

1 STATE OF NEW HAMPSHIRE
2 SITE EVALUATION COMMITTEE

3 April 20, 2009 - 10:15 a.m.
4 21 South Fruit Street DAY II
5 Suite 10
6 Concord, New Hampshire

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

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

25 * * *

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

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

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1 P R O C E E D I N G S
2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. I'll reopen the public meeting in Site
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4 Evaluation Committee Docket 2008-04, concerning the
5 Application of the Granite Reliable wind facility. These
6 deliberations -- This meeting is for the purpose of
7 deliberations. And, as indicated in the order of notice
8 setting the deliberations, the meeting is open to all
9 parties and to the public. The Committee will not take
10 testimony or public comment. And, this session may be
11 recessed and continued at the call of the Chair. We began
12 these deliberations on Friday, and recessed for the
13 weekend. And, we're going to be working our way through
14 all of the required findings under the statute RSA
15 162-H:16, IV.

16 And, we'll begin today with Dr. Kent
17 addressing one subset of that statute that requires that
18 we must find that the site and facility "will not have an
19 unreasonable adverse effect on the natural environment".
20 And, I'll reiterate for the record, the language of the
21 statute speaks in terms of "will not have an unreasonable
22 adverse effect", so that's the standard that we must use
23 in making our findings. And, I'll also point out that,
24 with respect to making a finding, that the burden is on
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1 the Applicant to demonstrate that in each case the finding
2 that is required of us and must demonstrate that the
3 project will not have an unreasonable adverse effect on
4 the natural environment in this case, and it must prove
5 its position by the preponderance of the evidence.

6 So, with that background, I would turn
7 to Dr. Kent.

8 DR. KENT: Thank you, Mr. Chairman.
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9 I'll begin by discussing the findings and any mitigative
10 measures. I have four areas, and I'll offer to you, Mr.
11 Chairman, to decide how we proceed: Alternatives
12 analysis, wetlands, wildlife, plants and communities.
13 And, since there's so much material here, it might be good
14 to hesitate after each section and take comment.

15 CHAIRMAN GETZ: Certainly.

16 DR. KENT: Alternatives analysis, I
17 start there. That's really the first place to start when
18 determining whether there's unreasonable adverse effects
19 on the natural environment. According to the Application,
20 and testimony by Mr. Decker, site selection initially
21 emphasized a geographically diverse portfolio. And,
22 secondly, an adequate wind resource, proximity to
23 transmission lines, community support, and availability of
24 land. Environmental impacts were not addressed early in
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1 the site selection process. And, in part, Fish & Wildlife
2 Service and EPA cited this as an inadequacy of the
3 alternatives analysis.

4 As a mitigating measure, the Project has
5 minimized onset environmental impacts by reducing the
6 number of turbines, stream crossings, collection line
7 extension, using existing roads, increasing the distance
8 of the proposed project from the Nash Stream State Forest.

9 In testimony by Mr. LaFrance, Mr.
10 Lobdell, Mr. Pelletier, and Mr. Gravel, site layout was
11 performed in advance and identifying wetlands, rare
12 species, and sensitive habits. As a mitigative factor,
13 the site was significantly impacted by logging before any

14 planning had been implemented.

15 And, those are my comments for
16 alternatives analysis. You may want to capture some
17 feedback at this point.

18 CHAIRMAN GETZ: Any discussions on that
19 part of this topic? Any questions? Mr. Harrington.

20 MR. HARRINGTON: The only thing I would
21 comment, is I think there's a -- I think it's
22 confidential, but there is a presentation on an
23 alternatives analysis that was submitted to the Army Corps
24 of Engineers that goes into more detail on exactly what
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1 sites that were studied and where and why they weren't
2 selected. So, if all the members of the Committee haven't
3 seen that, they'd probably want to take a look at it.

4 MR. JANELLE: I have that.

5 CHAIRMAN GETZ: Well, for the moment,
6 let's make sure -- we'll make sure over the lunch break
7 that everybody has had a chance to see that. I want also
8 to give some thought to what exactly what is required in
9 terms of confidentiality on that issue, before we make any
10 decision that's based on, in any way, on confidential
11 information, then we'll take a really close look at why or
12 if it merits confidentiality.

13 DR. KENT: Proceeding to wetlands. The
14 Applicant's Wetland Permit Application and testimony have
15 indicated the project will impact 13.5 acres of wetlands,
16 including eight vernal pools and perennial intermittent
17 streams. As a mitigating factor, the Applicant has
18 reduced wetland impacts from a previous impact of 14.8

19 acres, to the 13.5. This occurred in consultation with
20 New Hampshire Department of Environmental Services.

21 The U.S. EPA, in a letter dated 11th of
22 March 2009, deems the vernal pool mitigation inadequate,
23 and recommends the creation of 16 to 24 vernal pools, in
24 conflict with the project and the DES conditions to create
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1 eight vernal pools.

2 As mitigation, the Applicant proposed
3 620 acres of wetland and wetland buffer mitigation to the
4 Phillips Brook tract, the creation of eight vernal pools.
5 The New Hampshire Department of Environmental Services has
6 been to the mitigation site with Mr. Lobdell and conducted
7 an on-site assessment to determine the value and condition
8 of the proposed wetland mitigation parcel.

9 The Department of Environmental Services
10 is prepared to issue a 401 Water Quality Certificate and
11 has issued a Wetlands Permit and Alteration of Terrain
12 Permits. That's my comments on the wetlands issue.

13 CHAIRMAN GETZ: Any discussion about any
14 of the --

15 MR. HARRINGTON: A question.

16 CHAIRMAN GETZ: Mr. Harrington.

17 MR. HARRINGTON: I know there was a
18 difference between the amount of new vernal pools to be
19 created between DES and EPA. Was there any, I'm not aware
20 of this, I'm asking this as a question, was there any
21 response from DES as to the EPA's recommendation that
22 there be 16 new ones created, instead of eight? Or, did
23 they just stand pat? Does anybody know the answer to that

24 question?

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1 DR. KENT: I have no information to
2 indicate that permit conditions from DES have been
3 changed.

4 MR. IACOPI NO: On our record, I don't
5 believe there's been any response from the state
6 Department of Environmental Services to either U.S. EPA or
7 U.S. Fish & Wildlife. And, normally, they wouldn't
8 respond to those agencies anyway. It's a separate
9 process. Both of those letters, just for the record, are
10 -- were filed with the Army Corps of Engineer in the
11 course of their 404B process. And, they were copied to
12 our Committee as part of that process. So, just to put it
13 in its context, where those two letters fit into the
14 rubric.

15 CHAIRMAN GETZ: Anything else on the
16 wetlands or the vernal pools issues? Dr. Kent.

17 DR. KENT: All right. Proceeding to
18 wildlife. According to the Application and testimony by
19 Mr. Pelletier and Mr. Gravel, the project will directly
20 impact 58 acres of high-elevation forest, which provides
21 critical habitat for American marten, Canada lynx,
22 Bicknell's thrush, three-toed woodpecker, and other
23 wildlife.

24 The testimony by Mr. Staats and Ms.

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1 Kelly, the project will directly impact not only the

2 58 acres, but indirectly impact 3,747 acres. Again, all
3 of this habitat provides critical habitat for American
4 marten, Canada Lynx, Bicknell's thrush, three-toed
5 woodpecker, and other wildlife.

6 The Applicant has proposed, and has
7 reached a Settlement Agreement, conveying to New Hampshire
8 Fish & Game 1,735 acres of high-elevation forest, \$750,000
9 to acquire other high-elevation land, \$200,000 for the
10 study of impacts to American marten and Bicknell's thrush,
11 and other wildlife species.

12 Neither the Applicant, New Hampshire
13 Fish & Game, or the AMC have performed an on-site
14 assessment of the condition and value of the proposed
15 high-elevation mitigation lands. However, New Hampshire
16 Fish & Game and the Appalachian Mountain Club assert that
17 the High-elevation Settlement Agreement is adequate
18 mitigation for the impacts. In addition, the Applicant
19 proposes to reduce post construction high elevation road
20 widths on Mount Kelsey to 12 feet and to revegetate
21 disturbed areas.

22 Testimony by Mr. Pelletier and Mr.
23 Gravel, the Applicants conducted three seasons of
24 nocturnal avian migration surveys; one season, 2.5 miles
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1 across the valley; one season on the summit of Owl head;
2 and one season 800 meters below the summit of Owl head.
3 Mr. Pelletier and Mr. Gravel concluded that mortality will
4 likely be insignificant.

5 In a letter dated 12th of March 2009,
6 the Fish & Wildlife Service states that they requested

7 three years of radar coverage on the turbine ridges. Fish
8 & Wildlife Service has concluded that the limited data
9 collected by Applicant at Owlhead indicates conditions
10 exist that would put migrating birds at risk.

11 In testimony by Mr. Pelletier and
12 Mr. Gravel, the Applicant conducted one season of hawk
13 migration surveys on Owlhead in the Fall of 2007, for a
14 total of 11 days. Mr. Pelletier testified that a Stantec
15 analysis of historic raptor surveys results indicating a
16 minimum of 20 days of surveys was needed to obtain
17 reasonably conclusive information. Fifty-five
18 (55) percent of the observations occurred below
19 125 meters, significant because it's the height of the
20 towers.

21 According to Mr. Pelletier and Mr.
22 Gravel, post-construction mortality is anticipated to be
23 low. The data -- In a letter dated 12th of March 2009,
24 from the Fish & Wildlife Service, the Service noted that
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1 migratory raptor results were at odds with other surveys.
2 And, despite these low numbers, they're concerned with the
3 55 percent of observations below 125 meters. They
4 requested that raptor surveys be repeated for Owlhead and
5 other ridgelines during spring and fall migrations.

6 The testimony by Dr. Trevor Lloyd-Evans,
7 he described the raptor surveys as "insufficient".
8 There's also no pre-construction breeding raptor survey.
9 So, we're unable to reasonably estimate potential impacts.

10 Testimony by Mr. Pelletier and Mr.
11 Gravel, we learned that the Applicant conducted two

12 breeding bird surveys during Spring 2007. The first
13 excluded the Dixville Peak area, the second included
14 Dixville. Combined, the two surveys encompass the entire
15 project area.

16 There were no confirmed observations of
17 state listed species. Although, two species of special
18 concern, Bicknell's thrush and Rusty blackbird were
19 documented. Mr. Pelletier and Mr. Gravel concluded a
20 small number of breeding birds will likely collide with
21 the turbines. The magnitude of these impacts is expected
22 to be minor.

23 In a letter dated 12th of March 2009,
24 from Fish & Wildlife Service, the Service has concluded
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1 that the turbine strings and access road in Kelsey and
2 Dixville ridgelines create a serious land use conflict
3 with Bicknell's thrush breeding habitat. They requested
4 additional downslope survey work, but it was not
5 conducted. Potential conflict with the purple finch,
6 which is the State bird, could occur, because the finch
7 has aerial displays.

8 Testimony by Dr. Trevor Lloyd-Evans:
9 "Breeding bird surveys detected 23 species identified by
10 the North American Land Bird Conservation Plan as
11 priorities for the region. A breeding bird survey was not
12 conducted in a manner that would provide a baseline for
13 assessing the post construction impacts.

