1 times the turbine height from any non-participating landowner's property line; and at least 1.5 times the turbine height from public roads. See, Exh. Lempster C, p. 12-13. The Applicant has also agreed with Public Counsel to monitor turbine conditions to determine the presence of ice; respond with operational measures to limit ice throw; ensure that turbines are free from accumulated ice prior to restarting turbines that have been shut down due to icing; and, post warning signs alerting others to the danger of ice shedding during winter conditions. See, Exh. PC-20 p. 2-3.

At hearing, an incident of blade failure at a facility in Allegheny Ridge, Pennsylvania employing Gamesa turbines was discussed and the Applicant was directed to provide a status report on the incident, which it filed on May 18, 2007. The report indicated that the causes of the blade failure were being addressed through revisions to Gamesa's quality control measures at its manufacturing facilities and institution of a mandatory thermo graphic inspection. The Committee discussed the report at its public meeting on June 20, 2007, and determined that the Certificate of Site and Facility would include a condition that the Applicant take all commercially reasonable measures to ensure that the blade problem identified at Allegheny Ridge not impact the safe operation of the Facility.

Having considered both sides of these arguments, the Committee finds that the Applicant has shown by a preponderance of the evidence that the proposed facility will not have an unreasonable adverse effect on the public health and safety as the result of ice throw or blade fragment throw. In considering the Consolidated Intervenors' worst case theoretical situation, and weighing a number of countervailing factors including the experience of the Applicant's parent companies in operating wind farms, the operational controls that exist on the proposed turbines, the remote location of the proposed turbines and the setback agreements, the Committee concludes that the likelihood of ice throw or blade fragment throws is far less both in frequency and distance than predicted by Mr. Webb. The Committee, furthermore, adopts the conditions pertaining to setbacks and ice shedding in the Town of Lempster and the Public Counsel agreements.

(ii.) Noise

Determining whether a proposed facility will have an unreasonable adverse noise impact on the public health and safety can be a vexing and complex problem because noise issues have both objective and subjective aspects. The measurement of incremental increases in sound, moreover, is complicated by the presence of ambient sound and the effect of other environmental factors such as temperature. Further, there are sounds that are not noticeable to some individuals but are annoying to others.

In this case, the Applicant asserts that it has demonstrated that any noise impact from the proposed facility is not unreasonable and, in fact, will be minimal. See, Exh. App. 1 (Application Vol. I) p. 43. In support, the Applicant presents a noise assessment study for the proposed project prepared by Lloyd Pasley of Superna Energy. In determining predicted sound levels, Mr. Pasley utilized the specifications provided by the manufacturer of the wind turbines.

Mr. Pasley presents predicted sound levels in six critical locations between 26 dBA and 35.1 dBA as set forth in Table 4.1 of his study. See, Exh. App. 2, Appdx. 21, p. 11. He also provides a 5 dBA contour map illustrating the predicted sound levels through the affected areas. See, Exh. App. 2, Appendix 21, p. 12. In addition, the Applicant provided a more detailed dBA contour map illustrating the affected areas. See, Exh. App. 39. Mr. Pasley asserts that his calculations are based upon conservative assumptions and do not take into effect sound absorption due to trees, grass and vegetation, outbuildings around residences, and the fact that sound levels inside residences will be lower. However, Mr. Pasley indicates that his calculations include a factor for absorption of sound by the atmosphere, which will vary with frequency. See, Exhibit App. 2, Appdx. 21, p. 11.

In his pre-filed direct testimony, Mr. Pasley reviews various standards used in other jurisdictions. He concludes that noise levels at sensitive local receptors will not exceed 35.1 dBA nor will noise levels exceed 43 dBA at the very closest residences (excluding the home of "participating" landowners Kevin and Debra Onella). In the last submitted version of a sound contour map showing residences, all homes except that of the Onella residence, are shown outside or beyond the 45 dBA contour. Exh. App. 39. Based on noise limitation standards from various jurisdictions, Mr. Pasley concludes that the noise impacts of the proposed project will be minimal. See, Exh. App. 11, p. 3-5.

Public Counsel commissioned a review through its consultant, Epsilon Associates, of the Superna study. Although Epsilon found the Superna study incomplete in several areas, it concluded that the sound level modeling estimates for the six sensitive receptor areas were reasonable. See, Exh. PC-18, p. 2-4. Epsilon concludes that although the wind turbines may be audible at times, the expected sound levels are still very low. In fact, Epsilon concluded that the

predicted sound levels should actually be somewhat less than those predicted in the Applicant's study. In determining the effect of the predicted sound levels on the community, Epsilon relies upon a document entitled "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety" published by the United States Environmental Protection Agency, Office of Noise Abatement Control in March 1974. Exh. PC-18, p. 2-3. Epsilon also relies upon a document entitled "Guideline for Community Noise" published by the World Health Organization in 1999. *Id.* Based upon these documents, Epsilon concludes that the predicted sound levels are within acceptable ranges.

Additionally, Public Counsel and the Town of Lempster have both entered into agreements with the Applicant regarding noise impacts. The Town and Public Counsel have agreed to the following noise restrictions.

1. Audible sound from the project shall not exceed 55 dBA measured at 300 feet from any existing occupied building or at the property line if the property line is less than 300 feet from an existing occupied building.

2. Sound pressure levels shall not be exceeded for more than 3 minutes in any hour of the day.

3. If the existing ambient sound pressure level exceeds 55 dBA, the standard shall be ambient dBA level plus 5 dBA.

4. Audible sound from the project at the Goshen/Lempster school shall not exceed 45 dBA. If the ambient sound pressure level at the Goshen/Lempster school exceeds 45 dBA, the standard shall be ambient dBA plus 5 dBA.

5. The Applicant shall, using an independent qualified acoustics engineer, take sound pressure level measurements after the commencement of commercial operation at sensitive receptor locations, identified by the owner of the town including the Goshen/Lempster school, both inside and outside of the building. These post-construction noise measurements shall include, at a minimum, daytime, winter and summer seasons, nighttime after 10 p.m. and for measurements at the school periods when school is in session.

6. The Applicant must provide a report of its acoustics engineer, once available, to the town and the NH Office of the Attorney General.

7. In the event that the noise standards are exceeded by the Applicant, the project shall undertake operational measures to come into compliance.

See, Exh. Lempster C, p. 12 and Exh. PC 20, p. 2. The Applicant, the Town of Lempster and Public Counsel argue that the agreements with respect to noise restrictions reasonably limit any adverse impact resulting from noise created by the project.

The Consolidated Intervenors take a different view. They assert that the Applicant's predicted sound levels are methodologically flawed because the Applicant "incorrectly utilizes a 5 dBA per kilometer atmospheric attenuation factor to reduce projected noise levels at locations removed from the sound source" (Exh. Int. C, p. 3) and suggest, based on a NASA study, that a more appropriate atmospheric attenuation factor would be 1 dBA per kilometer due to the low frequency nature of some of the wind turbine noise. (Exh, Int D-1, Appendix 1 to prefiled testimony of Mr. Webb, see also transcript for 3-27-07 at p. 92, lines 5-8, and pages 93 & 94.) The Consolidated Intervenors also rely on the work of a Dr. VandenBerg to assert that the Applicant's attenuation factor is incorrect and to assert that the wind turbines are likely to produce a "harmonic beating" noise which is particularly annoying and dangerous to public health. The Consolidated Intervenors suggest that harmonic beating occurs when two or more sound sources such as wind turbines produce noise in a synchronous fashion and rely upon Dr. VandenBerg's work to state that the effect has been "documented both analytically and experimentally." In addition, the Consolidated Intervenors have provided a number of exhibits, including Intervenor Exhibits E-3, E-7, E-8, E-9 and E-34, which are anecdotal illustrations of complaints made by others who live in proximity to wind farms. A number of public comments along these lines have also been received by the Committee.

In order to mitigate noise from the proposed project, the Consolidated Intervenors suggest that a condition be imposed that no wind turbine shall be located within one mile of a residence, which would effectively preclude the project. Alternatively the Consolidated Intervenors suggest the following two conditions pertaining to noise.

1. At all times of the year, the applicant must either feather blades, take other operational measures, or apply effective sound mitigation improvements to nearby residences that successfully reduce indoor nighttime sound levels below 30 dBA and beat amplitude inside residences to less than 5 dBA, measured from peak height to adjacent peak low. These improvements could include requiring closed insulated windows during winter time periods to achieve the required limits. Noise mitigation which results in degraded living conditions including but not limited to higher indoor temperatures will require additional mitigation to restore living conditions to normal levels.

2. During the period from Memorial Day to Columbus Day between the hours of 10 PM and 7 AM when windows will be open, the applicant must either feather blades or take other operational measures that successfully reduce indoor sound levels below 30 dBA inside nearby residences and beat amplitude inside residences to less than 5 dBA, measured from peak height to adjacent peak low.

See, Consolidated Intervenors Brief on Sound Mitigation, p. 4

Dr. VandenBerg's article, based on a study of certain wind power projects in Europe, and other anecdotal information on other wind projects, none of which were specific to the type of turbines being proposed by Applicant and all of which may or may not have characteristics similar to the Applicant's project, do not provide a sufficient basis upon which the Committee can find that unreasonable noise levels or unreasonable noise effects will occur in Lempster. It would likewise be unsound to render a decision in reliance on the anecdotal evidence submitted by the Consolidated Intervenors that was not subject to qualification as to its source nor subject to cross-examination, and cannot be directly linked to this project. At the same time, the sound levels predicted by Superna Energy and affirmed by Epsilon, which rely upon various published standards to determine whether the predicted sound levels would unreasonably impact the local area, are instructive in considering the potential effects of increased sound levels attributable to

the proposed project but they are not entirely dispositive with respect to the issue of determining an appropriate noise standard, or predicting sound levels that residents will actually experience immediately adjacent to and within their homes.

The Committee finds, based on the record, that the project is unlikely to create the harmonic beating effect suggested by the consolidated intervenors. However, in the event the project does create such an effect, the Committee finds that such effects can be reasonably mitigated by the application of the conditions outlined below.

The Committee appreciates the fact that the Town of Lempster, Public Counsel and the Applicant have reached agreement with respect to maximum noise limitations from the project. We will incorporate those provisions into our conditions for approval of the project. However, after review, the Committee is concerned that those noise limitations could still allow unacceptable noise levels at some residences under certain conditions.

The agreements between the Town of Lempster, Public Counsel and the Applicant provide for a 55 dBA (or 5 dBA more than the ambient level, which ever is greater) noise limit from the wind turbines at the property line of nearby homeowners, or 300 feet from homes, whichever is closer. Whether the Applicant's atmospheric sound attenuation factor of 5 dBA per kilometer or Intervenors'suggested 1 dBA per kilometer factor is assumed, inasmuch as 300 feet is less than 1/10 of a kilometer, in theory, sound levels close to 55 dBA immediately outside of residences could be permissible under the agreements. Applicant's Noise Assessment notes that the typical sound level in a "Quiet Bedroom at night (no wind)" is 30 dB(A). Exh. App. 2, Appdx. 21, p. 9. Applicant's Noise Assessment further notes that "Sounds levels will be lower inside the residences; a further 10 dB(A) attenuation can be expected inside a typical residence, with open windows and if the windows are closed the attenuation is 20 dB(A) or more,

depending on the standard of glazing. (Ref. ISO 1996)." *Id.* at p. 11. Thus, if sound from the wind turbines were as high as 55 dBA immediately outside a home, then the noise in a bedroom could be as high as 45 dBA with windows open, and as high as 35 dBA with windows closed.

Public Counsel's consultant, Epsilon Associates, Inc., in its January, 2007 report cites two generally accepted guidelines for appropriate regulatory standards for noise (See, Exh. PC 18, under 2.2.1, Criteria at p. 2-3).

> The first guideline document is the "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety" (U.S. Environmental Protection Agency, Office of Noise Abatement and Control, Washington, DC, 550/9-74-004, March 1974). This document, often referred to as the "Levels" document, identifies an Ldn of 55 dBA outdoors in residential areas as the maximum level below which no effects on public health and welfare occur due to interference with speech or other activities. This level includes a 10 dBA "penalty" for sound levels at night (10 p.m. to 7 a.m.). This level will permit normal speech communication, and would also protect against sleep interference inside a home with the windows open.
>
> The second guideline is the "Guideline for Community Noise" (World Health Organization, Geneva, 1999). Daytime and evening outdoor living area sound levels at a residence should not exceed 55 dBA Leq to prevent "serious annoyance", and 50 dBA Leq to prevent "moderate annoyance" from a steady, continuous noise. At night, sound levels at the outside facades of the living spaces should not exceed 45 dBA Leq so that people may sleep with bedroom windows open.

We find these guidelines instructive and, in order to assure that nearby residents are protected against sleep interference from the project, as a general matter we will require the applicant to undertake mitigation measures if sound levels at the outside facades of homes exceed 45 dBA or 5 dBA greater than ambient, whichever is greater, to ensure that interior bedroom sound levels do not exceed 30 dBA or 5dBA greater than ambient, whichever is greater, with windows closed. In addition, during summer nights when some people sleep with their bedroom windows open, we will require the applicant to undertake operational or other measures to reduce the sound level at the outside facades of homes to not more than 45 dBA or 5

dBA above ambient, whichever is greater, if installation of a home mitigation package is not otherwise sufficient to reduce project noise inside bedrooms to 30 dBA or 5 dBA above ambient sound levels, whichever is greater, with windows open.

Therefore, the Committee will add the following four conditions:

1) If sound levels generated by the project immediately outside any residence of a non-participating homeowner are found to be: a) more than the greater of 45 dBA or 5 dBA above the ambient sound level (the background sound level measured with wind turbine blades locked and not operating), or b) generating a measurable harmonic or beating noise effect in a short cycle that fluctuates with an amplitude of 5 dBA or more, both as measured at any exterior facade of the home, then the Applicant shall, within 90 days of confirmation of such exceedances and, at its option, either complete actions to reduce project generated noise below the above specified sound levels on a going forward basis, or offer such homeowner, at Applicant's expense, an installed package of sound mitigation measures to ensure that the sound level within the home is reduced to less than 30 dBA or 5 dBA above interior home ambient sound levels, whichever is greater, and/or that such harmonic or beating noise effect is reduced to less than 1 dBA in amplitude, both as measured with doors and windows closed. Such noise mitigation measures shall be consistent with generally accepted sound attenuation practices for homes and should include, but not be limited to, well sealed interior or exterior laminated glass storm windows, or at Applicant's option, Energy Star rated laminated glass insulated replacement windows; weather stripping and air sealing of any openings; insulated doors; and the addition of wall or attic insulation, such as injected foam, if feasible and necessary.

2) If sound levels generated by the project immediately outside any affected residence of a non-participating homeowner are found to be more than the greater of 45 dBA or 5 dBA above

the ambient sound level as measured at any exterior facade of the home, at any time between 10 p.m. and 7 a.m., during the months of June, July or August, then the Applicant shall, in addition to the mitigation measures described above, offer such non-participating homeowner, at Applicant's expense, installed Energy Star rated room air conditioners for each bedroom in the home, or, at the homeowner's option, an installed whole-house fan with automatically closing well sealed and insulated doors. If the homeowner accepts such mitigation measures and upon further complaint the sound level generated by the project is found to be greater than 30 dBA or 5 dBA above ambient levels, whichever is greater, at the sleeping area within any bedroom of the home, measured with windows open, and there continues to be sound levels generated by the project as measured at any exterior facade of the home more than the greater of 45 dBA or 5 dBA above the ambient sound level, at any time between 10 p.m. and 7 a.m., during the months of June, July or August of summers following the acceptance of such mitigation measures, then the Applicant shall undertake operational or other measures to mitigate and reduce sound levels on an ongoing basis to no greater than 45 dBA or 5 dBA above ambient levels measured at any exterior facade of the home.

3) The standards referenced above that trigger the need for mitigation shall be considered to be exceeded if an independent qualified acoustics engineer measures such an exceedance for more than three minutes in any hour.

4) The applicant shall provide the Town of Lempster with a decibel meter of sufficient quality to allow an initial response to homeowner complaints regarding the noise allegedly created by the turbines. If the Board of Selectmen of the Town of Lempster certifies in writing to the Applicant that they find any complaint of a violation of these requirements to be well founded in their judgment, then the Applicant shall pay for the reasonable cost of an

investigation of the complaint by an independent qualified acoustics engineer. Homeowners, whether residents of Lempster or other towns, may also engage their own consultants or engineers and bring complaints directly to the Applicant for investigation and resolution consistent with the complaint resolution provisions of the Town of Lempster Agreement.

Having considered the evidence regarding the potential noise effects of the proposed facility, the Committee finds that construction and operation of said facility will not have an unreasonable adverse effect on public health and safety due to noise so long as the foregoing conditions are made part of the Certificate of Site and Facility.

(iii.) Fire/Lightning Strikes and Other Emergencies

In considering whether the proposed facility will have an unreasonable adverse effect on the public health and safety, the Committee has considered the effects of lightning strikes, fires and other site specific emergencies.

As installed, the proposed turbines will contain a "total lightning protection" system that complies with standards promulgated by the International Electrotechnical Commission (IEC). Exh. App. 1 (Application Vol. I) p. 47. The system conducts lightning from both sides of the blade tip down to the root joint and into the nacelle, tower and earthing system. Additionally, the turbine's blade monitoring system provides documentation of all critical lightning events. Exh. App. 1 (Application Vol. I), p. 9; Exh. App. 8 p. 9. These operational safety features ensure that the risk of lightning strikes is not unreasonable.

The turbines contain relatively few flammable components but the Applicant does admit that a turbine fire, although extremely rare, is possible. Exh. App. 1 (Application Vol. I), p. 49. The turbines contain internal fire safety systems. *Id.* Potential causes of fire such as lightning strikes, short circuits, or other internal malfunctions are sensed by the turbine monitoring system,

which can shut down the turbine and alert appropriate maintenance personnel. Exh. App. 1 (Application Vol. I), p. 49; Exh. App. 8, p. 11.

A turbine fire could conceivably occur at extreme heights, in which case the only available emergency response may be to monitor the fire until it has burned itself out. Exh. App. 8 at p. 11. Under such circumstances, it is necessary to ensure that the fire remains under control and does not spread to structures on the ground or to the forested areas. This requires a prompt response by both employees of the Applicant and local emergency responders. Cooperation and coordination between the Applicant and the Town of Lempster's emergency personnel is subject to the Town of Lempster Agreement, which calls for the establishment of protocols that will provide emergency response access to the turbines within 30 minutes of alarm or call for emergency response. In addition, the Applicant has agreed to cooperate with the Town of Lempster in determining the need for, and the purchase of, adequate emergency response equipment.

The Town of Lempster Agreement also contains a number of additional provisions concerning training, equipment and cooperation, which will help mitigate the chances of a destructive fire event. Once the protocols, procedures and other criteria envisioned by the Town of Lempster Agreement are in place, the Committee concludes that the proposed facility will not pose an unreasonable adverse effect to public health or safety due to fire or lightning concerns. The Committee will require the Applicant to abide by the terms and conditions contained within the Town of Lempster Agreement, and commercial operation of the turbines shall not commence until all provisions contained within the agreement with regard to lightning strike, fire and emergency response are met.

(iv.) Public Access

The record indicates that the landowner who will be leasing the bulk of the project site to the Applicant has, in the past, permitted public access to their property for recreational purposes such as hunting and snowmobiling. Exh. App. 1 (Application Vol. I), p. 67. At a public hearing held on June 21, 2006, the primary landowners filed a letter explaining that they had acquired approximately 1,500 acres and had kept it open for hunters, hikers, snowmobilers and four-wheelers. Transcript, June 21, 2006, p. 199-201. The landowners have also indicated that they would prefer to continue to allow access to the unaffected portions of their property after construction of the turbines.

In order to restrict public access to the turbines, structures and supporting equipment, the Applicant, Public Counsel and the Town of Lempster have entered into agreements which, in part, contain conditions governing access and warning signs. See Proposed Certificate Conditions Pursuant to Agreement of Counsel for the Public and the Applicant (Public Counsel Agreement), Exh. PC 20, p.3; Exh. Lempster C, p. 4. The conditions set forth in the agreements require the Applicant to:

1. Gate and lock entrances to the project site; (PC)
2. Ensure that turbines are not climbable up to 15 feet above the ground; (PC)
3. Lock all access to turbine and other equipment to prevent entry by non-authorized persons; (PC)
4. Install clearly visible warnings signs concerning voltage at the base of all facilities; (PC and Town)
5. Identify any guy wires and guy wire anchor points with colored objects; and (Town)
6. Post visible warning signs related to storm and winter conditions no less than 300 feet from each turbine base. (Town)

In addition, the applicant has agreed to carry general liability insurance, including bodily injury and property damage coverage, with limits of at least $10 million dollars. See Exh. Lempster C, p. 4.

The Committee finds that the aforementioned conditions will assist in avoiding unauthorized access to the proposed Facility and will adopt them. The Committee finds that the proposed facility, subject to the conditions set forth herein, does not present an unreasonable adverse effect on the public health and safety from the standpoint of public access to the facility.

(v.) Construction

The Committee recognizes that, during the construction period of the proposed facility, certain activities may affect the public safety. Specifically, the Committee recognizes that the Applicant may have to undertake blasting measures. Indeed, the agreement with the Town of Lempster includes certain provisions pertaining to blasting. At this point in time, it is not possible to know the full extent of the amount of blasting that may be necessary during construction. Thus, the Committee will require that the Applicant file for and obtain all necessary permits from the Department of Safety and/or the Department of Transportation (DOT) as may be necessary to conduct blasting activities. The Applicant shall pay all fees and file all necessary paperwork and applications with said agencies and obtain necessary approvals prior to undertaking blasting activities. In this regard, the Committee hereby delegates to the Department of Safety and DOT the authority to designate all means, methods, and criteria for blasting activity at the proposed site, as well as the transportation of explosive materials to the site.

In addition, the Committee recognizes that increased heavy equipment traffic will occur during the course of both construction and decommissioning of the proposed facility, which may

trigger DOT jurisdiction. The Applicant and its agents, contractors and subcontractors shall comply with all rules and regulations concerning trucking, overweight loads, and other matters pertaining to transportation along state municipal highways. The Applicant shall file applications for all necessary permits as would normally be required by DOT. The Applicant shall pay all fees pertaining to said applications and permits, as well as excise taxes, fines or other monies owed pursuant to law stemming from transportation activities. Further, the Committee hereby delegates to DOT the authority to specify the means, criteria, methods and processes to be used to regulate trucking, overweight loads, and any other matter within the jurisdiction of DOT to and from the proposed project site during its construction period and during decommissioning.

4. Consistency with State Energy Policy

In order to issue a certificate of site and facility, the Committee must find that the operation of the proposed facility is consistent with the state energy policy as established in RSA 378:37. See, RSA 162-H:16 IV(d). RSA 378:37 states that it is the energy policy of this state:

> To meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; the protection of the safety and health of the citizens, the physical environment of the state, and the future supplies of non-renewable resources; and consideration of the financial stability of the state's utilities.

The Applicant submits that the proposed facility is consistent with the energy policy of the state because it will produce needed electricity; add to the diversity of the generation portfolio in the state; will not have adverse environmental effects; and will not burn fossil fuels. See, Exh. App. 1 (Application Vol. I), p. 30-33. Additionally, the Applicant asserts that the proposed project maintains an "appropriate balance between the state's environment and the

need for new renewable energy facilities that can be constructed without undue delay and in conformance with sound environmental considerations." See, Exh. App. 5, p. 6. The Applicant points out that the regional system operator, ISO-New England, has encouraged investment in new power generation and has encouraged greater diversity in the portfolio of electricity generating resources. See, Exh. App. 5, p. 6. The Applicant also contends that wind power is more economic than other forms of generation, will benefit system reliability, and limit vulnerability to high prices from fossil fuels such as natural gas. See, Exh. App. 5, p. 6-7. The Applicant also asserts that ISO-New England has indicated that significant additional renewable energy projects are needed in the region to meet these requirements. See, Exh. App. 5, p. 7. Finally, the Applicant asserts that construction and operation of the facility will contribute toward achieving the goal of obtaining 25% of the state's energy needs from renewable sources by the year 2025, a proposition that has been promoted by Governor Lynch and codified in recently passed legislation. See, 2007 Laws of New Hampshire, Chapter 26, (HB 873).

Public Counsel and the Town of Lempster support the position of the Applicant that the proposed facility is consistent with the state's energy policy. The Consolidated Intervenors, however, disagree with the Applicant's position. They point out that wind energy is an intermittent resource and suggest that construction of the proposed project will not relieve the region's need for electricity due to its size and their doubts about the achievable capacity of the project. See, Exh. Lin. A, p. 13. The Consolidated Intervenors, meanwhile, do not dispute the need for power in the region. See, Exh. Lin. A, p. 13; see, Exh. Int C, p. 1-2. Mr. Webb nevertheless describes the proposed project as "an empty symbolic gesture preying on a widespread and heartfelt desire by the people to solve the real problems of global warming and an over-reliance on fossil fuels." See, Exh. Int. C, p. 2.

Having reviewed the evidence, the Committee acknowledges that the proposed project is a small step in achieving the New England region's need for greater diversity in the generation of electric power but finds that the construction and operation of the proposed facility is an important step nonetheless. Similarly, the Committee concludes that such is the case even if the resulting capacity factor for the project is lower than the range predicted by the Applicant and nearer that cited by the Consolidated Intervenors. Further, the Committee finds that the proposed project contributes to fuel diversity without appreciable harm to the health and safety of the residents of the state or the physical environment, and that it will not emit air pollutants or water pollutants. The Committee also finds that the project, although it relies upon an intermittent energy source, will not adversely affect system reliability but can contribute to the reliability of the electric transmission system. In addition, the Committee finds that the generation cost of wind power is a reasonable low cost option inasmuch as wind generation facilities, given the availability of investment tax credits and renewable portfolio requirements, can be built and operated at a relatively reasonable cost and brought on line in a comparatively short time frame. Based upon these findings, the Committee concludes that the construction and operation of the proposed facility is consistent with the state energy policy as established in R.S.A. 378:37. The Committee also finds that the construction and operation of the proposed facility will contribute to meeting the goal of obtaining 25% of state energy needs from renewable sources by the year 2025.

D. Town of Goshen

The Committee has considered separately the issues pertaining to the Town of Goshen, New Hampshire. While the Town has intervened in these proceedings, it takes no position with respect to the certification of the wind turbines themselves. It opposes, however, the rewiring of

the 34.5 kV electric distribution line through the village core and the resulting installation of larger utility poles and additional cable and wires running along those poles. The Town argues that this portion of the project unduly interferes with the orderly development of the region, and will have an unreasonable adverse effect on aesthetics and historic sites. The Town also complains that the utility pole replacement and additional wires and cables contravene its master plan, and zoning and building ordinances.

The Applicant contends that the sole authority for the erection and installation of utility poles, structures, conduits, cables or wires upon state maintained highways rests with DOT pursuant to RSA 231:161. The Applicant asserts that the existing utility poles and wires are substandard and it argues that the upgrade in the distribution line will advance the orderly development of the region by providing a source for a future electrical substation planned by another electric distributor, New Hampshire Electric Cooperative. See, Exh. App. 29, p. 5-6; see Transcript, April 9, 2007, pp.83-84 and 59-63.

The proposed project will require PSNH to replace virtually all of the utility poles within the Town of Goshen along state Route 10. The majority of the poles presently in the Goshen village are 35 feet tall. PSNH will replace those poles with either 45-foot or 50-foot replacement utility poles. The new utility poles will carry additional cabling and wire necessary to guy the poles and to transfer 3-phase power. See, Exh. App. 32. Although such poles normally have a cross arm, PSNH has proposed the elimination of cross arms and use of a device called a Hendricks Pin to guide the 3-phase wire through the Goshen village core. The use of the Hendricks Pin will alleviate some of the aesthetic concerns that can arise from wooden cross arms on the utility poles but, if a 3-phase electric customer were to migrate to the area, the addition of cross arms may be necessary to serve the customer. To the extent that PSNH

replaces poles currently, they are generally replaced with 45 or 50-foot poles, which are the current standard.

At the outset, the Committee recognizes that the Applicant, PSNH and the Town of Goshen have explored alternatives for the rebuilt distribution line to proceed, including a new right-of-way on the opposite side of the Sugar River from the core of Goshen village, and a route that would take the distribution line behind the historic buildings in the core of the Goshen village. The Town, moreover, has argued that the Applicant should run the distribution line entirely underground through the village core. In the event an alternative is not selected, the Town proposed "establishment of a mitigation fund to be held by the Town for the improvement of the village core." See, Goshen Brief, May 3, 2007, p.31. Despite the search for alternatives, it is clear that the most practical, cost effective and orderly way to manage the distribution line is to use the existing right of way, remove the substandard poles and replace them with poles that meet current standards for 3-phase power and telecommunication needs.

The Committee notes that there are presently above ground distribution lines running through the Town of Goshen along Route 10 and many of the poles are old and show signs of wear and tear. See Exh. Goshen A. Additionally, many of the poles are leaning in haphazard directions and the cable or wires interfere with a view of the historic structures in the Goshen village core. *Id.* Thus, the Committee finds that the proposed upgrade to the distribution line will not have an unreasonable adverse effect on aesthetics but, arguably, could be an aesthetic improvement. The Committee also notes that the replacement of the existing poles with modern utility poles creates the possibility for additional cable, broadband, and telecommunications which are not presently accommodated. Finally, a change in height to the poles or the additional

cable wire does not *per se* create an unreasonable impact either on the orderly development of the village of Goshen or on the aesthetics of the village.

In reaching this conclusion, the Committee makes the following observations about the master plan and zoning ordinances of the Town of Goshen. While the plan and ordinances are not controlling in this instance, the Committee nevertheless notes its interpretation that the proposed upgrade of the distribution line is not inconsistent with the master plan for the Town of Goshen or its zoning ordinance. A utility pole is not part of the definition of a "building" within the meaning of Goshen zoning ordinances. See, Transcript, April 9, 2007, p. 183. The Goshen zoning ordinance contains a number of exceptions for church towers, barns and silos, and wireless service facilities. See, Transcript, April 9, 2007 p. 159-160; see also, Exhibit Goshen E, (Zoning Ordinance Section 3D.3; Section 13 X.I, X.II; Section III, D.3.) The Committee recognizes the concern of the Town of Goshen in maintaining its rural character, but the evidence does not support a finding that the upgrade to the distribution line either undermines that rural character or violates the planning tools enacted in the Town of Goshen.

The Committee also notes that at its public meeting on May 7, 2007, it directed Committee counsel to meet with the Applicant, PSNH and Town officials to ascertain whether specific adjustments to pole locations and configurations in the village core could be arranged. Counsel reported to the Committee at the public meeting on June 20, 2007, that a meeting was held among the parties on June 7, 2007 in Goshen. He indicated that accommodations were reached in three cases within the village core.

Assuming *arguendo* that the issues raised by the Town of Goshen are properly before the Committee, the Committee finds, having given due consideration to the views of the Town of Goshen, that the project, to the extent it requires the upgrade of the distribution lines through the

Town of Goshen, does not unduly interfere with the orderly development of the region. Likewise, the Committee finds that the proposed project does not have an unreasonable adverse impact on aesthetics or historic sites stemming from the upgrade of the distribution line through the Town of Goshen.

VI. CONCLUSION

The Legislature has declared that it is essential to maintain a balance between the environment and the need for new energy facilities or power sources. In furtherance of its declared purpose, the Legislature has prescribed, in RSA Chapter 162-H, a detailed procedure to be followed by the Site Evaluation Committee when considering an application for a certificate of site and facility and described specific findings that the Committee must make before it can issue a certificate.

In this proceeding, the Committee has conducted an open and inclusive process during which it heard a full range of opinions on how best to achieve the balance between the environment and the need for the proposed wind facility. In addition to a number of preliminary hearings and an informational hearing in Lempster, the Committee held four days of evidentiary hearings, heard testimony from 14 witnesses, entertained briefs from the parties and conducted two days of deliberations. The Committee has closely examined the evidence and arguments of the parties, and weighed and considered public input to reach the results articulated in this Order.

The Committee has made the requisite findings, "having considered available alternatives and the environmental impact of the site." Subject to the conditions described herein, the Committee has determined that: the Applicant has adequate financial, technical and managerial capabilities; the project will not interfere with the orderly development of the region; the project

will not have an unreasonable adverse effect on the environment; and the project is consistent with state energy policy.

Attachment B

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEEE

Docket No. 2006-01
Application for Certificate of Site and Facility for the Lempster Mountain Wind Power Project, Lempster, Sullivan County New Hampshire.

ORDER

CERTIFICATE OF SITE AND FACILITY

WHEREAS, the Applicant, Lempster Wind, LLC, filed an Application for a Certificate of Site and Facility to site, construct, and operate a wind powered electric generation facility designed for operation at 24 Megawatts (MW) to be located on private property along the ridge line of Lempster Mountain in Lempster, Sullivan County, New Hampshire. The proposed site is bounded on the North by the Goshen town line and Lempster Mountain Road to the South. The proposed site includes land identified by the Town of Lempster Tax Map as Map/Parcel: 6-132,000; 9-175,111; 8-530,094; 6-218,115; 6-034,044; and,

Whereas, the proposed facility will include twelve (12) Gamesa G87 wind turbine generator units each of which is rated at a capacity of 2.0 MW. Each turbine generator unit will contain a rotor measuring 285 feet in diameter, made up of three individual blades of 139 feet each in length; a nacelle that attaches to the rotor and contains a gearbox, low and high speed shafts, generator and other controls; and, a tubular structural steel tower, in four sections, with an approximate height of 255.9 feet. The gross weight of each turbine generator unit will be approximately 303 tons, including the rotor hub (38 tons), nacelle (65 tons) and tower (200 tons); and,

Whereas, the proposed facility also includes access roads, a metering station, and an interconnection point with the Public Service Company of New Hampshire 34.5 kV distribution line at the intersection of Bean Mountain Road and Nichols Road in Lempster; and,

Whereas, the Committee has held a number of public meetings and hearings regarding the Application including a Public Informational Hearing pursuant to R.S.A. 162-H: 10 on October 30, 2007 and adversarial proceedings on March 26, 27, 28 and April 7, 2007, to hear evidence regarding the Application; and,

Whereas, the Committee has received and considered comments from the public concerning the Application; and,

Whereas the Committee has considered available alternative sites and fully reviewed the impact of the site and all other relevant factors bearing on whether the objectives of R.S.A. 162-H would be best served by the issuance of the certificate; and,

Whereas the Committee finds that the Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of this Certificate; and,

Whereas the Committee finds that the proposed facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies; and,

Whereas the Committee finds that the proposed facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety; and,

Whereas the Committee finds that the siting, construction and operation of the proposed facility is consistent with the state energy policy established in R.S.A. 378:37.