14 The testimony by Mr. Pelletier and Mr.
15 Gravel: "The Applicant conducted spring, summer, and fall
16 2007 acoustic bat detector surveys at the met tower sites.

17 No endangered or threatened species were detected. The
18 Applicant, by his -- through his consultant, concluded bat
19 collision mortality may occur, but expected to be lower
20 than that documented at other facilities.

21 And, the U.S. Fish & Wildlife Service
22 letter, 12th of March 2009, pre-construction bat surveys
23 were deemed to be inadequate, and likely miss the fall
24 migration. And, bat detectors were deployed at a single
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1 location where turbines were proposed. That's the summary
2 for the wildlife issues.

3 CHAIRMAN GETZ: Any discussions,
4 questions, comments about those issues, as summarized by
5 Dr. Kent?

6 MR. HARRINGTON: I had just a question.
7 And, in the very beginning, Dr. Kent, you mentioned
8 "lynx". Maybe I misinterpreted this, I thought the idea
9 with the lynx is that they're not there now, and the
10 question is "whether the windmills would make them more or
11 less likely to come back, if indeed they were able to come
12 back at all?" Is that correct or --

13 DR. KENT: It's my understanding that
14 there was no confirmed documentation of the lynx during
15 preparation for this Application, but that Fish & Wildlife
16 Service was reasonably assured or reasonably certain that
17 lynx could be using the area. And, if they weren't now,
18 they would be. It's described by Staats and Kelly as an
19 "important corridor for lynx".

20 MR. HARRINGTON: Okay. Thank you.

21 CHAIRMAN GETZ: Mr. Scott.

22 DIR. SCOTT: I just wanted to comment to
23 the other members of the Commission, we've heard on
24 different levels during the testimony that this property
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1 has been authorized, indeed, in the past, typically as
2 clear-cut for lumber operations. So, I think that it's
3 just important to keep in mind, when we look at wildlife
4 impacts, we balance that with the historical use of the
5 land, which is essentially clear-cutting, and as it
6 relates to the mitigation plans, which would prevent that
7 from happening in the future.

8 I also wanted to just comment to
9 Mr. Kent, to make sure I remembered right also, and I
10 apologize, I don't remember if it was Mr. Pelletier or
11 Gravel or who I talked to during the discussion with them,
12 Fish & Wildlife -- U.S. Fish & Wildlife had a document
13 suggesting that three years of bird and bat radar studies
14 be done. If I recollect properly, I had asked the
15 experts, "has that ever been done anywhere?" And, the
16 answer, to their acknowledge was "no, it hasn't." And,
17 that's my understanding, too. That may be Fish &
18 Wildlife's preferred, but we're not aware if that's
19 industry standard by any means. So, I just wanted to
20 comment on the record.

21 DR. KENT: My recollection, on your
22 latter point, was that Stantec had never conducted three
23 years. I didn't interpret that as industry standard, but
24 I'm not certain if they spoke to that at all.

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CHAIRMAN GETZ: Mr. Northrop.

MR. NORTHROP: Just one question or clarification. You had said, towards the beginning of the wildlife section, that the Settlement Agreement with Fish & Game, AMC, and the Applicant -- regarding the Settlement Agreement between Fish & Game, AMC, and the Applicant, I just want to clarify that I think you said "those agencies have asserted that the Settlement Agreement is adequate mitigation for the potential impacts". Was that in testimony or was that just sort of an inference from the fact that Fish & Game, AMC, and the Applicant have entered into that agreement?

DR. KENT: No. My recollection of that was in response to direct questions during testimony.

MR. NORTHROP: All right. Thanks.

CHAIRMAN GETZ: Any other comments at this time?

(No verbal response)

CHAIRMAN GETZ: Dr. Kent.

DR. KENT: One last little section, it will get to your point, Mr. Scott. The testimony by Pelletier and Gravel, they conducted surveys for rare plants and exemplar communities in spring and summer 2007 and in spring of 2008. These studies were designed in {SEC 2008-04} [Deliberations - Day 11] {04-20-09}

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consultation with state and federal agencies. No rare plants or communities were documented. There were obvious impacts from forestry activities. And, they have concluded there's no unreasonable adverse effect on natural environment expected when it comes to plants and

6 exemplar communities. In a letter 12th of November 2008
7 from New Hampshire Natural Heritage Bureau, as follow-up
8 to a October 2008 visit, a circumneutral seep between the
9 saddles of Mt. Kelsey had recently been clearcut. And,
10 Bicknell's thrush habitat on Mt. Kelsey had also been
11 cleared. And, that's the end of my summary.

12 CHAIRMAN GETZ: Anything on that part of
13 Dr. Kent's summary?

14 (No verbal response)

15 CHAIRMAN GETZ: Okay. I think this
16 topic is very similar to the discussion that was led by
17 Mr. Scott about the air and water quality. I think
18 there's a lot of interrelation among the issues that were
19 discussed by Mr. Scott and those discussed by Dr. Kent.
20 And, I think it's going to get into some of the issues
21 that Mr. Janelle is going to speak on "alternative
22 analysis". And, I think there's really a lot of close
23 interrelationship with those issues and all of the
24 conditions that have been proposed and the Mitigation
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1 Settlement.

2 So, I would propose that we defer
3 further discussion of this topic for the moment or taking
4 any sense of the Committee or any vote on this particular
5 finding, until we go through all the issues. And, then,
6 let's go -- be looking in a general way at, you know, the
7 water quality, natural environment, and the alternatives
8 analysis, and make sure we understand what the Mitigation
9 Settlement would do and what the proposed conditions are,
10 because I think we have to be very sure about the details

11 when we're looking at all those issues.

12 So, is there any objection to moving on
13 to Director Normandeau?

14 (No verbal response)

15 CHAIRMAN GETZ: Okay. Mr. Normandeau.

16 DIR. NORMANDEAU: Okay. Health and
17 safety, there was several issues related with health and
18 safety. The issue of shadow flicker and noise was dealt
19 with by the Applicant. Basically, we didn't see a whole
20 lot coming from that, based on the distance, the distances
21 involved. So, I don't spend too much time on that. We
22 had the issue of hazardous material, due to oil in the
23 crankcases of the gear boxes in the turbines, the
24 potential for fire, potential for the rotors to throw ice
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1 or have a mechanical problem that causes the rotor itself
2 to lose a blade and blade throw, the issue of a tower
3 collapse, aviation issues. And, I believe that pretty
4 much summed up the problems. There was, I believe, a
5 snowmobile trail in the vicinity, and time for fire
6 equipment to get there, etcetera. The Applicant described
7 their monitoring for all of these problems. The Applicant
8 discussed the towers are designed to shut down if icing on
9 the blades occurs. There was discussion on collapse,
10 but, given the remote nature of the sites, that typically
11 nobody was around, essentially, for most of the -- most of
12 these issues. People would be on standby at all times.
13 And, the Applicant proposes to enter into a -- into an
14 extensive agreement with Coos County over safety issues
15 and to work with the local fire departments, etcetera.

16 And, I think that pretty much is what the -- was a
17 summation of what the issues were.

18 Probably the only other thing involved,
19 safety issues during construction, where it could be
20 considered something of an attraction possibly, to keep
21 running up there to see what the big cranes are doing,
22 etcetera. Which I would think that that would be fairly
23 well covered by any contractor that was, you know,
24 covering their own liability issues.

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1 But I think that was the summation of
2 what the issues were.

3 CHAIRMAN GETZ: Is there any comments or
4 questions? Mr. Scott.

5 DIR. SCOTT: Yes. If I remember
6 correctly, too, early on we had some talk about the FAA
7 certifications, regarding the height of the towers. If I
8 understand correctly, that has been since corrected, the
9 height of the towers?

10 MR. IACOPINO: We actually had a data
11 request go out to the Applicant from the Bench during the
12 adjudicative hearing. They did respond to that,
13 indicating that there was an error, and that the permits
14 have been resubmitted to FAA. And, in this record, I
15 don't believe we have any response back from FAA. I
16 believe the difference is something like 385 feet or 388
17 to 411 feet.

18 CHAIRMAN GETZ: Well, did you have
19 follow-up on that, Mr. Scott?

20 DIR. SCOTT: Not on that same issue, but
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21 a follow-up on the general topic.

22 CHAIRMAN GETZ: Okay.

23 DIR. SCOTT: I also wanted to remind the
24 Committee that we did also talk, in addition to what
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1 Director Normandeau mentioned, we did have some
2 discussions about site access, posting of the area for
3 hikers, limiting access to the road that will be modified.
4 And, I think that's important for us to consider also when
5 we get to the point of conditions.

6 DIR. NORMANDEAU: I expect that those,
7 all those issues would be brought up as conditions to go
8 with each topic.

9 CHAIRMAN GETZ: Okay. Mr. Harrington.

10 MR. HARRINGTON: Just as a follow-up
11 maybe for Mike.

12 MR. IACOPI NO: Yes, sir.

13 MR. HARRINGTON: So, where are we at
14 with those permits? Are they going to re-issue them with
15 the correct height or --

16 MR. IACOPI NO: Well, I don't know if the
17 FAA will re-issue them. But my understanding is that
18 there was an administrative error in the filing that the
19 Applicant provided to FAA about the height of the towers.
20 They then corrected that and refiled those with the FAA.
21 I'm not sure how fast the FAA operates.

22 MR. HARRINGTON: Okay. So, it was just
23 the wrong number written down, now the correct number is
24 with the FAA. And, presumably, they are either going to
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1 approve the correct number or reject the correct number,
2 one or the other?

3 MR. IACOPI NO: That's my understanding.

4 MR. HARRINGTON: Okay. And, is that a
5 condition that takes care of itself, and, without that
6 permit from the FAA, they don't build?

7 MR. IACOPI NO: I think it would be very
8 difficult for them to build those towers without getting
9 into trouble with the FAA, if they don't have the
10 appropriate siting permit.

11 MR. HARRINGTON: The other thing I
12 wanted to mention was on this, I think it was brought up,
13 and that has to do with the signage and stuff. And, in
14 the Applicant's closing statements, they talk about
15 "install signs at appropriate trail junctions or headers."
16 I just think we need maybe a little bit more specifics on
17 that. Because my concern is that, especially in the
18 wintertime, with snowmobiles and hikers, they don't always
19 follow the trail. The trail is whoever went through first
20 with snowshoes or whoever went through first with their
21 snowmobile, and it may or may not follow the normal marks
22 on the trail. So, you may have the trail diverge
23 substantially from where you would see it during the
24 normal course of a year. So, I think we're going to have
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1 to get more, more signs, than just on trail junctions. I
2 think a lot of the public will simply -- it will be sort
3 of a bit of an attractive nuisance, "Oh, let's go look at

4 the windmills, especially now that I can take my
5 snowmobile up there and I don't have to walk." But
6 they're not going to think "Well, we better make sure we
7 watch out for ice throw off of these blades, because that
8 just isn't going to come to the normal person's, I think,
9 state of mind.

10 So, probably a little bit more on
11 warning, maybe right at the outset, at the beginning of
12 the trails, or just, you know, sort of a general posting,
13 so that people are cognizant of that possibility.