NOW THEREFORE, it is hereby ORDERED that the Application of Lempster Wind LLC is approved subject to the conditions set forth herein and this Order shall be deemed to be a Certificate of Site and Facility pursuant to R.S.A. 162-H: 4; and it is,

Further Ordered that the Site Evaluation Committee's Decision, dated June 28, 2007, and conditions contained therein, are hereby made a part of this Order; and it is,

Further Ordered that the Applicant may site, construct and operate the facility as outlined in the Application subject to the terms and conditions of the Decision and this Order; and it is,

Further Ordered that this Certificate is not transferable to any other person or entity without the prior written approval of the Committee; and it is,

Further Ordered that this Certificate is conditioned on the present ownership structure of the Applicant, which is wholly owned by Iberdrola S.A. through subsidiary companies, and neither the Applicant, nor the Applicant's assets shall be transferred by sale or other method to any other person or entity without the prior written approval of the Committee. In the event of an unapproved sale, this Certificate shall be null and void; and it is,

Further Ordered that the Applicant shall provide immediate notice to the Committee in the event that the Applicant or any of its parent companies shall file a bankruptcy or insolvency petition in any jurisdiction, foreign or domestic; and it is

Further Ordered, that all permits and/or certificates recommended by the New Hampshire Department of Environmental Services including the Standard Dredge and

Fill Permit, the Alteration of Terrain Permit (subject to re-design for a 25 year storm event) and the Section 401 Water Quality Certificate shall issue and this Certificate is conditioned upon compliance with all conditions of said permits and/or certificates which are appended hereto as Appendix I; and it is,

Further Ordered, that the New Hampshire Department of Environmental Services is authorized to specify the use of any appropriate technique, methodology, practice or procedure associated with the conditions of the Standard Dredge and Fill Permit, the Alteration of Terrain Permit and the Water Quality Certificate including the authority to approve minor modifications to said permits and certificates; and it is,

Further Ordered that the Agreement between Public Counsel and the Applicant, attached as Appendix II, shall be a part of this Order and the Conditions contained therein shall be conditions of this Certificate; and it is,

Further Ordered that the Agreement between the Applicant and the Town of Lempster, attached as Appendix III, shall be a part of this Order and the conditions contained therein shall be conditions of this Certificate; and it is,

Further Ordered that the Additional Conditions Pertaining to Noise, attached as Appendix IV, shall be a part of this Order and shall be conditions of this Certificate; and it is,

Further Ordered, that the Applicant, as a condition of this Certificate shall continue to consult with the Division of Historic Resources and shall complete a Phase 1-a and appropriate Phase 1-b archeological surveys and shall report all findings of historic or cultural significance to the Division of Historic Resources and the Committee pursuant to the terms of the Decision; and it is,

Further Ordered, that to the extent that blasting may be necessary in the construction or decommissioning of the facility the Applicant shall comply with all rules and regulations for blasting and the transportation of explosive materials and use of state and local thoroughfares as promulgated by statute or the regulations of the Department of Safety and the Department of Transportation. The Department of Safety and the Department of Transportation are each delegated the authority to specify the use of any appropriate technique, methodology, practice or procedure associated with blasting, transportation of explosives or other heavy loads which shall occur during the construction or decommissioning of the facility; and it is,

Further Ordered that all Conditions contained in this Certificate and in the Decision shall remain in full force and effect unless otherwise ordered by the Committee.

By Order of the Site Evaluation Committee this twenty-eighth day of June, 2007.

Thomas B.Getz, Chairman
Public Utilities Commission
Presiding Officer

Michael J. Walls, Asst. Commissioner
Department of Environmental Services

Harry T. Stewart, Director
Water Division, Department of
Environmental Services

Robert Scott, Director
Air Resources Division, Department of
Environmental Services

Amy Ignatius, Director
Office of Energy & Planning

George Bald, Commissioner
Department of Resources & Economic
Development

Allison McLean, Director
Division of Parks, Department of
Resources & Economic Development

Philip Bryce, Director
Division of Forest & Lands, Department
of Resources & Economic Development

Graham Morrison, Commissioner
Public Utilities Commission

Clifton C. Below, Commissioner
Public Utilities Commission

Michael Harrington, Staff Engineer
Public Utilities Commission

Appeals Process

Any person or party aggrieved by this decision or order may appeal this decision or order to the New Hampshire Supreme Court by complying with the following provisions of RSA 541

R.S.A. 162-H: 11 Judicial Review. – Decisions made pursuant to this chapter shall be reviewable in accordance with RSA 541.

R.S.A. 541:3 Motion for Rehearing. - Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

R.S.A. 541:4 Specifications. - Such motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the commission shall be taken unless the appellant shall have made application for rehearing as herein provided, and when such application shall have been made, no ground not set forth therein shall be urged, relied on, or given any consideration by the court, unless the court for good cause shown shall allow the appellant to specify additional grounds.

R.S.A. 541:5 Action on Motion. – Upon the filing of such motion for rehearing, the commission shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.

R.S.A. 541:6 Appeal. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.

Appendix I
Certificate of Site and Facility

Department of Environmental Services
Permits and Conditions

Attachment 1:	Standard Dredge and Fill Permit
Attachment 2:	Alteration of Terrain Permit
Attachment 3:	Section 401 Water Quality Certificate

ATTACHMENT 1

APPLICATION OF LEMPSTER WIND LLC

WETLANDS PERMIT APPLICATION: DEPARTMENT OF ENVIRONMENTAL SERVICES RECOMMENDATION, FINDINGS AND CONDITIONS

RECOMMENDATION:

That the New Hampshire Energy Facility Site Evaluation Committee pursuant to RSA 162-H, approve the proposal to dredge and fill 1,472 square feet of palustrine forested wetlands to construct approximately five (5) miles of access roads, electric cable conduit and service pads for twelve (12) wind turbines.

RECOMMENDED FINDINGS:

1. The project is classified as a Minimum Impact Project per NH Administrative Rule Env-Wt 303.04(f), as wetland impacts are less than 3,000 square feet.
2. On April 8, 2005, DES held a pre-application meeting with Community Energy, Inc. and their agents to discuss the proposed project and methods of avoiding permanent wetland impacts.
3. On March 28, 2006, DES received a Standard Dredge and Fill application that proposed impacting 4,375 square feet of wetlands, which includes 151 linear feet of stream impact, for roadway construction with 10 wetland crossings.
4. On April 5, 2006, DES issued a "Notice of Administrative Completeness" letter to the applicant and their agent.
5. In a letter dated April 19, 2006, the Lempster Conservation Commission stated that Lempster Wind LLC is meeting their requirements as needed at this time, but that they are concerned with the disturbance of wetlands in this area of this of the project. In addition, the letter stated there is still concern on sensitive species and are waiting for surveys from NH Natural Heritage Bureau, NH Fish & Game, and NH Division of Historical Resources.
6. In a letter dated June 6, 2006, the Army Corps of Engineers stated that they have reviewed the application and concluded that the project is ineligible for authorization under the NH Programmatic General Permit because US Fish & Wildlife Service has expressed concerns about the potential impact of the project on migratory birds and endangered species.
7. On June 19, 2006, DES issued a "Request for More Information" letter to the applicant and their agent to address questions and concerns that were found during the technical review of the application.
8. On July 7, 2006, DES received revised plans and application that responded to concerns raised in the DES "Request for More Information" letter.

9. On July 27, 2006, DES staff conducted a site inspection of the subject property to view wetland areas and other natural resources within the project vicinity. A few wetland areas were found within close proximity to the proposed roadway that were not previously identified on the plans. The applicant agreed to revise the plans accordingly.

10. In a letter dated August 31, 2006, an abutter wrote to express concerns about the potential environmental impact on the area surrounding the proposed project and specifically on their property. In addition, the abutter requested that DES hold a public hearing to allow citizens an opportunity to express their concerns.

11. In a letter dated September 15, 2006, the SEC's counsel notified DES that the Committee had received an application for the proposed wind powered electric generation project and that the letter is to inquire whether or not the applicant supplied DES with sufficient information to undertake our regulatory authority.

12. On September 29, 2006, DES received revised plans and application from the applicant to respond to additional comments and concerns raised by DES, USFWS, ACOE, and the Lempster Conservation Commission. The revisions include a change in proposed wetland impact from 4,375 square feet (impacting 151 linear feet of streams) to 5,126 square feet (impacting 136 linear feet of streams); however full-sized plans were not yet submitted.

13. On November 13, 2006, DES received an email from Jeff Keeler of Lempster Wind, LLC explaining that revised plans had not been submitted as they are working on possible changes to the roadway alignment based on comments from the Army Corps of Engineers.

14. On February 7, 2007, DES, NHF&G and USFWS met with the applicant and their agents to discuss wildlife issues as well as results from bat and bird surveys that were conducted on-site.

15. On March 1, 2007, DES received revised plans and application showing that the road had been realigned to avoid all but one wetland crossing. The revised plans propose a total of 1,470 square feet of wetland impact for one road crossing at "Wetland W10"; therefore, the applicant has provided evidence which demonstrates that this proposal is the alternative with the least adverse impact to areas and environments under the department's jurisdiction per Rule Env-Wt 302.03.

16. The need for the proposed impacts has been demonstrated by the applicant per Rule Env-Wt 302.01.

17. The applicant has demonstrated by plan and example that each factor listed in Env-Wt 302.04(b) Requirements for Application Evaluation, has been considered in the design of the project.

18. DES Wetlands Bureau staff screened the project through a GIS database for exemplary natural communities, sensitive plant species, and state/federal threatened and endangered species. DES found that there are no such species/communities known to exist within the project vicinity.

19. The project is classified as a Minimum Impact Project; therefore, the project does not have significant environmental impact as defined by Rule Env-Ws 101.83.
20. Public hearing is not required with the finding that the revised project plans will not have significant impacts on the resources protected under RSA 482-A and that the wetland impact area is not of special value from a local, regional, or state perspective as defined by Rule Env-Wt 101.87. In addition, public hearings are being held by the SEC to allow citizens the opportunity to comment on the overall project.

RECOMMENDED PROJECT SPECIFIC CONDITIONS:

1. All work shall be in accordance with revised plans by Clough Harbour & Associates, LLP dated February 23, 2007, as received by the Department on March 1, 2007.
2. Any further alteration of areas that are within the jurisdiction of the DES Wetlands Bureau will require a new application and further approvals by the Bureau.
3. This approval is contingent on approval by the DES Alteration of Terrain Program (formerly known as Site Specific Program).
4. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
5. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, in all cases with a minimum of 20 feet of undisturbed vegetated buffer.
6. Culvert outlets shall be protected in accordance with the DES Best Management Practices for Urban Stormwater Runoff Manual (January 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August 1992).
7. Proper headwalls shall be constructed within seven days of culvert installation.
8. Within three days of final grading in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.
9. Where construction activities have been temporarily suspended within the growing season, all exposed soil areas shall be stabilized within 14 days by seeding and mulching.
10. Where construction activities have been temporarily suspended outside the growing season, all exposed areas shall be stabilized within 14 days by mulching and tack. Slopes steeper than 3:1 shall be stabilized by matting and pinning.
11. The contractor responsible for completion of the work shall utilize techniques described in the DES Best Management Practices for Urban Stormwater Runoff Manual (January, 1996) and the Stormwater Management and Erosion and Sediment

Control Handbook for Urban and Developing Areas in New Hampshire (August, 1992).

RECOMMENDED GENERAL CONDITIONS:

12. A copy of this approval shall be posted on site during construction in a prominent location visible to inspecting personnel;
13. This approval does not convey a property right, nor authorize any injury to property of others, nor invasion of rights of others;
14. The DES Wetlands Bureau shall be notified upon completion of work;
15. This approval does not relieve the applicant from the obligation to obtain other local, state or federal permits that may be required;
16. Transfer of this approval to a new owner shall require notification to and approval by the Department;
17. This approval shall not be extended beyond the current expiration date.
18. This project has been screened for potential impacts to known occurrences of rare species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or have received only cursory inventories, unidentified sensitive species or communities may be present. This approval does not absolve the permittee from due diligence in regard to state, local or federal laws regarding such communities or species.
19. The permittee shall coordinate with the NH Division of Historic Resources to assess and mitigate the project's effect on historic resources.

ATTACHMENT 2

TERRAIN ALTERATION: DEPARTMENT OF ENVIRONMENTAL SERVICES RECOMMENDATION, FINDINGS AND CONDITIONS

RECOMMENDATION:

That the New Hampshire Energy Facility Site Evaluation Committee pursuant to RSA 162-H, approve the proposal to disturb approximately 25 acres of land to construct approximately five (5) miles of access roads, electric cable conduit and service pads for twelve (12) wind turbines.

RECOMMENDED FINDINGS AND CONDITIONS:

1. Water quality degradation shall not occur as a result of the project.
2. Revised plans shall be submitted for an amendment approval prior to any changes in construction details or sequences. The Department must be notified in writing within ten days of a change in ownership.
3. The Department must be notified in writing prior to the start of construction and upon the completion of construction.
4. The revised plans dated January 23, 2007 and supporting documentation in the file are a part of this approval.
5. This approval expires on March 15, 2009. No construction activities shall occur on the project after expiration of the approval unless the approval has been extended by the Department.
6. This approval does not relieve the applicant from the obligation to obtain other local, state or federal permits that may be required (e.g. from US EPA, US Army Corps of Engineers, etc.) Projects disturbing over 1 acre require a federal stormwater permit from EPA. Information regarding this permitting process can be obtained through the following e-mail address: *www.des.state.nh.us/StormWater/construction.htm*.
7. The smallest practical area shall be disturbed during construction, but in no case shall exceed 5 acres at any one time before disturbed areas are stabilized.
8. A Certified Professional in Erosion and Sediment Control or a Professional Engineer licensed in the State of New Hampshire ("Monitor") shall be employed to inspect the site from the start of alteration of terrain activities until the alteration of terrain activities are completed and stabilized.
9. During this period, the Monitor shall inspect the subject site at least once a week, and if possible, during any ½ inch or greater rain event (i.e. ½ inch of precipitation or more within a 24 hour period). If unable to be present during such a storm, the Monitor shall inspect the site within 24 hours of this event.
10. The Monitor shall provide technical assistance and recommendations to the Contractor on the appropriate Best Management Practices for Erosion and Sediment

Controls required to meet the requirements of RSA 485-A:17 and all applicable DES approval conditions.

11. Within 24 hours of each inspection, the Monitor shall submit a report to the DES Alteration of Terrain Program.

Additional Condition Added by the Site Evaluation Committee:

12. The Applicant shall submit to the Department of Environmental Services Terrain Alteration Program information such as hydrologic calculations to demonstrate that the proposed stormwater infrastructure will handle a 25-year storm event. Should this not be the case, the Applicant shall make appropriate adjustments to the project design under the direction of the DES Terrain Alteration Program.

ATTACHMENT 3

APPLICATION OF LEMPSTER WIND LLC

401 WATER QUALITY CERTIFICATE: DEPARTMENT OF ENVIRONMENTAL SERVICES RECOMMENDATION, FINDINGS AND CONDITIONS

RECOMMENDATION:

That the New Hampshire Energy Facility Site Evaluation Committee pursuant to RSA 162-H, approve the proposal to dredge and fill 1,472 square feet of palustrine forested wetlands to construct approximately five (5) miles of access roads, electric cable conduit and service pads for twelve (12) wind turbines.

RECOMMENDED FINDINGS:

1. The Activity will result in a discharge and may cause the permanent alteration of, or temporary impacts to surface waters.
2. Storm water runoff to surface waters from the Activity area, during construction or operation, constitutes a discharge under Env-Ws 1702.18.
3. The Activity requires water quality certification under Section 401 of the federal Clean Water Act.
4. The Activity will temporarily and permanently alter or impact wetlands under the jurisdiction of DES. The 401 Certification decision relies, in part, on an approved permit from the DES Wetlands Bureau for the potential construction-related impacts to jurisdictional wetlands, including unnamed tributary to High View Wildlife Pond, Unnamed tributary Brown Pond, Dodge Pond, Cold Brook, South Branch Sugar River, Babb Brook, Dodge Brook, Unnamed tributaries to Butterfield Pond, Ashuelot River, and Richardson Brook. Through its processing and anticipated issuance and signature, the DES wetlands permit will address the impacts to jurisdictional wetlands.
5. The unnamed tributary to High View Wildlife Pond, Unnamed tributary Brown Pond, Dodge Pond, Cold Brook, South Branch Sugar River, Babb Brook, Dodge Brook, Unnamed tributaries to Butterfield Pond, Ashuelot River, Richardson Brook, and unnamed wetlands adjacent to the Activity are the surface waters affected by the Activity. The affected surface waters are Class B waterbodies; Class B New Hampshire surface water quality standards (SWQS) apply to the Activity. Class B waterways are considered suitable for aquatic life, primary and secondary contact recreation, fish consumption, wildlife, and, after adequate treatment, as a water supply.
6. During construction, the excavation of earth, installation of foundations for wind generator units, and other land disturbance within the Activity area may temporarily increase turbidity levels and benthic deposits in surface waters downstream from the

Activity area, particularly during wet weather events, and may contribute to long-term sediment retention in and/or transport through the downstream reaches of these surface waters. The potential for turbidity and benthic deposits can be evaluated through a loading analysis. Specifically, a loading analysis can be used to determine the difference between pre-development and post-development loads for specific pollutants for a typical year.

7. The Applicant documented its proposed erosion control practices, as follows:
8. A Stormwater Pollution Protection Plan (SWPPP) dated April 14, 2006, which described the installation and use of stormwater best management practices (BMPs). This included, but was not limited to silt fences, water bars, and stone check dams. The SWPPP also described the maintenance and inspection of BMPs.
9. An erosion control plan dated April 21, 2006, revised February 23, 2007, which described inspection and maintenance of erosion controls. The Applicant stated that all erosion control devices will be inspected weekly prior to forecasted rain events, and after each rainfall event of 0.5" or greater. Further, the Applicant stated necessary repairs will be made immediately.
10. The Activity, if conducted with proper installation, monitoring, and maintenance of the BMPs for construction or operation, as described above, will not likely cause or contribute to violations of water quality standards for turbidity or benthic deposits.
11. The Applicant, in its additional information transmittal dated March 1, 2007 included a Spill Prevention, Control, and Countermeasures plan (SPCC) for its Locust Ridge Wind Farm in Schuylkill County, Pennsylvania. The SPCC served as a sample SPCC for the Lempster Wind Farm and included provisions for on-site storage and maintenance of hydraulic oils. The sample SPCC also discussed emergency response measures in the event of spills. The Applicant stated that an SPCC for the Lempster Wind Farm will not be completed until after final approval is granted for the Lempster Wind Farm and turbine locations by the New Hampshire Site Evaluation Committee. The operation of the Lempster Wind Farm is not expected to violate surface water quality standards provided the storage of oils and other pollutants and remediation of spills are conducted in accordance with a SPCC developed and implemented for the Lempster Wind Farm.
12. The Activity, particularly the operation of the turbine units, may require maintenance during winter months that may include the application of de/anti-icing compounds. By letter dated October 24, 2006, DES requested information relative to winter maintenance practices. To date, the Applicant has not provided winter maintenance plans for the Activity. This information gap can reasonably be resolved by the Applicant through timely submittal of the information to DES.

RECOMMENDED CONDITIONS:

1. The Activity shall not cause or contribute to a violation of surface water quality standards. If DES determines that surface water quality standards are being violated as a result of the Activity, DES may modify this 401 Certification to include

additional conditions to ensure the Activity complies with surface water quality standards, when authorized by law, and after notice and opportunity for hearing.

2. The Applicant shall inspect all erosion control devices weekly prior to forecasted rain events, and after each rainfall event of 0.5" or greater, unless otherwise approved by DES. Further, the Applicant shall immediately repair any erosion control measure(s) to restore proper function of the erosion control measure(s). The Applicant shall consult DES Watershed Management Bureau (WMB) relative to the resources used for measuring and forecasting rainfall events. In addition, the Applicant shall retain records of rainfall events and erosion control maintenance, and make the records available to DES WMB upon request by DES WMB.
3. The Applicant shall prepare and submit a Spill Prevention, Control, and Countermeasures plan (SPCC) for the Activity. The Applicant shall submit the plan to DES Watershed Management Bureau for review and approval at least 60 days prior to the installation of the first turbine. The plans shall include provisions for inspection and maintenance of the turbine units for spills, leaks, or other releases of hydraulic oils, and provisions for emergency responses to spills, leaks or other releases at any time, including non-work hours.
4. The Applicant shall submit a winter maintenance plan for the Activity, specifically for operation of the turbines. The plan shall include a description of the use of de/anti-icing compounds, and how application of de/anti-icing compounds shall be minimized, particularly those that contain chloride. The Applicant shall submit the plan to DES Watershed Management Bureau for review and approval at least 60 days prior to operation of the first turbine.
5. The Applicant shall consult DES WMB relative to the need to develop and submit a loading analysis for the Activity. Should a loading analysis be necessary, the Applicant shall submit the loading analysis for approval by DES WMB at least 45 days prior to the installation of the Best Management Practices referred in 7 of this 401 Certification.
6. The Applicant shall comply with the conditions of DES Wetlands Bureau. Requirements of the Wetlands Bureau shall become conditions of this 401 Certification upon issuance of this 401 Certification.
7. The Applicant shall comply with the conditions of the approved DES Alteration of Terrain Program. Any conditions of the Alteration of Terrain Program shall become conditions of this 401 Certification upon issuance of this 401 Certification.
8. The terms and conditions of this 401 Certification may be modified and additional terms and conditions added as necessary to ensure compliance with New Hampshire surface water quality standards, when authorized by law, and after notice and opportunity for hearing.

Appendix II
Certificate of Site and Facility

Conditions Pursuant to Agreement Of Counsel for the Public and the Applicant

State of New Hampshire
Site Evaluation Committee
Application of Lempster Wind, LLC
Docket No. 2006-01

Proposed Certificate Conditions Pursuant to
Agreement of Counsel for the Public and the Applicant

Now come Lempster Wind, LLC (the "Applicant" or the "Project") and Peter C.L. Roth, Counsel to the Public ("NHOAG" or "Counsel to the Public"), and jointly submit the following as agreed upon conditions to any certificate for operation granted by the New Hampshire Site Evaluation Committee ("NHSEC") in this docket.

These conditions shall become effective when ordered and adopted by the Committee. If the NHSEC does not adopt any particular condition(s), or adopts particular conditions with modification or in part, the remaining conditions shall remain effective.

1. Avian species protection

    a. A balanced technical committee shall be assembled with voluntary participation of organizations including New Hampshire Fish and Game Department ("NHF&G"), United States Fish & Wildlife Service ("USF&W"), NHOAG, Town of Lempster, NH Audubon, representatives of the Project, representatives of Public Service Company of New Hampshire ("PSNH") and technical consultants selected by NHOAG and the Project (the "technical committee").

    b. The Project shall report spring 2007 avian survey results to NH SEC, and the technical committee.

    c. The Project shall conduct post-construction avian and bat mortality surveys similar to those implemented at other constructed wind projects in the United States, using protocols reviewed and approved by the technical committee that includes searches of individual turbines at entire project site, searcher efficiency trials, and scavenging rate (carcass removal) trials. Surveys will be conducted for a period of two years following commercial operation of the wind turbines, including spring and fall migration seasons. A brief report on the number and locations of fatalities will be provided after each season. A final report will then be prepared that summarizes all seasons combined, and will present estimates of the overall annual rate of fatalities at the project.

d. The periodic reports and final report will be presented to the technical committee for review. The technical committee shall have the opportunity to comment on the report. The Project shall be obligated to review and respond to the technical committee comments within a reasonable time.

e. The technical committee may recommend additional investigations and the technical committee will work collaboratively to address any concerns identified by the report.

f. If the technical committee cannot achieve general consensus on the issue, Counsel to the Public may petition the NHSEC.

g. If after notice and an opportunity to be heard, the Site Evaluation Committee determines that the Project is having an unreasonable adverse impact on any avian species, it may take appropriate action within its jurisdiction.

h. This condition is not intended, nor shall it be deemed to constitute a permit to take any species, or as any waiver of any of the entities that are represented on the technical committee, of its enforcement rights and powers under the federal Migratory Bird Treaty Act or any other applicable law.

2. Noise:

a. The Project shall, in its Agreement with the Town of Lempster and consultation with Counsel to the Public, develop standards for noise restrictions that include:

- Limitations on audible sound from the wind power project, including sound level metric (55 dBA), duration of measurement (3 minutes in any hour of the day), and location of compliance (within 300 feet of a residence or at the property line, whichever is less.)
- The specific limitation on audible sound at the Goshen-Lempster School shall be 45 dBA.
- Pre-operation measurement of ambient noise conditions will be conducted by a qualified and independent sound engineer, at the Project's cost. Measurements will be conducted during a summer and winter test using standard protocols for wind noise measurement at defined receptor locations, including the Goshen-Lempster School.
- Reporting of results to the Town of Lempster and NHOAG
- Maintaining compliance with noise restrictions; if standards are exceeded, the Project shall undertake operational measures to come into compliance.

3. Ice shedding:

a. Project on-site personnel and remote operations centers shall monitor turbine conditions (regardless of the time of day) to determine the presence of ice, and

respond with operational measures to limit potential ice throw. Personnel shall ensure that turbines are free of accumulated ice before any restart of turbines that have been suspended due to icing.

b. The Project shall post warning signs at visible locations on access roads and at turbine sites to alert unauthorized or recreational users of the site property to the danger of ice shedding during winter storm conditions.

4. Access:

a. Entrances to the Project site shall be gated, and locked during non-working hours. If problems with unauthorized access are identified, the Project shall work to install additional gated access points.

b. Turbine exteriors shall not be climbable up to fifteen (15) feet above ground surface.

c. All access doors to wind turbines and above-ground electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.

d. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers, above-ground electrical collection facilities, switching or interconnection facilities, and substations.

5. Conservation Easement:

a. As a condition of the certificate, the Project, in consultation with NHOAG and the Town of Lempster, shall, prior to the commercial operation date, donate the lands owned by the Project in the Town of Lempster (Tax parcel 12-036,324, "Earl's Lane") or such other parcel as they may agree upon, to an organization approved by Counsel to the Public for conservation purposes and subject to a conservation easement.

b. The Project shall maintain permanent easement rights upon Earl's Lane necessary to operate, maintain and decommission the Project utilizing access roads and facilities as constructed. The Project shall install and maintain gated access to the Project site at a point on the north end of Earl's Lane access road.

c. The Project shall return the Earl's Lane access road and disturbed area to the final post-construction width and conditions consistent with the Project's erosion and sediment control plan.

The Applicant and Counsel to the Public respectfully request that the NHSEC adopt these conditions and incorporate them within any certificate that the NHSEC may issue to the Applicant with this docket.

Respectfully submitted this 6th day of April 2007,

COUNSEL TO THE PUBLIC

PETER C.L. ROTH

Peter C.L. Roth
Senior Assistant Attorney General

LEMPSTER WIND, LLC

By its attorneys

ORR & RENO
Professional Association

Susan S. Geiger
One Eagle Square
P.O. Box 3550
Concord, New Hampshire 03302-3550

Appendix III
Certificate of Site and Facility

Agreement Between Town of Lempster and
Lempster Wind, LLC, Developer/Owner of the Lempster Mountain Wind
Power Project

AGREEMENT BETWEEN TOWN OF LEMPSTER AND LEMPSTER WIND, LLC, DEVELOPER/OWNER OF THE

LEMPSTER MOUNTAIN WIND POWER PROJECT

INDEX

AGREEMENT BETWEEN TOWN OF LEMPSTER AND LEMPSTER WIND, LLC, DEVELOPER/OWNER OF THE LEMPSTER MOUNTAIN WIND POWER PROJECT

1. Definitions

1.1. "Agreement" - This agreement between the Town of Lempster, New Hampshire and Lempster Wind LLC, and its successors and assigns.

1.2. "Ambient Sound Pressure" - The sound pressure level excluding that contributed by the operation of the Wind Park.

1.3. "End of Useful Life" - The Wind Park or each of its individual Wind Turbines will be deemed to be at the End of Useful Life if no electricity is generated by the Wind Park or turbine for a continuous period of twelve months.

1.4. "Non-Participating Landowner" - Any landowner in the Town of Lempster, other than a Participating Landowner.

1.5. "Owner" - The entity or entities having equity interest in the Wind Park, including their respective successors and assigns.

1.6. "Occupied Building" - A permanent structure used as a year-round or seasonal residence, school, hospital, church, public library or other building used for gathering that is occupied or in use as of the time that the permit application was submitted to the New Hampshire Site Evaluation Committee.

1.7. "Participating Landowner" – Any landowner having entered into an agreement with the Owner for hosting Wind Park facilities, providing easements for access, entry or conveyance of other rights related to the Wind Park, or any other agreement related to the construction or operation of the Wind Park.

1.8. "Project Site" – Property with rights as conveyed to Owner by lease, easement or other agreement with a Participating Landowner that includes all Wind Turbines, access roads, and other facilities required for construction and operation of the Wind Park.

1.9. "Town" – Town of Lempster, New Hampshire.

1.10. "Turbine Height" - The distance from the surface of the tower foundation to the tip of the uppermost blade when in a vertical position. For the Lempster Wind Power Project, this height is approximately 424 feet.

1.11. "Wind Turbine" - A wind energy conversion system that converts wind energy for the generation of electricity, including a tower, a nacelle housing the generator and transformer, and a 3-blade rotor.

1.12. "Wind Park" - The totality of the Wind Turbines, cables, accessory buildings and structures including substations, meteorological towers, electric infrastructure and cables and other appurtenant structures and facilities that comprise the Lempster Mountain Wind Power Project under development by Owner.

2. General Provisions

2.1. **Enforceability.** This Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Park or any Wind Turbines after the End of Useful Life.

2.2. **Applicability to Owner.** This Agreement shall apply to the Owner only to the extent of Owner's rights and responsibilities related to the Wind Park and Project Site as conferred to Owner by Participating Landowner Agreements.

2.3. **Recording.**

2.3.1. Owner shall submit to the Town evidence of all Participating Landowner agreements, which may take the form of memoranda recorded with the Sullivan County Registry of Deeds.

2.3.2. This Agreement shall be recorded at the Sullivan County Registry of Deeds.

2.4. **Survivability.** The invalidity, in whole or in part, of any of this agreement will not affect any other paragraph in this Agreement.

2.5. **Limitation on Turbines.** This Agreement is for the installation and operation of a Wind Park that utilizes up to twelve Wind Turbines. The Owner shall not construct more than twelve Wind Turbines on the site without prior agreement with the Town. Communications or other equipment attached to the Wind Turbines shall be limited to that incidental and necessary for the safe and efficient operation of the Wind Park.

2.6. **On-site Burning.** The Owner will obtain a permit from the Lempster Fire Chief and comply with all State requirements before any onsite burning occurs.

2.7. **Warnings**

2.7.1. A clearly visible warning sign identifying danger from voltage must be placed at the base of all pad-mounted transformers, electrical collection facilities, switching or interconnection facilities, and substations.

2.7.2. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on all anchor points of guy wires, if any, and along the guy wires up to a height of ten feet from the ground.

2.7.3. A clearly visible warning sign concerning safety risks related to winter or storm conditions shall be placed no less than 300 feet from each Wind Turbine tower base on access roads.

2.8. **Access.** The Town shall have access to the Project Site for the purpose of emergency response. The Owner shall provide access to the Project Site, Wind Turbines or other facilities upon request of the Town for the purpose of building or safety inspections under Town ordinances. The Owner shall provide access for emergency response purposes pursuant to the protocols provided under Section 7 of this Agreement

2.9. **Liability Insurance.** There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least $10 million in the aggregate. Certificates shall be made available to the Town upon request.

2.10. **Indemnification.** The Owner specifically and expressly agrees to indemnify, defend, and hold harmless the Town and its officers, elected officials, employees and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of any negligence or wrongful

acts of the Owner, its employees, agents, representatives or Subcontractors of any tier, their employees, agents or representatives in the connection with the Wind Park. The indemnity obligations under this Article shall include without limitation:

2.10.1. Loss of or damage to any property of the Town, the Owner or any third party;

2.10.2. Bodily or personal injury to, or death of any person(s), including without limitation employees of the Town, or of the Owner or its Subcontractors of any tier.

The Owner's indemnity obligation under this Article shall not extend to any liability caused by the sole negligence of any of the Indemnitees.

3. Wind Turbine Equipment and Facilities

3.1. Visual Appearance

3.1.1. Wind Turbines shall be a non-obtrusive color such as white, off-white, or gray.

3.1.2. Wind Turbines shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.

3.1.3. Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer and/or Owner.

3.2. **Controls and Brakes.** All Wind Turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

3.3. **Electrical Components.** All electrical components of the Wind Park shall conform to relevant and applicable local, state, and national codes, and relevant and applicable international standards.

3.4. **Power Lines.** On-site transmission and power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground.

4. Project Security

4.1.1. Wind Turbines shall not be climbable up to fifteen (15) feet above ground surface.

4.1.2. All access doors to Wind Turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.

4.1.3. Entrance to the Project Site shall be gated, and locked during non-working hours. If problems with unauthorized access are identified, the Owner shall work to install additional gated access points.

5. Public Information, Communications and Complaints

5.1. **Public Inquiries and Complaints.** During construction and operation of the Wind Park, the Owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints through completion of decommissioning. The Owner shall make reasonable efforts to respond to the public's inquiries and complaints.

5.2. **Complaint Resolution.** The Owner shall develop and submit to the Town a process to resolve complaints from Town residents concerning the construction or operation of the Wind Park. The process shall not preclude the local government from acting on a complaint.

5.3. **Public Information Facility.** Within six months of commercial operation of the Wind Park, the Owner will construct and maintain a public information kiosk at a public location designated by the Town. The Owner will be responsible for keeping the kiosk in good condition, and the Town will be responsible for maintaining the site of the kiosk, including public security.

5.4. **Signs.** Signs shall be reasonably sized and limited to those necessary to identify the Project Site and provide warnings or liability information, construction information, or identification of private property. There will be no signs placed in the public right of way. The Owner and Town may agree on the placement of signs in the public right of way that relate to a Public Information Facility.

6. Reports to the Town of Lempster

6.1. **Incident Reports.** The Owner shall notify the Chairman of the Board of Selectmen or his designee as soon as possible with:

6.1.1. copies of reporting of environmental incidents or industrial accidents that require a report to U.S. EPA, New Hampshire Department of Environmental Services, OSHA or another federal or state government agency; and

6.1.2. all complaints from Town residents as submitted through the complaint resolution process under Section 5.2 of this Agreement

6.2 **Periodic Reports.** The owner shall submit, on an annual basis, starting one year from commercial operation of the Wind Park, a report to the Selectmen of the Town of Lempster, providing, as a minimum, the following information:

6.2.1 If applicable, status of any additional construction activities, including schedule for completion;

6.2.2 Copies of all reporting of environmental incidents or industrial accidents that require a report to U.S. EPA, New Hampshire Department of Environmental Services, OSHA or another federal or state government agency; and

6.2.3 Details on any calls for emergency police or fire assistance;

6.2.4 Location of all on-site fire suppression equipment; and

6.2.5 Identity of hazardous materials including volumes and locations as reported to state and federal agencies.

7. Emergency Response

7.1. Upon request, the Owner shall cooperate with the Town's emergency services and any emergency services that may be called upon to deal with a fire or other emergency at the Wind Park through a mutual aid agreement, to develop and coordinate implementation of an emergency response plan for the Wind Park. The Owner and Town will establish protocols to provide emergency response access to the Turbine Towers within 30 minutes of an alarm or other request for emergency response.

7.2. The Owner shall cooperate with the Town's emergency services to determine the need for the purchase of any equipment required too provide an adequate response to an emergency at the Wind Park that would not otherwise need to be purchased by the Town. If agreed between the Town and Owner, Owner shall purchase any specialized equipment for storage at a mutually agreeable location. The Town and

Owner shall review together on an annual basis the equipment requirements for emergency response at the Wind Park.

7.3. The Owner shall provide and maintain protocols for direct notification of emergency response personnel designated by the Town. The Owner shall provide the Town with contact information of personnel available at every hour of the day.

7.4. The Owner shall provide training to emergency response personnel identified by the Town. Those identified for training will include First Alarm mutual aid responders. Training shall be conducted at times agreed to by the Town and the Owner prior to the commencement of commercial operation and on an annual basis during operation of the Wind Park. The training shall include, but not be limited to, the location and operation of on-site fire suppression equipment, Project Site and Wind Turbine access, and communication protocols.

7.5. The Owner shall maintain fire alarm systems and fire extinguisher equipment that are installed in all Wind Turbines and facilities. The Town and Owner shall work to identify sources of water on or around the Project Site that may be utilized in the event of a fire at the Project Site outside the Wind Turbines, and collaborate on a process for utilizing the identified sources.

7.6. In the event of an emergency response event that creates an extraordinary expense for the Town based on obligations under a mutual aid agreement, Owner shall reimburse the Town for reasonable expenses.

7.7. In the event Lempster Fire Department changes from an all-volunteer department to a department with firefighters being paid for services, the Owner and Town will determine whether direct reimbursement for emergency response by the Town is appropriate.

8. Roads

8.1. Public Roads

8.1.1. The Owner shall identify all state and local public roads to be used within the Town to transport equipment and parts for construction, operation or maintenance of the facility.

8.1.2. The Owner shall hire a qualified professional engineer, as mutually agreed with the Town, to document road conditions prior to

construction and again thirty days after construction is completed or as weather permits.

8.1.3. Any road damage caused by the Owner or its contractors at any time shall be promptly repaired at the Owner's expense.