14 And, one thing that's nicer about this
15 one, compared to Lempster, is we don't have to deal with
16 so much the -- especially the noise issue, which was a
17 major concern, because we had houses close. Here it
18 appears, based on the testimony, that no one's going to be
19 bothered by the noise from these at all.

20 CHAIRMAN GETZ: Mr. Northrop.

21 MR. NORTHROP: I just had some comments
22 or questions, along the same lines of trails and access.
23 And, I think the -- or, there is a snowmobile trail on
24 Dixville Peak. And, I think also, correct, that there's
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1 the Coos or Cohas, Cohas Hiking Trail, as well as that,
2 that's in the same location?

3 MR. IACOPINO: Yes. Just in the record
4 there is a data request that was replied to by the
5 Applicant, actually superimposing the Cohas Trail on that
6 map that we have, I forget which exhibit number it is.
7 But it's -- I could probably find it pretty quick, .

8 MR. HARRINGTON: Excuse me, Mike.

9 Wasn't there also a statement made that they would "work
10 with the Cohas Trail Committee", or whatever it is called,
11 about relocating the trail as necessary to get it away
12 from them?

13 MR. IACOPI NO: Obviously, what was said
14 in testimony is for you all to determine. But my
15 recollection is that there was a reference that they were
16 going to work with the trail, the folks who maintain the
17 trail, to move it, I guess it was in close proximity to
18 one of the proposed sites. I think it is on Dixville.

19 MR. HARRINGTON: Yes. There's a trail
20 that goes right to the top of Dixville Peak.

21 MR. IACOPI NO: You would know better
22 than I.

23 MR. NORTHROP: My only point, I guess,
24 is that I think those are the only two official marked,
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1 sanctioned, whatever, trails, the snowmobile trail to
2 Dixville and Cohas. There was quite a number of letters
3 received from the, I'm not sure of the name of it, the
4 local ATV club or the local snowmobile club. It's about
5 50/50, half in favor and half opposed. And, a lot of the
6 letters referenced that they were in favor of the project,
7 provided it didn't impact or restrict their access to
8 trails. And, I'm assuming those are just the other myriad
9 of logging roads and trails that are in the area. There
10 were no -- I don't remember any references specifically in
11 those letters to particular marked, named trails. So, I
12 guess, sort of going along with Mr. Harrington's point
13 about the fact that there are lots of trails and lots of

14 potential access, I think that's something we need to take
15 a look at.

16 CHAIRMAN GETZ: Anything else on public
17 health and safety?

18 MR. HARRINGTON: Yes.

19 CHAIRMAN GETZ: Mr. Harrington.

20 MR. HARRINGTON: I guess it's more of a
21 comment than anything else. It's been now a few weeks,
22 and we still haven't seen the root cause analysis of the
23 tower failure in Altona. And, it strikes me is we got a
24 little bit of information off of the internet that they
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1 thought they had found out what the reason was. By this
2 time, that should have been completed. I mean, I've done
3 a lot of those myself. It doesn't take this long to get
4 one done. If there was any sense of urgency, which I
5 assume there is, since they have an operating wind farm
6 down there, that they don't want the rest of them to
7 collapse. So, I'm kind of just surprised that we have not
8 seen a root cause analysis for that failure yet. It could
9 be something that we could just eliminate as a concern, if
10 we were to see it.

11 CHAIRMAN GETZ: What do we have in the
12 record, Mr. Iacopino? We have a --

13 MR. IACOPI NO: We have the testimony of
14 Mr. Mandli regarding that. And, I think there was a
15 newspaper article. I'm not sure if it was actually marked
16 as an exhibit, but presented by Industrial Wind Action
17 Group, regarding the tower collapse. And, beyond that, my
18 memory is that I don't think there's anything else

19 specific, other than Mr. Mandli's testimony about that.

20 I don't recall if there was an actual
21 data request for a formal report. And, I don't see it on
22 our Exhibit List as reserved, as of yet anyway, for that.
23 So, it may be, Mr. Harrington, that there was not actually
24 a formal request put to the Applicant. But I can't be
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1 sure of that just yet.

2 MR. HARRINGTON: I'll have to look back.
3 I had it -- they're just saying that it collapsed on 3/6,
4 and I think we were discussing it shortly thereafter.
5 And, that's why I'm kind of surprised that it hasn't been
6 completed at this time, because it usually doesn't take
7 that long to do.

8 CHAIRMAN GETZ: Director Normandeau.

9 DIR. NORMANDEAU: I do remember, I
10 believe it was Mr. Mandli, saying that that was being
11 investigated, that was a GE turbine, if I recall. And,
12 that GE might consider its findings confidential itself
13 because, he did have that comment when we asked to get the
14 scoop.

15 CHAIRMAN GETZ: Well, we have a few
16 options, I think, available to us. And, some of it
17 depends on the materiality of this particular issue to the
18 larger issue of "have they demonstrated that the project
19 will not have an unreasonable adverse effect on public
20 health and safety?" We could defer a vote on that
21 particular issue, pending a request, we could do a record
22 request to the Applicant asking for an update on that.
23 With could vote up or down on the issue, I guess that goes

24 to materiality and which way you would vote. But, I
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1 think, Mr. Harrington, if it's your position that this is
2 an important issue necessary to make an informed -- take
3 an informed vote on the issue of public health and safety,
4 then I guess I would ask you is it a material issue and
5 would you like to see the results before we have a vote?

6 MR. HARRINGTON: I would like to see the
7 results. And, the reason being is it's two-fold, I guess.
8 Is, one, I realize they were GE, which is a different type
9 of, you know, it's a different manufacturer and different
10 design. So, most likely, he could be eliminated as a
11 failure that doesn't occur in this type of design. Or, on
12 the other hand, it could be something that's more generic
13 to wind turbines, and that type of failure could occur in
14 the ones that are being proposed here.

15 And, also, I think it goes to show
16 responsiveness of the company. If you have a failure like
17 this, where you have two, well, one tower collapsed and
18 another one was damaged, I would think that, you know, a
19 prudent company would move fast to determine what the
20 cause of that was, to make sure that it wasn't going to
21 effect any of the other installations. So, I would like
22 to see something on that. I think the time is -- it's
23 been now over a month, well over a month, a month and a
24 half. And, like I said, root cause analyses don't take
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1 that long, if there's a sense of urgency in getting it
2 completed.

3 MR. IACOPINO: And, if I could just --
4 I'm looking for the references in the transcript right
5 now. But the way that we kept track of data requests on
6 the Exhibit List was to reserve them. And, I just
7 reviewed the Exhibit List. There was no reserved request
8 for a root cause analysis of the tower collapse, at least
9 that made it onto the Exhibit List. I'm checking the
10 transcript of Mr. Mandli's testimony as we speak.

11 CHAIRMAN GETZ: Well, maybe the -- well,
12 in terms of nomenclature, it hasn't been -- that question
13 hasn't been asked. I don't recall that it was that
14 specifically. But I would suggest it would be, you know,
15 "Committee Record Request No. 1", asking the Applicant for
16 an update on the Altona incident. And, I guess I would
17 suggest, as a second request, that updating while we're at
18 it on the -- if the FAA has taken any action with respect
19 to the correction to the Application as regards the height
20 of the turbines.

21 So, I think that places us in a position
22 that I think we should defer further consideration of this
23 issue until we've got answers from the Applicant on those
24 -- on those two issues. Is there anything else that we
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1 want to address in this regard? I think -- oh, Dr. Kent.

2 DR. KENT: I would just note for the
3 Committee's attention that there's an agreement or several
4 agreements planned with Coos County and the Applicant, and
5 we need to be tracking that, paying attention to that as
6 we go forward.

7 CHAIRMAN GETZ: And, I think that --
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8 Yes, there is a very close relationship between the
9 Applicant's proposed agreement with Coos County on a lot
10 of the issues I think that would come under the heading of
11 "public health and safety". So, when we get back to this
12 issue, I think we need to look at how that -- how that
13 proposed agreement relates. And, again, that gets us into
14 a similar kind of analysis that we've had on a number of
15 these issues.

16 In the first instance, "has the
17 Applicant shown that -- demonstrated that whatever it is
18 will not have an unreasonable adverse effect?" And, then,
19 if it has, we can still impose conditions related to the
20 implementation of that, or, prior to that, if you don't
21 think or we don't think that they have made their case on
22 any particular issue, whether -- with the introduction of
23 particular conditions, would the required findings be
24 satisfied? So, just to keep that in mind when we return
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1 to the issue of public health and safety. Okay.

2 All right. Then, let's turn to
3 Mr. Janelle.

4 MR. JANELLE: Okay. Within the
5 Application, the Applicant discussed different
6 alternatives and how they came up with their alternatives
7 of the GRP park. Starting, the Applicant talked about an
8 extensive wind site prospecting and screening process it
9 conducted to determine location of the GRP park. First
10 started on a regional level, using publicly available wind
11 resource mapping technologies and knowledge of the
12 existing electrical infrastructure, and also knowledge of

13 various environmental attributes, and looked at the most
14 promising areas to kind of hone down which sites would
15 make the most sense.

16 We also heard testimony from Mr. Lyons
17 that stated that a diverse portfolio of wind projects has
18 value and is favored by investors and lenders, and that
19 New England sites are particularly high value with regard
20 to the scarcity of wind energy in the region.

21 If we go on within the Application, they
22 talked about a preliminary screening. They listed
23 criteria of that screening, which is availability of wind
24 sources, proximity to existing roads and transmission
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1 lines, the availability of privately owned lands, the
2 presence of environmental land use constraints and
3 identification of preferred site turbine locations. They
4 also went on to look at alternatives evaluated, looked at
5 a smaller size project. GRP evaluated reducing the size
6 of the project by using a smaller number of turbines.
7 However, they stated "reducing the project size would
8 reduce the energy production, and that the resulting
9 environmental economic benefits of the project, the
10 smaller projects, would also be less financially viable."
11 GRP evaluated a project with fewer turbines and determined
12 that such a project would reduce the localized
13 environmental impacts only marginally, and the footprint
14 and visibility of the project would be slightly reduced,
15 thereby also reducing the amount of disturbed forest land.
16 Talked about the fixed costs involved with the Wind
17 Project, and that certain infrastructure capital

18 expenditures are independent of the size of the facility.
19 We have an example of the interconnection of the facility
20 to the facility substation. And, that these capital costs
21 wouldn't change much based on size. They stated the
22 project was sized to maximize the available wind
23 resources, while being sensitive to various environmental
24 factors. And, a smaller project would produce fewer
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1 global benefits, clean energy emissions. They also talked
2 about a "no build" alternative, and again stressed, if you
3 didn't build the wind farm, that you would have continued
4 reliance on non-renewable resources and the issues
5 connected with that.

6 Let's see. In the supplemental
7 testimony by Pip Decker, Charles Reading, talked about
8 the alternative sites for the project that are considered.
9 Again, specified the criteria. Let's see. Initially, --
10 They said, "Initially, the project focused on tracts of
11 land in the Phillips Brook area, not only because of the
12 tremendous wind resource capable supporting the 100
13 megawatt windpark, but also because the area has a long
14 history of heavy logging activity and yielded a vast
15 network of excellent soil compaction. As the development
16 process continued, the property under consideration
17 expanded some 84,000 acres."

18 Under supplemental testimony by Mr.
19 Decker and Mr. Lyons, there was a question as to why the
20 proposed windpark was selected. Again, going back to the
21 ultimate selection was based on the key features required
22 for a successful wind project. And, the question was

23 asked "whether turbine locations could be changed or
24 eliminated?" And, the answer was "No. The project
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1 proposed, with 33 three-megawatt wind turbines is
2 economically viable and cannot be further reduced in size
3 without jeopardizing its feasibility or acquiring complete
4 interconnection reprocessing by New England-ISO. To
5 summarize the information found in the GRP Application,
6 through on-site analysis, leasing additional land in the
7 Bayroot tract, to expand the wind profile of the project,
8 we were unable to maximize the available wind resource by
9 increasing the size of the wind turbines to 3 megawatts,
10 from originally proposed 1.5 megawatt machines, which
11 decreased the number of turbine foundations that were
12 required to permit in connection with this project, and
13 further allow us to minimize the impact utilizing the
14 western ridgeline of the Phillips Brook tract.

15 Also submitted as part of the Army Corps
16 analysis, the Applicant submitted confidential information
17 regarding additional alternative sites that they looked
18 at. There were five sites. The sites were throughout New
19 Hampshire, both northern and central areas, used similar
20 criteria: The amount of wind that's available,
21 environmental constraints, and available land. And, the
22 analysis determined that the GRP site was the most viable
23 location.

24 In the post hearing brief, again it was
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1 discussed that -- to reiterate the criteria, and the fact
2 that the evaluation of the smaller sized project was
3 looked at. But, again, stated that wind energy projects
4 are capital-intensive and have a significant fixed cost
5 infrastructure and the problems associated with that.
6 Stated "GRP's alternatives analysis was thorough and
7 exhaustive and led to the selection of one of the best
8 sites in New Hampshire. A site that will be attractive to
9 investors, has very good resources, and has available land
10 that's privately owned and not subject to conservation."

11 Ms. Linowes also talked about
12 alternatives in her post hearing brief, and raised issues
13 regarding additional off-site alternatives in the March
14 23rd Army Corps study, "was submitted 11 days before the
15 SEC hearings were to commence." "This information lacks
16 any detail, other than gross GIS maps and vague qualifiers
17 on each alternative. It was not further considered, such
18 as increased likelihood of wetland and stream impacts."
19 Also brings up the U.S. Fish & Wildlife comments that
20 off-site alternatives analysis with the statement was a
21 coarse level of analysis. The analysis appears to be
22 limited to GIS layers available. "EPA characterized the
23 off-site alternatives as incomplete", and adds, among
24 other deficiencies, "it's unclear as to how the Applicant
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1 chose the five sites. There's no explanation of what
2 factors were considered in selecting the sites. And, it
3 was unclear as to how the presence of potential adverse
4 impacts to aquatic resources were considered."

5 I guess that's about it.

6 CHAIRMAN GETZ: Discussion? Dr. Kent.

7 DR. KENT: I would offer that one of the
8 most critical pieces of information we're missing is an
9 independent evaluation of the costs and benefits of
10 eliminating Dixville and/or Kelsey from the project.

11 CHAIRMAN GETZ: Director Normandeau.

12 DIR. NORMANDEAU: Yes. The Counsel for
13 the Public's finance person, as I recall, said that the
14 returns wouldn't be much different with fewer turbines. I
15 think there was a -- if I remember his testimony, there
16 was a piece about that. Although my own thought at the
17 time was, I didn't really see how the returns could be the
18 same, given a certain amount of fixed costs associated
19 with it regardless, but I do remember he had something to
20 say on that topic.

21 CHAIRMAN GETZ: Okay. Well, Mr.
22 Harrington, go ahead.

23 MR. HARRINGTON: Yes, just a couple of
24 things on that we have to be aware of. One is that there
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1 was a statement by the Applicant that, if they didn't put
2 the turbines on Dixville, and what was the other, Kelsey,
3 that the project wouldn't be financially viable. There
4 wasn't any real backup to that, it was just a statement
5 that they made. But there was another part of this and
6 they said that "somewhere in the vicinity of around a 20
7 to 25 percent change in the total output of the project
8 would result in a -- having to file a new request for a
9 system impact study, which would put them to the bottom of
10 the queue. Which, because of the way things are going

11 right now, with the queue at the ISO, you know, being
12 backlogged substantially, that would delay the project
13 probably maybe years, by the time that analysis was
14 performed, and it would also get into different
15 overlapping impacts on that as well. So, that has to be
16 looked at.

17 And, the other thing is that, I don't
18 have all the capacity factors down, but I do for Dixville
19 and Kelsey, those were the two highest, where the turbines
20 on Dixville they expected to have a 43 percent capacity
21 factor.

22 CHAIRMAN GETZ: Yes. I think some of
23 those numbers about the actual capacity factors are
24 confidential. But I think it's fair to say that the
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1 capacity factors and the wind availability numbers
2 decrease with altitude.

3 MR. HARRINGTON: Okay.

4 CHAIRMAN GETZ: And, the higher numbers
5 are at Dixville, and then they reduce slightly as you go
6 through --

7 MR. HARRINGTON: Kelsey and --

8 CHAIRMAN GETZ: -- Kelsey and Owl head
9 and Fishbrook.

10 MR. HARRINGTON: Okay. So, those are
11 factors I think we have to -- I didn't have them down as
12 confidential, maybe they were. But, anyways, that's
13 something we need to consider, that it's not just a matter
14 of simply removing some turbines from the design, because
15 there are other impacts on all of that, especially having

16 to do with if they have to refile a system impact study
17 with the ISO-New England.

18 CHAIRMAN GETZ: Well, and let me just
19 point to, because I happen to have it right here in front
20 of me in the transcript, it was the cross-examination of
21 Mr. Lowe on March 16th. And, he had said, asking about
22 the system impact study, on Page 107. And, he indicated
23 "If the project changes by a certain percentage, and I'm
24 going to say it's 15 percent, I'm recalling it off my
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1 head, but I don't know if that's the right number. But,
2 if it changes by a certain percentage, that it could
3 require a restudy, and that could significantly impact the
4 overall timing of the project." So, the statements that
5 he made, you know, are qualified in that respect. So, I
6 guess we don't know the answer.

7 MR. HARRINGTON: I'm just saying it's a
8 possibility.

9 CHAIRMAN GETZ: Yes, I think that's
10 correct. But the -- well, let me go back to the statute,
11 which I think where we should always start on these
12 issues, and the statute requires, with respect to issuance
13 of a certificate, that we -- the Committee has considered
14 available alternatives and fully reviewed the
15 environmental impact of the site or the route. And, I
16 think the summary provided by Mr. Janelle, you know,
17 supports, you know, a conclusion that the Applicant was
18 systematic in looking at other sites to getting to the one
19 it proposes. But I think, and it has made a case why the
20 smaller project size is not optimum from their

21 perspective, but I think that we need to give close
22 attention basically to that alternative.

23 On the one hand, if they made a case for
24 the project as proposed, I don't think it would be a
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1 proper conclusion to say "Let's approve a smaller project,
2 just because it would have less impact." But we need to
3 look at the project as proposed, see what the impacts are
4 on the air and water quality, on the natural environment.
5 And, if we -- but we need to also, at the same time, look
6 at an alternative analysis. Now, they make the case about
7 "the smaller project would be less financially viable."
8 And, it doesn't -- the language doesn't say "it would not
9 be viable", it says it "would be less financially viable."
10 And, they say "the project was sized to maximize available
11 wind resources, while being sensitive to various
12 environmental factors." So, and then they make a number
13 of the points made by Mr. Janelle on why, certainly at
14 least from their perspective, the 99-megawatt project is
15 preferable, and I think the argument is -- I guess I would
16 paraphrase it as "there would be not a lot to be gained by
17 a smaller project", and certainly it wouldn't be, from
18 their perspective, the lost returns, I guess, wouldn't be
19 comparable to what the potential gains would be. But I
20 think that's what we need to focus on, is what's the
21 effect of the project as proposed and to look at what the
22 alternative analysis is. But, Director Normandeau.

23 DIR. NORMANDEAU: Also, was there not a
24 reduction from originally two long ridgelines, they were
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1 looking to start with 60 something turbines, that would be
2 factored into the process here somewhere?

3 MR. HARRINGTON: I think, originally,
4 they were going with smaller turbines and more turbines --

5 DIR. NORMANDEAU: Smaller turbines, but
6 a lot more of them.

7 MR. HARRINGTON: Yes.

8 MR. JANELLE: Right. So, I just want to
9 say that that alternative analysis has kind of been looked
10 at, maybe not in a sense to reduce the generating
11 capacity, but to reduce the footprint of the project --

12 DIR. NORMANDEAU: The project.

13 MR. JANELLE: -- on that site, and they
14 have done that, and reduced the environmental impact as a
15 result of increasing the size of the wind turbines.

16 CHAIRMAN GETZ: And, was that basically
17 lines parallel somewhat to the west?

18 MR. JANELLE: Yes.

19 CHAIRMAN GETZ: I mean, it's not along
20 these same ridgelines?

21 MR. JANELLE: Right. Somewhat to the
22 west, and there were issues with conservation easements in
23 that area as well, so...

24 CHAIRMAN GETZ: Okay. Any other
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1 discussion about the alternatives analysis? Mr.
2 Harrington.

3 MR. HARRINGTON: Just looking back at my
4 notes here, that apparently there's seven turbines planned

5 for Dixville Peak and eight for Kelsey. So, 15 of the
6 turbines with the highest capacity factors I think would
7 have a significant impact on the -- it's got to have some
8 significant impact of the financing of the project if you
9 were to eliminate, I mean, that's, in round figures, it's
10 about 15 percent of the turbines -- 15 percent of the --
11 no, not 15 percent of the turbines, it's more than it's 5
12 percent of the turbines, it's almost half. And,
13 certainly, probably in output, it's probably more than
14 half, given the high capacity factors there. So, I think
15 that that would have a very negative effect on the
16 financial viability of this project, if you were to
17 eliminate those two sites.

18 CHAIRMAN GETZ: Though, that's not the
19 only alternative. I mean, I guess at one point the one
20 proposed alternative was to eliminate anything above the
21 2,700 feet, which I guess would include both Kelsey and
22 Dixville. Another alternative perhaps could be to
23 eliminate Dixville.

24 MR. HARRINGTON: Or Kelsey. I mean,
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1 that was the original assessment by the AMC, remember,
2 said "you can mitigate development on Dixville, but not on
3 Kelsey."

4 CHAIRMAN GETZ: And, there was I think
5 the testimony as well by Mr. Lowe about -- when actually
6 he was questioned about elimination of any significant
7 number of turbines, and he responded in terms of
8 "materiality being 10 percent", which I guess in this
9 instance would be three or four turbines, which would be

10 part of one string, would not be an entire string.