8.1.4. The Owner will reimburse the Town for costs associated with special details required to direct or monitor traffic within the Town limits during construction.

8.1.5. The Owner shall demonstrate by financial guarantee of the Owner or its parent or affiliates, that it will provide appropriate financial assurance to ensure prompt repair of damaged roads. If such financial assurance is not provided in a form acceptable to the Town, the Town may require a bond or cash deposit to meet this obligation.

8.2. **Wind Park Access Roads.** The Owner shall construct and maintain roads at the Wind Park that allow for year-round access to each Wind Turbine at a level that permits passage of emergency response vehicles. The Owner shall provide assurance, in the form of a financial guarantee from the Owner or its parent or affiliates, that Wind Park roads will be maintained to permit such emergency access.

8.2.1. The Owner shall construct and maintain roads at the Wind Park that allow for year-round access to each Wind Turbine at a level that permits passage and turnaround of emergency response vehicles. The Owner shall provide assurance by a financial guarantee from the Owner of its parent or affiliates, in a form acceptable to the Town, that Wind Park roads will be maintained at all times to permit such emergency access.

8.2.2. Any use of the Access Roads that is beyond what is necessary to service the Wind Park or that are beyond the Participation Landowner Agreements, shall be subject to approvals under relevant Town ordinances or regulations, or state or federal laws.

9. Construction Period Requirements

9.1. **Site Plan.** Prior to the commencement of construction, the Owner shall provide the Town with a copy of the final Soil Erosion and Sediment Control site plans showing the construction layout of the Wind Park.

9.2. **Construction Schedule.** Prior to the commencement of construction activities at the Wind Park, the Owner shall provide the Town with a schedule for construction activities, including anticipated use of public roads for the transport of oversize and overweight vehicles. The Owner

shall provide updated information and schedules regarding construction activities to the Town on a monthly basis, or upon request of the Town.

9.3. **Disposal of Construction Debris.** Tree stumps, slash and brush will be disposed of onsite or removed consistent with state law. Construction debris shall not be disposed of at Town facilities.

9.4. **Blasting.** The handling, storage, sale, transportation and use of explosive materials shall conform to all state and federal rules and regulations. In addition, the Owner shall comply with the following Town requirements.

9.4.1. At least ten days before blasting commences, the Owner shall brief Town officials on the blasting plan. The briefing shall include the necessity of blasting and the safeguards that will be in place to ensure that building foundations, wells or other structures will not be damaged by the blasting.

9.4.2. In accordance with the rules of the State of New Hampshire, the Owner shall notify the Lempster police and fire chiefs before blasting commences. Any changes to the schedule for blasting must be reported immediately and in person to the police and fire chiefs.

9.4.3. A Pre-Blast Survey will cover residents within 500 ft. of the work area, and a copy of the survey will be recorded in the Town office. Residents within 500 feet will be notified in person whenever possible, or by registered mail, prior to work in the area.

9.4.4. A copy of the appropriate Insurance Policy and Blasting License will be recorded in the Town office.

9.5. **Storm Water Pollution Control** The Owner shall obtain a New Hampshire Site-Specific Permit and conform to all of its requirements including the Storm Water Pollution Prevention Plan and requirements for inspections as included or referenced therein. The Owner shall provide the Town with a copy of all state and federal storm water, wetlands, or water quality permits and related conditions.

9.6. **Design Safety Certification.** The design of the Wind Park shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanishcer Lloyd Wind Energies, or other similar certifying organizations.

9.7. **Construction Vehicles**

9.7.1. Construction vehicles shall only use a route approved by the Town. There shall be no staging or idling of vehicles on public roads. The Town shall be notified at least 24 hours before each construction vehicle with a Gross Vertical Weight greater than 88,000 pounds is to use a Town road. Acceptance by the Town of vehicles exceeding this level is not a waiver of the Owner's obligation to repair all damage to roadways caused by vehicles used during construction or during any other time through the completion of decommissioning.

9.7.2. Construction vehicles will not travel on Town roads before 6:00 am or after 7:00 pm, Monday through Saturday. Construction vehicles will not travel on Town roads on Sunday, unless prior approval is obtained from the Town.

9.7.3. Construction will only be conducted between 6:00 am and 7:00 pm, Monday – Saturday. Construction will not be conducted on Sundays.

9.7.4. The start-up and idling of trucks and equipment will conform to all applicable Department of Transportation regulations. In addition, the start-up and idling of trucks and equipment will only be conducted between 6:00 am and 7:00 pm, Monday through Saturday

10. <u>Operating Period Requirements</u>

10.1. **Spill Protection**

10.1.1. The Owner shall take reasonable and prudent steps to prevent spills of hazardous substances, including but not limited to oil and oil-based products, used during the construction and operation of the Wind Park. This includes oil, gasoline, and other hazardous substances from construction related vehicles and machinery, permanently stored oil, and oil used for operation of permanent equipment. Owner shall provide the Town with a copy of the Spill Prevention, Control and Countermeasure (SPCC) for the Wind Park as required by state or federal agencies.

10.2. **Pesticides and Herbicides.** The Owner shall not use herbicides or pesticides for maintaining clearances around the Wind Turbines or for any other maintenance at the Wind Park.

10.3. **Signal Interference.** The Owner shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television, or similar

signals, and shall mitigate any harm caused by the Wind Park, subject to the Complaint Resolution process as provided pursuant to Section 5.2.

11. Noise Restrictions

11.1. **Residential Noise Restrictions.** Audible sound from the Wind Park shall not exceed 55 dB(A) as measured at 300 feet from any existing Occupied Building on a Non-Participating Landowner's property, or at the property line if it is less than 300 feet from an existing Occupied Building. This sound pressure level shall not be exceeded for more than 3 minutes in any hour of the day. If the Ambient Sound Pressure Level exceeds 55 dB(A), the standard shall be ambient dB(A) level plus 5 dB(A).

11.2. **Goshen-Lempster School Noise Restriction.** Audible sound from the Wind Park at the Goshen-Lempster School shall not exceed 45 dB(A). If the Ambient Sound Pressure Level at the Goshen-Lempster School exceeds 45 dB(A), at the school, the standard shall be ambient dB(A) plus 5 dB(A).

11.3. **Post-Construction Noise Measurements.** After commercial operation of the Wind Park, the Owner shall retain an independent qualified acoustics engineer to take sound pressure level measurements in accordance with the most current version of ANSI S12.18. The measurements shall be taken at sensitive receptor locations as identified by the Owner and Town, and shall include the Goshen-Lempster School both inside and outside of the school building. The periods of the noise measurements shall include, as a minimum, daytime, winter and summer seasons, nighttime after 10 pm, and, for measurements at the school, periods when school is in session. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter. The Owner shall provide the report of the acoustics engineer once available to the Town.

12. Setbacks

12.1. **Setback From Occupied Buildings.** The setback distance between a Wind Turbine tower and a Non-Participating landowner's existing Occupied Building shall be not less than three times the Turbine Height. The setback distance shall be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.

12.2. **Setback From Property Lines.** The setback distance between a Wind Turbine tower and Non-Participating landowner's property line shall be not less than 1.1 times the Turbine Height. The setback distance shall be measured to the center of the Wind Turbine base.

12.3. **Setback From Public Roads.** All Wind Turbines shall be setback from the nearest public road a distance of not less than 1.5 times the Turbine Height as measured from the right-of-way line of the nearest public road to the center of the Wind Turbine base.

13. Waiver of Restrictions

13.1. **Waiver of Noise Restrictions.** A Participating Landowner or Non-Participating Landowner may waive the noise provisions of Section 12 of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. The written waiver shall state that the consent is granted for the Wind Park to not comply with the sound limit in this Agreement.

13.2. **Waiver of Setback Requirements.** A Participating Landowner or Non-Participating Landowner may waive the setback provisions of Section 14 of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. Such a waiver shall identify the applicable setback requirements provision(s) in this Agreement and the proposed changes, including a description of how the Wind Park is not in compliance with the requirements in this Agreement and a statement that consent is granted for the Owner to not be in compliance with the requirements in this Agreement. Upon application, the Town may waive the setback requirement for public roads for good cause.

13.3. **Recording.** A memorandum summarizing a waiver or agreement containing a waiver pursuant to Section 13.1 or 13.2 of this Agreement shall be recorded in the Registry of Deeds for Sullivan County, New Hampshire. The memorandum shall describe the properties benefited and burdened and advise all subsequent purchasers of the burdened property of the basic terms of the waiver or agreement, including time duration.

14. Decommissioning

14.1. Scope of Decommissioning Activities

14.1.1. The Owner shall submit a detailed site-specific decommissioning estimate to the Town before construction of the Wind Park

commences. This estimate shall be updated and submitted to the Town every five years thereafter.

14.1.2. The Owner shall, at its expense, complete decommissioning of the Wind Park, or individual Wind Turbines, pursuant to Section 14.1.3 of this Agreement, within 12 months after the End of Useful Life of the Wind Park or individual Wind Turbines.

14.1.3. The Owner shall provide a decommissioning plan to the Town no less than three months before decommissioning is to begin. The decommissioning plan shall provide a detailed description of all Wind Park equipment, facilities or appurtenances proposed to be removed, the process for removal, and the post-removal site conditions. The Town will consider the remaining useful life of any improvement before requiring its removal as part of decommissioning. Approval of the Town must be received before decommissioning can begin.

14.2. **Decommissioning Funding Assurance**

14.2.1. The Owner shall provide funding assurance for the complete decommissioning of the Wind Park, or individual Wind Turbines in a form acceptable to the Town. ("Decommissioning Funding Assurance") The Wind Park or individual Wind Turbines will be presumed to be at the End of Useful Life if no electricity is generated from the Wind Park or any individual Wind Turbine for a continuous period of twelve months.

14.2.2. Before commencement of construction of the Wind Park, the Owner shall provide Decommissioning Funding Assurance in an amount equal to the site-specific decommissioning estimate or $2,000,000, whichever is greater. The Owner shall adjust the amount of the Decommissioning Funding Assurance to reflect the updated decommissioning costs after each update of the decommissioning estimate, if the estimate exceeds $2,000,000.

14.2.3. Decommissioning Funding Assurance in the amount described in Section 14.2.2 shall be provided by a financial guarantee from the Owner, its parent or affiliates, in a form acceptable to the Town. If Owner does not provide such financial guarantee, the Town may require another form of decommissioning assurance such as prepayment, external sinking funds, insurance, performance bond, surety bond, letters of credit, form of surety, or other method, or combination of methods as may be acceptable to the Board of Selectmen of the Town of Lempster.

14.2.4. Funds expended in connections with the Decommissioning Funding Assurance shall only be used for expenses associated with the cost of decommissioning the Wind Park. Any funds remaining after decommissioning has been completed shall be distributed to the current Owner.

14.2.5. If the Owner fails to complete decommissioning within the period proscribed by this agreement, the Town of Lempster may, at its sole discretion, enforce the financial guarantee and require the expenditure of decommissioning funds on such measures as necessary to complete decommissioning.

14.3. **Transfer of Decommissioning Responsibility**

14.3.1. Consistent with Section 2.1 of this Agreement, the provisions of Section 14 of this Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Park or any Wind Turbines after the End of Useful Life.

14.3.2. Owner shall not enter into any agreement with any party, including a Participating Landowner and successor in ownership, which waives the responsibilities of the Owner for decommissioning or the requirement to maintain decommissioning assurance without first receiving the written agreement of the Town.

Exhibit 20
Final Town Agreement

AGREEMENT BETWEEN TOWN OF LEMPSTER AND LEMPSTER WIND, LLC, DEVELOPER/OWNER OF THE LEMPSTER MOUNTAIN WIND POWER PROJECT

1. Definitions

1.1. "Agreement" - This agreement between the Town of Lempster, New Hampshire and Lempster Wind LLC, and its successors and assigns.

1.2. "Ambient Sound Pressure" - The sound pressure level excluded that contributed by the operation of the Wind Park.

1.3. "Decommissioning Funding Assurance" – An assurance provided by the Owner in a form acceptable to the Town that guarantees completion of decommissioning, as provided in this Agreement.

1.4. "End of Useful Life" - The Wind Park or individual Wind Turbines will be presumed to be at the End of Useful Life if no electricity is generated for a continuous period of twelve months.

1.5. "Non-Participating Landowner" - Any landowner in the Town of Lempster, other than a Participating Landowner.

1.6. "Owner" - The entity or entities having equity interest in the Wind Park, including their respective successors and assigns.

1.7. "Occupied Building" - A permanent structure used as a year-round or seasonal residence, school, hospital, church, public library or other building used for gathering that is occupied or in use as of the time that the permit application was submitted to the New Hampshire Site Evaluation Committee.

1.8. "Participating Landowner" – Any landowner having entered into an agreement with the Owner for hosting Wind Park facilities, providing easements for access, entry or conveyance of other rights related to the Wind Park, or any other agreement related to the construction or operation of the Wind Park.

1.9. "Project Site" – Property with rights as conveyed to Owner by lease, easement or other agreement with a Participating Landowner that includes all Wind Turbines, access roads, and other facilities required for construction and operation of the Wind Park.

1.10. "Town" – Town of Lempster, New Hampshire.

1.11. "Turbine Height" - The distance from the surface of the tower foundation to the tip of the uppermost blade when in a vertical position. For the Lempster Wind Power Project, this height is approximately 424 feet.

1.12. "Wind Turbine" - A wind energy conversion system that converts wind energy for the generation of electricity, including a tower, a nacelle housing the generator and transformer, and a 3-blade rotor.

1.13. "Wind Park" - The totality of the Wind Turbines, cables, accessory buildings and structures including substations, meteorological towers, electric infrastructure and cables and other appurtenant structures and facilities that comprise the Lempster Mountain Wind Power Project under development by Owner.

2. General Provisions

2.1. **Enforceability.** This Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Park or any Wind Turbines after the End of Useful Life.

2.2. **Applicability to Owner.** This Agreement shall apply to the Owner only to the extent of Owner's rights and responsibilities related to the Wind Park and Project Site as conferred to Owner by Participating Landowner agreements.

2.3. **Recording.**

2.3.1. Owner shall submit to the Town evidence of all Participating Landowner agreements, which may take the form of memoranda recorded with the Sullivan County Registry of Deeds.

2.3.2. This Agreement shall be recorded at the Sullivan County Registry of Deeds.

2.4. **Survivability.** The invalidity, in whole or in part, of any of this Agreement will not affect any other paragraph in this Agreement.

2.5. **Limitation on Turbines.** This Agreement is for the installation and operation of a Wind Park that utilizes up to twelve Wind Turbines. The Owner shall not construct more than twelve Wind Turbines on the site without prior agreement with the Town. Communications or other equipment attached to the Wind Turbines shall be limited to that incidental and necessary for the safe and efficient operation of the Wind Park.

2.6. **On-site Burning.** The Owner will obtain a permit from the Lempster Fire Department and comply with all State requirements before Owner or its agents perform any on-site burning.

2.7. **Warnings.**

2.7.1. A clearly visible warning sign concerning voltage must be placed at the base of all above-ground electrical collection facilities, switching or interconnection facilities, and substations.

2.7.2. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on all anchor points of guy wires, if any, and along the guy wires up to a height of ten feet from the ground.

2.7.3. A clearly visible warning sign concerning safety risks related to winter or storm conditions shall be placed no less than 300 feet from each Wind Turbine tower base on access roads

2.8. **Access.** The Town shall have keyed access to all gated entrances to the Project Site for the purpose of emergency response. The Owner shall provide access to the Project Site, Wind Turbines or other facilities upon reasonable request of the Town for the purpose of building or safety inspections under Town ordinances. The Owner shall provide access for emergency response purposes pursuant to the protocols provided under Section 7 of this Agreement.

2.9. **Liability Insurance.** There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least $10 million in the aggregate. Certificates shall be made available to the Town upon request.

2.10. **Indemnification.** The Owner specifically and expressly agrees to indemnify, defend, and hold harmless the Town and its officers, elected officials, employees and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of any negligence or wrongful acts of the Owner, its employees, agents, representatives or subcontractors of any tier, their employees, agents or representatives in connection with the Wind Park. The indemnity obligations under this Article shall include without limitation:

2.10.1. Loss of or damage to any property of the Town or any third party or, to the extent that loss of or damage to property of Owner, results in a third party claim against the Town, loss of or damage to any property of Owner;

2.10.2. Bodily or personal injury to, or death of any person(s), including without limitation employees of the Town, or of the Owner or its subcontractors of any tier.

The Owner's indemnity obligation under this Article shall not extend to any liability caused by the negligence or willful misconduct of any of the Indemnitees.

3. Wind Turbine Equipment and Facilities

3.1. **Visual Appearance.**

3.1.1. Wind Turbines shall be a non-obtrusive color such as white, off-white, or gray.

3.1.2. Wind Turbines shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or any other applicable authority that regulates air safety.

3.1.3. Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer and/or Owner.

3.2. **Controls and Brakes.** All Wind Turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

3.3. **Electrical Components.** All electrical components of the Wind Park shall conform to relevant and applicable local, state, and national codes, and relevant and applicable international standards.

3.4. **Power Lines.** On-site transmission and power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground.

4. Project Site Security

4.1. Wind Turbines exteriors shall not be climbable up to fifteen (15) feet above ground surface.

4.2. All access doors to Wind Turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.

4.3. Entrances to the Project Site shall be gated, and locked during non-working hours. If problems with unauthorized access are identified, the Project shall work to implement additional security measures.

5. Public Information, Communications and Complaints

5.1. **Public Inquiries and Complaints.** During construction and operation of the Wind Park, and continuing through completion of decommissioning of the Wind Park, the Owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints. The Owner shall make reasonable efforts to respond to the public's inquiries and complaints.

5.2. **Complaint Resolution.** The Owner shall develop and submit to the Town a process to resolve complaints from Town residents concerning the construction or operation of the Wind Park. The process shall not preclude the local government from acting on a complaint.

5.3. **Public Information Facility.** Within six months of commercial operation of the Wind Park, the Owner will construct a public information kiosk at a public location designated by the Town. The Owner will be responsible for keeping the kiosk in good condition and the Town will be responsible for maintaining the site of the kiosk, including public security.

5.4. **Signs.** Signs shall be reasonably sized and limited to those necessary to identify the Project Site and provide warnings or liability information, construction information, or identification of private property. There will be no signs placed in

the public right of way. After the completion of construction, signs visible from public roads shall be unlit and be no larger than six square feet, unless otherwise approved by the Town. The Owner and Town may agree on the placement of signs in the public right of way that relate to a Public Information Facility.

6. Reports to the Town of Lempster

6.1. **Incident Reports.** The Owner shall provide the following to the Chairman of the Board of Selectmen or his designee as soon as possible:

6.1.1. Copies of all reporting of environmental incidents or industrial accidents that require a report to U.S. EPA, New Hampshire Department of Environmental Services, OSHA or another federal or state government agency; and

6.1.2. All complaints from Town residents as submitted through the complaint resolution process under Section 5.2 of this Agreement.

6.2 **Periodic Reports.** The owner shall submit, on an annual basis starting one year from commercial operation of the Wind Park, a report to the Board of Selectmen of the Town of Lempster, providing, at a minimum, the following information:

6.2.1 If applicable, status of any additional construction activities, including schedule for completion;

6.2.2 Details on any calls for emergency police or fire assistance;

6.2.3 Location of all on-site fire suppression equipment; and

6.2.4 Identity of hazardous materials, including volumes and locations, as reported to state or federal agencies.

7. Emergency Response

7.1. Upon request, the Owner shall cooperate with the Town's emergency services and any emergency services that may be called upon to deal with a fire or other emergency at the Wind Park through a mutual aid agreement, to develop and coordinate implementation of an emergency response plan for the Wind Park. The Owner shall provide and maintain protocols for direct notification of emergency response personnel designated by the Town, including provisions for access to the Project Site, Wind Turbines or other facilities within 30 minutes of an alarm of other request for emergency response, and provisions that provide the Town with contact information of personnel available at every hour of the day.

7.2. The Owner shall cooperate with the Town's emergency services to determine the need for the purchase of any equipment required to provide an adequate response to an emergency at the Wind Park that would not otherwise need to be purchased by the Town. If agreed between the Town and Owner, Owner shall purchase any specialized equipment for storage at the Project Site. The Town and Owner shall review together on an annual basis the equipment requirements for emergency response at the Wind Park.

7.3. The Owner shall provide training to emergency response personnel identified by the Town. Those identified for training will include First Alarm mutual aid responders. Training shall be conducted at times agreed to by the Town and the Owner prior to the commencement of commercial operation and on an annual basis during operation of the Wind Park. The training shall include, but not be limited to, the location and operation of on-site fire suppression equipment, Project Site and Wind Turbine access, and communication protocols.

7.4. The Owner shall maintain fire alarm systems, sensor systems and fire extinguisher equipment that are installed in all Wind Turbines and facilities. The Town and Owner shall work to identify sources of water on or around the Project Site that may be utilized in the event of a fire at the Project Site outside the Wind Turbines, and collaborate on a process for utilizing the identified sources.

7.5. In the event of an emergency response event that creates an extraordinary expense for the Town based on obligations under a mutual aid agreement, Owner shall reimburse the Town for actual expenses incurred by the Town.

7.6. In the event Lempster Fire Department changes from an all volunteer department to a department with firefighters being paid for services, the Owner and Town will work to determine whether direct reimbursement for emergency response by the Town is appropriate.

8. Roads

8.1. Public Roads

8.1.1. The Owner shall identify all state and local public roads to be used within the Town to transport equipment and parts for construction, operation or maintenance of the facility.

8.1.2. The Owner shall hire a qualified professional engineer, as mutually agreed with the Town, to document road conditions prior to construction and again thirty days after construction is completed or as weather permits.

8.1.3. Any road damage caused by the Owner or its contractors at any time shall be promptly repaired at the Owner's expense.

8.1.4. The Owner will reimburse the Town for costs associated with special details required to direct or monitor traffic within the Town limits during construction.

8.1.5. The Owner shall demonstrate by financial guarantee of the Owner or its parent or affiliates, that it will provide appropriate financial assurance to ensure prompt repair of damaged roads. If such financial assurance is not provided in a form acceptable to the Town, the Town may require a bond or cash deposit to meet this obligation.

8.2. **Wind Park Access Roads**

8.2.1. The Owner shall construct and maintain roads at the Wind Park that allow for year-round access to each Wind Turbine at a level that permits passage and turnaround of emergency response vehicles. The Owner shall provide assurance by a financial guarantee from the Owner or its parent or affiliates, in a form acceptable to the Town, that Wind Park roads will be maintained at all times to permit such emergency access.

8.2.2. Any use of the access roads that is beyond what is necessary to service the Wind Park or that are beyond the scope of Participating Landowner agreement(s) shall be subject to approvals under relevant Town ordinances or regulations, or state or federal laws.

9. Construction Period Requirements

9.1. **Site Plan**. Prior to the commencement of construction, the Owner shall provide the Town with a copy of the final Soil Erosion and Sediment Control site plans showing the construction layout of the Wind Park.

9.2. **Construction Schedule**. Prior to the commencement of construction activities at the Wind Park, the Owner shall provide the Town with a schedule for construction activities, including anticipated use of public roads for the transport of oversize and overweight vehicles. The Owner shall provide updated information and schedules regarding construction activities to the Town on a monthly basis, or upon request of the Town.

9.3. **Disposal of Construction Debris.** Tree stumps, slash and brush will be disposed of onsite or removed consistent with state law. Construction debris and stumps shall not be disposed of at Town facilities.

9.4. **Blasting**. The handling, storage, sale, transportation and use of explosive materials shall conform to all state and federal rules and regulations. In addition, the Owner shall comply with the following Town requirements.

9.4.1. At least ten days before blasting commences, the Owner shall brief Town officials on the blasting plan. The briefing shall include the necessity of blasting and the safeguards that will be in place to ensure that building foundations, wells or other structures will not be damaged by the blasting.

9.4.2. In accordance with the rules of the State of New Hampshire, the Owner shall notify the Lempster police and fire chiefs before blasting commences. Any changes to the schedule for blasting must be reported immediately and in person to the police and fire chiefs.

9.4.3. A Pre-Blast Survey will cover residents within 500 ft. of the work area, and a copy of the survey will be recorded in the Town office. Residents within 500 feet will be notified in person whenever possible, or by registered mail, prior to work in the area.

9.4.4. A copy of the appropriate Insurance Policy and Blasting License will be recorded in the Town office.

9.5. **Storm Water Pollution Control.** The Owner shall obtain a New Hampshire Site-Specific Permit and conform to all of its requirements including the Storm Water Pollution Prevention Plan and requirements for inspections as included or referenced therein. The Owner shall provide the Town with a copy of all state and federal stormwater, wetlands, or water quality permits and related conditions.

9.6. **Design Safety Certification.** The design of the Wind Park shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanishcer LIloyd Wind Energies, or other similar certifying organizations.

9.7. **Construction Vehicles**

9.7.1. Construction vehicles shall only use a route approved by the Town. There shall be no staging or idling of vehicles on public roads. The Town shall be notified at least 24 hours before each construction vehicle with a Gross Vehicle Weight greater than 88,000 pounds is to use a Town road. Acceptance by the Town of vehicles exceeding this level is not a waiver of the Owner's obligation to repair all damage to roadways caused by vehicles used during construction or during any other time through the completion of decommissioning.

9.7.2. Construction vehicles will not travel on Town roads before 6:00 am or after 7:00 pm, Monday through Saturday. Construction vehicles will not travel on Town roads on Sunday, unless prior approval is obtained from the Town.

9.7.3. Construction will only be conducted between 6:00 am and 7:00 pm, Monday – Saturday. Construction will not be conducted on Sundays.

9.7.4. The start-up and idling of trucks and equipment will conform to all applicable Department of Transportation regulations. In addition, the start-up and idling of trucks and equipment will only be conducted between 6:00 am and 7:00 pm, Monday through Saturday.

9.7.5. Notwithstanding anything in this Agreement to the contrary, upon prior approval of the Town, over-sized vehicles delivering equipment and supplies may travel on Town roads between the hours of 7:00 pm and 6:00 am and on Sundays in order to minimize potential disruptions to area roads.

10. Operating Period Requirements

10.1. **Spill Protection.** The Owner shall take reasonable and prudent steps to prevent spills of hazardous substances used during the construction and operation of the Wind Park. This includes, without limitation, oil and oil-based products, gasoline, and other hazardous substances from construction related vehicles and machinery, permanently stored oil, and oil used for operation of permanent equipment. Owner shall provide the Town with a copy of the Spill Prevention, Control and Countermeasure (SPCC) for the Wind Park as required by state or federal agencies.

10.2. **Pesticides and Herbicides.** The Owner shall not use herbicides or pesticides for maintaining clearances around the Wind Turbines or for any other maintenance at the Wind Park.

10.3. **Signal Interference.** The Owner shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television, or similar signals, and shall mitigate any harm caused by the Wind Park, subject to the Complaint Resolution process as provided pursuant to Section 5.2.

11. Noise Restrictions

11.1. **Residential Noise Restrictions.** Audible sound from the Wind Park shall not exceed 55 dB(A) as measured at 300 feet from any existing Occupied Building on a Non-Participating Landowner's property, or at the property line if it is less than 300 feet from an existing Occupied Building. This sound pressure level shall not be exceeded for more than a total of three minutes during any sixty minute period of the day. If the Ambient Sound Pressure Level exceeds 55 dB(A), the standard shall be ambient dB(A) level plus 5 dB(A).

11.2. **Goshen-Lempster School Noise Restriction.** Audible sound from the Wind Park at the Goshen-Lempster School shall not exceed 45 dB(A). This sound pressure level shall not be exceeded for more than a total of 3 minutes during any sixty minute period of the day. If the Ambient Sound Pressure Level at the Goshen-Lempster School exceeds 45 dB(A), at the school, the standard shall be ambient dB(A) plus 5 dB(A).

11.3. **Post-Construction Noise Measurements.** After commercial operation of the Wind Park, the Owner shall retain an independent qualified acoustics engineer to take sound pressure level measurements in accordance with the most current version of ANSI S12.18. The measurements shall be taken at sensitive receptor locations as identified by the Owner and Town, and shall include the Goshen-Lempster School both inside and outside of the school building. The periods of the noise measurements shall include, as a minimum, daytime, winter and summer seasons, nighttime after 10 pm, and, for measurements at the school, periods when school is in session. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4

specifications for a Type II sound meter. The Owner shall provide the report of the acoustics engineer to the Town within 30 days of its receipt by the Owner.

12. Setbacks

12.1. **Setback From Occupied Buildings.** The setback distance between a Wind Turbine tower and a Non-Participating Landowner's existing Occupied Building shall be not less than three times the Turbine Height. The setback distance shall be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.

12.2. **Setback From Property Lines.** The setback distance between a Wind Turbine tower and Non-Participating Landowner's property line shall be not less than 1.1 times the Turbine Height. The setback distance shall be measured to the center of the Wind Turbine base.

12.3. **Setback From Public Roads.** All Wind Turbines shall be setback from the nearest public road a distance of not less than 1.5 times the Turbine Height as measured from the right-of-way line of the nearest public road to the center of the Wind Turbine base.

13. Waiver of Restrictions

13.1. **Waiver of Noise Restrictions.** A Participating Landowner or Non-Participating Landowner may waive the noise provisions of Section 11 of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. The written waiver shall state that the consent is granted for the Wind Park to not comply with the sound limits set forth in this Agreement.

13.2. **Waiver of Setback Requirements.** A Participating Landowner or Non-Participating Landowner may waive the setback provisions of Section twelve of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. Such a waiver shall identify the applicable setback requirements provision(s) in this Agreement and the proposed changes, including a description of how the Wind Park is not in compliance with the requirements in this Agreement and a statement that consent is granted for the Owner to not be in compliance with the requirements set forth in this Agreement. Upon application, the Town may waive the setback requirement for public roads for good cause.

13.3. **Recording.** A memorandum summarizing a waiver or agreement containing a waiver pursuant to Section 13.1 or 13.2 of this Agreement shall be recorded in the Registry of Deeds for Sullivan County, New Hampshire. The memorandum shall describe the properties benefited and burdened and advise all subsequent purchasers of the burdened property of the basic terms of the waiver or agreement, including time duration.

14. Decommissioning

14.1. Scope of Decommissioning Activities

14.1.1. The Owner shall submit a detailed site-specific decommissioning estimate of costs associated with decommissioning activities to the Town before construction of the Wind Park commences. This estimate shall be updated and submitted to the Town every five years thereafter.

14.1.2. The Owner shall, at its expense, complete decommissioning of the Wind Park or individual Wind Turbines, pursuant to Section 14.1.3 of this Agreement, within twelve months after the End of Useful Life of the Wind Park or individual Wind Turbines.

14.1.3. The Owner shall provide a decommissioning plan to the Town no less than three months before decommissioning is to begin. The decommissioning plan shall provide a detailed description of all Wind Park equipment, facilities or appurtenances proposed to be removed, the process for removal, and the post-removal site conditions. The Town will consider the remaining useful life of any improvement before requiring its removal as part of decommissioning. Approval of the Town must be received before decommissioning can begin.

14.2. Decommissioning Funding Assurance

14.2.1. The Owner shall provide a Decommissioning Funding Assurance for the complete decommissioning of the Wind Park, or individual Wind Turbines in a form acceptable to the Town. The Wind Park or individual Wind Turbines will be presumed to be at the End of Useful Life if no electricity is generated from the Wind Park or any individual Wind Turbine for a continuous period of twelve months.

14.2.2. Before commencement of construction of the Wind Park, the Owner shall provide Decommissioning Funding Assurance in an amount equal to the site-specific decommissioning estimate or $2,000,000, whichever is greater. The Owner shall adjust the amount of the Decommissioning Funding Assurance to reflect the updated decommissioning costs after each update of the decommissioning estimate, if the updated estimate exceeds $2,000,000.

14.2.3. Decommissioning Funding Assurance in the amount described in Section 14.2.2 shall be provided by a financial guarantee from the Owner, its parent or affiliates, in a form reasonably acceptable to the Town. If Owner does not provide such financial guarantee, the Town may require another form of decommissioning assurance such as prepayment, external sinking funds, insurance, performance bond, surety bond, letters of credit, form of surety, or other method, or combination of methods as may be acceptable to the Board of Selectmen of the Town of Lempster.

14.2.4. Funds expended from the Decommissioning Funding Assurance shall only be used for expenses associated with the cost of decommissioning the Wind Park. Any funds remaining after decommissioning has been completed shall be distributed to the current Owner.

14.2.5. If the Owner fails to complete decommissioning within the period proscribed by this Agreement, the Town of Lempster may, at its sole discretion, enforce the financial guarantee and require the expenditure of decommissioning funds on such measures as necessary to complete decommissioning.

14.3. **Transfer of Decommissioning Responsibility**

14.3.1. Consistent with Section 2.1 of this Agreement, the provisions of Section 14 of this Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Park or any Wind Turbines after the End of Useful Life.

14.3.2. Owner shall not enter into any agreement with any party, including a Participating Landowner and successor in ownership, which waives the responsibilities of the Owner for decommissioning or the requirement to maintain decommissioning assurance without first receiving the written agreement of the Town.

The parties agree the terms of this Agreement are final, enforceable and no longer subject to change as of July 27, 2007, regardless of the date of execution by either party.

Town of Lempster

Chairman, Board of Selectmen

Selectman

Selectman

Lempster Wind, LLC

Martin Mugica, President
Iberdrola Renewable Energies, USA

Pablo Canales, Chief Financial Officer
Iberdrola Renewable Energies, USA

New Hampshire Site Evaluation Committee

Docket No. 2006-01

Application of Lempster Wind, LLC
For Certificate of Site and Facility

Lempster Mountain Wind Power Project
Lempster, New Hampshire

August 28, 2006

New Hampshire Site Evaluation Committee –Docket No. 2006-01
Application of Lempster Wind, LLC
August 28, 2006

TABLE OF CONTENTS

New Hampshire Site Evaluation Committee –Docket No. 2006-01
Application of Lempster Wind, LLC
August 28, 2006

EXECUTIVE SUMMARY

This Application to the New Hampshire Site Evaluation Committee (SEC) represents the request for a "certificate of site and facility" to construct and operate the Lempster Mountain Wind Power Project, in the Town of Lempster, Sullivan County, New Hampshire.

This Executive Summary provides information summarizing the full contents of the Application and its Appendices, including information about the Applicant and its affiliates, site information, facility information, potential health and environmental effects and mitigation plans, impacts on local land use, economy and employment, and impacts during construction and mitigation plans.

Applicant Information

Lempster Wind, LLC, a Delaware Limited Liability Company registered to do business in New Hampshire with the New Hampshire Secretary of State, proposes to develop the Lempster Mountain Wind Power Project (the Project) in the Town of Lempster, Sullivan County, New Hampshire. Lempster Wind, LLC is wholly-owned by Community Energy, Inc. (CEI), a Delaware Corporation based in Wayne, Pennsylvania and a national leader in the marketing of renewable energy and development of wind power projects. CEI is wholly-owned by Iberdrola, S.A., an international energy company based in Madrid, Spain that is engaged in the generation, transmission, distribution and marketing of electricity and natural gas. Iberdrola, with over 3,494 MW of wind power, is the world leader in wind power generation, and employs more than 500 employees worldwide in the area of renewable energy.

Iberdrola's extensive experience in wind energy project construction, ownership, operation and management combined with CEI's leadership in renewable energy marketing and development in the U.S. constitute adequate, if not superior, financial, managerial and technical capabilities to assure construction and operation of the facility.

The managerial capabilities of the CEI team includes a wide range of knowledge and experience from team members' work as public utility regulators, environmental leaders, corporate managers, wind project developers, and attorneys. The management resources of Iberdrola, including more than 500 personnel worldwide working on renewable energy, will provide depth and experience to the already substantial abilities of CEI.

Iberdrola will arrange for the financing of the Lempster Project, through various potential structures to provide the expected $30 to $40 million in capital for construction, equipment and operation of the Project. Investment in the Project by Iberdrola or others will be secured by long-term contracts for the purchase of power and renewable energy credits from the Project, as well as by the federal 1.8 cent/kilowatt-hour "production tax credit" for wind power, which

is set to expire at the end of 2007. The Project, its investors and construction contractors will carry adequate insurance to provide coverage against liability or damage resulting from the construction or operation of the wind Project.