11 But, again, in terms of -- what I did
12 not understand from his testimony is what context the
13 "materiality" that statement was made within. I mean,
14 it's one thing to say, in the context of a contractual
15 arrangement, that there shall be no material changes or a
16 funding agreement, that there will be no material changes.
17 But I don't believe we have such a, you know, binding
18 contractual arrangement. I think, in this context, the
19 only inference I can make is, when he speaks of
20 "materiality", is it's probably in the terms of some
21 internal financial review, that they have made some
22 conclusions about their internal rates of return and what
23 returns might go to investors, that that would -- anything
24 greater than 10 percent, three or four turbines, would
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1 have some material effect. But, again, they talk about
2 things being "less financially viable". I haven't seen
3 anything that would say in any concrete way that that
4 would make it not viable. Though, I take Mr. Harrington's
5 point, if you're eliminating half of the project, you
6 probably, and that half of the project with the best wind
7 producers, then you're probably not going to have a
8 project. But there may be some numbers between three or
9 four and 15 that, you know, may have a positive impact
10 environmentally, but not have a financial impact that
11 would prevent the project from going forward. So, I just
12 throw that out there.

13 Any other discussion on some of these
14 alternatives analysis issues? Mr. Janelle.

15 MR. JANELLE: It seems in some way you
16 need to weigh in the environmental benefit as well from
17 eliminating a single string and how that factors into the
18 whole project relatively. You know, do you gain -- is
19 there a very highly sensitive area, maybe it's the top of
20 Dixville, that makes the most sense to save to reduce the
21 environmental impacts in that area, and how does that
22 weigh against the whole project, in terms of length of
23 road and other environmental impacts?

24 CHAIRMAN GETZ: Though, I guess, on the
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1 other hand, I think the intention of Fish & Game and AMC
2 was that the Mitigation Settlement is proposed to resolve
3 any concerns that we might have about impacts on Kelsey
4 and Dixville. But I guess it's our -- you know, what we
5 need to decide is has that Mitigation Settlement -- has it
6 resolved any concerns that we might have about basically
7 the water quality and natural environment issues? So,
8 that's the, I guess, factual conclusion that we have to
9 determine at some point here.

10 MR. HARRINGTON: This is kind of an
11 unrelated note, just looking at my notes here on that root
12 cause analysis, I had written down that it was -- that I'm
13 assuming I heard somebody say that it was going to be
14 submitted with the final brief. That's my note anyway.
15 So, I don't know what it's worth.

16 CHAIRMAN GETZ: Okay. We'll ask
17 Mr. Iacopino to follow up on that with the Applicant.

18 MR. HARRINGTON: Okay. And, another
19 kind of generic question, I'm not sure where it fits in,

20 but there was a lot -- there was discussion and there was
21 actually some conditions submitted by various groups on a
22 Technical Oversight Committee and establishing that. And,
23 is this the topic that that would fit under?

24 CHAIRMAN GETZ: Yes, I think this should
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1 all be related. Again, this goes back to the issues that
2 came up in the two other categories of what, in the first
3 instance, based on what we have before us, whether we --
4 you know, what's our -- do we think that the Applicant has
5 made its -- satisfied its burden of proof? And, then, are
6 there conditions, you know, and I guess properly here, the
7 Mitigation Settlement, that resolve any of the issues that
8 we may have about either them implementing and executing
9 the project in a way that's consistent with what we
10 require of them and/or are these conditions necessary as
11 predicate for our findings that there's not an
12 unreasonable adverse effect, and it would put them in a
13 position where we would be issuing a certificate.

14 MR. IACOPI NO: And, just --

15 MR. HARRINGTON: Well, I guess -- excuse
16 me. Go ahead.

17 MR. IACOPI NO: With respect to those
18 conditions on that Committee, in the memo that I did for
19 you, I included those under "natural" -- "Adverse Impacts
20 to the Natural Environment". And, unfortunately, I didn't
21 paginate the pages, but it's under --

22 MR. HARRINGTON: Give me a hint.

23 MR. IACOPI NO: VIII, Section VIII in the
24 outline.

1 CHAIRMAN GETZ: And, let me just
2 clarify, though, in terms of the reference to a "memo".
3 What counsel has done, and as we requested on Friday, is
4 he has just taken all of the conditions that were in the
5 briefs and put them into one document, and put them in
6 subcategories by topic, so as a convenience for us to go
7 through the issues and determine what conditions should or
8 shouldn't be applied, and which ones we agree with or
9 which ones should be altered. And, I think we're going to
10 have to take -- look close at this language.

11 MR. IACOPI NO: Yes, Mr. Chairman. All
12 it is is a cut -- it's literally a cut-and-paste, just put
13 into categories.

14 MR. HARRINGTON: Just a further
15 follow-up question on that. It talks about this
16 "Technical Advisory Committee". Is that just three words
17 that are used to describe it or two words used to describe
18 the type of committee or is there some formal reference in
19 a statute or rules or something for a Technical Advisory
20 Committee?

21 MR. IACOPI NO: I am unaware of anything
22 in our statute or statutes pertaining to this Committee.
23 I think that's a -- was a suggestion from Counsel for the
24 Public, if I remember correctly. And, it was something
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1 that they actually did in the Lempster Project. So, I
2 think it's sort of that methodology being carried over.

3 MR. HARRINGTON: Okay. So, it's just
4 the same as that. Okay.

5 MR. IACOPINO: It's something that he's
6 suggesting as a condition of the certificate in this
7 particular case. And, that particular condition appears
8 to me would go to the -- whether your finding that needs
9 to be made as to whether or not there are any unreasonable
10 adverse impacts on the natural environment.

11 MR. HARRINGTON: And, just, Mr.
12 Chairman, one other comment I wanted to make on this, is
13 that, you know, when you go back and look and we talk
14 about the Mitigation Agreement, that there is, you know, a
15 distinct advantage to the Mitigation Agreement in that it
16 puts aside thousands of acres of land, and as well
17 provides money for the purchase of more land, that would
18 be in a perpetual easement that would stay in the state
19 it's in right now. If this project doesn't go forward,
20 the alternative is we know there will be at least some
21 logging there. But no one will know, if I could predict
22 the future, I would have predicted the stock market crash
23 and be happier now, but no one is going to know what's
24 going to be proposed to be built up there five years from
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1 now, ten years from now, or twenty years from now. But we
2 do know that, if this agreement goes into effect, that
3 that land will be protected forever. And, I think that's
4 something we have to be able to balance, where it's a sure
5 thing versus conjecture, as far as what will happen in
6 that area ten, fifteen, twenty years from now.

7 CHAIRMAN GETZ: Other discussion about

8 the alternatives analysis?
9 (No verbal response)
10 CHAIRMAN GETZ: Okay. I guess one thing
11 I would suggest is I think we need to spend some
12 significant time going through the conditions. And, I
13 think it's helpful that we have them all in -- all in one
14 place. And, I would propose that we take the time to, you
15 know, individually, to read through these, through these
16 conditions. And, I would suggest that we recess, and to
17 return at 1:00, and see if we can pick up this
18 conversation again, with everybody having looked at the
19 Mitigation Settlement, the conditions, the proposed
20 agreement with Coos County, and to have some discussion
21 about -- and then walk our way through those documents and
22 have some discussion about those, and see how much
23 progress we can make today. And, the --

24 MR. HARRINGTON: Mr. Chairman, just a
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1 question, so we're clear. When you're talking about the
2 "Coos County" document, you're talking about "Attachment A
3 to the Applicant's final brief"?

4 CHAIRMAN GETZ: Yes.

5 MR. HARRINGTON: Okay. Just so we have
6 the right one.

7 CHAIRMAN GETZ: Ms. Tucker?

8 MS. TUCKER: Edith Tucker, Coos County
9 Democrat. I understand that the document that you're
10 going to be reviewing in the next hour and a half as
11 proposed is a cut-and-paste of public information. And,
12 although I understand that this is a client/lawyer

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13 privilege document, since it's all public material, I
14 wondered whether you could give copies to the press and
15 others who are here?

16 CHAIRMAN GETZ: Certainly.

17 MR. IACOPI NO: I have two copies left,
18 Mr. Chairman. I have no problem with passing it out.
19 It's nothing but a cut-and-paste.

20 MR. HARRINGTON: Mike, just a follow-up
21 question. Did your outline that you're passing out here,
22 the one you gave us today, does that include any of the
23 conditions from the Coos -- proposed Coos County
24 agreement?

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1 MR. IACOPI NO: No, Mr. Harrington.
2 Where there was a reference in an exhibit or in a brief to
3 conditions that were contained in either the High
4 Elevation Mitigation Plan, the Coos County Plan, or the
5 conditions with the Town of Dummer, I have simply a
6 reference to those separate documents.

7 MR. HARRINGTON: Okay. Thank you.

8 MR. IACOPI NO: When we recess, I'll get
9 some more copies made.

10 CHAIRMAN GETZ: Okay. Is there any
11 other thoughts or suggestions on how to proceed?

12 (No verbal response)

13 CHAIRMAN GETZ: Okay. Then, let's
14 recess, and return at 1:00.

15 (Whereupon a recess was taken at 11:25
16 a.m. and deliberations resumed at 1:17
17 p.m.)

18 CHAIRMAN GETZ: Okay. Let's get back on
19 the record in the public meeting regarding the Site
20 Evaluation Committee Docket 2008-04 regarding the
21 Application of Granite Reliable Power. And, I would
22 suggest that we proceed this afternoon is the document
23 that counsel put together for us that put all the
24 conditions from the briefs in one area, I think, let's
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1 work off of that. And, if you're -- basically, if we turn
2 to what would be Page 9, and that's under VI, with respect
3 to Adverse Impact - Water Quality.

4 I guess my suggestion would be this.
5 Let's walk through all of these issues, beginning on what
6 would be Page 9, and going over to what would be Page 17,
7 before you get to the discussion of "Public Health and
8 Safety", and use these proposed conditions as a vehicle
9 for further discussion of the issues. And, see -- and,
10 just basically, let's see where we get, how far we get,
11 and if some decisions seem to be forming.

12 I know that we're -- we're going to have
13 to come back for a third day, because we have a couple of
14 document requests that we're going to be looking to the
15 Applicant for before we make a final decision. So, I'd
16 like to see -- just to see where we go with this
17 discussion, and then we'll have to find a day when the
18 seven of us are available again to resume. But that would
19 be my proposal on how we -- how we proceed.

20 I think we've had a good summary of the
21 issues with respect to the issues that we need to make
22 findings on. And, in some cases, we've come to a meeting

23 of the minds, but there's still a lot more that we have to
24 walk through and see where we come out.

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1 So, I would, and looking at this
2 document, the first item refers to the DES permits, the
3 401 Water Quality Certificate, the Wetlands Permit, and
4 the Alteration of Terrain. And, I would ask, you know,
5 Mr. Scott, you're familiar with these documents. So, I
6 guess I would ask you to give us, you know, a summary of
7 some of the highlights from those, from those permits, and
8 see where we -- if there's further discussion about the
9 conditions that DES has put into its proposed permit
10 application conditions.