Site Information

The proposed Project site is located on privately-owned property along the ridge line of Lempster Mountain, which is located in the Town of Lempster, in Sullivan County approximately 20 miles north of Keene and 5 miles south of Mount Sunapee. The Project site will include approximately 35-40 acres, including Project access roads and 12 wind turbine sites. The site is rural and remote, located on land parcels that are set back from residences, roads, and other public areas. The land proposed for the site was predominantly used for timber and agricultural operations in the past, and contains a number of existing logging roads and trails. Wetlands and surface waters have been identified by a NH-certified wetlands scientist, and other natural features such as wildlife, plant species, soils, and historic/cultural locations have been thoroughly documented in ongoing surveys and permit applications with state agencies.

The site and proposed Project will fall under the regulatory permitting authority of the New Hampshire Department of Environmental Services, Water Division (Wetlands Bureau, Site Specific Program, and Water Management Bureau), and the New Hampshire Department of Transportation. Applications for required permits that have been filed in association with the SEC Application include:

- Standard Dredge & Fill Application, Submitted to NH DES Wetlands Division on March 24, 2006, including responses to follow-up information requests of June 19, 2006. (covering wetlands impacts)

- Site Specific Application, Submitted to NH DES Water Division on April 14, 2006. (covering stormwater, soil erosion and sediment control impacts)

- Request for 401 Water Quality Certification, Submitted to NH DES Water Division on August 11, 2006 (analyzing potential impacts to surface water quality)

Facility Information

The proposed Project will be powered by twelve wind turbine generators, each rated 2.0 megawatts (MW) in capacity, for a total capability to produce 24 MW of power. The Project will use no fuel, only the wind, to turn rotor "blades" and power generating units. The Project has collected actual wind speed/direction data at the Project site for over 3 years, from two 50-meter test towers instrumented with measurement equipment, finding annual average wind speeds of between 7 and 8 meters/second (15 and 18 mph) – indicating excellent year-round potential for energy production. Based on wind data, energy production is anticipated in the range of 70,000,000 to 80,000,000 kWh per year. Based on an average household electrical usage of 550 kWh per month, the Project could provide power equivalent to that used by 10,000 to 12,000 homes.

The specific wind turbine generator technology proposed for use in the Project is G87 turbine, manufactured by Spanish company Gamesa. The major components of each Gamesa G87 wind turbine include a "rotor" measuring 285 feet in diameter, made up of three individual blades of 139 feet in length each; a "nacelle" that attaches to the rotor and contains the gearbox, low-and high-speed shafts, generator, and other controls; and a tower made of tubular structural steel in four sections, with a height of 256 feet. Other features of the state-of-the-art Gamesa G87 turbine include: a remote control system with real-time monitoring of the unit's operation, electric system interface, and safety systems; a braking system for controlling rotors in extreme weather or safety situations; and lightning protection systems that meet international electrical standards for "total lightning protection."

Power will be collected and transported on-site using a system of underground power cables, consolidated into one cable and running down Bean Mountain Road to the Project metering point at the intersection of Bean Mountain Road and Nichols Road. At the Project metering point, the power will be taken from the Project's underground facilities and interconnected with the 34.5 kV overhead distribution lines of PSNH at the street. The Project requires no high-voltage transmission lines, and connects to PSNH at the voltage standard for distribution systems that run throughout communities in the State.

Proposed construction start date is May 2007, with a completion date by November 1, 2007, to achieve an in-service date before December 31, 2007.

The Project conforms with the "orderly development of the region," balancing increasing energy demand with environmental protection and economic growth. As very few generating units are planned for New England, the Project addresses the growing demand for electricity within New Hampshire, and the New England electric power grid to which New Hampshire and the other New England states are all connected. The Project adds to the diversity of the power generation portfolio in New England and New Hampshire, which currently utilizes renewable energy sources including wind for less than 1% of its power generation. At 24 MW, the Project is the right size for the demonstrating the viability of wind power technology in New Hampshire – with a relatively small size and project footprint, but the ability to make a significant contribution to power needs.

The Project is also consistent with New Hampshire's state energy policy laws and goals as articulated by agencies and officials at all levels of government. New Hampshire Department of Environmental Services has actively indicated support for wind energy development, renewable energy "portfolio" standards for electric use, and wind energy's significant role in clean air and greenhouse gas emissions prevention. Other agencies have supported the development of renewable energy, promotion of clean air policy, and financial incentives for new energy sources and economic development that are consistent with the goals of the Project.

The Project is also consistent with the State's goals for energy facility siting. With significant environmental benefits and low impacts that are well-planned and mitigated, the Project balances environmental impacts with need for new power sources. With a single phase

construction schedule that can be completed in less than one year, the Project can be constructed on a timely basis and avoid undue delay in bringing a new clean energy source on-line. While lower than the SEC's 30 MW size threshold, the Project has provided a full disclosure of plans, studies, data and analysis for consideration by the SEC in an integrated fashion.

The Project is consistent with the goals for economic development in Sullivan County, as well as the energy goals articulated by the Upper Valley Lake Sunapee Regional Planning Commission -- to achieve a sustainable energy supply and encourage the use of local, rather than imported, fuels while balancing environmental and social impacts.

The Project will be a safe and reliable contributor to the electric system. PSNH and power grid operator ISO-New England performed a detailed system impact study and determined that the addition of the Project has no significant system impact to the stability, reliability, and operating characteristics of the New England bulk power transmission system. In general, modern wind energy technology is widely recognized for its potential to maintain the reliability and integrity of the electric system without impacting system operating costs, as found by the nation's largest and most-respected utility groups.

The size of the Project is consistent with system requirements of the interconnecting utility, Public Service of New Hampshire, which identified 25 MW as the maximum project size given system considerations in the area. The final number of wind turbine units utilized in the Project design is based on siting and access considerations, landowner agreements, meteorology and energy production estimates for various locations throughout the site, and the Gamesa specifications. A number of alternatives were considered for turbine locations within the current site, as well as on properties in Lempster not contained in the final proposed site, but were ruled out due to siting considerations. The current wind turbine sites chosen by the Project represent the best locations out of all the alternatives in terms of siting, keeping the site as insulated as possible from residences and public roads while maintaining project interconnection and design considerations.

Potential Health and Environmental Effects and Mitigation Plans

Air Quality and Climate Change

With no fuel and no emissions, the Project will have no adverse impact on air quality and climate change and will provide an environmental benefit to the state and region in terms of air quality or climate change. The Project adds a new electric generating source without adding air emissions or greenhouse gases, which the NH DES has recognized as having "significant environmental benefits that would be achieved by meeting future electricity demand growth with non-emitting wind energy rather than with energy from higher emitting fossil fuel-fired plants." Wind projects also have the potential to displace power produced by "dirtier" facilities, thereby reducing air emissions and consumption of fuels. The Project will have a long-term beneficial impact on climate and air quality, which is mitigation not only for other potential environmental impacts associated with the Project, but also mitigation for the air

quality and climate change impacts that would occur if other non-renewable sources of energy were developed in its place.

Water Impacts

The Project will generate power without any water intake or discharge that requires study, mitigation or permitting. The Project will avoid all environmental problems associated with the intake and discharge of cooling water, which is mitigation not only for other potential environmental impacts associated with the Project, but also mitigation for the water quality impacts that would occur if other non-renewable sources of energy were developed in its place.

Due to the alteration of terrain required for the construction of new roads and wind turbine facilities, the Project will have temporary impacts related to stormwater, soil erosion and sediment control. However, due to the placement of the Project along the highest points of the ridgeline, and the fact that the disturbance is very small when compared to the area of the watershed, there will be negligible increases to runoff as a result of this Project.

Stormwater runoff, erosion and sediment control have been addressed in the detailed plans and mitigation measures as submitted in the Standard Dredge & Fill Permit Application and Site Specific Application to NH DES. Civil engineering design of the Project was based on extensive on-site investigations of wetlands and other surface waters, soils, forests, and wildlife, research with environmental agencies, and best practices used in constructing similar roads and facilities.

Due to the location of wetland areas on Lempster Mountain, and the alteration of terrain required for the construction of new roads and wind turbine facilities, the Project will have impacts related to wetlands, mostly in the form crossing of intermittent streams and proximity to vernal pools and bogs. The Project was able to avoid and mitigate wetlands impacts through design of the Project facilities around wetland areas to the greatest extent possible, resulting in wetlands impacts of only approximately 4,375 square feet (one-tenth of one acre of impact) -- less than one percent of the 35-40 acres total used for the Project. A "Standard Dredge and Fill" application was submitted to NH DES to seek approval for wetland impacts, and the Project and NH DES have exchanged information and conducted a detailed site visit.

With a very minimal impact on wetlands that are not classified as major surface water bodies or major tributaries to surface water bodies, no water intake or pollution discharge, and detailed soil erosion and sediment control measures in place to mitigate stormwater discharge, the Project's impact on water quality is expected to be very minimal.

Noise

The Lempster Project has taken local concerns over potential wind turbine noise very seriously, and has worked to analyze and address potential impacts. In general, modern wind plants are not noisy and good neighbors, overcoming many issues associated with older forms of wind turbines that are still circulated as mis-information by wind power detractors. At Community Energy's 24-MW Bear Creek, PA wind project, using the same Gamesa 2.0MW

turbines as proposed for Lempster, noise has not been a complaint. Noise impacts at the Lempster Project are anticipated to be minimal based on equipment data for the Gamesa G87 wind turbines and the siting of the proposed turbines, which is on land that is rural and insulated from the community. The Project has performed a noise survey specific to the Project area, and has included a version updated as of August 2006. The noise assessment showed minimal noise impact (45-50dBA) beyond the range of 500 to 1,000 feet from the wind turbines, without taking into consideration any noise absorption by landscape features.

Hazardous Wastes

The Project will produce no hazardous waste streams as part of the power generation process, and involves only minimal disposal, storage, or transportation of wastes such as lubricant oil and hydraulic fluids. The Project conducted a "Phase I" Environmental Site Assessment, finding no environmental impact insofar as the existence of hazardous materials, underground tanks, or other hazardous wastes that would be in violation of environmental laws or pose a risk to public health or safety.

Public Health and Safety

In general, modern wind turbines are extremely safe, and have public health benefits due to their positive environmental attributes. However, issues have been raised about potential safety impacts such as ice shedding, risk from lightning strikes, tower collapse or blade throw, stray voltage, fire, and risk to air navigation.

The predominant mitigating factor in all these potential safety risks is the siting of the Project's turbines away from roads, public places, residences and property lines, as well as adequate public notice, warnings and public education efforts used to discourage unauthorized access to wind turbine areas.

Ice shedding impacts will be mitigated by technological advancements, such as remote detection of ice accumulation by equipment sensors, and by operation and maintenance practices that automatically or manually switch off turbines during extreme weather events.

Turbines will be equipped with a state-of-the-art "total lightning protection" system that conducts the lightning from both sides of the blade tip down to the root joint and from there to the nacelle, tower and earthing system. If a problem is detected, the turbine will shut down automatically, or at a minimum, be inspected to assure that damage has not occurred.

Technological improvements and mandatory safety standards during turbine design, manufacturing, and installation have largely eliminated occurrences of tower collapse or blade throw. State-of-the-art braking systems, pitch controls, sensors, and speed controls on wind turbines have greatly reduced the risk of such safety impacts. Also, design of electrical collection lines to be located underground with shielded cables and multiple ground points eliminates the potential for stray voltage.

Since the public typically does not have access to the private land on which the turbines are located, risk to public safety during a fire event would be minimal. Also fire situations at a wind turbine site or substation that are beyond the capabilities of the local service providers will be the responsibility of the project owner/operator. Fire or emergency incidents would generally not expose local emergency service providers or the general public to any public health or safety risk.

In terms of risks to air navigation, the Project applied for "determination of no hazard to air navigation" rulings from the Federal Aviation Administration for all 12 proposed wind turbine structures. The FAA performed an aeronautical study for each and determined "that the structure does not exceed obstruction standards and would not be a hazard to air navigation."

Aesthetics & Visual Impacts

No environmental, health, or safety impacts will occur related to the visual impacts of the Project, but the prospect of seeing wind turbines in a previously un-developed area has created aesthetic concerns by members of the community. To address visual impacts, the Project has worked to provide the community with actual photos of wind turbines in operation at similar projects, and photo-simulations of wind turbines. The Project also anticipates holding a "photo-simulation tour" for the public and SEC members on the same dates as the SEC's local public hearings, and hosting an opportunity for members of the community to travel to Community Energy wind farms to see wind turbines first-hand.

The Project performed an analysis of potential shadow flicker impacts, using data on proposed locations and turbine specifications, wind speed and directional data, and data on sunrise/sunset and weather factors in the Lempster area to indicate the area and extent of potential impacts. The analysis concludes that the Project will comply with accepted norms for shadow flicker, which suggest that impacts remain below 30 hours per year. All the areas that would experience 30 hours or more of shadow flicker impact are located in the vicinity of the wind turbines and on the associated ridge – remote from buildings or residences.

"Strobing" from flashing lights at night is also expected to be mitigated by the insulated siting of the turbines and through work with the Federal Aviation Administration to minimize intensity and number of lights required.

Historic & Cultural Resources

Under a memorandum of understanding with the New Hampshire Division of Historical Resources, the Project is currently conducting an archaeological survey of all areas of potential disturbance on the proposed site, to search for sites of cultural or historical significance. The Project is also conducting an historic viewshed impact survey to document Project visibility from existing and potential historic sites within a 3-mile radius of the Project.

Plant Life

In collaboration with the New Hampshire Natural Heritage Bureau, the Project is currently conducting a plant survey to document site specific findings and assess potential impacts, if any. Based on the characteristics and location of the site, it is not expected that rare or significant plant species will be found.

Wildlife

Wildlife including various species of birds, bats, mammals and aquatic life are potentially present throughout the site, and their presence has been documented and will continue to be documented by a number of wildlife surveys, including avian breeding and migratory surveys, bat surveys, and surveys of other wildlife. While no endangered or threatened species have been identified at the site, the Project has collaborated with New Hampshire Fish & Game Department as well as the U.S. Fish & Wildlife Service on wildlife surveys, and has worked to address their concerns and comments throughout the permitting and review process.

The Project's wildlife surveys are ongoing – while surveys have collected a significant amount of data and shown a low potential impact on species of concern, efforts to study wildlife use of the site will continue throughout development as well as once the Project is in operation in order to serve the public interest.

Mitigation for impacts related to permanent habitat loss and fragmentation will be accomplished through careful site design (i.e., avoiding wetlands and minimizing the permanent footprint of project components to the extent practicable) and restoration of all temporarily disturbed areas.

In general, issues related to wind power facility impacts on birds have been addressed by comprehensive analyses that the wind industry has undertaken over the last 2 decades, by technological improvements like rotation speeds, tower designs and by proper siting practices. The wind industry record is very positive in this area; bird deaths are extremely low when compared to most other man-made and natural causes. The impact of wind turbines on bat communities is a relatively new area of inquiry and research, with interest peaked by a few isolated collision incidents. The wind industry is working with the governmental and environmental community to study the reasons for these unique bat-related events, conduct proper studies related to turbine siting, and plan for future mitigation.

Impacts on local land use, economy, and employment

The land comprising the site will be leased from private landowners, and totals approximately 35-40 acres out of the more than 1,500 acres comprising the total land holdings of these individuals. The Town of Lempster currently has no zoning or land use ordinances, and other land uses in the Town include communication towers on the Lempster Mountain ridgeline, gravel and sand pits, timber operations, single-family home development, and seasonal recreational uses. During Project operation, landowners will be able to continue ongoing use of their land for timber, agriculture, and authorized recreation. In case decommissioning of the

Project becomes necessary, a plan that details the process, estimated cost, salvage value, and site restoration will be put in place with the Town prior to Project operation.

The proposed Lempster Wind Project represents a unique economic development opportunity for the Town of Lempster. The Project will provide significant property tax revenues but will not burden the local economy – with only 3 or 4 full time employees, a burden will not be placed on local schools, and with all facilities located on private property, no Town services are expected to support the Project. As a clean energy facility, the Project will not impose environmental or heath impacts that carry costs to the town, region or state.

The Project will provide landowner payments to local property owners for leases of land for the site, and will generate substantial revenues for the Town of Lempster in the form of local property taxes. In addition to local taxes, the Project will generate state tax revenues in the form of the state utility property tax.

The construction phase of the Project will provide approximately 150 jobs, with some lasting 2 to 3 months and some lasting 6 to 9 months. It is expected that 3 or 4 longer term, full-time jobs will be created relating to Project operation and maintenance. Raw materials and services for the construction of the Project will be purchased locally to the extent possible.

Owners of seasonal and year-round properties in Lempster have expressed concern about the impact of the Project on future property values, however there is no local data to support this claim. Recent studies of property values in communities with wind farms show no devaluation of property after construction of new wind farms.

The Project is not anticipated to have a negative impact on tourism in the area, and could provide tourism benefits to the Town itself. There is no evidence to indicate that the presence of wind turbines will have a negative impact on tourism. Based on information from other areas that are home to wind power projects, negative impacts on tourism have not been found – in fact projects have resulted in a significant increase in visitation from tourists interested in the projects.

Impacts during construction and mitigation plans

Wind project construction can take 6-12 months, depending on the size of the project and site-specific factors. Project construction in Lempster is anticipated to occur in a single phase, which will begin in the spring of 2007 and be completed by December 31, 2007.

Steps in the wind farm construction process will include:

- The wind farm layout and soil erosion and sediment control plan design was completed in March and April of 2006 to complete planning to avoid wetlands impacts and apply for permits with NH DES.
- Procurement and delivery of materials will follow design activities and will commence during early 2007. However, should approvals for the Project be delayed into 2007, turbine availability may become an issue for the Project.

- Transportation permits for access to public roads and access road construction will be obtained and the work will be started in the spring when appropriate (April-May, depending on local road restrictions and site conditions).
- Site clearing and access road construction, summer 2007.
- Foundation excavation and collection system excavation, foundation pouring and curing, metering point and operations & maintenance building construction, and foundation and collection system backfilling, summer to fall 2007.
- Concurrently, and throughout April to August, foundation conduit and grounding, underground and aboveground collection system and collection and interconnection metering point equipment will be installed.
- Wind turbine tower, nacelle, and rotor assembly, as well as permanent meteorological tower erection will be accomplished in the late fall of 2007.
- Mechanical completion and turbine wiring, as well as energization will be performed through November followed by commissioning of the Project by the end of 2007.

Impacts from construction will include traffic and road closures, movement of oversize or overweight loads, damage to state and local roads, dust and temporary air emissions, construction noise, and impacts to wetlands and soil erosion. These impacts will be addressed by various permits, as well as agreements and detailed construction plans put in place with the Town.

Conclusion

Lempster Wind, LLC respectfully requests expedited consideration of this under 30-MW clean energy facility that can be constructed quickly to meet growing energy demands in New Hampshire and New England while maintaining a positive impact on the environment and public safety.

LIST OF APPENDICES

1.	Iberdrola, Community Energy, Inc. and Lempster Wind LLC Financial Information
2.	Community Energy, Inc. and Iberdrola Corporate Background Information
3.	Biographies of Key Personnel
4.	Lempster Project & Surrounding Area Map
5.	Maps Identifying Project Site Tax Parcels & Acreage
6.	Map & Travel Directions to the Project Site
7.	Aerial Photograph Map & Building Locations
8.	NH DES Standard Dredge & Fill Application & NHDES Follow-up Information
9.	NH DES Site Specific Application
10	NH DES Request for 401 Water Quality Certification
11.	NREL "How Wind Turbines Work"
12.	New England Wind Maps & Lempster Wind Data Overview
13.	Gamesa G87 Turbine Specifications
14.	Project Turbine Layout Map & Coordinates
15.	ISO New England Demand Statements & NEPOOL Fuel Mix
16.	State Policies Supporting Renewable Energy – Documents
17.	System Impact Study Application Information
18.	Utility Wind Integration Group (UWIG) Wind Integration Assessment
19.	Wind Turbine Layout Alternatives – Draft, December 2004
20.	Air Quality & Climate Change Policy Documents
21.	University of Massachusetts Renewable Energy Research Laboratory, Noise Paper
22.	Lempster Wind Project: Noise Assessment, August 2006
23.	Phase I Environmental Site Assessment – Executive Summary
24.	*Risk Analysis of Ice Throw from Wind Turbines* (Seifert Paper)
25.	FAA Determination of No Hazard to Air Navigation – Sample WTG #6
26.	Actual Photos of Bear Creek (PA) Wind Farm Provided as Reference
27.	Lempster Wind Photo-Simulations, September 2005
28	Lempster Wind Project Shadow Flicker Assessment, August 2006
29.	Lempster Wind – NH DHR Memorandum of Understanding, Cultural/Historic
30.	Phase I Avian Risk Assessment, released June 2005
31.	*Pre and Post-construction Avian Survey, Monitoring, and Mitigation* (Avian and Bat Survey Paper)
32.	Lempster, NH Town & Economic Data
33.	Press Releases on Pennsylvania Economic Development
34.	Property Value Studies – REPP (2003) and Bard College (2006)
35.	Wind Projects and Tourism Documents
36.	Construction Photos, Bear Creek Wind Farm
37.	Transport Vehicle Specifications (Typical)
38.	Documentation of SEC Application Delivery to Town of Lempster
39.	AWEA APPENDIX: American Wind Energy Association Fact Sheets & Background Information • *Wind Power Today* • *Wind Energy 101* • *The Difference Wind Makes* • *Wind Energy Facts & Myths* • *The Economics of Wind Energy* • *Wind Energy & Wildlife: The Three C's* • *Wind Energy and Wildlife: Frequently Asked Questions* • *Save the Loon with Wind Energy: Comparative Impacts of Wind & Other Energy Sources on Wildlife* • *Comparative Emissions of Wind and Other Fuels* • *Facts About Wind Energy and Noise* • *Wind Turbine Lighting*

New Hampshire Site Evaluation Committee – Docket No. 2006-01
Application of Lempster Wind, LLC
August 28, 2006

Based on DRAFT Site 201 Rules for Application Procedures and RSA 162-H:7 Application for Certificate

Lempster Wind, LLC respectfully submits this Application to the New Hampshire Site Evaluation Committee (SEC) and requests that the Committee issue a "certificate of site and facility" to construct and operate the Lempster Mountain Wind Power Project, in the Town of Lempster, Sullivan County, New Hampshire.

As a form of application, the Project has utilized the SEC's draft rules as provided by the Committee and available on the SEC website (Draft Administrative Rules, Chapter Site 100-400), in particular Part Site 201, Application Procedures. The Project has also complied with all relevant provisions of RSA 162-H, Energy Facility Evaluation, Siting, Construction and Operation, including RSA 162-H:7 Application for Certificate.

Site 201.04 Application for Certificate of Site and Facility. Each applicant for a certificate of site and facility for an energy facility or a bulk power supply facility shall file an application providing the following information:

(a) Applicant Information

(1) Name of Applicant

Lempster Wind, LLC

(2) Mailing Address, Telephone, Fax and E-Mail Contacts

Lempster Wind, LLC
c/o Community Energy, Inc.
724 Boston Post Road, Suite 205
Madison, CT 06443
(203) 245-0757 phone
(203) 779-1003 fax
jeff.keeler@newwindenergy.com e-mail contact

www.lempsterwind.com project web site
www.communityenergy.biz company web site
www.iberdrola.com parent company web site

(3) Franchise Area

N/A

(4) Name and Address of Parent Company, Association or Corporation, if Applicant is a Subsidiary

Community Energy, Inc.
150 Strafford Avenue
Wayne, PA 19087
www.communityenergy.biz website

Iberdrola Renewable Energies USA, Ltd.
1660 Tysons Boulevard, Suite 814
McLean, VA 22102
www.iberdrola.com website

(5) If applicant is a corporation, the state of incorporation and address of its principal place of business, and the names and addresses of its principal directors, officers and stockholders

Lempster Wind, LLC is a Delaware Limited Liability Company, registered to do business in New Hampshire with the New Hampshire Secretary of State. Community Energy, Inc. is a Delaware Corporation. Principal place of business for Lempster Wind, LLC and Community Energy, Inc. is:

Community Energy, Inc.
150 Strafford Avenue
Wayne, PA 19087

Names of principal officers, directors & shareholders:

Officers:

R. Brent Alderfer, President & Chief Executive Officer
Eric A. Blank, Executive Vice President
Pablo Canales, Treasurer & Vice President
Ana Buitraga, Secretary

Directors:

R. Brent Alderfer
Eric A. Blank
Patrick Longmire
Pablo Canales

Principal Shareholder:

Iberdrola Renewable Energies USA, Ltd.
1660 Tysons Boulevard, Suite 814
McLean, VA 22102
(owns 100% of Community Energy, Inc.)

(6) If an association, the names and residences of the members of the association

N/A

(7) The location or locations where applicant proposes to conduct business in New Hampshire

The proposed Project and the business location of Lempster Wind, LLC will be located in the Town of Lempster, Sullivan County, New Hampshire.

(8) Whether applicant is the owner, lessee or other; and

Applicant Lempster Wind, LLC is the developer of the wind power project, and will be the owner and operator of the wind power project.

(9) A statement of assets and liabilities of the applicant and other relevant financial information;

Applicant Lempster Wind, LLC is a Delaware Limited Liability Company formed for the development of, and eventual ownership and operation of the Project. Unaudited financial statements for Lempster Wind, LLC are included as part of **Appendix 1**.

Lempster Wind, LLC is currently wholly-owned by Community Energy, Inc., a Delaware Corporation which markets renewable energy and develops, owns, and operates wind power projects. The most recent audited financial statements, as well as most recent un-audited financial statements for Community Energy, Inc. are included as part of **Appendix 1**.

As of June 1, 2006, Community Energy, Inc. is wholly-owned by Iberdrola, S.A., and all funding and financing for the Project is now provided by Iberdrola. Financial information for Iberdrola has also been included as part of **Appendix 1.**

(10) Identification of any requests for waivers from the information requirements of any state agency or department whether represented on the committee or not;

The Project has not requested waiver from any information requirements related to this Application.

(11) Applicant's financial, technical and managerial capability for construction and operation of the proposed facility.

a. Technical Capability

Lempster Wind, LLC, as a wholly-owned subsidiary of Community Energy, Inc. and affiliate of Iberdrola, S.A., possesses the experience in the wind power and renewable energy industry needed to develop, construct and operate the Lempster Project.

Community Energy, Inc. (CEI) is a developer, marketer and supplier of renewable energy. Founded in 1999 with a mission to "ignite the market and supply the demand for fuel-free, emission-free energy," CEI provides wind energy and other renewable energy products to end-use customers nationwide, and develops, constructs, owns and operates wind power projects throughout the U.S. CEI is headquartered in Wayne, Pennsylvania and has offices in New York, Connecticut, New Jersey, Illinois and Colorado. Additional background information on CEI is attached as part of **Appendix 2** and is available at www.communityenergy.biz.

As a marketer of renewable energy, CEI has more than 3 billion kilowatt-hours of wind energy sales under contract with residential, business and institutional customers nationwide. Through its ability to obtain renewable energy contracts and assist with project finance, CEI participated in the development of six wind farms totaling 250 MW of wind energy in the Mid-Atlantic, New York and Illinois, creating a new market for wind energy by bringing projects on-line where there were none before.

As a project developer, CEI developed a one of the first wind projects in Illinois at Crescent Ridge (54 MW), New Jersey's first wind farm and the first coastal wind farm in the United States in Atlantic City (7.5 MW), and the first project to erect 2 MW scale wind turbines in the

United States at Bear Creek, Pennsylvania (24 MW). CEI is responsible for more than 2,000 MW of wind energy under development in 12 states.

CEI constructed the wind power projects at Bear Creek, PA and Atlantic City, NJ. The Bear Creek Wind Power Project – utilizing 12 of the 2 MW turbines for a total of 24 MW in mountainous terrain – is very similar to the proposed Project in Lempster.

In 2006, CEI merged with Iberdrola, S.A., an international energy company based in Madrid, Spain that is engaged in the generation, transmission, distribution and marketing of electricity and natural gas. In addition to operating in Spain and other European countries, Iberdrola operates in South America and the United States. Iberdrola, with over 3,494 MW of wind power, is the world leader in wind power generation, and employs more than 500 employees worldwide in the area of renewable energy. Iberdrola's extensive experience in wind energy project construction, ownership, operation and management will bring resources to CEI's technical capabilities that are unmatched throughout the world. Additional background information on Iberdrola is attached as part of **Appendix 2** and is available at www.iberdrola.com.

CEI will own and operate the Lempster Mountain Wind Power Project through Lempster Wind LLC, which is wholly-owned by CEI. CEI currently operates the Bear Creek, PA and Atlantic City, NJ wind projects with its project partners, Babcock & Brown, a world leading investor in wind power projects. Iberdrola's experience in project operations and maintenance will be incorporated into all new CEI projects. Iberdrola will oversee the construction as well as the operation and maintenance of the Lempster Project.

b. Managerial Capability

Lempster Wind, LLC, as a wholly-owned subsidiary of CEI, is currently managed by the management team of CEI. Biographies of key CEI personnel involved in the management of the Project are attached as **Appendix 3**.

CEI's management team involved with the management of Lempster Wind, LLC and the Project includes: Brent Alderfer, co-founder of CEI and its current President and Chief Executive Officer, Eric Blank, Executive Vice President and head of CEI's project development division, Ana Buitraga, Secretary of CEI and legal counsel for Iberdrola, and Brent Beerley, Vice President, Business Development.

The development team for the Lempster project includes Jeff Keeler, the New England Director for CEI and Project Manager for the Lempster

Wind Project, and David Shadle, managing director for project development at CEI.

The managerial capabilities of the CEI team includes a wide range of knowledge and experience from team members' work as public utility regulators, environmental leaders, corporate managers, wind project developers, and attorneys. CEI's management has successfully built a small company into a national leader in renewable energy marketing and wind power development, and has successfully merged that company with Iberdrola, the world leader in wind power and renewable energy construction, ownership, operation and management.

The management resources of Iberdrola, including more than 500 personnel worldwide working on renewable energy, will provide depth and experience to the already substantial abilities of CEI in developing the Lempster Project and other projects in the U.S.

c. Financial Capability

Lempster Wind, LLC is wholly-owned by CEI, which currently provides all funding for the Project's development, and is backed by the financial resources of Iberdrola, S.A. Financial information about CEI and Iberdrola has been provided as part of section (a)(9) above

Iberdrola, S.A. will arrange for the financing of the Lempster Project, through various potential structures to provide capital for construction, equipment and operation of the Project. The Project is currently estimated to require in the range of $30 to $40 million in capital, depending on final equipment costs and construction pricing.

Investment in the Project, from Iberdrola or its other partners or investors, will be secured by long-term contracts for the purchase of power and renewable energy credits from the Project. The Project has executed a term sheet with Public Service of New Hampshire for the long term purchase of all power and renewable energy credits from the Project, and is working to finalize the contract.

Investment in the Project will also be secured by the federal "Production Tax Credit" for wind power, which provides a 1.8 cent per kilowatt-hour tax credit for 10 years following the in-service date of the Project. Typical wind power project finance structures in the U.S. include "tax investors," who have substantial tax liabilities and can be allocated the Project's tax credit benefits as part of the return on their capital investment. A "tax investor" structure has not yet been finalized for the Lempster project, but is an option available to CEI and Iberdrola.

The federal wind production tax credit is currently set to expire on December 31, 2007. While Congress has re-authorized the tax credit in the past, and the wind power industry is working to have the tax credit re-authorized beyond 2007, there are no guarantees that the tax credit will be available to Lempster Wind, LLC if the Project is not in service by December 31, 2007.

The Project, its investors and construction contractors will carry adequate insurance to provide coverage against liability or damage resulting from the wind Project.

During the construction phase of the Project, the selected contractor will be required to carry contractor's insurance including worker's compensation insurance, commercial general liability insurance, automobile liability insurance, excess liability insurance and professional liability insurance for liability arising out of any negligent act, error or omission resulting from Contractor's engineering, design and commissioning services, such coverage to remain in effect for not less than three (3) years following completion of the Project. The contractor shall also require each of its major subcontractors performing services at the Project site to carry and maintain liability insurance. Contractors also are required to carry a builder's "all-risk" insurance policy covering the risk of physical loss or damage to wind turbine equipment.

During the operation phase, the Project will carry insurance including: worker's compensation insurance, commercial general liability insurance, automobile liability insurance, excess liability insurance and professional liability insurance

(b) Site information

(1) Location and address of site of proposed facility;

The proposed site for the Lempster Mountain Wind Power Project is located on privately-owned land in the Town of Lempster, Sullivan County, in Southwestern New Hampshire. The Town of Lempster is located about 20 miles north of Keene, NH and 5 miles to the south of Newport, NH, and is surrounded by the towns of Washington, Goshen, Unity, Marlow and Acworth. The site in relation to the surrounding area is illustrated in the map contained in **Appendix 4.**

The Project site is located along the ridge line of Lempster Mountain, which runs for several miles from Northeast to Southwest parallel to Route 10. The site is bounded by the Goshen town border to the North and Lempster Mountain Road to the South. The Project site will be located on privately-owned land, with the land parcels identified on the maps contained as **Appendix 5.**

(2) Travel directions to site;

Access to the Project site is available via the current access entrance to the property of landowners Kevin & Debra Onnela, 107 Bean Mountain Road in Lempster. From Route 10 North, turn right on School Road (at the sign for the Goshen-Lempster School) and continue straight for approximately ¾ of a mile. Bear right at the split with Nichols Road. At the sign "Private road – town maintenance ends" bear to the left and continue straight up Bean Mountain Road (private). At the top of Bean Mountain Road, turn left toward the house (107 Bean Mountain Road.). A map with directions to the site is included as **Appendix 6.**

(3) Site acreage (attach property map and locate site by scale on U.S. Geological Survey or GIS map);

The Project site will include approximately 35-40 acres, including project access roads and 12 wind turbine sites. A map including property boundaries, project roads and turbine locations, and USGS features has been included as indicated in subsection (1) above, as **Appendix 5.**

(4) Location of residences, industrial buildings, and other structures and improvements in vicinity of site by description and on plan;

The location of structures in the vicinity of the site is provided in the descriptions and aerial photograph maps included as **Appendix 7.**

(5) Identification of wetlands and surface waters of the state at site;

Identification of wetlands, as delineated by a certified NH wetlands scientist, and other surface waters of the state at the site are described in detail in the application forms, design plans, and maps provided in conjunction with the NH DES Standard Dredge & Fill Permit Application, NH DES Site Specific Application, and NH DES 401 Water Quality Certification Application, discussed in section (e)(2)a., below, and attached as **Appendices 8, 9 and 10.**

(6) Identification of natural and other resources at site;

Information on natural resources at the site, including soil, trees, water bodies and other features are discussed in detail in documents including the "Phase I Environmental Site Assessment," discussed in section (e)(5) below and **Appendix 9,** NH DES Standard Dredge & Fill Permit Application, NH DES Site Specific Application, and NH DES 401 Water Quality Certification Application, discussed in section (e)(2)a., below, and attached as **Appendices 8, 9 and 10.** The presence of wildlife at the site is discussed in section (e)(7)e., below, and **Appendix 26 and 27.**

(7) Statement concerning the proposed facility's compliance with municipal land use regulations;

The Town of Lempster currently has no zoning laws, so the compliance with such regulations is not applicable. The Town of Lempster does require construction projects to obtain building permits, which the Project applied for and obtained from the Town in July 2005. The Project will comply with local building regulations and occupancy standards.

(8) Statement that the proposed facility site was selected from among those sites included in the 5-year inventory of sites identified in the applicant's long-range plans or statement showing good cause why this prerequisite should be waived; and

N/A. This prerequisite should be waived since the proposed facility is an independent, merchant generator, and not subject to long range plan filings with the NH PUC.

(9) Other application and permits to be included:

a. State agencies having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility;

1. New Hampshire Department of Environmental Services, Water Division, Wetlands Bureau (authority under state and federal law over wetlands impacts)

2. New Hampshire Department of Environmental Services, Water Division, Site Specific Program (authority under state and federal law over alteration of terrain and pollutant discharge)

3. New Hampshire Department of Environmental Services, Water Division, Water Management Bureau (authority under federal law related to U.S. Army Corps of Engineers individual wetlands permit)

4. New Hampshire Department of Transportation (authority under state law over highway safety)

b. Information satisfying the application requirements of such agencies;

Information satisfying the application requirements of such agencies has been included as part of the actual application forms as submitted to the agencies under subsection c. below.

While the New Hampshire Department of Transportation will have authority to regulate oversize/overweight transport vehicles associated

with the Project's construction, the "Special Permit to Move a Load In Excess of Legal Limit" is submitted by the trucking contractor, as discussed in section (g)(2), below, once Project permits are issued and turbine equipment is ordered. Transport information relevant to the requirements of New Hampshire Department of Transportation has been provided in section (g)(2) below.

c. Each agency's completed application forms;

Please see attached the following completed application forms:

Appendix 8: Standard Dredge & Fill Application, Submitted to NH DES Wetlands Division on March 24, 2006, including responses to follow-up information requests of June 19, 2006.

Appendix 9: Site Specific Application, Submitted to NH DES Water Division on April 14, 2006

Appendix 10: Request for 401 Water Quality Certification, Submitted to NH DES Water Management Bureau on August 11, 2006

(c) Facility Information

(1) Name of unit

Lempster Mountain Wind Power Project (the "Project")

(2) Capacity

a. Designed for operation at 24.0 MW

b. Capable of operation at 24.0 MW (Rated power factor of 1.0)

(3) Type of unit

The proposed Project will be powered by twelve (12) wind turbine generator units, each rated 2.0 MW in capacity. Wind turbine generators utilize a three-blade rotor, turned by the wind, to spin shafts and gears that connect to a standard induction generator to produce electricity. Information on wind turbine technology, as described by the National Renewable Energy Laboratory, is attached as **Appendix 11**. A specific description of the wind turbine units proposed for the Project is included in subsection e., below.

a. Fuel utilized

N/A – The Project utilizes the wind to power generator units (no fuel).

b. Method of cooling condenser discharge

N/A

c. Whether the unit is proposed to serve base, intermediate or peaking loads;

The Project is proposed to serve base loads. While wind power plants do not operate continuously, because they have zero fuel cost they always run whenever available.

d. Unit efficiency

The Project has collected actual wind speed/direction data at the Project site for over 3 years, from two 50-meter test towers instrumented with measurement equipment, finding annual average wind speeds of between 7 and 8 meters/second (15 and 18 mph). Wind speed/direction data has also been correlated with long-term state and regional data, including the most updated wind mapping from the New England Wind Maps and U.S. Department of Energy, and historical and current data collected at a 40-meter meteorological tower at nearby Mount Sunapee. Wind mapping information and average wind speed data for the Lempster site are included as **Appendix 12.**

Based on wind speed/direction data and performance data on the Gamesa G87 wind turbines, the projected annual net "capacity factor" for the Project is in the 37% to 40% range.

(*Note:* "Capacity Factor" refers to the plant's actual production over a given period of time with the amount of power the plant would have produced if it had run at full capacity for the same amount of time. Modern utility-scale wind turbines typically operate 65% to 90% of the time, but they often run at less than full capacity. With a very large rotor and a very small generator, a wind turbine would run at full capacity whenever the wind blew and would have a 60-80% capacity factor—but it would produce very little electricity. The most electricity per dollar of investment is gained by using a larger generator and accepting the fact that the capacity factor will be lower as a result. Wind turbines are fundamentally different from fueled power plants in this respect.)

Based on a projected capacity factor in the 37% to 40% range, energy production from the Project is anticipated in the range of 70,000,000 to 80,000,000 kWh per year. Based on an average household electrical

usage of 550 kWh per month, the Project could provide power equivalent to that used by 10,000 to 12,000 homes.

With no fuel utilized in the power generation process, the Project will be extremely energy efficient.

e. Description of Specific Technology

The specific wind turbine generator technology proposed for use in the Project is Gamesa G87 turbine; each individual unit having a 2.0 MW rated capacity. Detailed technical information and specifications for the Gamesa G87 turbine is attached as **Appendix 13**.

The major components of each Gamesa G87 wind turbine include:

- Rotor measuring 87m (285 ft) in diameter, made up of three individual blades of 42.5m (139 ft) in length each.
- A "nacelle" that attaches to the rotor and contains the gearbox, low- and high-speed shafts, generator, and other controls.
- A tower made of tubular structural steel in four sections, with a height of 78m (255.9 ft)
- The total weight of the turbine unit in this configuration is 303 tons, including the rotor and hub (38 tons), nacelle (65 tons) and tower (200 tons).

Features of the Gamesa G87 wind turbine also include:

- Doubly-fed generator of 2.0 MW rated capacity, generating at 690 volts a/c
- Remote control system that ensures real-time monitoring of the unit's operation and communication with weather measurement equipment and electrical controls at the metering point and utility substations from a central and/or remote site.
- Predictive maintenance system for the early detection of wear and faults in the wind turbine's main components, integrated with the control system.
- A transformer in the nacelle to convert 690 volt power into 34.5 kV power for collection and interconnection.
- A braking system, including aerodynamic braking capability by feathering blades, and a mechanical emergency disc brake hydraulically activated and mounted on the high-speed shaft.
- Lightning protection, meeting international electrical standards for "total lightning protection," that conducts lightning from both sides of the blade tip down to the nacelle, tower, and earthing system.
- A "yaw drive," designed to keep rotor into the wind, and blade pitch controls, for optimizing energy production as well as safety features.

- Cut in speed of 4 m/s (8-9 mph) and a cut out speed of 25 m/s (50-55 mph)
- Rotational speed at the rotor of 9 to 19 rpm (depending on wind)

f. Project design and turbine layout

The Project has been designed to include 12 wind turbine generator units, for a total rated capacity of 24 MW. The size of the Project is consistent with system requirements of the interconnecting utility, Public Service of New Hampshire, which identified 25 MW as the maximum project size given system considerations in the area. The number of wind turbine units utilized in the Project design is based on siting and access considerations, landowner agreements, meteorology and energy production estimates for various locations throughout the site, and the Gamesa specifications. A number of alternatives were considered for turbine locations within the current site, as well as on properties not contained in the final proposed site. The proposed wind turbine locations for the Project are included as **Appendix 14.**

g. Project interconnection

Power will be produced by the individual wind generator units at 690 volts a/c, and converted by transformers in the nacelle of each unit to 34.5 kV d/c. Power will be collected and transported on-site using a system of underground power cables following project roads, and running down Bean Mountain Road to the Project metering point at the intersection of Bean Mountain Road and Nichols Road.

At the Project metering point, the power will be taken from the Project's underground facilities and interconnected with the 34.5 kV overhead distribution lines of PSNH at the street. The metering point will contain metering equipment, switch gear, and other equipment needed to transfer the power to the PSNH distribution system.

As the power from the Project is transported at 34.5 kV on site and interconnected to 34.5 kV distribution lines owned by PSNH, no transformer equipment will be needed to convert power for transportation off site.

Information on the proposed interconnection to PSNH is contained in the Project's application to grid operator ISO-New England for a system impact study, as discussed in section (c)(5) h., below and included as **Appendix 16.** Upon approval of the System Impact Study by ISO-New England, an executive summary of the results of the study will be provided to the Committee as an addendum to this application.

(4) Construction schedule

a. Start

Proposed construction start date is May 2007. Some site clearing work could be performed at an earlier date in the winter of 2006-2007.

b. Completion.

Proposed construction completion date is by November 1, 2006, to achieve an in-service date before December 31, 2007.

(5) Need for proposed generating unit to meet the present and future need for electricity

a. Orderly development of the region

1. Meeting the need for electricity

The Project addresses the growing demand for electricity within New Hampshire, and the New England electric power grid to which New Hampshire and the other New England states are all connected.

The regional system operator, ISO-New England, has encouraged new investment in power generation, citing the fact that demand for electricity continues to grow across New England, while construction of new generating resources has stagnated. The ISO has also stated that a more diverse portfolio of electricity generating resources will help the region achieve a more secure energy future. A statement from ISO-New England on regional electric demand is included in **Appendix 15**.

The Project adds to the diversity of the power generation portfolio in New England and New Hampshire, which currently utilizes renewable energy sources including wind for less than 1% of its power generation (see **Appendix 15**, NEPOOL GIS System Mix by Fuel). At 24 MW, the Project is the right size for the demonstrating the viability of wind power technology in New Hampshire – with a relatively small size and project footprint, but the ability to make a significant contribution to power needs.

2. Consistency with the State energy policy

The Project is consistent with New Hampshire's state energy policy contained in RSA 378:37. The Project will contribute to meeting the energy needs of the state and will help to diversify the state's portfolio of energy resources. It will not consume fuel, create air or water emissions or otherwise burden the state's physical environment or endanger the health or safety of the public. As indicated below, the Project is also consistent with the energy policy as articulated in a number of documents and statements made by officials at all levels of government.

Note: All policy documents cited in the following section(s) have also been included in **Appendix 16**.

a) Renewable Energy Policies

New Hampshire has promoted the use of renewable energy and clean power through a number of policies and initiatives.

The New Hampshire DES has supported the development of "Renewable Portfolio Standards" (RPS) to provide incentives for the development of renewable energy generation projects in the state. https://www.des.state.nh.us/testimony/archive/2006/HB1146.3706.pdf

In the 2006 legislative session, NH DES joined a number of environmental groups in promoting RPS legislation, including the Audubon Society of New Hampshire, Clean Air-Cool Planet, Clean Water Action, Conservation Law Foundation, New Hampshire Sustainable Energy Association, Sierra Club, Society for the Protection of New Hampshire Forests, Union of Concerned Scientists. Representatives of the New Hampshire governor's office, NH DES, NH Office of Energy & Planning, and NH PUC were involved in the drafting of RPS legislation. Legislation passed the House but was not passed by the Senate in 2006, and is expected to return for consideration in the 2007 session.

During consideration of legislation on creation of a study committee to examine wind power development in New Hampshire, NH DES issued statements in support of the

construction of wind power facilities in New Hampshire "because of the significant environmental benefits that would be achieved by meeting future electricity demand growth with non-emitting wind energy rather than with energy from higher emitting fossil fuel-fired plants." https://www.des.state.nh.us/testimony/archive/2006/HB1568.pdf

The New Hampshire Office of Energy & Planning has promoted policies to support the development of renewable energy sources. OEP provides information resources on the benefits of renewable energy Information, renewable energy incentives and programs and has included statements in support of renewable portfolio standards and increasing New Hampshire's fuel diversity in the 2002 New Hampshire Energy Plan. http://www.state.nh.us/oep/programs/energy/renewableenergy.htm http://www.state.nh.us/oep/programs/energy/RenewableEnergyIncentives.htm http://www.state.nh.us/oep/programs/energy/StateEnergyPlan.htm

New Hampshire has also provided incentives for the development of renewable energy sources, by providing the opportunity for renewable energy sources such as wind, hydropower and biomass to voluntarily enter into "payment in lieu of taxes" agreements with towns that provide important stability and certainty of tax valuation revenues for towns and renewable projects. The legislature passed and the governor signed HB 1758 in 2006, with the support of renewable energy groups, the New Hampshire Municipal Association, and several towns. http://www.gencourt.state.nh.us/legislation/2006/HB1758.html

b) Air Quality and Clean Air Policies

New Hampshire is a leader in the New England region and in the U.S. on policies to promote clean air and improved air quality standards. The use of renewable energy to meet electricity demand without producing emissions is a critical component of New Hampshire's clean air strategies and goals, and the development of the Lempster Project is consistent with those policies. As

discussed in subsection a), above, NH DES has played an active role in promoting renewable energy as a key element to addressing air quality issues.

In 2002, New Hampshire issued the "Clean Power Action Plan" and subsequently the Clean Power Act was passed by the legislature and signed into law. As referenced in the Plan, the power generation sector is responsible for 81% of all sulfur dioxide emissions (which cause acid rain), 20% of nitrogen oxide emissions (which cause ozone, smog and asthma problems), 40% of mercury emissions (which pollute lakes and streams, harm wildlife and endanger public health), and 30% of carbon dioxide emissions (which lead to global climate change and long term environmental and health problems). By adding power generation with no emissions, the Project is consistent with the goals of offsetting or reducing growth in these air pollutants.
http://www.des.state.nh.us/ard/pdf/NHCPS.pdf
http://www.des.state.nh.us/ard/CleanPowerAct.htm

c) Climate Change Policy

New Hampshire is also a leader in climate change policy, with a number of initiatives and policies in place to reduce greenhouse gases that cause global climate change. New Hampshire's participation in such groups as the Regional Greenhouse Gas Initiative and the Conference of New England Governors and Eastern Canadian Premiers, and its initiation of programs such as the Climate Challenge and Greenhouse Gas Inventory all include support for renewable energy as a solution to climate change.
http://www.des.state.nh.us/factsheets/ard/ard-23.htm
http://www.des.state.nh.us/ard/climatechange/challenge.pdf
http://www.des.state.nh.us/ard/climatechange/rggi.htm

As discussed in section (e)(1) below, the Project will not emit greenhouse gases, and will have a positive impact on global climate change, consistent with the State's climate change policies.

d) Energy Facility Siting Policies

The Project is also consistent with the Declaration of Purpose contained in the NH Site Evaluation Committee

statute (RSA 162-H:1). "The legislature, accordingly, finds that the public interest requires that it is essential to maintain a balance between the environment and the need for new power sources; that electric power supplies must be constructed on a timely basis; that in order to avoid undue delay in construction of needed facilities and to provide full and timely consideration of environmental consequences, all entities planning to construct facilities in the state should be required to provide full and complete disclosure to the public of such plans; ... that the siting of electric generating plants and high voltage transmission lines should be treated as a significant aspect of land-use planning in which all environmental, economic and technical issues should be resolved in an integrated fashion, so as to assure the state an adequate and reliable supply of electric power in conformance with sound environmental utilization.

The Project is consistent with the State's goals for energy facility siting. With significant environmental benefits and low impacts that are well-planned and mitigated, the Project balances the environment with need for new power sources. With a single phase construction schedule that can be completed in less than one year, the Project can be constructed on a timely basis and avoid undue delay in bringing a new clean energy source on-line. A single phase of construction will also minimize the impacts of temporary construction issues like traffic, noise, and dust. While lower than the SEC's 30 MW size threshold, the Project has provided a full disclosure of plans, studies, data and analysis for consideration by the SEC in an integrated fashion.

3. Consistency with Economic Development and Regional Planning Goals

The Project is consistent with the goals for economic development in Sullivan County, as well as the energy goals articulated by the Upper Valley Lake Sunapee Regional Planning Commission.

a) Economic Development

The Project will provide economic development to Lempster and Sullivan County in the form of a clean, environmentally friendly source of energy production that provides economic benefits

without placing a burden on local or regional economies. Initial referrals to landowners in Lempster came from Sullivan County Economic Development Council authorities.

b) Regional Planning & Energy Goals

The Project is consistent with the energy goals of the Upper Valley Lake Sunapee Regional Planning Commission. As stated in its Regional Plan, the general goal to "maintain or improve air quality in our region" is met by several specific energy goals, including: achieving a sustainable energy supply; encouraging the use of local, rather than imported, fuels; promoting least-cost planning, or life cycle costing, which considers all costs of energy production and use, including environmental and social costs; evaluating all energy alternatives and choosing those with the least adverse environmental, aesthetic, economic and social impacts; and encouraging and promoting wise management of locally-developed renewable energy sources which create local jobs, stimulate investment in the region and have minimal environmental impact.
UVLSRPC Regional Plan "Energy Goals, Policies & Recommendations" http://www.uvlsrpc.org/files/pdf/Ch1.pdf

b. – g. Aesthetics, Historic Sites, Air Quality, Water Quality, the Natural Environment, Public Health and Safety

Please see below, section "(e) Potential health and environmental effects and mitigation plans."

h. System stability and reliability factors

The Project, Public Service of New Hampshire/Northeast Utilities, and ISO New England entered into a System Impact Study Agreement in June 2005. PSNH and ISO-NE performed the system impact study over the past 12 months and a final draft of the study has determined that the addition of the Project has no significant system impact to the stability, reliability, and operating characteristics of the New England bulk power transmission system. Information contained in the application for System Impact Study is attached as **Appendix 17**, and upon approval of the System Impact Study by ISO-New England, an executive summary of the results of the study will be provided to the Committee as an addendum to this application.

In general, wind power has been found to maintain the reliability and integrity of the electric system without impacting system operating costs.

According to a comprehensive analysis released May 22, 2006 by the Utility Wind Integration Group (UWIG), Edison Electric Institute, American Public Power Association, and National Rural Electric Cooperative Association -- groups representing nearly 100 percent of the utilities in the United States – there are not "any fundamental technical barriers at the present time to wind penetrations of up to 20 percent of system peak demand, which is far beyond where we are today." The UWIG study focuses on wind's impacts on the operating costs of the non-wind portion of the power system and on wind's impacts on the system's electrical integrity and concludes that "the consensus view is that wind power impacts can be managed with proper design and operation of the system." An executive summary of the UWIG study is attached as **Appendix 18.**

i. Economic factors

The Project will be a new, clean, environmentally low-impact source of energy that will be a significant contributor to the state and local economy without burdening the town or school budgets or adding societal costs related to the environment or public health. A more detailed discussion of economic impacts is contained in section (f)(2), below.

(6) Available alternatives

In its initial search of potential wind power project sites in New Hampshire, Community Energy did not find any alternatives in the area that contained key characteristics needed for a wind project that were found in Lempster – significant wind resources as identified by state and regional wind data; landowners with suitable property (high elevation, insulated/rural acreage) willing to lease lands for a project; and ability to interconnect cost-effectively to the distribution or transmission system.

Community Energy began in 2003 investigating potential wind turbine locations within the general area of the Lempster Mountain ridgeline, including locations along South Road in Lempster to Silver Mountain, and in additional areas on Bean Mountain. Some of the potential alternatives are shown on earlier versions of maps used for land acquisition and initial turbine layout, a December 2004 version of which is included as **Appendix 19.** A number of wind turbine locations were initially identified and investigated with landowners and lease option agreements were signed, but due to interconnection limitations (limiting the project size to 25MW in the area), siting best practices based on industry and other model zoning standards (proximity to residences, public roads, communication towers), and project design considerations, some of the alternatives for turbine locations in Lempster were not pursued for the final site.

The current wind turbine sites chosen by the Project represent the best locations out of all the alternatives in terms of siting, keeping the site as insulated as possible from residences and public roads while maintaining project interconnection and design considerations.

(d) Transmission Line Information

N/A – the Project does not entail construction of new transmission lines – it will be interconnected at the distribution level, as described in Section (c) 3. e. above.

(e) Potential health and environmental effects and mitigation plans

(1) Air and Climate Change

Background & Impacts: The Project will have no adverse impact on air quality and climate change and will provide an environmental benefit to the state and region in terms of air quality or climate change. The Project adds a new electric generating source without adding air emissions or greenhouse gases, which the NH DES has recognized as having "significant environmental benefits that would be achieved by meeting future electricity demand growth with non-emitting wind energy rather than with energy from higher emitting fossil fuel-fired plants." (**Appendix 16**, NHDES HB 1568 Testimony)

Note: documents associated with internet links contained in this subsection are included as **Appendix 20**.

Wind projects also have the potential to displace power produced by "dirtier" facilities, thereby reducing air emissions and consumption of fuels. The Project's operation has the potential to reduce current emissions from existing power plants in the regional power grid.

Wind farms emit no carbon dioxide. A 2-MW turbine displaces nearly 3,600 tons of carbon dioxide each year (equivalent to planting nearly 2 square miles of forest), based on the current average U.S. utility fuel mix. Fossil fuel power plants account for about 34% of the carbon dioxide emitted by the United States, itself the largest emitter of CO2 worldwide. Carbon dioxide is the leading global warming pollutant, threatening habitats for wildlife and air quality for humans worldwide. A scientific study published in *Nature* (January 2004) estimated that global warming may lead to the extinction of one million species by 2050 (BBC news report at http://news.bbc.co.uk/1/hi/sci/tech/3375447.stm).

New Hampshire DES has stated that the effects of climate change on New Hampshire could include serious impacts such as:

- Impacts on the New Hampshire ski industry at a loss of $42 million to $84 million in direct and indirect spending in the state

- Impacts on New Hampshire forests including the ecological collapse for several tree species, including beech, maple, and hemlock (an important species for deer during the winter); widespread tree mortality, including spruce and others; decreases in vegetation density of 25 - 75 percent; extensive wildfires; large increases in pest and pathogen outbreaks; and a lag in the establishment of new forests for several decades; northern movement of other local tree species from 100 - 300 miles; potential large-scale die-offs of sugar maple, on average a $3 - $3.5 million dollar industry.
- Impacts on New Hampshire Coasts including a sea level rise of 12 - 20 inches, causing large scale alteration of Great Bay, reduction of coastal estuaries and flooding of rivers, as well as potentially large revenue losses from coastal tourism, a $484 million revenue generator for New Hampshire.
- Impacts on New Hampshire foliage, including dulling and browning of foliage season due to tree die-offs, species substitution, and "climate stressed" unhealthy trees; New Hampshire foliage travelers on average spend a total of $292 million annually.
- Impacts on New Hampshire fishing including loss of cold water fishing, 50 - 100 percent eradication of rainbow, brook, and brown trout fishing, a $150 million New Hampshire industry.
- See: **Appendix 16,** *Climate Challenge* and NHDES ARD Fact Sheet

- Wind farms emit no hazardous or toxic air pollutants. To generate the same amount of electricity as a single 2-MW turbine using the average U.S. utility fuel mix results in the emissions of 18 tons of sulfur dioxide and 8 tons of nitrogen oxide each year. As referenced above in section (c)(5)a.2.b), the power generation sector is responsible for 81% of all sulfur dioxide emissions (which cause acid rain), 20% of nitrogen oxide emissions (which cause ozone, smog and asthma problems), 40% of mercury emissions (which pollute lakes and streams, harm wildlife and endanger public health), and 30% of carbon dioxide emissions (which lead to global climate change and long term environmental and health problems). (See **Appendix 16,** Clean Power Strategy).

In comparison to fossil fuel consumption and combustion, to generate the same amount of electricity as a single 2-MW wind turbine for 20 years would require burning 58,000 tons of coal (a line of 10-ton trucks 22 miles long) or 184,000 barrels of oil – for a 24 MW project, that equates to 700,000 tons of coal or 2.2 million barrels of oil. To generate the same amount of electricity as today's U.S. wind turbine fleet (over 6,000 MW) would require burning more than 9 million tons of coal (a train of coal cars 750 miles long) or 28 million barrels of oil each year. (information from American Wind Energy Association and Natural Resources Defense Council study 2002, See **Appendix 39 AWEA Appendix,** *Wind Energy & Wildlife: The Three C's* and **Appendix 20** http://www.nrdc.org/air/pollution/benchmarking/)

Study & Mitigation: The Project has no air or greenhouse gas emissions that require study or mitigation. The Project will have a long-term beneficial impact on climate and air quality, which is mitigation not only for other potential environmental impacts associated with the Project, but also mitigation for the air quality and climate change impacts that would occur if other non-renewable sources of energy were developed in its place.

(2) Water

a. Water Intake or Pollution Discharge

Background & Impacts: The Project does not involve any water intake or discharge.

Other forms of conventional power generation use water for cooling, up to a billion gallons each day. As this water is discharged back to water bodies, thermal (heat) pollution occurs, which can create environmental problems in the winter, creating ice-free pockets which can attract and then trap many species when the flow slows or stops, or in summer, when the hot water can add to eutrophication (oxygen-deficiency) in the river, choking fish and aquatic life. Heavy metals and chlorine in cooling water discharges are also having a negative effect on water bodies and aquatic life.

Study & Mitigation:

The Project has no water intake or discharge requiring study, mitigation or permitting. The Project will avoid all environmental problems associated with the intake and discharge of cooling water, which is mitigation not only for other potential environmental impacts associated with the Project, but also mitigation for the water quality impacts that would occur if other non-renewable sources of energy were developed in its place.

b. Stormwater, Soil Erosion and Sediment Control

Background & Impacts: Due to the alteration of terrain required for the construction of new roads and wind turbine facilities, the Project will have impacts related to stormwater, soil erosion and sediment control. Total alteration of terrain by the Project will entail the creation of approximately 5 linear miles of gravel access roads and conduit for underground electrical collection system, and disturbance of 35-40 acres total for turbine locations. The site is currently a wooded mountainside, with predominantly rocky soil groups as based on Natural Resources Conservation Service (US Dept. of Agriculture) soils maps and on-site investigations.

Peak runoff from the site will increase as a result of the Project due to the increased impervious area created by gravel access roads and wind turbine sites. The existing mountainside may already have increased runoff characteristics due to the steep slopes and rocky soils. However, due to the placement of the Project along the highest points of the ridgeline, and the fact that the disturbance is very small when compared to the area of the watershed, there will be negligible increases to runoff as a result of this Project.

Erosion and sediment control will be particularly important during construction activities at the Project site due to the presence of wetlands, as delineated by a NH certified wetlands scientist (discussed in wetlands subsection c., below).

Study & Mitigation: Stormwater runoff, erosion and sediment control have been addressed in the detailed plans and mitigation measures as submitted in the Standard Dredge & Fill Permit Application and Site Specific Application to NH DES. (Attached as **Appendices 8 and 9.**) The Site Specific Application contains a detailed set of Project plans, as well as a Stormwater Pollution Prevention Plan that details civil engineering measures that will mitigate soil erosion and sediment control from stormwater related to the Project roads and turbine locations. Civil engineering design of the Project was based on extensive on-site investigations of wetlands and other surface waters, soils, forests, and wildlife, research with environmental agencies, and best practices used in constructing similar roads and facilities.

c. Wetlands Impacts

Background & Impacts: Due to the location of wetland areas on Lempster Mountain, and the alteration of terrain required for the construction of new roads and wind turbine facilities, the Project will have impacts related to wetlands. Wetlands in the Project area have been delineated by a NH Certified Wetlands Scientist. The wetlands impacted by the Project as currently designed total 4,375 square feet, and include: six intermittent headwater streams scattered along ridge sides, two bogs associated with streams located on saddles between mountain peaks, and three cattle watering holes located on the sides of existing roads. These types of wetlands are not rare, and are considered common in this part of the state. There is one direct impact on a stream crossing, which is on Cold Brook, where trenching for underground cable conduit will cause a temporary impact. There are also nearby wetlands, mostly situated in the saddles between mountain ridge peaks, and surface waters including Beaver Brook, Cold Brook, and Richardson Brook.

In its letter to the Project of June 19, 2006, NH DES indicated that while the square footage of wetlands is small enough for a "minor impact" permit, that the application would be considered a "major impact" project due to its significant attention in the community and state.

Study & Mitigation: As part of the submission of its Standard Dredge and Fill Permit Application (Attached as **Appendix 8**) the Project has submitted road and turbine location plans to NH DES along with detailed information about wetlands in the vicinity of the Project site and the impacted wetland areas. The Project was designed using aerial photography, detailed digital topographic mapping, extensive on-site survey and civil engineering work, and wetlands delineation by a certified NH wetlands scientist.

The Project was able to avoid and mitigate wetlands impacts through design of the Project facilities around wetland areas to the greatest extent possible, resulting in wetlands impacts of only approximately 4,375 square feet (one-tenth of one acre of impact) -- less than one percent of the 35-40 acres total used for the Project.

The wetlands application also discusses Project impacts on plants, fish and wildlife, commerce and recreation, public health, safety and well being, and cultural and historic resources (issues addressed in various separately in sections of this application). Abutters to the Project were notified of the wetlands application, and the Lempster Conservation Commission was provided a copy of the application for review.

The Project received an information request from the NH DES on June 19, 2006 asking for additional information and has provided the information requested related to the NH DES and related agencies. The DES information request and follow up information sent is included as part of **Appendix 8**.

The Project conducted a site visit on July 27, 2006 that was attended by representatives of NH DES Wetlands Bureau and Water Division, NH Fish & Game, US Fish & Wildlife Service and the Lempster Conservation Commission. Participants walked along proposed road alignments and examined proposed wetlands impacts in detail.

Due to concerns raised by the U.S. Fish & Wildlife Service about the potential "secondary impacts" of the Project on migratory birds and endangered due to the fill of wetlands, the U.S. Army Corps of Engineers has requested an "individual" wetlands permit review of the Project, requiring an additional federal review of wetlands and related environmental issues. The Project is consulting with the Army Corps before filing an individual permit application.

d. Surface Water Quality

Background & Impacts: Under the NH DES wetlands permitting process, a certification of water quality is not required, but since the U.S. Army Corps of Engineers has requested an "individual" wetlands permit review, the federal process requires the Project to obtain a "401 Water Quality Certification" through the NH DES Water Division, Watershed Management Bureau.

Impacts on surface water quality from the Project include potential stormwater runoff and erosion from Project roads and facilities, as discussed in subsection b., above. Surface waters potentially impacted by the Project include the wetlands (intermittent streams and pools) directly impacted by the Project, as discussed in subsection c., above.

Because of the intermittent nature and minimal water levels in the small headwater streams that are present, uses of these water bodies are likely to be limited to aquatic life, wildlife, and limited recreational purposes. Aquatic life and wildlife uses may be impacted in the immediate area of the culvert placement at each stream due to the altered nature of the new environment (within the culvert). A culvert is a modified environment that may limit stream usage by some aquatic and wildlife species; however a culvert may create habitat for other species. Recreational purposes will not be affected because the property is privately owned and because of their small, intermittent nature, the stream channels do not offer much recreational opportunity. The proposed activities should have no effect on the opportunity for these streams to be used, after treatment, as water supplies.

Study & Mitigation: The Project has submitted the required 401 Water Quality Certification application to NH DES (attached as **Appendix 10)** as part of this Site Evaluation Committee application. With only 4,375 square feet of wetlands (one-tenth of an acre) impact on wetlands that are not classified as major surface water bodies or major tributaries to surface water bodies, no water intake or pollution discharge, and detailed soil erosion and sediment control measures in place to mitigate stormwater discharge, the Project's impact on water quality is expected to be very minimal.

The proposed construction activities were designed based on best management practices used in constructing similar roads, and activities such as the placement or replacement of culverts may temporarily affect but will not permanently affect water quality. During construction, sedimentation and erosion control measures will be incorporated to prevent water quality impacts. No other discharges are anticipated that would impact/alter water quality standards.

(3) Noise

Background & Impacts: Noise is among the most frequently raised issues of local concern in connection with the operation of wind power facilities. In general, impacts related to noise produced by the operation of wind turbines have been addressed by the industry through significant technological and design advancements over the past 20 years, as well as proper siting practices. Additional information on wind turbines and noise from the American Wind Energy Association has been attached as **Appendix 39 AWEA Appendix** *Facts About Wind Energy and Noise.*

The Lempster Project has taken local concerns over wind turbine noise very seriously, and has worked to analyze and address potential impacts.

In the construction phase of the Project, noise from construction activities will occur. This can include truck traffic, use of heavy equipment for site preparation and construction, and blasting for foundations or access roads. Construction impacts and mitigation are discussed in more detail in section (g), below.

There are several types of noise that have been raised as issues with the operation of wind power projects, including Lempster. Aerodynamic broadband sound, which originates from the flow of air around the blades, is typically the largest component of wind turbine acoustic emissions. Mechanical noise, which originates from the relative motion of mechanical components like the gearbox and generator, is less of a concern with modern wind turbines. As indicated in a 2006 paper by the University of Massachusetts Renewable Energy Research Laboratory (UMass RERL), summary attached as **Appendix 21**, "the sound produced by wind turbines has diminished as the technology has improved. As blade airfoils have become more efficient, more of the wind energy is converted into rotational energy, and less into acoustic energy. Vibration damping and improved mechanical design have also significantly reduced noise from mechanical sources."

Another noise concern frequently raised is that of "infrasound" or low-frequency vibration from wind turbines. This concern is mainly associated with older machines with "downwind" (2-blade) rotors. Modern wind turbines with "upwind" (3-blade) rotors emit broadband sound emissions, which include low frequency sound and some infrasound. However, the "swish-swish" sound from wind turbine blade rotation is aerodynamic noise that does not contain low frequencies. As the UMass RERL paper indicates, "the magnitudes of these are below the perception limits of humans" and that "there is no evidence that infrasound below human perception level produces physical or psychological effects." **(Appendix 21,** p. 13, p. 10)

In general, modern wind plants are not noisy and are good neighbors. At Community Energy's 24-MW Bear Creek, PA wind project, which uses the same Gamesa 2.0MW turbines as proposed for Lempster, noise has not been a complaint. Noise impacts at the Lempster Project are anticipated to be minimal based on equipment data for the Gamesa G87 wind turbines and the siting of the proposed turbines, which is on land that is rural and insulated from the community.

Study & Mitigation: The Project commissioned Superna Energy LLC, a qualified consultant in wind power engineering, to perform a noise assessment based on the Lempster site, noise data for the Gamesa G87 wind turbine, and international noise standards and models. The initial assessment was performed in August 2005, and updated in July 2006. The noise assessment showed minimal noise impact (45-50dBA) beyond the range of 500 to 1,000 feet from the wind turbines, without taking into consideration any noise absorption by landscape features.

The 2006 updated assessment included notable locations in Lempster, including the Goshen-Lempster School. Lempster Town Hall, Pillsbury State Park, Long Pond, and residences of individuals who have raised specific concerns about noise. The Lempster noise assessment has been attached as **Appendix 21.**

Beyond the technological advancements in the state-of-the-art Gamesa wind turbines that minimize aerodynamic and mechanical noise, the Project will mitigate potential noise concerns by its siting and setbacks. The Lempster Project site is designed to be insulated from people and public places, and the wind turbines will be situated more than 1,000 feet from permanent residences adjacent to the site.

Sites that are rural and insulated in nature, and are away from high-density residential areas or public places, greatly reduce the potential for noise impacts on the community. According to the UMass RERL, "operating sound produced from wind turbines is considerably different in level and nature than most large scale power plants, which can be classified as industrial sources. Wind turbines are often sited in rural or remote areas that have a corresponding ambient sound character. Furthermore, while noise may be a concern to the public living near wind turbines, much of the sound emitted from the turbines is masked by ambient or the background sounds of the wind itself." (**Appendix 21,** p. 3)

(4) Odors

Background & Impacts: N/A. The wind turbine generators produce no air emissions, and utilize no processes that would produce odors as an environmental impact.

(5) Hazardous and other wastes

Background & Impacts: The Project will produce no hazardous waste streams as part of the power generation process, nor will it involve any disposal, storage, or transportation of hazardous wastes as part of the power generation process.

The Project will utilize small amounts of lubricant oil and other chemical materials for the routine operation of the generators. These materials are stored on site under standard operation and maintenance procedures, and handling and disposal will be conducted in compliance with New Hampshire and federal laws for solid or hazardous wastes.

Study and Mitigation: The Project has studied the environmental conditions at the existing site area by conducting a "Phase I" Environmental Site Assessment in 2005 and 2006. The assessment found no environmental impact insofar as the existence of hazardous materials, underground tanks, or other hazardous wastes that would be in violation of environmental laws or pose a risk to public health or safety. A copy of the executive summary of the Phase I Environmental Site Assessment is attached as **Appendix 23** and full copies of the comprehensive study are available upon request.

(6) Public health and safety

a. Ice Shedding

Background & Impacts: In northern climates such as New Hampshire, concerns have been raised about the risk of potential ice shedding from wind turbines. "Ice throw" can occur when fragments from the rotor are thrown off from the operating turbine due to aerodynamic and centrifugal forces, or "ice fall" can occur when ice fragments fall down from the turbine when it is shut down or idling. Ice throw or fall depends heavily upon weather and wind conditions, and on the operation and control system of wind turbines. As the ice begins to thaw, it will typically drop straight to the ground. Any ice that remains attached to the blades as they begin to rotate could be thrown some distance from the tower. However, such a throw will usually result in the ice breaking into small pieces, and falling within 300 feet of the tower base.

Questions and concerns have been raised about potential ice throw from the wind turbines proposed for the Lempster Project. Based upon the research and scientific data, the Project's siting characteristics, and the proposed control of public access to the turbine sites, it is not anticipated that the Project will result in any measurable risks to the health or safety of the general public due to ice shedding.