11 DIR. SCOTT: Okay. I'll draw the
12 Committee's attention again. So, it's a submittal from
13 the Department of Environmental Services dated 10
14 February. The first part of that is a proposed 401 Water
15 Quality Certificate. I would direct your attention to
16 Section E, where it says "Water Quality Certification
17 Conditions", or actually says "Proposed Conditions".
18 Generally, the 401 Certificate looks at factors that may
19 contribute to a violation of the Water Quality Standards.
20 Highlighting, for instance, E-6, proposed condition E-6,
21 requires the Applicant to keep sufficient quality --
22 quantity of erosion control supplies on site at all times
23 to facilitate expeditious, which is within 24 hours,
24 response to erosion related issues. E-7 similarly
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1 requires the Applicant to prepare a turbidity sampling

2 plan to conform with measures to control erosion during
3 construction. Similarly, E-8 requires the Applicant to
4 develop and submit a monitoring plan to DES for at least
5 90 days prior to construction, related to anything that
6 may again contribute to a violation of the Water Quality
7 Standards. E-9, Condition E-9, Proposed Condition E-9, I
8 would draw your attention to also, which similar requires
9 that the Applicant develop an Inspection and Maintenance
10 Plan to be submitted prior to construction regarding storm
11 water practices.

12 Moving onto the next page, Section E-10
13 talks about a requirement for the Applicant to submit --
14 prepare and submit a Spill Prevention Control and
15 Countermeasures Plan. Again, that would relate to, for
16 instance, oils and that type of thing from the turbines.
17 Proposed condition E-11 requires the Applicant to submit a
18 plan to prevent water quality violations due to the
19 concrete wash water during construction. Proposed
20 Condition E-12 talks about the herbicides potentially
21 being used and puts limits on those and monitoring on
22 those. Section E-13 addresses fertilizers regarding
23 revegetation. Section E-14 talks about chloride
24 applications for its snow removal. It requires the amount
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1 of chloride to be recorded and submitted to DES.

2 Moving on, the 401 Certificate will also
3 incorporate the conditions in the Wetlands Permit, which
4 is the next section, titled "Wetlands Bureau Conditions".

5 CHAIRMAN GETZ: Actually, before we go
6 to that, --

7 DIR. SCOTT: Certainly.

8 CHAIRMAN GETZ: -- Let me just ask a
9 question about the -- I think it's E-9, the storm water,
10 approved storm water practices. "Applicant shall develop
11 an Inspection and Maintenance Plan approved by DES." And,
12 Public Counsel has a proposed condition, it shows up here
13 under "Public Health and Safety, saying "Applicant shall
14 file with the Subcommittee a detailed Storm Water System
15 Maintenance Plan." Does this E-9 address that? Are we
16 talking about the same subject matter here or --

17 DIR. SCOTT: I believe so.

18 MR. IACOPI NO: Mr. Chairman, if I could
19 just point out for the record that the document, which
20 Mr. Scott has been referencing, is marked as "Petitioner's
21 Exhibit 39".

22 CHAIRMAN GETZ: Okay. I just wanted to
23 -- it seemed to me that we were talking the same subject
24 manner, and I just wanted to make sure that it was. So...
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1 DIR. SCOTT: That's my understanding
2 also. And, again, the 401 Certificate would require that
3 very condition it appears to me.

4 CHAIRMAN GETZ: Okay.

5 DIR. SCOTT: Again, the Wetlands Bureau
6 conditions highlighting, at least 48 hours prior to start
7 of construction would require a pre-construction meeting
8 to be held with DES Land Resources Management Program
9 staff, to review the wetlands and alterations programs to
10 ensure they're being -- the proposed work is still in
11 compliance. Section -- Item Number 6, under "Project

12 Specific Conditions", requires appropriate siltation,
13 erosion and turbidity controls be in place. Item 8 refers
14 to culvert outlets; (9) proper headwalls. Going down to
15 Item 14, it requires the use of DES "best management
16 practices" for urban storm water run-off. And, Item 15
17 requires that the final roadway widths be minimized. And,
18 that work being done shall be restored and revegetated to
19 the greatest extent practical -- practicable, excuse my
20 pronunciation.

21 The next section, under the Wetlands
22 Permit, is titled "Mitigation Conditions Under Wetland
23 Construction". Item 16 requires the creation of eight
24 vernal pools totally 3,600 square feet. Item 17 requires
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1 those vernal pools to be basically under the purview or
2 approval from the Wetlands Bureau of the New Hampshire
3 Department of Environmental Services. Item 18 says "The
4 permittee shall designate a New Hampshire certified
5 wetlands scientist who will be responsible for monitoring
6 and ensuring that the vernal pool creation be constructed
7 in accordance with the Mitigation Plan. Monitoring shall
8 be accomplished in a timely fashion and remedial measures
9 taken, if necessary." Again, "the Wetlands Bureau shall
10 be notified in writing of the designated certified
11 wetlands scientist prior to the construction and if
12 there's a change of status during the project.

13 Item 19 relates to the final siting of
14 each of those vernal pools, and again requires
15 coordination with Wetlands Bureau staff and the New
16 Hampshire Fish & Game biologist. Item 22, still regarding

17 the scientist, requires that person to conduct fall
18 inspections during the first three consecutive breeding
19 seasons. It also requires a report outlining the
20 follow-up measures and a schedule for remediation work, if
21 any, which is required to be submitted by DES of
22 August 1st of each year, for a total of three years of
23 monitoring.

24 The next page, under "Land
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1 Preservation", Item 25, as we know the Mitigation Plan,
2 High Altitude Mitigation Plan, I think Exhibit 48, this
3 repeats the requirement for a conservation easement of
4 620 acres for wetlands mitigation. Item 28 under here
5 requires the Applicant to submit a report summarizing
6 existing conditions within the conservation areas.

7 And, then, I would draw your attention
8 to the following, the permit after that, which is labeled
9 "Alteration of Terrain" --

10 MR. IACOPINO: Before you do that,
11 Mr. Scott, I'll just point out that the Wetlands Permit
12 Conditions that you've been referencing are in Exhibit
13 Number 40, Petitioner's Exhibit 40.

14 DIR. SCOTT: Thank you.

15 CHAIRMAN GETZ: Before you go on to
16 Alteration of Terrain, another area I want to make sure I
17 understand. Under the mitigation conditions and wetland
18 construction, there are several numbered paragraphs
19 talking about "vernal pools". And, in the -- what would
20 be Page 10 of this compilation of various conditions we
21 have, and it looks like it's something from Public

22 Counsel, says that "Applicant shall employ a certified
23 wetlands scientist to design and implement plans to
24 restore 10 acres of already impacted wetlands in areas
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1 that will not be impacted by future logging activities;
2 prepare a detailed plan to reconstruct vernal pools and
3 monitor their success for a period of no less than five
4 days from the date of successful establishment of the
5 created pools in accordance with clearly delineated
6 detailed criteria; and (iii) conduct a baseline water
7 quality study for the project area covering four
8 contiguous pre-construction seasons."

9 And, so, I take it that, if I recall two
10 things correctly, one is I think that this is more than
11 DES is requiring or proposing in this permit?

12 DIR. SCOTT: That's my understanding.

13 CHAIRMAN GETZ: And, I guess the other
14 thing is, I'm not sure that I recall a discussion on the
15 record of, you know, the specificity here, about "10 acres
16 of already impacted wetlands" or "no less than five
17 years", and I don't know if this is relative,
18 Mr. Iacopino, if that's discussed in the record or these
19 are conditions that are drawn from some analogous permits,
20 federal or state, or, I mean, I guess I'm just not clear
21 on the source.

22 MR. IACOPINO: My recollection,
23 Mr. Getz, is that some of this may have come from the
24 testimony of Public Counsel's wetlands scientists, whose
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1 names have escaped me right now --

2 DR. KENT: Sanford and Mariani.

3 MR. IACOPI NO: -- Sanford and Mariani ,
4 although it does appear to be different than my
5 recollection of their testimony, at least in terms of the
6 details.

7 CHAIRMAN GETZ: Okay. Well, I'll just
8 make a note to go back and look at the Public Counsel
9 witnesses' testimony. Thank you. Sorry to interrupt
10 again.

11 DIR. SCOTT: If I may, looking at Public
12 Counsel's conditions, the third condition there, "conduct
13 a baseline water quality study for the project area
14 covering four contiguous pre-construction seasons", that
15 does seem to me that would -- I think that means you
16 couldn't construct until you've done four years of
17 studies. I believe that's what -- if I read that right.

18 CHAIRMAN GETZ: Okay. Thank you.

19 DIR. SCOTT: So, I was on -- where was
20 I?

21 CHAIRMAN GETZ: Alteration of Terrain, I
22 believe.

23 DIR. SCOTT: Thank you.

24 DR. KENT: I have one comment on the
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1 wetlands. Please help me out, Mr. Scott, if it's implicit
2 in the project site -- project specific conditions. One
3 of the intervenors proposed a condition that says
4 "Culverts shall be designed, installed and maintained to

5 facilitate upstream and downstream passage of the aquatic
6 biota." Would you say the aquatic biota are covered
7 implicitly in one of these conditions or it would be worth
8 our while to consider that condition I just read to you?

9 DIR. SCOTT: Well, I have to confess I'm
10 not a wetlands scientist myself, so I'm not sure of that.
11 I believe the -- again, the Section 8 of the Wetlands
12 Bureau Conditions, proposed conditions -- no, excuse me,
13 the Wetlands Bureau project Specific Conditions does talk
14 about culvert outlets and DES "best management practices"
15 for storm water run-off. I'm not sure of the extent that
16 covers biota though.

17 DR. KENT: Something to look into.

18 CHAIRMAN GETZ: Okay. All right. Let's
19 make a note of that.

20 MR. HARRINGTON: Just a comment on the
21 earlier concern on the 10 acres and all that. Looking at
22 Mariani and Sanford, they had said that the Mitigation
23 Agreement -- that opportunities exist in the 620 acres for
24 wetland mitigate areas or wetland restoration. And, they
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1 did use the term -- it's about ten acres of unmitigated
2 wetlands, so I think that's where the ten acres probably
3 comes from. That the implication there is that there was
4 the opportunity to mitigate 10 acres of wetlands in the
5 620 acres that was being converted or was being
6 transferred.

7 CHAIRMAN GETZ: All right. Thank you.
8 Mr. Scott.

9 DIR. SCOTT: Okay. Back to the

10 Alteration of Terrain Conditions. Again, Condition Number
11 1 is "water quality degradation shall not occur as a
12 result of the project." Condition 3 requires that "the
13 Department must be notified in writing prior to start of
14 construction." Item Number 9, and it sounds like when we
15 look at conditions we'll talk more about this, it says
16 "The project specific seeding specifications included on
17 Sheet 143 are a part of this approval. Sheet 143 will
18 come up, I think, in a couple of venues. One regarding,
19 again, the reforestation, the replanting, and the mix
20 there. And, two, Sheet 143, it's my understanding also
21 addresses the rock sandwich issue that I think the -- I
22 think all the parties have talked to in different
23 submittals to us, including the Applicant. Actually, in
24 Sheet 143, they have, in effect, agreed that they will use
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1 rock sandwiches for wetlands crossings.
2 Item 10, which has also been the subject
3 of some proposed conditions, it says "The permittee shall
4 employ the services of an environmental monitor. The
5 monitor shall be a certified professional in erosion and
6 sediment control or a professional engineer licensed in
7 New Hampshire and shall be employed to inspect the site
8 from the start of alteration of terrain activities until
9 the alteration of terrain activities are completed." It
10 requires, in Section 11, "the Monitor shall inspect the
11 subject site at least once a week, and, if possible,
12 during any one-half inch or greater rain events. If
13 unable to be present during the storm, the monitor shall
14 inspect the site within 24 hours of the event." Again,

15 that's intended to mitigate as much as possible the
16 potential for erosion.