Study & Mitigation: There are several organizations studying wind turbine icing, including the International Energy Agency Wind Research Annex XIX on wind energy in cold climates (http://arcticwind.vtt.fi/) and the Finnish Meteorological Institute (http://www.fmi.fi/en/). The most widely referenced scientific study on icing is "Risk Analysis of Ice Throw from Wind Turbines" (2003) by Henry Seifert et. al. from DeutschesWindenergie-InstitutGmbH in Cuxhaven, Germany (attached as **Appendix 24.**)

The Seifert study on wind turbine icing have identified a safety threshold of 200 to 250 meters (660 to 820 feet), beyond which there is no significant risk from falling ice fragments (risk equivalent to being hit by lighting). The Seifert study also calculated wind turbine risks based on a sample turbine location, concluding that if 15,000 people walked by the study turbine each year there would be one accident every 300 years.

It is widely recognized that risks of ice throw or ice fall can be mitigated by siting turbines a safe distance from structures, roads, or public areas (660 to 820 feet). The Project has worked to ensure that turbines are sited in such insulated and remote areas. While the Project is on privately-owned land with limited public access, to ensure the safety of authorized or unauthorized users of the site the Project will post warning signs at visible locations within appropriate distances from turbines. The Project will also work to ensure public awareness of icing and safety issues through dissemination and positing of information in the community.

Technological advancements as well as operational practices can also mitigate ice throw. When ice forms on blades, it produces an imbalance on the blades which is instantly detected by the turbine's continuous monitoring system. If the turbine does not perform according to normal operational requirements, it is programmed to automatically operate under a "safe mode" as well as alert operators that can implement safety measures.

If icing does occur on turbine blades, accumulated snow and ice drops occur at the very bottom of the blade position, and therefore any shedding would occur by the base of the turbine, rather than through a long-distance "throw" of ice. A "throw" would require that the ice be projected from the very tip of one of the blades when running at high rotational speed; but the turbine's safety system would prevent this by foreseeing the unbalance in the weights and adjusting accordingly. With higher wind speeds, the imbalance would only be accentuated and the system would adjust. Also, if heavy weights of ice are present, turbines would not be able to operate, much less project large pieces of ice for hundreds of feet.

The most likely safety risk is for maintenance personnel, who could be impacted if at the base of the turbines when shedding occurs. Operation and maintenance require training of personnel to deal with extreme weather events, restrict access to turbines by personnel dusting icing conditions, and require personnel to wear protective equipment such as helmets, gloves, and steel-toe boots.

b. Lightning strikes

Background & Impacts: Due to their height and metal/carbon components, wind turbines can be susceptible to lightning strikes. Most lightning strikes hit the rotor, and their effect is highly variable, ranging from minor surface damage to blade failure. Lightning protection systems were first added to rotor blades in the mid 1990's, and are now a standard component of modern turbines that generally prevent catastrophic blade failure. Questions have been raised about the effect of lightning strike on the proposed wind turbines at Lempster, based on past reports of lightning damage to wind turbines and concerns about potential safety risks associated with lightning strikes.

Study & Mitigation: The Gamesa G87 turbines proposed for Lempster are equipped with state-of-the-art "total lightning protection" system, according to the International Electrotechnical Commission (IEC) 1024-1 standard. This system conducts the lightning from both sides of the blade tip down to the root joint and from there to the nacelle, tower and earthing system. Therefore, blade failure is protected and electrical component damage is avoided. The turbines' blade monitoring system provides documentation of all critical lightning events. If a problem is detected, the turbine will shut down automatically, or at a minimum, be inspected to assure that damage has not occurred.

The siting of the turbines in remote and insulated areas will also mitigate the potential safety impacts related to lightning damage to the wind turbines.

c. Tower Collapse/Blade Throw

Another potential public safety concern is the possibility of a wind turbine tower collapsing or a rotor blade dropping or being thrown from the nacelle. These are extremely rare occurrences, but such incidents do occur (a tower collapse at the Weatherford Wind Power Project in Oklahoma occurred in May 2005), and are potentially dangerous for Project personnel, as well as the general public. The reasons for a turbine collapse or blade throw vary depending on conditions and tower type. Past occurrences of these incidents have generally been the result of design defects during manufacturing, poor maintenance, wind gusts that exceed the maximum design load of the engineered turbine structure, or lightning strikes. (See **Appendix 39 AWEA Appendix**, *Wind Energy Facts vs. Myths*)

Study & Mitigation: Most instances of blade throw and turbine collapse were reported during the early years of the wind industry. Technological improvements and mandatory safety standards during turbine design, manufacturing, and installation have largely eliminated such occurrences. Modern wind turbines are safely operating worldwide near schools, in urban settings and densely populated areas, and in rural communities.

State of the art braking systems, pitch controls, sensors, and speed controls on wind turbines have greatly reduced the risk of tower collapse and blade throw. The Gamesa G87 wind turbines proposed on the Lempster Project automatically shut down at wind speeds over 56 mph, and they also cease operation if significant vibrations or rotor blade stress is sensed by the turbines' blade monitoring system. These technological factors mitigate the minimal risk of catastrophic tower collapse or blade failure.

Siting of the Project's turbines away from roads, public places, residences and property lines equivalent to the maximum turbine height (i.e., base of tower to tip blade), will mitigate risks to public safety. Adequate public notice, warnings and public education efforts will be used to discourage unauthorized access to wind turbine areas.

d. Stray Voltage

Background & Impact: Stray voltage is a low level of electrical current that can occur between two points on a grounded electrical system, and is a concern usually raised by livestock farmers. Stray voltage can occur from a damaged or poorly connected wiring system, corrosion on either end of the wires, or weak/damaged wire insulation materials.

Study & Mitigation: Stray voltage is largely preventable with proper electrical installation and grounding practices. The Project's power collection system will be properly grounded and will not be connected to the local electrical distribution lines that provide electrical service to local homes or buildings. It will be physically and electrically isolated from all of the buildings in and adjacent to the Project area. Additionally, the Project's electrical collection lines will be located approximately four feet below ground, and will use shielded cables with multiple ground points. This design eliminates the potential for stray voltage. The electrical facilities will be located on private land, and will be adequately noticed by signs, warnings and public education efforts to limit unauthorized access to these areas.

e. Fire

Background & Impact: Although wind turbines contain relatively few flammable components, the presence of electrical generating equipment and electrical cables, along with various oils (lubricating, cooling, and hydraulic) does create the potential for fire or a medical emergency within the tower or the nacelle. This, in combination with the elevated location of the nacelle and the enclosed space of the tower interior makes response to a fire or other emergency difficult, and beyond the capabilities of most local fire departments and emergency service providers. However, fires associated with wind turbines are extremely rare and because of setbacks requirements do not pose an immediate danger to the public.

Study & Mitigation: Project electrical equipment will be inspected by PSNH (for grid and system safety) prior to being brought on line. The turbines will also contain built-in fire safety systems to minimize the chance of fire occurring in the turbines or electrical stations. Potential causes of fire such as lighting strikes, short circuits or mechanical failure/malfunction would be sensed by the Project's control center in Lempster, and turbines would automatically shut down and maintenance personnel would respond as appropriate.

Since the public typically does not have access to the private land on which the turbines are located, risk to public safety during a fire event would be minimal.

Generally, any emergency/fire situations at a wind turbine site or substation that are beyond the capabilities of the local service providers will be the responsibility of the project owner/operator. Fire or emergency incidents would generally not expose local emergency

service providers or the general public to any public health or safety risk beyond those normally associated with such incidents.

A Fire Protection and Emergency Response Plan will be prepared for the Project, and will include training for personnel, regular inspection of turbine components with fire risk, and installation and maintenance of fire safety systems and equipment. Development and implementation of this plan will assure that project construction and operation will not have a significant adverse impact on public safety, or the personnel and equipment of local emergency service providers.

f. Aviation Safety Risks

Background & Impacts: In order to prevent risks to aviation, the Federal Aviation Administration requires the lighting of wind turbines. New FAA guidelines do not require daytime lighting, and allow nighttime lighting of perimeter turbines only, at a maximum spacing of 0.5 mile. (Federal Aviation Administration, 2005. *Development of Obstruction Lighting Standards for Wind Turbine Farms.* DOT/FAA/AR-TN 05/50. U.S. Department of Transportation, Washington, D.C.)

Wind turbine lighting has also been raised as a potential aesthetic or visual impact, and is addressed in subsection (7) a., below.

Study & Mitigation: The Project applied for "determination of no hazard to air navigation" rulings from the FAA for all 12 proposed wind turbine structures, and the FAA performed an aeronautical study and determined "that the structure does not exceed obstruction standards and would not be a hazard to air navigation." See an example of an FAA Determination of No Hazard letter for one project turbine, attached as **Appendix 25.** As a condition to the FAA's approval, the Project must comply with FAA lighting standards, such as (FAA Advisory Circular 70/7460-1 K, *Obstruction Marking and Lighting*).

Wind turbine lighting will be kept to the minimum allowable by the FAA. Medium or low intensity pulsing red lights will be used at night, rather than white or red strobes, or steady burning red lights. The Project is in the process of seeking clarification from the FAA that only perimeter lighting of turbines every 0.5 mile is required, and not lighting of every turbine structure.

For additional information on the wind industry's efforts to address wind turbine lighting issues with the FAA and other stakeholders, please see the **Appendix 39, AWEA Appendix**, *Wind Turbine Lighting.*

(7) Other (aesthetics, historic sites, public health, safety, etc.)

a. Aesthetics

1. Visual Impacts

Background & Impacts: The proposed Project is located on the Lempster Mountain ridgeline and will be visible from a number of locations in the local and regional area. No environmental, health, or safety impacts will occur related to the visual impacts of the Project, but the prospect of seeing wind turbines in a previously un-developed area has created aesthetic concerns by members of the community.

Study & Mitigation:

The Project is working on an ongoing basis to provide visual impact information to the community, through photo-simulations from local vantage points, survey of viewshed impacts from historic places, provision of actual photographs from similar wind projects in operation, tours of wind farms in operation, and other visual impact assessments.

Photographs from construction and operation of Community Energy's Bear Creek (PA) Wind Farm, which is in the Pocono Mountains and uses the same number and type of turbines as planned for the Lempster site, have been provided in public meetings, as well as on the Community Energy/Lempster Wind website (www.lempsterwind.com), and are included in this application as **Appendix 26**.

Photo-simulations produced in 2005 and exhibited at a number of public meetings and on the Community Energy/Lempster Wind website (www.lempsterwind.com) are attached as **Appendix 27**.

In conjunction with public meetings associated with the Project's SEC application (date to be determined by the SEC), the Project will conduct a "photo-simulation tour" in Lempster, with simulated images of the wind turbines posted at the actual vantage points from the photographs, allowing a "before and after" comparison by members of the community and decision makers. Locations for simulations will be representative views of the Project from various distances and directions, and times of day. Suggestions for simulation locations will be solicited from the community and decision makers as part of public meetings on local issues and agreements, expected to occur in August and

September of 2006. Information on these locations and copies of the photo-simulations produced will be provided to the SEC as an addendum to this application when available.

The Project has also planned to conduct a bus tour to the Community Energy wind farm at Bear Creek, PA as a "see it for yourself" opportunity for members of the community, planned for September 2006 prior to SEC public meetings or hearings. Notice will be provided by postings in town, mailings to residents and/or local media outlets.

Visual impacts will be avoided, minimized, and mitigated to the greatest extent possible through careful site planning and project layout, as well as a comprehensive site restoration process following completion of construction.

The Project has worked to limit aesthetic impacts by ensuring that siting of wind turbines, roads and facilities are located on the most rural, insulated portion of the site lands, away from residences, businesses, and public roads or places. The proposed project layout was developed so as to minimize the need for tree clearing and new road construction by utilizing existing logging roads and open areas. Where clearing of undisturbed forest is unavoidable, cleared sites are not easily accessible from public roads and are not near residences, so impacts from close proximity are limited.

Following completion of construction, site restoration activities will occur. These will include removal of any temporary road stabilization material from project access roads and stabilizing/revegetating all disturbed sites through seeding and mulching. These actions will assure that, as much as possible, the site is returned to its preconstruction condition and that long-term visual impacts are minimized.

In terms of appearance, all turbines will have uniform design, speed, height and rotor diameter. Towers will include no exterior ladders or catwalks, and there will be no placement of any advertising devices on the turbines.

The Project is also evaluating with the Town the potential of creating a parking/viewing location, with an informational kiosk, to provide an appropriate viewing point for the Project as well as enhance public understanding and appreciation of the Project.

2. Shadow Flicker

Background & Impacts: Shadow flicker is the alternating change in light intensity or shadows created by the moving turbine blades when back-lit by the sun. These flickering shadows can cause an annoyance when cast on nearby buildings or residences. However, due to the turbines' low blade pass frequency, shadow flicker is not anticipated to have any adverse health effects (e.g., trigger epileptic seizures). Although setback distances for turbines (1,000 feet from permanent residences) will significantly reduce shadow flicker impacts to potential receptors, some limited impact may occur.

Study & Mitigation: The Project has performed an analysis of potential shadow flicker impacts, using data on proposed locations and turbine specifications, wind speed and directional data, and data on sunrise/sunset and weather factors in the Lempster area to indicate the area and extent of potential impacts. (Attached as **Appendix 28.**)

The analysis concludes that the Project will comply with accepted norms for shadow flicker, which suggest that impacts remain below 30 hours per year.

All the areas that would experience 30 hours or more of shadow flicker impact are located in the vicinity of the wind turbines and on the associated ridge – remote from buildings or residences. A few areas containing residences to the west of Project turbines at the south end of the site (Guilford Lane, Nichols Road, Maplewood Road, Fifield Drive, Sugarhouse Drive) are not projected to receive more than 10-20 hours per year of impact. Some key locations studied (Goshen-Lempster School, Lempster Town Hall, Pillsbury State Park, Long Pond) are shown to experience much less than 10 hours of impact per year.

For areas receiving these minimal impacts, site-specific factors such as terrain, trees, other buildings, and window location would further reduce impacts from shadow flicker.

3. Wind Turbine Safety Lighting

Background & Impacts: A few residents in the community have raised concerns about the nuisance of safety lighting on wind turbines, related to the flashing or "strobing" effect of safety lights at night on residences.

Study & Mitigation: Wind turbine lighting will be kept to the minimum allowable by the FAA for safety purposes. Medium or low intensity pulsing red lights will be used at night, rather than white or red strobes, or steady burning red lights. The Project is in the process of seeking clarification from the FAA based in its regulations that only perimeter lighting of turbines every 0.5 mile is required, and not lighting of every turbine structure. By minimizing the number of lights required for safety purposes, the Project will mitigate potential impacts from flashing lights.

Siting of the Project's turbines far away from public places, residences and property lines equivalent to the maximum turbine height (i.e., base of tower to tip blade), will also mitigate impacts of lighting. The lighting is designed to be visible for aircraft, and its intensity will be lower at ground level, and will also decrease with distance from the Project. The potential for turbine safety lights to illuminate residences to a level of nuisance is very low, given the distance of turbines from residential areas.

For additional information on the wind industry's efforts to address wind turbine lighting issues with the FAA and other stakeholders, please see the **Appendix 39, AWEA Appendix,** *Wind Turbine Lighting.*

b. Historic and Cultural Resources

Background & Impacts: The Project's impacts on historic and cultural resources may include both the impacts from construction and placement of roads and facilities near sites of archaeological significance, and visual impacts from places or structures of historical significance. The Project has investigated the presence of historic resources in Lempster and the area through research with the Lempster Historical Society and the New Hampshire Division of Historical Resources (NH DHR). Based on its records, NH DHR indicated no known presence of cultural sites on Lempster Mountain that will be affected by the Project. There is one site in Lempster currently listed on the National Register of Historic Places – the Lempster Meetinghouse, on Lempster Street in Lempster (2.8 miles away from the Project) – as well as one site that will be listed in the future – the Lempster Miner Memorial Library on Route 10 in East Lempster (1 mile from the Project). There are also several historic sites within 3-5 miles of the Project area, including the Washington Common Historic District in Washington, NH, and the Captain John Gunnison House in Goshen, NH.

Survey and Mitigation: Under a memorandum of understanding with the NH DHR, the Project is currently conducting an archaeological survey of all areas of potential disturbance on the proposed site, to search for sites of cultural or historical significance. The Project will also collaborate with historical and cultural groups in the area to assist in the survey. If potential impacts are found on the site, additional ground testing and analysis will be done to determine the significance of the location, and a plan for mitigation or avoidance of impact will be developed.

Under the NH DHR agreement, the Project will also conduct a historic viewshed impact survey to document Project visibility from existing and potential historic sites within a 3-mile radius of the Project. The search for properties within the 3-mile radius will be guided by GIS mapping to determine the "worst case" visibility of turbines (any portion of turbine visible without regard to vegetation cover). The viewshed survey will result in a comprehensive list of potentially affected locations that can be provided to NH DHR and the community, as well as the production of visual simulations to document potential impacts from several areas in Lempster and surrounding towns.

The memorandum of understanding with NH DHR, as well as the 3-mile radius GIS viewshed "worst case" map is included as **Appendix 29.** The final results of the historic and cultural surveys will be provided to the Committee and NH DHR when completed.

c. Plant Life

Background & Impacts: With the construction of new roads and wind turbine locations, the Project will have potential impact on plant life on the proposed site, particularly if rare or significant plant species are present at the site.

Study & Mitigation: The Project consulted with the Department of Resources and Economic Development, Natural Heritage Bureau (NHB), and no exemplary natural communities were identified by the NHB in its review of state databases and files. In collaboration with the NHB, the Project is currently conducting a plant survey to document site specific findings and assess potential impacts, if any. Based on the characteristics and location of the site, it is not expected that rare or significant plant species will be found. Results of the plant survey when completed (report expected August-September 2006) will be provided to the Committee as an addendum to this application.

In terms of impact on plant life removed due to clearing and construction of new roads and facilities, the Project will work to mitigate removal of plant life by re-vegetation of construction areas to the greatest extent

possible, with non-invasive species that are consistent with the character of the site. Plans submitted along with the Site Specific Permit Application also call for seeding and re-vegetation as one of the final phases of the construction sequence.

d. Tree Clearing

Background & Impacts: The proposed Project site is located in mixed forest, and is primarily on land that has been previously used for timber operations, agriculture or recreation, and contains a number of logging roads and cleared locations. The site is mostly northern forest, with some boreal elements. Trees are a mixture of deciduous hardwoods mixed with some conifer, with fairly large patches of red spruce. The tops of hills are either, mixed hardwood and conifer, continuous red spruce, or balds, and there are clearings throughout the site. Many of the trees on site are newer re-growth since prior timber or agriculture activities. The land under lease by the Project consists of parcels greater than 1,500 acres, of which only approximately 35-40 acres will be utilized for Project roads and turbine locations.

Study & Mitigation: Any alteration of terrain at the site will be covered by the "Site Specific" permit application was filed with the Department of Environmental Services on April 14, 2006 and is currently under review (attached as **Appendix 9**). As required under the Site Specific permit, tree clearing required by the Project will be documented in the "Notice of Intent to Cut" forms that are submitted to the Town before the commencement of work.

The Project has worked to minimize the extent of tree clearing and cutting needed for Project access, using only approximately 1.5% of the land under lease. After construction, trees and other plant life will be allowed to re-grow in areas cleared for large construction equipment, to a normal 18-foot access road width.

e. Wildlife

Due to its rural, remote location in mountainous and forested terrain, the Lempster Project site is home to a number of species of wildlife and is also used by migrating species. In general terms, impacts on wildlife are generally partitioned into two categories: "direct effects" which include the chance that wildlife (mainly birds and bats) that live near or migrate through a wind power project site will collide with turbine blades, nacelles, or the towers, or the potential that wildlife will be harmed by the presence of construction vehicles or activities; or "indirect effects" which include the chance that that wildlife will avoid visiting or nesting in land that supports wind turbines, due to the presence of new structures, motion

or sound from turbine operation, or from habitat fragmentation or loss due to clearing and excavation for access roads and turbine locations.

Wildlife including various species of birds, bats, mammals and aquatic life are potentially present throughout the site, and their presence has been documented and will continue to be documented by a number of wildlife surveys, discussed below. Of particular concern are endangered or threatened species that may use or reside at the site. No endangered or threatened species have been identified by NH Fish and Game or the US Fish and Wildlife Service as present in the area, but concerns have been raised that more survey and analysis is needed at the specific site to document use by various species and assess potential risks.

Overall, it is important to recognize that in comparison to other energy sources that could be built to meet energy demands, wind power's impact on wildlife is minimal. The list of environmental and wildlife impacts of other energy sources is long and varied, including:

- Habitat impacts from mining (coal, uranium), drilling (natural gas, oil), and compressing fuel (natural gas). Some of these effects are local, while others can extend over fairly broad areas.
- Habitat impacts from air and water pollution: acid rain, smog, mercury, drilling wastewater disposal (fossil fuels).
- Habitat impacts from global warming (fossil fuels). Significant changes in some species' ranges are already occurring, particularly in northern latitudes.
- Habitat impacts from thermal pollution of water (nuclear and fossil power plants).
- Habitat impacts from flooding of land and streamflow changes (hydropower).
- Habitat impacts from waste disposal (coal). The American Bird Conservancy estimates that mountaintop mining/valley fill operations in West Virginia, Tennessee, Kentucky, and Virginia will lead to a massive and permanent impact on mature forest birds including the loss of tens of thousands of breeding Cerulean Warblers and other forest birds in the next decade.

While wind plants and their construction definitely have local impacts, the use of wind energy largely avoids these more far-reaching effects. (See attached **Appendix 39 AWEA Appendix**: *Wind Energy and Wildlife: Frequently Asked Questions*, and *Save the Loon with Wind Energy: Comparative Impacts of Wind and Other Energy Source on Wildlife.*

1. Birds

Background & Impacts: The Project has the potential to have both direct and indirect effects, as described above, on a number of avian species that are resident at or migrating through the proposed site. The Project has conducted a number of surveys to document avian species at the site that could be impacted by the Project.

The Project's "*Phase I Avian Risk Assessment*" (attached as **Appendix 30**), and "*Pre and Post-construction Avian Survey, Monitoring, and Mitigation at the Lempster, New Hampshire Wind Power Project*" (attached as **Appendix 31**.) provide a comprehensive discussion of the potential habitats that support various species of nesting birds, the suitability of the site for endangered and threatened species, and potential for migration use by raptors and night migrating birds.

In general, issues related to wind power facility impacts on birds have been addressed by comprehensive analyses that the wind industry has undertaken over the last 2 decades, by technological improvements like rotation speeds, tower designs and by proper siting practices. The wind industry record is very positive in this area; bird deaths are extremely low when compared to most other man-made and natural causes.

Based on decades of research, a conservative estimate is that of every 10,000 human-related bird deaths in the U.S. today, wind plants cause less than one. Leading human-related causes of bird kills, in the U.S. alone, include:

- cats (1 billion per year)
- buildings (100 million to 1 billion per year)
- hunters (100 million per year)
- vehicles (60 million to 80 million per year)
- communications towers (10 million to 40 million per year)
- pesticides (67 million per year)
- power lines (10,000 to 174 million per year)

And as discussed above and in AWEA literature, in comparison to the impacts on avian species from fossil fuel energy sources, wind energy has far lesser impact than these alternatives.

Study & Mitigation: At early stages in the planning phase, the Project contacted NH Fish and Game and the US Fish and Wildlife Service to learn about documented occurrences of endangered or threatened species in the area. The agencies

reported no known occurrence of endangered or threatened species, but raised several concerns about the possibility of avian species that may be present at the site. (Letters are included as part of Phase I Avian Study, **Appendix 30**.)

In response to concerns, the Project has voluntarily undertaken surveys and analyses of bird impacts since fall of 2004, with additional surveys continuing throughout 2006 and 2007. Specific survey and analysis conducted to date at the Lempster site includes:

- a Phase I Avian Study conducted in the fall of 2004 to determine site characteristics and the need to address specific issues;
- Breeding bird survey and migratory bird "point count" to analyze bird habitat and activity at the site, spring/summer 2005, and ongoing monitoring until construction;
- Raptor migration survey during migration periods in the fall of 2005 and spring of 2006; and
- Radar survey for migratory birds, scheduled for fall 2006 and spring 2007 migration periods.

The U.S. Fish and Wildlife Service has requested that the Project be reviewed under the US Army Corps of Engineers individual wetlands permitting process due to the Project's potentially significant impact on habitat for migratory birds and other endangered species. The Project will continue to provide the US Fish & Wildlife Service and NH Fish & Game with information about the Project's design, results of wildlife surveys, and analysis about potential habitat impacts to address such concerns and collaborate in the permitting process.

To mitigate for wildlife displacement related to temporary construction impacts, construction activities and sequencing will be examined to try to avoid disturbing bird habitat or identified nesting sites until the young have fledged. In addition, all temporarily disturbed areas will be restored following construction activities to allow reestablishment of wildlife habitat. Permanent habitat loss and fragmentation will be mitigated through careful site design (i.e., avoiding wetlands and large areas of mature forest, and minimizing the permanent footprint of Project components to the extent practicable) and restoration of all temporarily disturbed areas. Additional measures for sustainable design of the Project are discussed in the white paper: *Pre and Post-construction Avian Survey, Monitoring, and Mitigation at the Lempster, New Hampshire Wind Power Project* (Avian and Bat Survey), **Appendix 31.**

The turbines themselves will be placed much further apart than in older wind farms where greater avian mortality has been documented, such as northern California. The towers will be mounted on tubular towers (rather than lattice), which prevents perching by birds. In accordance with recommendations included in the Phase I Avian Risk Assessment, electrical lines between the turbines will be buried. It has also been recommended that any permanent meteorological towers be freestanding and unguyed, and that lighting of the turbines (and other infrastructure) follow specific design guidelines, such as using flashing lights with the longest permissible off cycle. The Project has committed to follow all of these recommendations to decrease the risk of avian and bat mortality.

Despite the fact that significant impacts to birds and bats are not anticipated, a post-construction avian and bat fatality monitoring program will be implemented. The purpose of the on-site, post-construction monitoring program will be to determine if avian and/or bat collision fatalities are occurring as a result of project operation, and if so, the rate of mortality. This data can then be correlated with pre-construction data, and ultimately this information can help to develop models that will more precisely predict the impact of future wind power projects. The protocols and study design will follow established/accepted procedures for monitoring collision mortality at wind power facilities and other tall structures. These methods include searches under turbines, coupled with analysis of carcass removal rates (scavenging) and searcher efficiency rates.

2. Bats

Background & Impacts: The Project has the potential to have both direct and indirect effects on bat species that may be resident at or migrating through the proposed site. The Project has conducted surveys to document bat species at the site that could be impacted by the Project. The Avian and Bat Survey paper, **Appendix 31**, provides a more detailed discussion of potential bat impacts at the site as well as initial results of ongoing "Anabat" acoustical surveys.

In general, the impact of wind turbines on bat communities is a relatively new area of inquiry and research, with interest peaked by a few isolated collision incidents. The wind industry is working with the governmental and environmental community to study the reasons for these unique bat-related events, conduct

proper studies related to turbine siting, and plan for future mitigation.

Study & Mitigation: At the Lempster site, no endangered or threatened species of bats were identified as present by NH Fish and Game or US Fish and Wildlife Service. Voluntary studies undertaken to examine bat issues include the use of "Anabat," an acoustical sensor technology to detect bats, conducted in the Fall of 2005, Spring 2006 and planned for the Summer/Fall 2006. Also, a direct examination of an on-site pond area identified by USFWS and NH Fish and Game will be conducted in the Summer/Fall of 2006.

Mitigation measures for bat impacts will be integrated with avian risk mitigation measures, as discussed in the Birds subsection above and in the Avian and Bat Survey paper.

3. Other wildlife

Background & Impacts: Other wildlife using the Project site that may be potentially impacted by construction or operation include mammals (other than bats) and aquatic species. The Project is currently conducting a survey to determine the presence of mammals and aquatic species at the site (Summer 2006). Large or non-seasonal surface water bodies at the site are limited, so the survey will focus predominantly on mammals, and aquatic species that could be present in the types of water bodies found on the site. It is expected that species found at the site will include mainly those that are common and widely distributed throughout New Hampshire and the region.

Temporary impacts to wildlife are anticipated to be limited to incidental injury and mortality due to construction activity and vehicular movement, construction-related silt and sedimentation impacts on aquatic organisms, dredge and fill of wetlands, one stream crossing disturbance (underground cable conduit only), habitat disturbance associated with clearing and earth moving activities, and displacement due to increased noise and human activities. Long term operational impacts could include minor habitat loss or fragmentation in forested areas, or displacement due to the presence of the wind turbines. A total of approximately 35-40 acres of wildlife habitat will be permanently lost from the Project area (i.e., converted to built facilities).

Study & Mitigation: Based on concerns raised in discussions with NH Fish and Game and U.S. Fish and Wildlife Service, the

Project is currently conducting a survey to document wildlife habitat at the site, document wildlife use of the site including specific mammals and stream life, and perform analysis of potential impacts. Results of the wildlife survey when completed (report expected August-September 2006) will be provided to the Committee as an addendum to this application.

Mitigation of impacts related to construction activity will be accomplished through careful site design (e.g., utilizing existing roads, avoiding sensitive habitat, and minimizing disturbance to the extent practicable). In addition, the contractor will assure that all work remains within the designated construction limits and does not encroach upon off-limit sensitive areas.

To avoid and minimize impacts to aquatic resources resulting from construction-related siltation and sedimentation, an approved sediment and erosion control plan and Storm Water Pollution Prevention Plan (SWPPP) will be implemented (see **Appendix 10**, discussed above). Proper implementation of these plans will assure compliance with New Hampshire DES and US EPA National Pollutant Discharge Elimination System (NPDES) regulations and state water quality standards.

Mitigation for impacts related to permanent habitat loss and fragmentation will be accomplished through careful site design (i.e., avoiding wetlands and minimizing the permanent footprint of Project components to the extent practicable) and restoration of all temporarily disturbed areas.

(f) Impacts on local land use, economy, and employment;

(1) Land use

The Project area in the Town of Lempster and surrounding Sullivan County has a rural, low-density character. Forestland and single-family rural residences are the dominant land uses. Commercial uses of land in Lempster include timber operations, greenhouses, single-family home developments, gravel and sand pits, and a motorcycle racing track. Two communications towers are sited on the Lempster Mountain ridgeline, located to the south of the Project site – a 350-foot tall, lattice-style microwave tower and a 400-foot guy-wired cellular phone tower – both containing safety lighting.

The Town of Lempster currently has no zoning or land use ordinances. The Town does have a Planning Board that has functions to approve subdivisions of property and other basic responsibilities. The Lempster Planning Board has

worked to develop a draft "Master Plan" for the Town, which includes preferred zones for development, as well as a statement in support of ridgeline protection.

The land comprising the site will be leased from private landowners, and totals approximately 35-40 acres out of the more than 1,500 acres comprising the total land holdings of these individuals. A large percentage of the land that will be leased is currently classified as "current use" for taxation purposes, due to its rural nature and limited uses. The lands surrounding the Project have been used mainly for timber operations, agriculture or recreation.

The land under lease for the Project is not under conservation or land otherwise not subject to development – according to at least one landowner, it is land that would otherwise be used for other purposes such as logging or housing development.

During Project operation, additional impacts on land use should be infrequent and minimal. Other than occasional maintenance and repair activities, the Project should not interfere with on-going land use (e.g., timber, agriculture, authorized recreation). By supplementing the income of participating landowners, the Project will help avoid subdivision or sale of the land, as well as limit the conversion of land to uses such as housing development.

a. Project Decommissioning

Modern wind turbine generators typically have a life expectancy of 20 to 25 years. The current trend in the wind energy industry has been to replace or "re-power" older wind energy projects by upgrading older equipment with more efficient turbines. A good portion of a project's value is in its proven wind resource, land agreements, and in-place infrastructure. Therefore, it is likely that after mechanical wear takes its toll, the Project would be upgraded with more efficient equipment. However, if not upgraded, the turbines will be decommissioned. Decommissioning of the wind power facility is essentially the reverse of the installation process.

A decommissioning plan that details the process, estimated cost, salvage value, and site restoration will be put in place with the Town prior to Project operation. All decommissioning and restoration activities will be in accordance with all applicable federal, state, and local permits and requirements. Likely elements of a decommissioning plan include: turbine removal and disassembly into salvageable, recyclable, or disposable components; turbine foundation removal and restoration of land; removal of underground cables, collection system components, and metering point equipment, and a monitoring and remediation plan for the period after decommissioning.

(2) Economy

The State of New Hampshire's economic data for the Town of Lempster is available in **Appendix 32** attached, and in the Town of Lempster Annual Town and School Report. As a few key economic data points include:

- Population around 1,044 (2003 Census estimate), and 601 total housing units.
- Town budget 2005 of $858,641, proposed a budget of $1,230,187 for 2006.
- 2005 total income of $2,392,467.62 and disbursements of $2,365,729.23
- 2005 tax rate of $22.54 per $1,000 of value (town $5.67, school $14.30, county $2.57)
- 2005 total inventory of tax valuation of $77,206,952
- Annual per capita income of $19,172 and median 4-person family income of $45,385
- Largest employers include Jolly Roger Moto-Sports Park (seasonal), 15; Onnela Lumber Company, sawmill, 7.
- Other industries present include sand and gravel pits, greenhouses, auto repair & tool shops.

The proposed Lempster Wind Project represents a unique economic development opportunity for the Town of Lempster. The Project will provide significant property tax revenues but will not burden the local economy – with only 3 or 4 full time employees, a burden will not be placed on local schools, and with all facilities located on private property, no Town services are expected to support the Project. As a clean energy facility, the Project will not impose environmental or heath impacts that carry costs to the town, region or state.

a. Landowner payments

Local landowners will receive land lease payments and will be able to continue existing uses of the majority of their land, including timber operations, agriculture, conservation, hunting or recreation. Lempster landowners that will lease land to the Project have land parcels containing over 1,500 acres, but just 35-40 acres will be used for the Project – representing a use of 2.5% or less of their land. Leases with Lempster landowners are confidential and private contracts, but the American Wind Energy Association estimates that the average payment to landowners is between $2,500 and $5,000 per turbine per year.

b. Tax Revenues

The Project will generate substantial revenues for the Town of Lempster in the form of local property taxes. Discussions with the Town on tax valuation and payment are ongoing, but are expected to yield annual

payments equivalent to a significant portion of the Town's annual budget.

In addition to local taxes, the Project will generate state tax revenues in the form of the state utility property tax (charged at the rate of $6.60 per $1,000 of valuation of the facility) which funds education statewide. Discussions with New Hampshire Department of Revenue Administration are ongoing about Project valuation for purposes of the Utility Property Tax.

c. Local Jobs and Services

The construction phase of the Project will provide approximately 150 jobs, with some lasting 2 to 3 months and some lasting 6 to 9 months. It is expected that 3 or 4 longer term, full-time jobs will be created relating to project operation and maintenance. Raw materials and services for the construction of the Project will be purchased locally to the extent possible.

d. Long term economic development

Wind power development has vast economic potential for New Hampshire and the U.S. The American Wind Energy Association estimates that more than 2,400 MW of new wind energy capacity was installed in 2005, resulting in $3 billion in investment and an estimated 10,000 new job-years nationwide (10,000 one-year jobs or 1,000 long-term, ten-year jobs).

One large (108-turbine, 162-MW) project in rural Prowers County, Colorado, increased the county's tax base by 29%, adding annual payments of about $917,000 to the general school fund, $203,000 to the school bond fund, $189,000 to a county medical center, and $764,000 in new county revenues, as well as 15-20 permanent and well-paying full-time jobs at the wind farm. (see **Appendix 33**, Economic Development Case Studies)

Wind energy development also presents the long-term opportunity to attract manufacturing or related businesses to the state, as seen recently in Pennsylvania where wind energy development (including a recent 24MW project developed by Community Energy) led to Spanish wind turbine producer Gamesa making an $84 million investment and creating 300 new jobs in manufacturing in the state. Information from the Pennsylvania Governor's office on wind-related economic development is included in **Appendix 33**.

New Hampshire's long history in machining and component manufacturing would be an excellent complement to the development of

wind turbine equipment or component manufacturing, if the demand for wind power becomes substantial enough in New Hampshire and New England to warrant such economic development.

e. Population and Housing

Approximately 3 to 4 full-time jobs will be created once the Project is fully operational. These can include technical operation and maintenance personnel, project managers and administrative support. These employees are expected to reside locally, which could translate into purchase of a few homes and addition of a few families to the towns and surrounding communities. Although this represents a positive economic impact, long-term employment associated with the Project is not large enough to have a significant impact on local population, schools or housing characteristics.

Owners of seasonal and year-round properties in Lempster have expressed concern about the impact of the Project on future property values, however there is no local data to support this claim. Recent studies of property values in communities with wind farms show no devaluation of property after construction of new wind farms.

In order to address this concern, a quantitative study was conducted by the Renewable Energy Policy Project (REPP) in 2003, titled *Effect of Wind Development on Local Property Values*. REPP assembled a database of real estate transactions adjacent to every wind power project in the United States (10 MW or greater) that became operational between 1998 and 2001 (a total of 10 projects, including the Madison and Fenner projects in Madison County, New York). Analysis of real estate transactions for three years before and three years after wind farm construction showed no negative affect on property value from existing wind farms in the communities studies.

To present a more specific understanding of the actual effects of existing wind farms on property values and address criticisms raised about the REPP Study, a master of science thesis was prepared by Ben Hoen of Bard College in 2006 to analyzed transaction value of homes within 5 miles of the existing Fenner (NY) Wind Farm that have views significantly effected by views of the wind farm. The Hoen-Bard College study concluded that the "likelihood that property values were affected in Madison County is negligible, thereby reducing similar concerns for other communities hosting wind farms."

Copies of the REPP and Hoen-Bard College studies are attached as **Appendix 34.**

f. Tourism

Tourism is a major component of New Hampshire's economy – the Division of Travel & Tourism Development indicates that travel and tourism is New Hampshire's second largest industry in terms of jobs and attracting dollars from out of state. The impact of wind power development on tourism has been raised as a concern, particularly since a large percentage of New Hampshire's tourism is related to its natural and scenic resources.

The Lempster Project site is located in an area that contains state parks and scenic areas, including Pillsbury State Park (1 mile to the east in Washington, NH) and Mount Sunapee (5-6 miles to the northeast). Tourist attractions or destinations in Lempster include a motorcycle racing park, private campgrounds, snowmobile trails, and areas for hunting and fishing. Lempster does not have any hotels/motels or inns, and has one food service establishment, at the Town's general store. The Project site is on private land which has been used in the past for recreation such as hunting or snowmobiling at the permission of landowners, primarily by local residents and not tourists.

Views of the Lempster Mountain ridgeline from various locations in the area will be subject to visual impacts from the placement of turbines at high elevations. Visual impacts are discussed in more detail section (e)(7) above. Noise, as discussed in section (e)(3) above and related analysis, is not anticipated to be present at distances outside 500-1,000 feet from the Project site and will not be an issue for state parks in the area, including Pillsbury State Park.

The Project is not anticipated to have a negative impact on tourism in the area, and could provide tourism benefits to the Town itself. There is no evidence to indicate that the presence of wind turbines will have a negative impact on tourism. Based on information from other areas that are home to wind power projects, negative impacts on tourism have not been found – in fact projects have resulted in a significant increase in visitation from tourists interested in the projects.

At the wind power installation closest to Lempster located at Searsburg, Vermont, Searsburg officials say they've had to build a parking lot for visitors due to the tourist draw. This is also evident in the resort community of Palm Springs, California, where there are over 3,500 wind turbines. Tours of this wind farm regularly draw 10,000 to 12,000 curious tourists every year.
http://www.capecodonline.com/special/windfarm/windmountain12.htm

At one of Community Energy's newest wind power facilities in Atlantic City, New Jersey, the wind project is highlighted as an attraction in the resort city, characterized by *Atlantic City Weekly* as "a definite tourist attraction." http://www.acweekly.com/view.php?id=3731
The Atlantic County Utility Authority (ACUA), host to the wind project, anticipates the project will have major tourism value:

> "Clearly visible from the Atlantic City Expressway and the White Horse Pike, the towers will be seen by the 35 million visitors a year flocking to Atlantic City's casinos and beaches. According to Paul Gallagher, vice president of the ACUA, the Atlantic City wind farm may become 'One of the most photographed and discussed wind turbines in the country, maybe the world.' Gallagher feels that the proximity of the wind farm to major roads and businesses will impress and educate the public's perception of alternative energy. Based on how many visitors a year currently visit the ACUA environmental park in Egg Harbor Township, the ACUA anticipates even "bigger" interest in the wind farm.
>
> To educate the public, the ACUA hopes to establish a user-friendly control room at the wind farm offering a number of video displays for visitors. In addition, an observation area at the front gate, a scenic overlook, and informational kiosks are also part of future tourist attraction plans. Authority officials are also hoping a pedestrian boardwalk that will run behind the Borgata Hotel Casino & Spa will offer a beautiful view of the wind farm."

In New York state, both the Fenner Wind Power Project and Madison Wind Power Project are listed as attractions on the Madison County Tourism website. www.madisontourism.com

In Prince Edward Island, Canada, a wind power project is prominently featured as the main attraction in the North Cape region on the government's visitor's guide
http://www.gov.pe.ca/photos/original/tou_nccd06.pdf

A 2002 study conducted in the Argyll Region of Scotland, involving interviews with over 300 tourists, found that 91% said the presence of wind farms in the area would not influence their decision about whether to return to the area. Almost half (48%) of the tourists interviewed were visiting the area because of the 'beautiful scenery and views'. Of those who had actually seen wind farms, 55% indicated that their effect was "generally or completely positive", 32% were ambivalent, and 8% felt that the wind farms had a negative effect.
http://www.mori.com/polls/2002/windfarms.shtml

Similarly, a recent survey of visitors, to Vermont's Northeast Kingdom found that 95% would not be deterred from further visits by the existence of a proposed wind farm. http://www.revermont.org/press/neksurvey.pdf.

Positive effects have been reported from various wind farm locations in Australia. According to the Australian Wind Energy Association (AusWEA), initial concerns that wind turbines would negatively impact tourism in that country have proven unfounded. http://www.thewind.info/downloads/tourism.pdf.

Note: Articles or documents referenced above on tourism are attached as **Appendix 35.** The Project will work with the Town to provide appropriate promotional and educational information for tourists that maximizes the tourism and economic benefits to Lempster.

(g) Impacts during construction and mitigation plans

(1) Construction timing and process

a. Estimated Timing and Sequence

Wind project construction can take 6-12 months, depending on the size of the project and site-specific factors. Compared to other electric power generation options, the construction of a wind generating facility can be accomplished very quickly to meet energy needs and the demand for clean, emission free sources. As an example, Community Energy's Jersey Atlantic (NJ) Wind Farm went from ground breaking in May 2005 to operation in December 2005.

Project construction in Lempster is anticipated to occur in a single phase, which will begin in the spring of 2007 and be completed by December 31, 2007.

The wind farm layout and soil erosion and sediment control plan design was completed in March and April of 2006 to complete planning to avoid wetlands impacts and apply for permits with NH DES. Final construction engineering will be completed by the "balance of plant" construction contractors for the Project, which is anticipated to occur in the fall or winter of 2006. Construction engineering will include final road and staging area design, final electric collection system design, foundation design, and operation and maintenance building design.

Procurement and delivery of materials will follow design activities and will commence during early 2007. However, should approvals for the Project be delayed into 2007, turbine availability may become an issue for the Project. Transportation permits for access to public roads and

access road construction will be obtained and the work will be started in the spring when appropriate (April-May, depending on local road restrictions and site conditions).

This will be followed in the summer of 2007 by site clearing and access road construction (although some site clearing work could be performed over the winter of 2006-2007). Foundation excavation and collection system excavation, foundation pouring and curing, metering point and operations & maintenance building construction, and foundation and collection system backfilling are anticipated to occur in the summer to fall of 2007. Concurrently, and throughout April to August, foundation conduit and grounding, underground and aboveground collection system and collection and interconnection metering point equipment will be installed. Wind turbine tower, nacelle, and rotor assembly, as well as permanent meteorological tower erection will be accomplished in the late fall of 2007. Mechanical completion and turbine wiring, as well as energization will be performed through November followed by commissioning of the Project by the end of 2007.

b. Construction Process

Pre-construction activities: In the development process, wind turbine locations are selected and preliminary civil engineering is completed, including detailed road and turbine layout for wetlands and stormwater permitting. The Project has completed these activities.

Before construction commences, a site survey will be performed to mark the exact location of the wind turbines, access roads, electrical cables, collection station, and metering point areas. Geotechnical investigation will be performed to identify subsurface conditions and allow development of final design specifications for the access roads, foundations, crane pads, laydown areas, underground trenching, substation and electrical grounding systems.

The Project, with the assistance of parent/affiliate Iberdrola, will select a qualified construction contractor that will work with the turbine equipment supplier to prepare final construction specifications for the various components of the Project. The design specifications will comply with construction standards established by various industry practice groups such as: American Concrete Institute (ACI), Institute for Electrical and Electronic Engineers (IEEE), National Electric Code (NEC), National Fire Protection Agency (NFPA), and Construction Standards Institute (CSI). The Project engineering team will ensure that all aspects of the specifications, as well as the actual on-site construction, comply with all applicable federal, state, and local codes and good industry practice.

Prior to the initiation of construction, various environmental protection and control plans will be developed and shared with the Town and other relevant state agencies. These will include a construction routing plan, construction documentation package, and public safety plan/emergency response plan.

Site Preparation: A construction staging area will be developed on the Project site to create a level working yard for construction trailers and other equipment and materials needed throughout construction. Construction will be initiated by clearing trees and vegetation access from all tower sites, access roads and facility areas. On average, a 200-foot radius will be cleared around each tower, an 18 to 50 foot-wide corridor will be cleared along access roads, and a 15 foot-wide corridor will be cleared along all underground electric interconnect routes. The actual width of clearing will vary on a case-by-case basis, and will depend on factors such as vegetation and slope.

Public roadways could require tree trimming in order to accommodate the movement of oversize equipment, as delivery vehicles may be as long as 170-feet and require turning radii of up to 150 feet.

Access Road Construction: Construction of Project access roads on private, leased site areas will, wherever possible, use existing logging roads and trails to minimize clearing and excavation impacts and impacts to wetlands. Otherwise, new gravel-surfaced access roads will be constructed, with topsoil stripping and grubbing of stumps, as necessary. Stripped topsoil will be stockpiled along the outer edges of the road corridor for use in site restoration. Any grubbed stumps will be chipped/mulched or buried. Following removal of topsoil, subsoil will be graded, compacted, and surfaced with gravel or crushed stone (depth to be determined by site specific conditions). A geotextile fabric or grid will be installed beneath the road surface, if necessary, to provide additional support.

The typical access road will be 18 to 40 feet in width and with occasional wider pull-off locations to accommodate passing vehicles. Roads will be restored where needed to protect sensitive environmental and wildlife areas, with a maximum permanent road width will not exceed 18 feet, with 10 ft shoulders on either side. Appropriately sized culverts will be placed in any wetland/stream crossings in accordance with state and federal permit requirements. In other locations, culverts may also be used to assure that the roads do not impede cross drainage. Where access roads cross, or are adjacent to, wetlands, streams, or drainage ditches/swales, appropriate sediment and erosion control measures (e.g.,

silt fence) will be installed in accordance with an approved sediment and erosion control plan.

During construction, paths for large crane use could result in temporary disturbance of approximately 40 feet, with temporary road corner radii of 125 feet. Once construction is complete, temporarily disturbed areas will be restored (including removal of excess road material and removal of all temporary fill in wetland/stream areas) and returned to their pre-construction contours.

Foundation Construction: Once the roads are complete, turbine foundation construction will commence. Foundation construction occurs in several stages including hole excavation, outer form setting, rebar and bolt cage assembly, casting and finishing of the concrete, removal of the forms, backfilling and compacting, and site restoration. Excavation and foundation construction will be conducted in a manner that will minimize the size and duration of excavated areas required to install foundations.

Initial activity at each tower site will generally involve stripping and stockpiling topsoil within a 200-foot radius around each tower (2.9-acre maximum area of temporary disturbance). Following topsoil removal, backhoes will be used to excavate a foundation hole. Some bedrock may not be ripable, and will be excavated by pneumatic jacking or hydraulic fracturing. If blasting is required, it will be conducted in compliance with a blasting plan, and in accordance with all applicable laws to avoid impacts to sensitive receptors. If necessary, dewatering of foundation holes will involve pumping the water to a discharge point, which will include measures/devices to slow water velocities and trap any suspended sediment. Dewatering activities will not result in the direct discharge of water into any streams or wetlands.

The foundation is anticipated to be one of two designs; either a concrete caisson or a spread footer. It is currently anticipated caisson foundation will be used. A caisson footing would be placed in a nominal 22-foot diameter excavation to a depth of around 30 feet. The top of the foundation is a nominal 18-foot diameter pedestal that typically extends 6 to 8 inches above grade. The base of each tower will be surrounded by a minimum of 6-foot wide gravel skirt. The crane pad area, which includes the foundation and surrounding laydown as well as the actual staging area for the crane to work is an approximately 82-foot by 100-foot area the roads roads/ramps into the crane pad area are an additional 85 x 85 ft. Foundations will require an estimated 300 yards of concrete on average per foundation, equivalent to 30 truckloads. (Total of 3,600 yards/360 truckloads)

Buried Cable Installation: The electrical collection system will generally follow Project access roads, but will also use Bean Mountain Road as a cable route separate from construction access roads to reach the Project metering point area, located at the intersection of Bean Mountain Road and Nichols Road. Direct burial methods through cable plow, rock saw, and/or trencher will be used during the installation of underground interconnect lines whenever possible.

Wind Turbine Assembly and Erection: Beyond the large vehicles used to transport the tower, nacelle, and rotor blades, other smaller wind turbine components include hubs, nose cones, cabling, control panels, and internal facilities such as lighting and ladders. All turbine components will be delivered to the project site on flatbed transport trucks and the main components will be off-loaded at the individual turbine sites.

Turbine erection is performed in multiple stages including: setting of the bus cabinet and ground control panels on the foundation, erection of the tower (which consists of 4 sections), erection of the nacelle, assembly and erection of the rotor, connection and termination of the internal cables, and inspection and testing of the electrical system prior to energizing.

Turbine assembly and erection involves mainly the use of large track mounted cranes, smaller rough terrain cranes, boom trucks, and rough terrain fork-lifts for loading and off-loading materials. The tower sections, rotor components, and nacelle for each turbine will be delivered to each site by flatbed trucks and unloaded by crane. A large erection crane will set the tower segments on the foundation, place the nacelle on top of the tower, and following ground assembly, place the rotor onto the nacelle. The erection crane(s) will move from one tower to another, sequentially.

Collection Station and Metering Point: Collection station and metering point construction will begin with clearing the site and stockpiling topsoil for later use in site restoration. The site will be graded, and a laydown area for construction trailers, equipment, materials, and parking will be prepared. Concrete foundations for major equipment and structural supports will be poured, followed by the installation of various conduits, cable trenches, and grounding grid conductors. Above-ground construction will involve the installation of structural steel, bus conductors and insulators, switches, circuit breakers, controls, and any poles or facilities required by PSNH. The final steps involve laying down crushed stone across the stations, erecting the chain link fence and testing the control systems.

Photographs of wind farm construction from Community Energy's recently-built Bear Creek Wind Farm are attached as **Appendix 36.**

(2) Potential impacts & mitigation plan

a. Road Use & Impacts

1. Traffic/road closures

Although roads within and adjacent to the Project area are operating well under capacity, some temporary impacts to transportation in and around the project area will result from the movement of vehicles involved in Project construction. The exact construction vehicles have not yet been determined, however, the types of vehicles typically involved in wind project construction include:

- Gravel trucks with capacity of approximately 10 cubic yards (cy) per truck and an estimated gross weight of 75,000 pounds (lbs), for access road construction. (Estimated 3,000 loads)
- Concrete trucks for construction of turbine foundations and transformer pads with capacity of approximately 10 cy per truck and an estimated gross weight of 96,000 lbs. (Estimated 360 loads)
- Flatbed trucks for transporting construction equipment to the site for clearing, excavation or equipment erection.
- Oversize flatbed trucks (up to approximately 14 axles) for transporting turbine components (tower sections, blades, nacelles, hubs); these trucks may have gross weights up to 276,000 pounds, with lengths (from front of cabin to end of trailer) up to 170 feet, widths to 14 feet, and heights to 15 feet 6 inches. (Estimated 84 loads)
- Pickup trucks for equipment and tools.
- Trucks and cars for transporting construction workers.

Transport of gravel, cement, construction equipment and personnel access will result in increased traffic on local roads, but is not expected to result in any road closures or traffic disruptions in the local area. Transport of oversize loads for wind turbine equipment can result in temporary traffic stops or re-routing, as vehicles navigate corners, town centers or other road or traffic features.

Final transportation routes for wind turbine equipment have not been selected, as the Project is not able to order wind turbine

equipment until state and federal permits (including an SEC certificate) are received, and thus the Project will not know the ultimate delivery points or interstate transportation routes. However, it is anticipated that locally, oversize loads related to wind turbine equipment will utilize New Hampshire Route 10 (either from the south via I-91 and NH Route 9, or from the north via I-89) and Lempster Mountain Road between NH Route 10 and Earl's Lane (private road). Most traffic impacts would be expected to occur around interstate highway exits, passing through city/town areas along the route (i.e., Keene or Newport), and navigating the intersections at Route 10/Lempster Mountain Road and Lempster Mountain Road/Earl's Lane.

Construction and transport plans will be provided to the Town of Lempster and be made available to the public, so residents will be aware of potential traffic issues. Trucking contractors will submit routes for delivery of oversize loads (see subsection 2., below) for approval to New Hampshire Department of Transportation (NH DOT), once equipment has been ordered, trucking contractors have been selected, and final transport routes are determined. The Town of Lempster and any other municipalities affected by the transport of oversize roads will be informed of the routes and schedules as coordinated with NH DOT.

Final transportation routing will be designed to avoid/minimize safety issues associated with the use of the approved haul routes, which will confine the heavy truck travel to a few select roads.

2. Heavy/Oversize trucking loads

As discussed in subsection 1., above, delivery of large wind turbine components to the site will involve transport of approximately 84 oversize and overweight loads. These loads will be subject to the New Hampshire Department of Transportation's "Special Permit to Move a Load In Excess of Legal Limit."

According to NH DOT regulations, special permit applications are issued only to the person or firm who will actually be hauling the oversized load. At this time, the Project has not selected the trucking contractors for the wind turbine equipment and will not be able to do so until it orders the turbines. Such orders will not be placed until all necessary state and federal permits relating to the construction and operation of the facility are obtained.

In order to provide the Committee and public with as much information as possible related to transportation issues, documents including specifications for typical oversize trucks used in transporting wind power equipment and information on the size and weight of loads has been included in this application as **Appendix 37**.

3. Damage to Public Roads

Transportation routing has been planned so as to avoid or minimize the impact to state and local roads. The Project will work with NH DOT and local highway departments to survey the transport impacts on the final route selected, and will perform any work required to prepare the route or repair damage to the route at the Project's expense.

The Project will work with the Town of Lempster on a specific plan and agreement for prevention of damage to public roads and the restoration and repair of any damaged areas post-construction. Such plan and agreement is expected to contain provisions for financial/performance guarantees for repair by the Project. Damage is expected to be mitigated by confining heavy truck travel to a few select roads, including NH Route 10 and Lempster Mountain Road. Prior to construction, the Project will work with the Town to video or photo document the existing roadways to verify the pre-construction roadway conditions. Upon completion of the construction activities, the Project will, at a minimum, return all roadways to their pre-construction conditions (subject to plan, agreement and financial guarantees entered with the Town).

b. Construction process impacts and mitigation

Beyond transportation issues, impacts related to Project construction could include impacts on environmental conditions such as dust and air emissions, impacts on soil and water resources, impacts from blasting, impacts related to construction noise, and safety impacts.

Dust and air emissions: During all aspects of project construction, the contractor and/or construction manager will minimize fugitive dust and airborne debris to the maximum extent practical by implementing appropriate control measures. These measures will include (but are not limited to) the application of mulch, water, stone, or an approved chemical agent on any access roads, exposed soils, or stockpiled soils when dry and windy conditions exist.

Other mechanisms to initiate dust control procedures include a determination from Project or construction managers that control measures shall be implemented, or complaints by landowners or local residents. A watering vehicle shall be available for use for the duration of project activities, including restoration.

During the construction process, there will be increased air pollutant emissions due to increased vehicle traffic. These impacts will be short-term, and at a minor enough level so as not to be a significant impact on overall air quality in the area.

Soil and water resources: Impacts from construction activities on wetlands, stormwater runoff, soil erosion and sediment control, and surface water quality are addressed in section (e) above, in discussion of the various permits required for these impacts. The core of the Project's mitigation in these areas is addressed in the stormwater pollution prevention plan, included in the Site Specific Permit (Stormwater Pollution Prevention Plan) and as referenced in wetlands and surface water quality permits.

The plan describes the temporary and permanent structural and vegetative measures that will be used to control erosion and sedimentation for each stage of the project from land clearing to the finished edge. The plan also provides detailed maps, dimensional details, and calculations for siting temporary erosion and sediment control facilities and permanent stormwater management facilities.

Wildlife impacts: As discussed above in section (e)(7)e., to mitigate for wildlife displacement related to temporary construction impacts, construction activities and sequencing will be examined to try and avoid habitat or identified nesting sites until vacated. In addition, all temporarily disturbed areas will be restored following construction activities to allow reestablishment of wildlife habitat. Permanent habitat loss and fragmentation will be avoided through careful site design (i.e., avoiding wetlands and large areas of mature forest, and minimizing the permanent footprint of project components to the extent practicable) and restoration of all temporarily disturbed areas. Additional measures for sustainable design of the Project are discussed in the Avian and Bat Survey paper, **Appendix 28.**

Noise impacts: Noise related to trucking (engine noise, brakes, back-up alarms, dumping, and bouncing on uneven road surfaces) and the operation of heavy construction equipment (excavators, rollers backhoes, hoe rams, pneumatic jacks, cable plows/trenchers, erection crane, blasting equipment) is expected to occur during the construction phase of the Project. Noise from construction-related activities may cause some temporary annoyance at residences within and adjacent to the Project area and public transportation routes. However, in many locations construction-related noise will not be significantly louder than everyday noise sources such as home construction, logging, or agricultural

equipment and vehicles passing on the road. In addition, construction noise will be a relatively short-term impact.

The Project will mitigate noise impacts by implementing best management practices for noise abatement during construction, including use of appropriate mufflers and limiting the hours of construction. The Project will also notify landowners of certain construction noise impacts in advance (e.g., blasting or heavy equipment moving). The Project will also implement a complaint resolution procedure to assure that any complaints from residents regarding construction or operational noise are adequately and efficiently investigated and resolved.

Blasting Impacts: During required blasting times, given the proposed turbines' distance from adjacent development (at least 1,000 feet from permanent residences), there should be no significant blasting-related impacts on wells, foundations, or other property features. Only temporary, minor impacts on the Project site are expected a result of blasting activities.

Safety impacts: Public safety impacts could be associated with Project construction including the movement of large construction vehicles, equipment and materials; falling overhead objects during erection; falls into open excavations; and electrocution. These issues are most relevant to construction personnel that will be working in close proximity to construction equipment and materials, and who will be exposed to construction related hazards on a daily basis.

The general public could also be exposed to construction-related hazards due to the passage of large construction equipment on area roads and unauthorized entry to the work site (on foot, by motor vehicle, ATV, or snowmobile). The latter could result in collision with stockpiled materials (e.g., soil, rebar, turbine/tower components), as well as falls into open excavations. Because construction activities will occur primarily on private land, and be well removed from adjacent roads and residences, exposure of the general public to construction-related risks/hazard is expected to be very limited.
Contractors will comply with all Occupational Safety and Health Administration (OSHA) regulations, in addition to state worker safety regulations, regarding electricity, structural climbing, and other hazards, during construction of the wind farm. To minimize safety risks to construction personnel, all workers will be required to adhere to a safety compliance program. The safety compliance program will address appropriate site health and safety related issues including personal protective equipment, job safety meetings and attendance requirements, fall prevention, construction equipment operation, maintenance and protection of traffic, hand and power tool use, open hole and excavation area safety, petroleum and hazardous material storage, use, containment and spill prevention, posting of health and safety requirements, procedures for visitors to

the job site, local emergency resources and contact information, and incident reporting requirements.

Construction vehicles will avoid areas where public safety could be a concern (schools, clusters of homes, etc.). The Project worked to design a construction access via Lempster Mountain Road rather than School Road in order to avoid traffic near the Goshen-Lempster School and the homes on School Road.

To minimize safety risks to the general public, all over-sized vehicles will be accompanied by an escort vehicle and/or flagman (if necessary) to assure safe passage of vehicles on public roads. The general public will not be allowed on the construction site, and the site will be well posted and gated at key entrances to avoid unauthorized access. Temporary construction fencing or other visible barriers will be placed around excavations that remain open during off hours. The contractor will coordinate with local fire and emergency personnel to assure that they are aware of where various construction activities are occurring, and avoid potential conflicts between construction activity and the provision of emergency services (e.g., road blockages, etc.).

(h) Net energy analysis

As discussed in Section (b)(3) d., above, wind data collected at the site indicates average wind speeds of between 7 and 8 meters/second (15 and 18 mph), resulting in an estimated capacity factor for the Project in the range of 37-38 percent. For a project with 24 MW rated capacity, this would result in the production of approximately 70,000 and 80,000 megawatt-hours (MWh) per year.

(i) Storage and distribution

N/A – no storage or distribution of energy products is required.

(j) General information – Statutory Requirements of RSA 162-H:7 V.

(1) Description in reasonable detail of the type and size of each major part of the proposed facility;

A description in detail of the type and size of each major part of the proposed Project is contained in sections (c)(1)-(3) above.

(2) Identification of the applicant's preferred alternative and any other options for the site of each major part of the proposed facility;

Identification of preferred alternatives for the Project site and turbine locations is contained in sections (b)(1)-(8) and section (c)(3) f. above. Identification of

alternatives considered for wind turbine locations is included in section (c)(6) above.

(3) Description in reasonable detail of the impact of each major part of the proposed facility on the environment for each site proposed;

A detailed description of the potential environmental, health and safety impacts of the Project is contained in section (e) above.

(4) Description in reasonable detail of the applicant's proposals for studying and solving environmental problems;

Detailed descriptions of studies that have been conducted or that are on-going to analyze environmental impacts of the Project are included in section (e) above, as are plans for mitigation of environmental impacts, where relevant.

(5) Description in reasonable detail of the applicant's financial, technical and managerial capability for construction and operation of the proposed facility;

A detailed description of the financial, technical and managerial capability of the Project is included in section (a), above.

(6) Documentation that written notification of the proposed project, including appropriate copies of the application, has been given to the appropriate governing body of each community in which the facility is proposed to be located;

The Town of Lempster has been provided with copies of this New Hampshire Site Evaluation Committee Application, as documented in **Appendix 38**.

(7) Description in reasonable detail of the project's consistency with the state energy policy;

A detailed description of the Project's consistency with the state energy policy is contained in section (c)(5) a. 2., above.

(8) Identification of any requests for waivers from the information requirements of any state agency or department whether represented on the committee or not;

Applicant has not requested waivers of any information requirements.

(9) Describe in reasonable detail the energy efficiency of the process;

The energy efficiency of the wind power generation units is included in section (c)(3) d., above.

(k) Statement certifying that the applicant agrees to provide such additional information as the Committee shall require to carry out the purposes of RSA 162-H;

Please see an executed Certification and Verification Statement of Lempster Wind, LLC, below.

Certification by Executive Officer of Lempster Wind, LLC

In accordance with RSA 162-H:8, I, Eric Blank, an executive officer of Lempster Wind, LLC, do hereby swear and affirm that the information contained in this Application is true and accurate to the best of my knowledge and belief.

I also certify that, as an Applicant to the New Hampshire Site Evaluation Committee, Lempster Wind, LLC agrees to provide such information as the Committee shall require to carry out the purposes of RSA 162-H.

LEMPSTER WIND, LLC

Eric Blank

Name: Eric Blank

Title: Manager

Date: August 16, 2006

STATE OF Colorado

COUNTY OF Boulder

On this 16th day of August, 2006, personally appeared before me the above-named Eric Blank, Manager of Lempster Wind, LLC, and swore and affirmed that the information contained in this Application is true and accurate to the best of his knowledge and belief.

Susan Schmidt
My commission expires 9-13-06
Notary Public/Justice of the Peace

SUSAN SCHMIDT NOTARY PUBLIC STATE OF COLORADO

THE STATE OF NEW HAMPSHIRE

SULLIVAN, SS. SUPERIOR COURT

Town of Lempster

v.

Kevin Onnela
and
Debra Onnela

Civil Action No. 220-2020-CV-00112

ANSWER AND DEFENDANTS' STATEMENT OF AFFIRMATIVE DEFENSES

JURY TRIAL DEMANDED

NOW COME the Defendants, Kevin and Debra Onnela, by and through their attorneys, Devine, Millimet & Branch, Professional Association, and respectfully submit the following Answer and Statement of Affirmative Defenses to the Plaintiff's Petition for Declaratory Judgment, Temporary Injunctive Relief and Permanent Injunctive Relief. The paragraphs and responses below correspond to the numbered paragraphs in the Plaintiff's Petition.

1. Admitted.

2. Admitted. By way of further answer, Defendants state that all the referenced tax parcels here, except for Lot 22 are leased to the wind farm operator, currently Avangrid, by the Defendants.

3. Denied in its entirety. It is expressly denied that Bean Mountain Road is a Class VI road (or any kind of public road) or that the Defendants are in violation of the cited statute and that they installed both gates on Bean Mountain Road. Bean Mountain Road is a private road owned by the Defendants on the portion that is on their property.

By way of further answer, the Defendants note that the Plaintiff's supporting documents to its Petition, at its Exhibit 3 in no way support the Plaintiff's claim that Bean Mountain Road is

a public road or Class VI road. The Plaintiff never identifies or authenticates any of these documents, merely calling them "Bean Mountain Road Documents." The first document is handwritten and says "Bean Mountain Road" in one corner in a different handwriting from the rest of the document. The second document is titled "N.H. Highway Dept. Right of Way Source Records" but the rest of the document is in longhand and never once says "Bean Mountain Road." The third supporting document has no title and is simply a list of references to various town and county records in various Registries of Deeds under a heading "For Layout See." Again, there is absolutely no reference to Bean Mountain Road. The fourth and final supporting document is a USGS topographic map with various handwritten lines added to it with portions of the lines bearing numerical designations. Again, there is no mention or reference to Bean Mountain Road.

Thus, the Plaintiff has failed to meet their most basic burden of proof, that Bean Mountain Road was laid out as a public road, let alone that it is a Class VI town road.

4. Admitted, except that the east gate is located at the limit of the Defendant's property, which is not the east end of Bean Mountain Road.

5. Denied. The referenced sign was placed by the wind farm operator, which leases the property, including the Defendant's portion of Bean Mountain Road from the Defendants.

6. Admitted. The traveling public, including ATV users, have no right to use the gated sections of Bean Mountain Road.

7. Denied. The statute only applies to Class VI roads. Bean Mountain Road is not a Class VI road. It is a private road owned by the Defendants from its junction with Nichols Road easterly to the eastern end of the Defendants' property as referenced in paragraph 4 above.

8. Admitted that that is what the Building Inspector informed Mr. Onnela. It is denied that Bean Mountain Road is a Class VI road.

9. Denied. This allegation incorrectly claims that the Building Permit requires Defendant Kevin Onnela to maintain all of Bean Mountain Road. To the contrary, the permit says that he is only "responsible for all maintenance of the subject roadway (Bean Mountain Road - so called) from junction of School and Nichols Roads to building site." (emphasis supplied) It is expressly denied that as a matter of fact that "the Town of Lempster reserves all rights to subject road and connectors as a Class VI roadway," because Bean Mountain Road is not a Class VI road or any public road.

10. Admitted only that the Selectboard attempted to designate Bean Mountain Road as an ATV trail on that date. It is expressly denied that the Selectmen had authority to do so since Bean Mountain Road is not a Class VI road.

11. Admitted.

12. Admitted, except that it is expressly denied that the Defendants are in violation of any of these unspecified "violations."

13. Denied in all respects.

14. Denied.

14.A. Denied that the Plaintiff is entitled to the requested relief.

14.B. Denied that the Plaintiff is entitled to the requested relief.

14.C. Denied that the Plaintiff is entitled to the requested relief.

14.D. Denied that the Plaintiff is entitled to the requested relief.

14.E. Denied that the Plaintiff is entitled to the requested relief.

14.F and remaining text. Denied that the Plaintiff is entitled to the requested relief.

STATEMENT OF AFFIRMATIVE DEFENSES

The Defendants raise the following Affirmative Defenses, pursuant to Superior Court Rule 9:

1. The Plaintiff Town of Lempster is prevented from claiming that Bean Mountain Road is a public road and its requested relief that the two gates on that road be removed so the road is opened for public use, by the doctrines of estoppel and waiver. In 2007 the Plaintiff, as part of its review and approval of the siting and operation of the Lempster Wind Farm, (which is accessible from Bean Mountain Road), required the erection of the two subject gates and required that those gates be open only for: the Defendants, the wind farm operator's general use and the Plaintiff Town's use for emergency or inspection purposes only. That agreement is memorialized in an agreement titled "Agreement between Town of Lempster and Lempster Wind, LLC, Developer/Owner of the Lempster Mountain Wind Power Project" and dated July 27, 2007 to which the Defendants are a named party as the "Participating Landowner."

2. The Town lacks authority and jurisdiction to require that the subject gates be removed because placement of the gates was ordered by the State of New Hampshire's Site Evaluation Committee, ("SEC") which ordered the placement of these gates and ordered the same restrictions on their use that the Plaintiff Town required as stated in paragraph 1 above. The Plaintiff Town would have to request that the SEC re-open its case on the Lempster Wind Farm and remove this condition before the Town could begin to attempt to require removal of these gates.

3. The Plaintiff Town's requirement that the two subject gates be erected and closed to the public as described in paragraph 1 above, is an "accord and satisfaction" with the Defendants as well as an admission as to the status of Bean Mountain Road as a private road. If

it was a public road, neither the SEC nor the Plaintiff Town would have the authority or jurisdiction to order it gated and the public kept out. The Town's attempt to reverse its 2007 requirement to place these locked gates violates this accord and satisfaction reached with the Defendants.

4. The Defendants raise the affirmative defense of illegality. The Plaintiff Town's requested relief is directly contrary to a ruling by the State's Site Evaluation Committee which has the force of law. In addition, the requested relief is directly contrary to the Town's requirement in the agreement referenced in paragraph 1 above, that the Defendants and wind farm operator must erect and lock the subject gates.

5. The Plaintiff Town's claims also fail because it has failed to sue a necessary party to this action. That party is the wind farm operator, currently a company called Avangrid. That company paid for, installed and maintains the western gate at the junction of Bean Mountain Road and Nichols Road. Even if the Plaintiff Town's requested relief was granted, the Defendants could not remove that gate as they do not own or operate it.

DEMAND FOR JURY TRIAL

The Defendants demand a trial by jury on all issues so triable.

Respectfully submitted,

KEVIN AND DEBRA ONNELA

By their attorneys,

DEVINE, MILLIMET & BRANCH, P.A.

Dated: September 25, 2020

By: /s/ Thomas Quarles, Jr.

Thomas Quarles, Jr., Esq. (NH Bar #2077)
111 Amherst Street
Manchester, NH 03101
(603) 669-1000
tquarles@devinemillimet.com

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing document was via electronic mail to Michael P. Courtney, Esq., counsel for the plaintiff.

Dated: September 25, 2020

/s/ Thomas Quarles, Jr.
Thomas Quarles, Jr.

STATE OF NEW HAMPSHIRE

SULLIVAN, SS. SUPERIOR COURT

Case No. 220-2020-CV-00112

Town of Lempster

v.