17 And, those are kind of the highlights.
18 Certainly, there are more details in there. Again, my
19 understanding is, working in the Department, that the
20 Water Division plans on issuing the final certificate
21 within a week or so of now. What you see here again are
22 proposed certificate conditions for their certificate,
23 their Water Quality Certificate, as opposed to the Site
24 Evaluation's certificate.

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1 MR. IACOPI NO: The other thing I would
2 point out for the record, Mr. Chairman, is the Alteration
3 of Terrain Permit conditions are located at Petitioner's
4 Exhibit 41.

5 CHAIRMAN GETZ: Okay. Thank you. Well,
6 if I look at the -- well, the cover letter on February 10
7 from DES, that contains the three permit findings and
8 conditions, notes that these are "proposed findings and
9 conditions", and then it says that "it's possible that
10 some of the conditions may change as a result of public
11 comment. Should they change, DES will provide a revised
12 set of findings and conditions", it said "prior to April
13 6, when a final decision is to be made", but we extended
14 the time for a decision to May 6th. So, I guess the
15 expectation is that we may see something additional or
16 somewhat revised from what we have before us.

17 But the -- I mean, just in general terms
18 -- well, first of all, is there any discussion or
19 questions, concerns about the Alteration of Terrain Permit

20 or any of the other pieces? Mr. Northrop.

21 MR. NORTHROP: Thank you, Mr. Chairman.
22 I just got a question, kind of bear with me, because it's
23 getting a little confusing. But, back to the Water
24 Quality Certificate, E-12 and E-13, I think both of those
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1 had to do with limits on pesticide use, limits on
2 herbicide use. Could you just read those again or --

3 DIR. SCOTT: You want me to read those?

4 MR. NORTHROP: Yes.

5 DIR. SCOTT: Okay. So, again, I'll read
6 E-12. "Herbicide use associated with the activity shall
7 be minimized to the maximum extent possible, and shall
8 only be allowed on a limited, as needed basis in the
9 switchyard and substation areas to control vegetation that
10 could otherwise disrupt operation of the Activity.
11 Herbicides shall only be applied in strict accordance with
12 the manufacturers' recommendations. Unless otherwise
13 authorized by DES, the Applicant shall maintain records of
14 herbicide use, including the name and brand of herbicide
15 used, the date herbicides were applied, where they were
16 applied, and the amount used. Such records shall be
17 provided to DES within 30 days of receiving a request from
18 DES." And, you're interested in the further --

19 MR. NORTHROP: And, E-13 was --

20 DIR. SCOTT: "Unless otherwise
21 authorized by DES, fertilizer shall only be applied once
22 on soils distributed during construction to support the
23 initial establishment of vegetation. Prior to fertilizer
24 application, soils shall be tested to determine the

1 minimum amount of lime, nitrogen, phosphorous, and
2 potassium needed to support vegetation. Lime application
3 rates, fertilizer selection, in terms of nitrogen,
4 phosphorus and potassium content, and fertilizer
5 application rates shall be consistent with the soil test
6 results. Fertilizers shall not contain any pesticides.
7 Where possible, fertilizer with slow-release nitrogen
8 shall be used. Soil test results, the name, brand and
9 nutrient content of fertilizer and application rates for
10 lime and fertilizer shall be provided to the DES within 30
11 days of receiving a request from DES."

12 MR. NORTHRUP: Okay. Thank you. The
13 reason I wanted to hear that again is, at some point, we
14 probably will be discussing the Applicant's proposed
15 agreement with Coos County. In the original version of
16 that, which was in Volume 6, it was Appendix 53,
17 Petitioner's 2.2, under the section titled "Operating
18 Period Requirements", there was a subsection in there
19 dealing with pesticides and herbicides. And, it's a short
20 paragraph, I'll just read it. "GRP shall not use
21 herbicides or pesticides for maintaining clearances around
22 the wind turbines or for any other maintenance at the
23 project, except for maintenance at the substation and
24 switchyard, so as to ensure safety around electrical
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1 facilities."

2 In the subsequent version of that
3 proposed agreement between the Applicant and Coos County,

4 which is contained in the Applicant's final brief, there
5 were a few changes in that whole agreement. And, that one
6 paragraph that I just read was completely omitted from
7 that final -- the draft agreement that is in the
8 Applicant's final brief. And, I was just -- just wanted
9 to mention that to see if that omitted pesticide and
10 herbicide use limitation in their draft agreement with
11 Coos County, if that was covered in E-12, and to some
12 extent in E-13, the Water Quality Certificate. And, do
13 you --

14 DIR. SCOTT: I don't want to ask you to
15 restate that question.

16 MR. NORTHRUP: Well, I'll just read --
17 let me just read --

18 DIR. SCOTT: I don't have their script
19 -- their conditions in front of me. Sorry.

20 MR. NORTHRUP: Well, in the E-12 of the
21 Water Quality Certificate, there were limits on herbicide
22 use. And, in the omitted, whether it was a mistake or
23 design, I don't know, the omitted paragraph from the draft
24 agreement between Coos County and the Applicant says "GRP
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1 shall not use herbicides or pesticides for maintaining
2 clearances around the wind turbines or for any other
3 maintenance of the project except for maintenance of the
4 substation and switchyard, so as to ensure safety around
5 electrical facilities."

6 CHAIRMAN GETZ: I guess the issue is,
7 how does that formulation compare to the first sentence of
8 E-12?

9 DIR. SCOTT: Exactly, yes.
10 CHAIRMAN GETZ: That they shall only be
11 allowed -- herbicides "shall only be allowed on a limited,
12 as-needed basis in the switchyard and substation areas to
13 control vegetation that could otherwise disrupt operation
14 of the activity."

15 MR. NORTHROP: Right. So, if ultimately
16 the draft agreement between the Applicant and Coos County,
17 as shown in the Applicant's final brief, if ultimately
18 that's adopted or, you know, is a condition or something
19 without this pesticide and herbicide use limitation, if
20 it's covered under that E-12 of the Water Quality
21 Certificate.

22 CHAIRMAN GETZ: Yes, I guess the issue
23 would be for us, assuming we grant a certificate in this,
24 and assuming we impose all of the DES conditions as
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1 conditions. And, I think the question I'm going to ask
2 shortly is, does anybody have any reason why we wouldn't
3 impose all of the DES conditions? But I guess it's then
4 for us to make the analysis. How does the condition here
5 relate to the condition that you pointed out? And, it
6 either isn't covered --

7 MR. NORTHROP: Right.

8 CHAIRMAN GETZ: -- and we're not
9 concerned or we think there's something important in there
10 that should be added.

11 MR. NORTHROP: Right.

12 CHAIRMAN GETZ: Because I guess I would
13 look at, you know, the DES permits as kind of a -- and

14 proposed conditions as a baseline to further discussions.
15 Mr. Scott.

16 DIR. SCOTT: I would -- the herbicide
17 again, Condition E-12, as you were alluding to
18 Mr. Northrop, is it shall only be used -- only be allowed
19 in a limited, as needed basis, in the switchyard and
20 substation areas, so that would to me preclude any other
21 use, so that I think that would cover it. Similarly, I
22 think E-13 is specific enough. So, the short answer to
23 your question, I think this permit, if it was issued,
24 covers that and makes that unneeded, which is, I guess,
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1 probably where you're going with this.

2 MR. NORTHRUP: Right. That's my point.
3 Is, if we lose it from here, is it covered under the --
4 under E-12, the Water Quality Certificate?

5 CHAIRMAN GETZ: Mr. Harrington.

6 MR. HARRINGTON: Yes, I would agree with
7 Mr. Scott. I think it is covered under E-12. And, just a
8 question, and I'll leave it to the Chair or counsel. Do
9 we have any discretion on this water quality conditions?
10 I thought that this is above and beyond us -- DES is
11 imposing these conditions on the project, isn't that
12 correct? I mean, if we say --

13 MR. IACOPIANO: RSA 162-H says that if
14 DES denies or if any of the State agencies with
15 jurisdiction, deny whatever their jurisdictional
16 certificate is or jurisdictional permits, we cannot
17 issue a certificate.

18 MR. HARRINGTON: Right. But I guess
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19 what I'm saying here is, whatever they issue in the form
20 of that Water Quality Permit, the conditions come with the
21 permit. So, they're obligated to follow all of these
22 conditions, whether we discuss them, put them in our
23 finding or not, isn't that correct?

24 DIR. SCOTT: Yes.

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1 MR. HARRINGTON: Okay.

2 MR. IACOPI NO: Pretty much. I mean, I
3 can envision a situation where there might be some
4 controversy that's generated over that, between Site
5 Evaluation Committee and the Department of Environmental
6 Services, or any other State agency, if there, for
7 instance, was a condition that was attached to a permit
8 that may not have been within their jurisdiction to order.

9 MR. HARRINGTON: Oh. Okay. Short of
10 that, generally they're part of the permit.

11 MR. IACOPI NO: Yes.

12 MR. HARRINGTON: Okay. Thank you.

13 CHAIRMAN GETZ: Any other?

14 DR. KENT: Are we just taking comments
15 on the DES permits now or are we talking about this --

16 CHAIRMAN GETZ: Yes. Well, anything
17 that is within the purview of the issues that are raised
18 by the DES permits.

19 DR. KENT: Okay. I'll wait.

20 MR. IACOPI NO: Mr. Chairman?

21 DR. KENT: I have a water quality one.

22 I'll wait.

23 MR. IACOPI NO: If I can just get back to
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24 your -- you had asked a question earlier about I believe
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1 it's Public Counsel's Condition 28, involving the 10 acres
2 of wetlands. And, I've reviewed the Mariani and Sanford
3 testimony, their direct testimony, doesn't specifically
4 use those numbers. But, on Page 161, on March 17th,
5 during their cross-examination, there is a statement by
6 Mr. Mariani that essentially he says that "over 100" --
7 well, I'd rather quote it directly, than misquote it, so
8 let me pull it up. I think this is where the condition
9 that Public Counsel suggests comes from. "The project",
10 this is Mr. Mariani testifying, "The project as proposed
11 simply does not meet by the numbers the "no net loss"
12 standard. We will end up in 100 years, everything else
13 being equal, with ten acres or so less wetlands than we
14 have now. That's the -- you asked for the reference in
15 the transcript, that's the only reference that I can find
16 to that particular number for loss of wetlands.

17 CHAIRMAN GETZ: Thank you. Okay. Well,
18 then, if we're going to use the issues as they're set
19 forth in the Outline of Conditions, we would turn next to
20 the High Level -- High Elevation Mitigation Plan. But,
21 Dr. Kent, you said you had a water quality issue?

22 DR. KENT: Yes. There's a condition
23 that's been proposed by the Applicant relative to the
24 environmental monitor. Do you want to take that up now or
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1 some other time?

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CHAIRMAN GETZ: Sure.

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3

DR. KENT: I don't have too much wrong with the condition. I would suggest that we add language, that this is the "hiring of environmental monitor subject to DES approval".

4

5

6

7

CHAIRMAN GETZ: I'm sorry.

8

9

MR. NORTHRUP: Could you, Mr. Chair, or Dr. Kent, could you point out where that is there, --

10

DR. KENT: Sure.