Kevin Onnela, et al.

DEFENDANTS KEVIN AND DEBRA ONNELA'S MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

I. Introduction

Defendants Kevin and Debra Onnela own land in Lempster, N.H. on which their residence is located. Some of that land includes the ridgeline of Lempster Mountain, which was suitable for development of a wind-powered electric generating facility. Such a facility was planned and developed by Defendant Lempster Wind, LLC ("Lempster Wind"). It consists of a dozen wind turbines. Each turbine stands approximately 256 feet high. The wind facility is located on property Lempster Wind leases from Defendants Kevin and Debra Onnela, and the Onnelas' house is the only permanent residence located on the facility site. Bean Mountain Road, which is unpaved, provides access to the wind facility site. There are two locations on Bean Mountain Road where locked gates prevent public access to the wind facility. In February 2020, on the initiative of the Lempster Trailblazers ATV Club (of which Selectman (at that time) Philip Tirrell is a member), the Town's Selectmen abrogated their 2007 agreement with Lempster Wind and the Onnelas requiring these locked gates to prevent public access. Instead the Town now claims that Bean Mountain Road is a public road that they could vote to open to All-Terrain Vehicle ("ATV") access and general public use. See Onnela's Counterclaim,

generally. On that basis, the Town has sued the Defendants to have the subject gates removed so that ATVs can have unrestricted access to Bean Mountain Road, and thus access to the Onnela's private residence and the wind facility's generating equipment.

In 2007, the State of New Hampshire Site Evaluation Committee ("SEC"), which had exclusive jurisdiction over the siting of the wind facility, approved the safe location of the wind turbines. Prohibiting the public's access to the site was addressed in the SEC's adjudicative Decision and Order. The Town was a party to and participated throughout the SEC's process. Not only did the Town accept the SEC's decision, the Town also signed an agreement with Lempster Wind, to which the Onnelas were a party and beneficiaries, requiring gates at the entrances of the facility site, and authorizing warning signs. Now, 14 years later, the Town wants the gates gone and a warning sign removed.

As will be discussed in this Memorandum, the Town's claims are defeated by many different legal and equitable principles. Underlying each is the fundamental principle that any party, like the Town, must be bound by the order in the case it litigated, and the agreement it signed.

II. Procedural History

The Town's initial pleading in this case was its Petition for Declaratory Judgment, Temporary Injunctive Relief and Permanent Injunctive Relief. The Town sued the Onnelas only, even though it was clear from the 2007 Agreement between the Town and Lempster Wind, that the latter was obligated by the Town to gate all entrances to the wind project facility, including the subject gates on Bean Mountain Road.

Undersigned counsel was hired just a few business days before the Court's hearing on the Town's request for temporary injunctive relief which was scheduled for the day after Labor Day,

September 8, 2020, when undersigned counsel was scheduled to be on vacation. Counsel for the Town agreed to extend the Onnela's deadline to file their Answer and Affirmative Defenses, but refused to continue the hearing which went forward on that date.

Following the hearing, undersigned counsel performed an extensive investigation and research for the Onnelas as to the Town's claims. It provided the Court with the 2007 Agreement between the Town and Lempster Wind, to which the Onnelas are a party. That Agreement expressly requires the subject gates, which the Town is now, for the first time, demanding be removed. That foundational document was never discussed or acknowledged in the Town's Petition. On September 25, 2020 the Onnelas filed their Answer, Affirmative Defenses and a separate Counterclaim against the Town. The Counterclaim alleges, among other matters, that the Town is estopped from claiming the relief it seeks now – the removal of the gates on Bean Mountain Road – due to the SEC's proceeding requiring those gates and the Town's 2007 Agreement with Lempster Wind with the same requirements. It also alleges that the Selectmen improperly and illegally breached that Agreement in counts of estoppel, accord and satisfaction, breach of contract, illegality, conflict of interest and bad faith conduct warranting an award of attorney's fees. The latter claim is based on the conflict of interest of Selectman Philip Tirrell, who allowed his pecuniary interests as a member of the Lempster Trailblazers ATV Club to override his duties as a Selectman to honor the 2007 Agreement and the SEC's Order.

The Onnelas made further submission to the Court in October 2020 in support of their Objection to the Town's Requests for Temporary Injunction providing more evidence that Bean Mountain Road was not a public road and therefore the Selectmen's action in February 2020 to allow ATV use on that road was illegal and improper.

On February 22, 2021 this Court denied the Town's request for preliminary injunction, holding in part that:

> In view of the [parties'] arguments, the conflicting evidence, and assessing the relative burdens on each side if the *status quo* is maintained until the final hearing, the Town's request for a preliminary injunction is *denied*.

Pursuant to the Case Structuring Conference Order, the Onnelas named Lempster Wind as a DeBenedetto defendant. That prompted the Town to prepare and file its Amended Petition, adding identical claims against Avangrid Renewables and Lempster Wind. These defendants filed their Answers and Affirmative Defenses on June 1, 2021 and now all defendants file for Summary Judgment against the Town on all the Town's claims.

III. Argument

A. The SEC's 2007 Order and Jurisdiction

1. RSA 541:22 bars the Town's claims from being maintained in this Court.

A claim may not be maintained in this court if it seeks to, "set aside, enjoin the enforcement of, or otherwise review or impeach any order of the commission." RSA 541:22. The SEC is a "commission" within the meaning of RSA 541:22, *see* RSA 541:1, as its decisions are reviewable in accordance with RSA 541. *See* RSA 162-H:11. Because the Town's claims seek to set aside and essentially nullify an order of the SEC, they cannot be maintained in this court. *See* RSA 541:22.

Other than the appeal provided under RSA 541, no other proceedings may be maintained by any court in this state for the purpose of reviewing an SEC order. *Id.* Parties aggrieved by an SEC decision have the opportunity to file a Motion for Rehearing within 30 days of the order or decision. RSA 541:3. If the party's Motion for Rehearing is denied, the party may appeal to the Supreme Court within 30 days. RSA 541:6. RSA 541 does not provide any additional

opportunities for parties to an SEC proceeding to appeal, contest, or otherwise seek to overturn an SEC order.

The Town was a party to and participated throughout the SEC proceedings that resulted in its 2007 Order requiring the installation of the gates and sign that the Town is now challenging. Statement of Material Facts ¶¶ 11, 24-25. The Town's opportunity to set aside the portions of the SEC's Order that it now finds objectionable expired approximately 14 years ago. The Town is now improperly attempting to revitalize its appellate opportunity by skirting the provisions of RSA 541:3 and filing this action in violation of RSA 541:22. This court, therefore, cannot entertain the Town's Amended Petition.

2. The SEC has primary jurisdiction over the Town's claims.

Pursuant to its authority under RSA 162-H:4, I the SEC adjudicated Lempster Wind's application for a certificate of site and facility and issued a Decision and Order. Statement of Material Facts ¶ 14. The SEC exercised its authority pursuant to RSA 162-H:16, VI and included terms and conditions in Lempster Wind's certificate requiring that entrances to the Facility site be gated and locked during non-working hours, and authorizing signs to identify the Facility site, provide warnings, or identify private property. Statement of Material Facts ¶¶ 15, 17-20, 22-25.

The gates and sign located on Bean Mountain Road comply with the SEC's Order. Bean Mountain Road not only provides access to the Facility, it runs through the Facility site. Statement of Material Facts ¶34 Yet, despite the SEC's Order, the Town seeks an order compelling the Defendants "to remove all gates and signs on Bean Mountain Road that restrict public travel" and prohibiting "the further installation of gates and signs that restrict the public's right to travel on Bean Mountain Road." *Amended Petition*, p. 3, ¶ B. Because the Town's

claims totally ignore and seek to invalidate a long-standing SEC Decision and Order regarding safety measures to limit access to the Facility, the Town's claims must be addressed to the SEC, as it has primary jurisdiction over this matter.

"New Hampshire has long recognized the doctrine of primary jurisdiction" "to encourage the exercise of agency expertise, preserve agency autonomy, and promote judicial efficiency." *Pennichuck Corp. v. City of Nashua*, 2004 WL 1950458 *8 (2005). The doctrine requires judicial abstention until the final administrative disposition of a matter. *Konefal v. Hollis/Brookline Co-op Sch. Dist.*, 143 N.H. 256, 258 (1998).

In this case, the Town seeks relief that would impact the safety precautions that the SEC was authorized to impose and enforce. *See* RSA 162-H:4, I. The SEC is composed of trained professionals who are specifically authorized by statute to use their expertise to decide matters relating to the siting, construction and operation of energy facilities. *See Society for the Protection of New Hampshire Forests v. Site Evaluation Committee*, 115 N.H. 163, 175 (1975). Because of the SEC's specialized expertise, this matter falls squarely within its authority. Only the SEC can evaluate the safety issues associated with the Town's complaints. *Id.*

The Town may petition the SEC for relief from the conditions that the Town now finds objectionable. *See* N.H. Code Admin. Rule Site 102.33(c) ("petition" means "[a]ny other initial filing that requests the committee to take action with respect to a matter within its jurisdiction or to determine whether it has jurisdiction over a matter.") Because the Town has failed to exhaust an appropriate and available administrative remedy from the tribunal having primary jurisdiction over them, its claims in this court are barred. *See Konefal v. Hollis/Brookline Co-op. Sch. Dist.*, 143 N.H. 256, 258-59 (1998) (plaintiff's claims were not viable because they involved a question of administrative discretion and plaintiff had failed to exhaust her administrative remedies).

3. The SEC's 2007 Decision and Order preempts the Town's alleged authority under RSA 231:21-a.

The Town asserts authority under RSA 231:21-a to regulate and remove structures on Bean Mountain Road to assure public use of the road. Amended Petition, ¶ 9. Irrespective of whether Bean Mountain Road is a Class VI road under RSA 231:21-a, it is undisputed that Bean Mountain Road provides access to and is located within the site of a wind energy facility. Statement of Material Facts, ¶ 34. Because the SEC has exclusive regulatory authority over issues relating to the siting of the Lempster Wind Facility, any authority that the Town may have had over that road under RSA 231:21-a is preempted by the SEC's 2007 Decision and Order.

The SEC was established by RSA 162-H and is vested with broad authority over issues relating to the siting, construction and operation of energy facilities, including issues related to public health and safety such as access points and signage. See RSAs 162-H:4, and 162-H:16, IV (c). By creating the SEC, the legislature preempted municipal authority relative to energy facility siting issues. See *Public Service Commission of New Hampshire v. Town of Hampton*, 120 N.H. 68, 71 (1980) (legislature intended that all matters regarding the construction of energy facilities covered by RSA 162-H "be determined in one integrated and coordinated procedure by the site evaluation committee, whose findings are conclusive."). Thus, the SEC's 2007 Decision and Order is controlling, and the Town's alleged authority to regulate Bean Mountain Road is preempted. See *Wasserman v. City of Lebanon*, 124 N.H. 538, 542-43 (1984) (City had exceeded its authority by implementing ordinances regulating maintenance of dams and hydroelectric facilities that were contrary to state law).

4. **The Town is barred by res judicata and collateral estoppel because its claims and issues have previously been litigated by the parties and a final judgment was issued.**

Even if this court finds that it has jurisdiction to consider the Town's claims, those claims must fail as they are barred by the doctrines of res judicata and collateral estoppel.

Res judicata bars a party's claims if: "(1) the parties are the same or in privity with one another; (2) the same cause of action was before the court in both instances; and (3) the first action ended with a final judgment on the merits." *Gray v. Kelly,* 161 N.H. 160, 164-65 (2010). Res Judicata applies to the SEC's decision because the SEC was acting in a judicial capacity. *See Cook v. Sullivan,* 149 N.H. 774, 778 (2003). Similarly, collateral estoppel bars a party from relitigating any issue or fact actually litigated and determined in a prior action in which the party participated and had a full and fair opportunity to litigate the issue or fact. *Id.*

All elements of res judicata and collateral estoppel are present. Lempster Wind and the Town participated as parties in the SEC proceeding. Statement of Material Facts ¶¶ 5, 10, 11 and 12. Although the Onnelas were not parties to the SEC proceeding, they are in privity with Lempster Wind by virtue of their lease of the subject project land to Lempster Wind. See Statement of Material Facts ¶ 32. They are in privity with the Town as they have party status as a "Participating Landowner" under the 2007 agreement between the Town and Lempster Wind. See Onnela's Statement of Material Facts A, B, C, D, E. *See Daigle v. City of Portsmouth,* 129 N.H. 561, 571 (1987). The cause of action before the SEC and this court are the same. The SEC proceedings extensively evaluated public health and safety concerns associated with access to the Facility, including the issues of the installation of the gates and signs which the Town now claims are in violation of RSA 231:21-a. Statement of Material Facts ¶¶ 15, 17-20, 22-25. The

relief the Town seeks in the instant action is an injunction ordering Defendants to remove all gates and signs on Bean Mountain Road that restrict public travel, and prohibiting further installation of such gates and signs. Amended Petition, p. 3, ¶B. The Town could have sought this relief from the SEC, but instead it did the opposite – the Town reached an agreement with Lempster Wind regarding the installation of gates and signage at Facility access points which the SEC incorporated into its Order. Statement of Material Facts ¶¶19, 20, 22-25. Because the relief that the Town is seeking from this court was available at the SEC, the Town cannot pursue its claims in this court. *See Gray v. Kelly,* 161 N.H. at 165 (if the same type of relief is available in both cases, res judicata precludes the claim from being relitigated).

The SEC "conducted an open and inclusive process." Statement of Material Facts ¶10. The Town was a party to the SEC proceedings, was represented by counsel, and participated throughout the proceedings. Statement of Material Facts ¶ 11. The SEC held four days of evidentiary hearings, heard from 14 witnesses, entertained briefs from all parties, and held two days of deliberations. Statement of Material Facts ¶ 10. These proceedings constituted "adjudicative proceedings under RSA 541-A". *See* RSA 162-H:10, II. Thus, the SEC was acting in a judicial capacity when it issued its Decision and Order.

In addition, as discussed above, the Town and Lempster Wind drafted their agreement providing that entrance to the Project Site must be gated, and locked during non-working hours, and that signs must be reasonably sized and limited to those necessary to identify the Project Site and provide warnings or liability information, construction information, or identification of private property. Statement of Material Facts ¶¶ 19, 20 and 22. The Onnelas were a "Participating Landowner" to that agreement and were bound by it. See Onnela's Statement of

Material Facts A, B, C, D, F. Counsel for the Public entered into an agreement with Lempster Wind containing almost identical gate provisions. Statement of Material Facts ¶¶ 17 and 18.

Following its adjudicative proceedings, the SEC issued a final judgment on the merits of Lempster Wind's application on June 28, 2007, granting Lempster Wind's Certificate subject to terms and conditions, which included the draft agreement between the Town and Lempster Wind, and Lempster Wind's agreement with Counsel for the Public. Statement of Material Facts ¶¶ 14, 15, 17, 19, 20, 22, 24-25. The SEC's Decision notes that "[i]n order to restrict public access to the turbines, structures and supporting equipment, the Applicant, Public Counsel and the Town of Lempster have entered into agreements which, in turn, contain conditions governing access and warning signs." Statement of Material Facts ¶24. The SEC expressly noted the conditions it had imposed in making the determination that the Facility "does not present an unreasonable adverse effect on the public health and safety from the standpoint of public access to the facility." Statement of Material Facts ¶25.

The Town had a fair and full opportunity to litigate its gates and signage claims and issues against Lempster Wind before the SEC. The SEC adjudicated those claims and issues and rendered a comprehensive Decision and Order in 2007 requiring those gates and signage.

B. <u>The Town's 2007 Agreement With Lempster Wind</u>

5. The Town is estopped from bringing its claims because they are contrary to the Executed Agreement between the Town and Lempster Wind to which the Onnelas are a party.

Because the Town's claims contravene its Executed Agreement with Lempster Wind which was signed by members of the Lempster Board of Selectmen, *see* Exhibit E, p. 12, the doctrine of municipal estoppel prevents the Town from pursuing its claims. *See Thomas v. Town*

of Hooksett, 153 N.H. 717, 721 (2006) (doctrine of municipal estoppel has been applied to municipalities to prevent unjust enrichment and to accord fairness to those who bargain with agents of municipalities for the promises of the municipalities); *see also Turco v. Town of Barnstead,* 136 N.H. 256, 261-263 (1992) (town was estopped from failing to maintain a road because plaintiffs had reasonably relied on a building permit the town issued).

Municipal estoppel bars municipal action if the party asserting estoppel demonstrates that: the municipality, through an authorized representative, made a false representation or concealed material facts; the representation was made with knowledge of the facts; the party relying on the representation was ignorant of the truth of the matter; the municipal representation was made with the intention that the other party should act on it; and the other party was induced to act on the representation to its injury. *Id.* All of the foregoing elements of municipal estopped are met in this case.

The Town's Board of Selectmen signed the Executed Agreement 14 years ago. The Town had authority to enter into the agreement, and its Board of Selectmen were authorized to sign it on behalf of the Town. *See* RSA 31:3 (a town "may make any contracts which may be necessary and convenient for the transaction of the public business of the town"), and RSA 41:8 ("selectmen shall manage the prudential affairs of the town and perform duties by law prescribed.") The Onnelas are parties to the Executed Agreement. See Onnela's Statement of Material Facts A, B, C, D, F. The Onnelas, as a "Participating Landowner" as provided for in that agreement are also parties and/or third party beneficiaries of that agreement and have standing to enforce it. *See Arlington Trust Co. v. Estate of Wood,* 123 N.H. 765, 767 (1983) ("The third-party beneficiary doctrine is an exception to the general rule that a non-party to a contract has no remedy for breach of the contract.") Nothing in the Executed Agreement

indicates that the Town considered Bean Mountain Road a Class VI Road, or that the Town was reserving the right to regulate the Facility's gates and signage other than in the manner described in the Executed Agreement. By signing the Executed Agreement, the Town, therefore, made a false representation and also concealed material facts (*i.e.* that the Town considered Bean Mountain Road to be a Class VI road). That 2007 representation was made by the Town with the "full knowledge of the facts" that the Town considered Bean Mountain Road to be a Class VI road, as the Town now points to documents dated 1981 to support its position on this issue. *See Amended Petition,* ¶¶ 10 and 11. The Onnelas and Lempster Wind were not only unaware of the Town's position, they believed the opposite to be true, *i.e.*, that Bean Mountain Road was a private Road. Statement of Material Facts, ¶ 9. The Town clearly intended that the Onnelas and Lempster Wind rely on the agreement; it is illogical to assume that the Town signed the agreement and somehow did not expect the parties to abide by the agreement's gates and signage provisions. Lastly, the Onnelas and Lempster Wind reasonably relied on the Executed Agreement to their prejudice. Lempster Wind constructed its Facility, including gates and signs, in compliance with the Executed Agreement and the SEC's Order which contains the same requirements. In bringing its claims, the Town has injured the Onnelas and Lempster Wind by forcing them to either defend themselves in this suit, or violate the terms and conditions of the SEC Certificate and their agreement with the Town. Such noncompliance would expose Lempster Wind and Avangrid Renewables to further harm in the form of severe penalties. *See* RSA 162-H:19, II (operation of energy facilities in violation of terms and conditions of a certificate may result in fines up to $10,000 for each day in violation).

6. The Town waived its claims by signing the Executed Agreement which explicitly addresses the issues raised in its Petition.

Shortly after the SEC issued its Decision and Order on June 28, 2007, the Town and Lempster Wind signed an agreement dated July 27, 2007 ("the Executed Agreement") that contains specific provisions regarding the installation of gates at entrances to the Facility and the installation of signs. Statement of Material Facts ¶¶ 26-30. See Onnela's Statement of Material Facts A - G. The Town now claims that the Onnelas, Avangrid Renewables and Lempster Wind have violated RSA 231:21-a by "permitting and installing gates on Bean Mountain Road, a Town of Lempster Class VI Road," and adding a sign prohibiting public travel. *Amended Petition,* ¶¶ 5 and 7. The Town ignores the fact the gates are required by the Executed Agreement which has been in place for 14 years. If the Town had any claim under RSA 231:21-a, it was waived when the Town voluntarily entered into the Executed Agreement requiring Lempster Wind to install gates at the Facility entrances.

A valid waiver exists when it is "'expressed in explicit language to forego a right'" or based on "'conduct under the circumstances justifying an inference of a relinquishment of [a right]'". *Town of Atkinson v. Malborn Realty Tr.,* 164 N.H. 62, 66 (2012). Both the explicit language of the Executed Agreement (requiring the installation of gates at Facility entrance points), Statement of Material Facts ¶ 27, as well as the Town's failure to assert its regulatory claims until many years after the date of that agreement, compel the reasonable inference that the Town willingly and knowingly relinquished any rights it may have had under RSA 231:21-a to treat Bean Mountain Road as a public road and thus to be able to control gates on Bean Mountain Road.

Inasmuch as Bean Mountain Road provides entrance to the Facility, Statement of Material Facts, ¶ 34, it is clear from the plain language of the Executed Agreement (Statement of Material Facts, ¶ 27) that the Town intended to waive any right that it may have had to claim that that road is a public road and thus to prevent the installation of the gates and sign about which it now complains. Because the Town waived its claims in 2007 when it signed the Executed Agreement, the Town's attempt to bring such claims against the Onnelas, Avangrid Renewables and Lempster Wind for acts that comply with that agreement is totally improper and the Onnelas contend constitutes bad faith on the Town's part. This also constitutes an accord and satisfaction, preventing the Town from changing its position and now contending that Bean Mountain Road is a public road. *See Decato Bros. v. Westinghouse Credit Corp.*, 129 N.H. 504, 506 (1987) ("An accord and satisfaction may properly be defined as a 'method of . . . setting aside a cause of action . . . by substituting for such . . . cause of action an agreement for the satisfaction thereof and the execution of such subsequent agreement.' 1 Am. Jur. 2d *Accord & Satisfaction* § 1, at 301 (1962)." (citation in original)).

C. **The Town's Delay**

7. The Town's claims are barred by the doctrine of laches.

Laches is an equitable doctrine that bars the claims of a plaintiff who has slept on its rights. *Appeal of Professional Fire Fighters Hudson, IAFF Loc. 3154,* 167 N.H. 46, 57 (2014). If a plaintiff's delay in bringing its claims is unreasonable and prejudice has resulted, the claims may not proceed. *Pennichuck Corp. v. City of Nashua,* 152 N.H. 729, 740 (2005). For laches to bar a municipality's claim, extraordinary and compelling circumstances must exist. *See Town of Seabrook v. Vachon Management,* 144 N.H. 660, 668 (2000).

Here, the Town is advancing claims that directly contradict an agreement it executed 14 years ago, as well as an order issued by the SEC in 2007. In constructing the Facility, including gates and signage, the Onnelas, Lempster Wind and Avangrid Renewables have reasonably relied upon the terms and conditions of the Executed Agreement and the SEC's Order, both of which authorize the gates and sign about which the Town now complains. The Town's delay in bringing its claims is therefore unreasonable.

As indicated in Section 7 above, the Onnelas, Lempster Wind and Avangrid Renewables have been prejudiced by the Town's delay in asserting its claimed rights under RSA 231:21-a, and they will suffer injury if the Town's requested relief is granted. *See* RSA 162-H:19, II. Moreover, if the Town is allowed to obtain the removal of the gates and sign on Bean Mountain Road, the public will be able to gain access to the site of a wind-powered electric generating facility, thereby creating a potent public safety risk – a risk that the SEC addressed by conditioning Lempster Wind's SEC Certificate on the installation of the gates and sign that the Town now seeks to remove.

In view of the foregoing, it would be illogical, unreasonable, and inequitable to allow the Town's claims to proceed. Moreover, the safety issues implicated by the Town's requested relief create extraordinary and compelling circumstances that warrant barring the Town's claims. This court, therefore, should apply the laches doctrine against the Town and dismiss all its claims against the Defendants. *See Town of Seabrook v. Vachon Management*, 144 N.H. 660, 668 (2000).

III. Conclusion

The Town's claims cannot be maintained in this Court and must be dismissed for the reasons discussed above. Even if this Court could consider the Town's Amended Petition, the

requested relief cannot be granted as it would cause Lempster Wind to violate the terms and conditions of its Certificate of Site and Facility, the SEC's Order, and Lempster Wind's 2007 agreement with the Town. It would also cause the Onnelas to breach the 2007 agreement with the Town which they are parties to as a "Participating Landowner." Such a result would be unjust and unreasonable, and therefore improper. Summary Judgment, therefore, must be entered for Defendants the Onnelas, Avangrid Renewables and Lempster Wind.

Respectfully submitted,

KEVIN AND DEBRA ONNELA

By their attorneys,

DEVINE, MILLIMET & BRANCH, P.A.

Dated: August 6, 2021

By: /s/ Thomas Quarles, Jr.

Thomas Quarles, Jr., Esq. (NH Bar #2077)
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(603) 669-1000
tquarles@devinemillimet.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this date via the ECF system upon all parties.

Dated: August 6, 2021

/s/ Thomas Quarles, Jr.
Thomas Quarles, Jr.

STATE OF NEW HAMPSHIRE

SULLIVAN, SS. SUPERIOR COURT

Case No. 220-2020-CV-00112

Town of Lempster

v.

Kevin Onnela, et al.

DEFENDANTS' JOINT REPLY TO PLAINTIFF TOWN OF LEMPSTER'S ADDITIONAL STATEMENT OF MATERIAL FACTS

NOW COME Defendants Kevin and Debra Onnela, by and through their attorneys, Devine, Millimet & Branch, P.A., and Avangrid Renewables, LLC ("Avangrid Renewables") and Lempster Wind, LLC ("Lempster Wind"), by and through their attorneys, Orr & Reno, P.A., and reply to Plaintiff Town of Lempster's Additional Statement of Material Facts in Objection to the Defendants' Motions for Summary Judgment, stating as follows:

Plaintiff's Additional Statement of Material Fact:

38. Bean Mountain Road is a Class VI road laid out by the Town of Lempster in 1819. *See* Pl.'s Exhibit 1, Affidavit of Mary Grenier ¶5.

Defendants' Reply:

38(a). This is not a statement of a material fact. As discussed in the Defendants' Motions for Summary Judgment and accompanying Memoranda of Law, the status of Bean Mountain Road as a matter of law, was determined when the Town, as a party to the New Hampshire Site Evaluation Committee (SEC) proceedings agreed that the subject areas of Bean Mountain Road were part of the Project Site and that public access to them must be prohibited. *See Defendants Avangrid Renewables' and Lempster Wind's Exhibit D,* pp. 3, 51, 65 and 81, and *Exhibit* A-1.

The Town willingly accepted the SEC orders to that effect and made no protest of the subject gates and Bean Mountain Road's status until the subject dispute and litigation arose in 2020.

38(b). To the extent a further reply to this Statement seems to be required by Superior Court Rule 12(g)(4), the Defendants deny the allegation. While its materiality is contested by the Defendants, there is no dispute that the Town's entire case (as only the Town analyzes the issues), depends on Bean Mountain Road being a Class VI public road as it now asserts. The alleged proof provided by the Town of that status does no such thing. The Town has consistently cited to a number of documents in support of its position, but it has never provided their source or a qualified witness who can testify as to how these documents allegedly establish that Bean Mountain Road is a Class VI road. None of the Town's alleged documentation state the words "Class VI" road or "Class VI road subject to gates and bars." The Town has failed in its burden to show that Bean Mountain Road is a Class VI road or a public road of any type. *See Defendants Onnelas' Objection to Plaintiff's Request for Temporary Injunction,* ¶¶ 12 and 13, and Exhibit C (recorded survey plans) attached thereto.

Plaintiff's Additional Statement of Material Fact:

39. Town officials and employees have searched the Town's records and have not identified a vote of the Town Meeting to discontinue Bean Mountain Road. *Affidavit of Mary Grenier* ¶6.

Defendants' Reply:

39. See Defendants' dispute of this allegation's materiality as detailed in the reply at paragraph 38(a) above.

To the extent a further reply seems to be required by Superior Court Rule 12(g)(4), this Statement is denied. Curiously, the allegation is <u>detrimental,</u> not supportive, to the Town's case.

In supporting its case, the Town asserts that "Bean Mountain Road is a Class VI road and is officially discontinued." *See* Town of Lempster's Exhibit 2 and Exhibit 6 in support of its Objections to the Defendants' Motions for Summary Judgment. If Bean Mountain Road has been "officially discontinued," then that "official discontinuance" should have been found in the alleged search that Town officials and employees conducted to identify "a vote of the Town Meeting to discontinue Bean Mountain Road."

The Town is bound by its prior official statements, first by its Building Inspector in 1981 that Bean Mountain Road is an "officially discontinued" Class VI road, and then the Selectmen's direct adoption and reiteration of that status on May 26, 2020 in the context of this present dispute and litigation. *Id.* Thus the Town has admitted that Bean Mountain Road, by its "official discontinuance" had its status changed from a public to private road by that discontinuance.

The fact that the documents and building permit that defendant Onnela received in 1981 claims that the Class VI status of Bean Mountain Road has been revived by the Building Inspector's allowance of a building permit to Kevin Onnela, (as long as he agreed to maintain Bean Mountain Road to his residence), has no legal force or effect. *See* Town's Petition, Ex. D. Contrary to the Town's assertions, Mr. Onnela did not agree in that process that Bean Mountain Road was a Class VI road. The Building Inspector simply asserts that in the Building Permit. He had no authority to do so. Neither Building Inspectors nor Road Agents can change or decree the status of any road. Town roads can only be laid out by the Selectmen and have their status changed or be discontinued by them. The Town's Selectmen have found that Bean Mountain Road was "officially discontinued," in this dispute. They are bound by that finding and cannot change that finding in the middle of this litigation to suit their litigation strategy.

Plaintiff's Additional Statement of Material Fact:

40. The Town of Lempster has not agreed to the placement of the gates by the defendants on Bean Mountain Road. *See Affidavit of Mary Grenier* ¶7.

Defendants' Reply:

40. See Reply 38(a) above for the Defendants' dispute of the materiality of this Statement.

To the extent a further reply seems to be required by Superior Court Rule 12(g)(4), this Statement is denied. The Town of Lempster's 2007 Agreement with Lempster Wind requires such gates. *See Defendants Avangrid Renewables' and Lempster Wind's Exhibit E,* p. 4, ¶ 4.3 These gates have been in place for thirteen years before the Town made its first protest about them, solely to support its effort to open Bean Mountain Road to ATV use.

Plaintiff's Additional Statement of Material Fact:

41. In 1981, Defendants Onella acknowledged Bean Mountain Road is a Class VI highway, when they applied for a building permit. *See Pl.'s Exhibit* 2.

Defendants' Reply:

41. See Reply 38(a) above for the Defendants' dispute of the materiality of this Statement.

To the extent a further reply seems to be required by Superior Court Rule 12(g)(4), this Statement is denied. *See* Defendants' reply to the Town's Statement 39 above for the review of the Town's Building Inspector's actions and decrees concerning Bean Mountain Road and his, not Mr. Onnela's, claim that Bean Mountain Road is a "Class VI officially discontinued road."

Plaintiff's Additional Statement of Material Fact:

42. Defendants have not erected a fence around the entire perimeter of the Project Site. See Affidavit Mary Grenier ¶8.

Defendants' Reply:

42. See Reply 38(a) above for the Defendants' dispute of the materiality of this Statement.

To the extent a further reply seems to be required by Superior Court Rule 12(g)(4), this Statement is admitted.

Plaintiff's Additional Statement of Material Fact:

43. Section 1.9 of the Town Agreement defines "Project Site" as "property with rights as conveyed to Owner by Lease, Easement or other agreement with Participating Landowner that includes all Wind, Turbines, access roads and other facilities required for construction operation of the Wind Park." Affidavit of Mary Grenier ¶9; Def.'s Exhibit E.

Defendants' Reply:

43. Admitted.

Plaintiff's Additional Statement of Material Fact:

44. Bean Mountain Road was not "conveyed to the Owner by lease [or] easement." Affidavit of Mary Grenier ¶10.

Defendants' Reply:

44. See Reply 38(a) above for the Defendants' dispute of the materiality of this Statement.

To the extent a further reply seems to be required by Superior Court Rule 12(g)(4), this Statement is denied. The Lease the Onnela's entered into with Lempster Wind included the parts of Bean Mountain Road within the Onnelas' property and are owned by the Onnelas' as a private road. In addition, Selectman Grenier has no legal training or factual or legal foundation to make

these asserted legal claims in her Affidavit. For that reason as well, this Statement of the Town is illegitimate and should be stricken.

Plaintiff's Additional Statement of Material Fact:

45. Bean Mountain Road was not "conveyed" to Lempster Wind by "an agreement with the Participating Landowner." Affidavit of Mary Grenier ¶11.

Defendants' Reply:

45. See Reply 38(a) above for the Defendants' dispute of the materiality of this Statement.

To the extent a further reply seems to be required by Superior Court Rule 12(g)(4), this Statement is denied. The Lease the Onnelas' entered into with Lempster Wind included the parts of Bean Mountain Road contained within the Onnelas' property and are owned by the Onnelas' as a private road. In addition, Selectman Grenier has no legal training or factual or legal foundation to make these asserted legal claims in her Affidavit. For that reason as well, this Statement of the Town is illegitimate and should be stricken.

Plaintiff's Additional Statement of Material Fact:

46. The Wind Park does not maintain Bean Mountain Road in the winter. Affidavit of Mary Grenier ¶12.

Defendants' Reply:

46. See Reply 38(a) above for the Defendants' dispute of the materiality of this Statement.

To the extent a further reply seems to be required by Superior Court Rule 12(g)(4), the Statement is denied. *See Defendants Avangrid Renewables' and Lempster Wind's Exhibit F,* ¶6.

Plaintiff's Additional Statement of Material Fact:

47. The Wind Park and Onnelas uses Ridge Road, to access the Wind Park. Affidavit of Mary Grenier ¶13.

Defendants' Reply:

47. See Reply 38(a) above for the Defendants' dispute of the materiality of this Statement.

To the extent a further reply seems to be required by Superior Court Rule 12(g)(4), this Statement is admitted in part. Representatives of Avangrid Renewables and Lempster Wind and the Onnelas use both Ridge Road and Bean Mountain Road on almost a daily basis, including in the winter months. *See Defendants Avangrid Renewables' and Lempster Wind's Exhibit F*, ¶6. Representatives of Avangrid Renewables and Lempster Wind and the Onnelas use both Ridge Road and Bean Mountain Road to access the Lempster Wind Energy Facility site and the Onnelas' property respectively. *See Defendants Avangrid Renewables' and Lempster Wind's Exhibit F*, ¶ 5.

Plaintiff's Additional Statement of Material Fact:

48. Defendants Onella have erected signs at the gate on Bean Mountain Road. Affidavit of Mary Grenier ¶14; Exhibit 3.

Defendants' Reply:

48. See Reply 38(a) above for the Defendants' dispute of the materiality of this Statement.

To the extent a further reply seems to be required by Superior Court Rule 12(g)(4), this Statement is admitted in part. There are 3 signs shown in the Town's Exhibit 3: The two signs shown on the utility pole were not authored by any of the Defendants and it is unknown when they were placed. The Town has provided a picture of this west gate at Bean Mountain Road at

Exhibit C, p. 1 of its Petition for Declaratory Judgment, etc. That photograph shows the two signs that have been on this west gate since about 2008. Those two signs were jointly placed by the Defendants. The Town has never protested their placement, even after the present dispute arose in 2020. In doing so, the Town has conceded that Bean Mountain Road is a private road, since pursuant to Section 5.4 of the 2007 Agreement, no signs can be "placed in the public right of way" without permission of the Town. To this day, neither the Onnelas, Avangrid Renewables or Lempster Wind or have been asked to modify or take down these signs.

Respectfully submitted,

KEVIN AND DEBRA ONNELA

By their attorneys,

DEVINE, MILLIMET & BRANCH, P.A.

Dated: September 22, 2021

By: */s/ Thomas Quarles, Jr.*

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Respectfully submitted,

AVANGRID RENEWABLES, LLC and
LEMPSTER WIND, LLC

By their attorneys,

ORR & RENO, P.A.

Dated: September 22, 2021

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this date via the ECF system upon all parties.

Dated: September 22, 2021

/s/ Thomas Quarles, Jr.
Thomas Quarles, Jr.