11

12

MR. NORTHRUP: -- in the Outline of Conditions as prepared by Mr. Iacopino? Just where that is?

13

14

DR. KENT: We were on Page 9. Flip it over. And, the first item on what would be Page 10. It says "the Applicant shall hire an independent engineer/environmental monitor."

15

16

17

18

MR. IACOPI NO: And, that was Applicant's proposed Condition G in their brief, I believe.

19

20

DR. KENT: Yes. In the Applicant's, that was G.

21

22

CHAIRMAN GETZ: Well, while we're there, look at the condition below that, which I guess is Public Counsel Condition 23. "To ensure compliance with {SEC 2008-04} [Deliberations - Day II] {04-20-09}

23

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environmental permits and laws..., Applicant shall employ an independent licensed environmental consultant who shall serve as environmental monitor." Is there any substantial difference between the two that we need to be concerned about or are they essentially the same?

2

3

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5

6

MR. HARRINGTON: It looks like the

7 Applicant's is a little bit more prescriptive, in that it
8 talks about the monitor, "the monitor shall keep a log of
9 all noncompliances and take steps to rectify them", which
10 may be implied in Public Counsel's, but not explicitly
11 stated.

12 MR. JANELLE: If you go onto Page 12,
13 AMC has a condition about the environmental monitor as
14 well. It talks about "The environmental monitor shall
15 have the authority to stop construction activity", goes
16 onto the permit conditions, weather conditions, and other
17 factors creating imminent risk. I guess the difference I
18 see between this condition and DES's condition, DES's
19 condition seems to be more of a monitor that stops in once
20 a week to check things out, or, if there's a rainfall
21 event that occurred, check things out, whereas this
22 monitor is a person that's more on-site directing
23 construction activities.

24 MR. HARRINGTON: What's the DES number?

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1 Which one is it?

2 MR. JANELLE: It's 11.

3 MR. HARRINGTON: It's 11 under?

4 CHAIRMAN GETZ: Alteration of Terrain.

5 DR. KENT: Alteration of Terrain.

6 MR. HARRINGTON: Alteration of Terrain.

7 Okay. Yes, I would agree. I think the DES one isn't
8 talking about a, you know, around-the-clock type thing.
9 And, I believe I took the idea that this -- one that the
10 Applicant was -- had submitted, was basically the person
11 is going to be there during construction, you know, all

12 the time. And, the DES, that would meet the requirements
13 of the DES one, but not the other way around. The DES one
14 isn't as demanding. So, I think, if we granted the
15 Condition G from the Applicant, it would cover conditions
16 10 and 11 required by the DES permit.

17 CHAIRMAN GETZ: Well, would it be fair
18 to say that the sense of the Committee is that the notion
19 of environmental monitor would make a whole lot of sense,
20 but what we've got to do is take a look at the four or
21 five varying proposals and make sure we come to agreement
22 on what the -- precisely what the language would be about
23 the powers of the environmental monitor, and, you know,
24 how long they're going to be on site, etcetera?

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1 (Non-verbal indication by members.)

2 CHAIRMAN GETZ: Okay. I'll take that as
3 assent. Okay.

4 MR. HARRINGTON: I could more or less go
5 along with Condition G as it's written out, unless we want
6 to get very explicit about, you know, how often or how
7 long a person has to be on site. I mean, there's going to
8 be obviously some time when they're not there during
9 construction. But I think someone can be there if they're
10 committed, there will be some time, there is maybe
11 construction going on in a couple of locations, for
12 example.

13 CHAIRMAN GETZ: Okay. Well, let's move
14 onto the High Elevation Mitigation Settlement Agreement
15 then. And, I'll just try to give a summary of that for
16 the purposes of discussion. And, you know, it's a page

17 and a half of "whereas" clauses, and I'll just note a
18 couple that, you know, the parties agreeing that the
19 development of the windpark would involve construction of
20 wind turbines and access roads in certain areas above
21 2,700 feet in elevation, encompassing high elevation
22 spruce-fir habitat, which is recognized in the State
23 Wildlife Action Plan as a limited habitat of particular
24 importance and sensitivity. And, that the parties share a
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1 mutual interest in ensuring that the windpark is developed
2 in a manner that minimizes potential adverse environmental
3 impacts and which ensures that the benefits of the
4 projected development outweigh potential adverse
5 environmental impacts. And, under the heading of some of
6 the agreements, you know, the Granite Reliable agreed it
7 shall have construction financing in place sufficient to
8 fund its obligations prior to commencing construction
9 activities above 2,700 feet. Indicates that it will
10 secure -- it shall secure permanent conservation of
11 certain lands totaling 1,735 acres. Sets forth that the
12 protection of lands shall be governed by provisions,
13 including future development and timber harvesting shall
14 be prohibited, unless specifically requested and approved
15 by Fish & Game. Motorized recreational vehicles shall be
16 prohibited. No additional roads or structures allowed.

17 And, it also notes that land on Phillips
18 Brook is intended as mitigation for wetlands impacts
19 covered by similar provisions that, on Mount Kelsey, all
20 those trees necessary for project construction will be
21 cut. And, sets out certain requirements about recording

22 surveys, marking boundaries, notes that Granite Reliable
23 would make a payment of \$200,000 to Fish & Game to conduct
24 studies of the impacts of the development on the use of
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1 the area by American marten, Bicknell's thrush, and other
2 wildlife species.

3 That Granite Reliable would make a
4 one-time payment of \$750,000 to Fish & Game to secure or
5 assist with the permanent conservation of comparable
6 habitat outside of the project area, and agree that it
7 would not construct wind turbines or associated
8 infrastructure on Whitcomb Mountain. And, I think that is
9 a -- generally summarizes the High Level -- High Elevation
10 Mitigation Settlement Agreement.

11 Is there any discussion about the terms
12 of that agreement? Dr. Kent.

13 DR. KENT: I would offer a couple of
14 suggestions. One, that Fish & Game verify that the High
15 Elevation mitigation sites reasonably compensate the
16 project impacts prior to construction through an on-site
17 visit. And, secondly, I would suggest some kind of
18 contingency, in case, for whatever reason, Governor and
19 Council or Fiscal Committee disapprove of New Hampshire
20 Fish & Game, and we have some language that let's another
21 State agency or conservation agency -- or, conservation
22 organization, excuse me, chosen by Fish & Game be an
23 acceptable alternative.

24 CHAIRMAN GETZ: Okay. Let me just ask,
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1 can you say a little more about the first provision, on
2 the on-site visit by Fish & Game?

3 DR. KENT: Yes. This was -- To my
4 understanding, the agreement was made desktop, and perhaps
5 from some historic on-the-ground traversing, but there was
6 no specific on-site check of the mitigation sites. So,
7 we're still a little weak on whether they're effective
8 compensation or not for the impacts.

9 CHAIRMAN GETZ: And, how would you see
10 that -- I'm just trying to think procedurally, how would
11 that play out?

12 DR. KENT: Prior to transfer from the
13 Applicant or the Applicant's landowners to Fish & Game,
14 they will have been to the sites and reassured themselves
15 and us that it's a good swap, compensates for impacts up
16 on the project site.

17 CHAIRMAN GETZ: So, then, there would be
18 -- basically, we'd be looking for some kind of
19 reaffirmation or not from Fish & Game whether the actual
20 properties accomplish the types of mitigation that they
21 intend?

22 DR. KENT: Exactly.

23 MR. HARRINGTON: Just to follow-up on
24 that. Maybe we could use something right out of one of
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1 our many whereases here. "Jointly agree that the
2 provisions of this agreement provide sufficient mitigation
3 --

4 (Court reporter interruption.)

5 MR. HARRINGTON: This is one of our many
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6 "whereas" clauses I'm suggesting we could use. "Whereas
7 New Hampshire Fish & Game and the AMC jointly agree that
8 the provisions of this agreement provide sufficient
9 mitigation to compensate for project impacts to high
10 elevation ecosystems, habitats, and species, and resolves
11 any and all concerns regarding the issue of mitigation for
12 impacts to high elevation ecosystems expressed in prefiled
13 testimony and unless specifically noted otherwise in this
14 agreement."

15 Is what you're getting at, Dr. Kent, is
16 basically a walk-through to validate that that's accurate?
17 That statement is accurate?

18 DR. KENT: "Validate" would be fine.

19 MR. HARRINGTON: And, I just wonder,
20 from a legal position, I'm reading this to say that this
21 document makes that happen. So, now we're saying "it
22 might not", and we're going to have to check it? I mean
23 when they say that it resolves "any and all concerns
24 regarding the issue of mitigation for impacts to high
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1 elevation ecosystems expressed in the prefiled testimony"?

2 CHAIRMAN GETZ: Well, it's an issue of
3 that's basically what they have concluded.

4 MR. HARRINGTON: Right.

5 CHAIRMAN GETZ: And, then, we have to
6 make our own independent conclusion, if that does
7 accomplish what they say that it accomplishes.

8 MR. HARRINGTON: So, we'd be asking Fish
9 & Game to go certify that what they already signed, that
10 they agree with is true?

11 CHAIRMAN GETZ: Well, --

12 DR. KENT: Let me tell you why --

13 MR. HARRINGTON: No, I understand the
14 why.

15 DR. KENT: Because we have had no
16 evidence presented to us about any details whatsoever of
17 what's over in those mitigation package sites.

18 MR. HARRINGTON: No, I understand where
19 you're coming from. My question I guess is that this is a
20 document that was signed by somebody at Fish & Game, I
21 guess, right? Okay. So, Fish & Game is already saying
22 that, if we live up to this agreement, which is the
23 transfer of this stuff, it resolves all concerns that were
24 raised. But, now we're saying, "We don't really believe
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1 it. As a condition, we want you to go out and check to
2 make sure that it does resolve." So, I mean, if we're
3 asking Fish & Game to do that, I'm not -- I guess I have a
4 little problem with that.

5 DR. KENT: No. What we're doing -- what
6 I'm doing is, Fish & Game has made a determination;
7 agreed. What I'm saying, as a Committee member, I would
8 like to have additional evidence that they, in fact, did
9 come to the right decision here. Not that I doubt their
10 abilities, but it would be nice to have some evidence
11 before us to document why we agree with their decision or
12 don't agree with the decision. So, evidence about what's
13 really on the ground over there, what's the condition of
14 these high elevation areas? Have they been logged? Do
15 they provide the same kind of habitat we're giving up?

16 Very fundamental information.

17 MR. HARRINGTON: No, I understand the
18 "why". I'm trying to get the "how it would work?" Let's
19 say Fish & Game goes out and says "We goofed. It doesn't
20 meet all these requirements." Well, they've already got a
21 signed agreement where they have already said "We, by our
22 signatures, say this resolves any and all concerns." So,
23 how can you then say "It doesn't resolve the concerns.
24 Now we've changed our minds."

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1 I mean, I'll ask one of the lawyers in
2 the room to jump in on this.

3 CHAIRMAN GETZ: Well, I lost track of
4 the pronouns about -- but it would be, it's up to us to
5 determine whether it's satisfactory. They have concluded,
6 they, the parties here to the High Elevation Settlement
7 Agreement. Now, it's up to us to determine whether that's
8 sufficient. So, we could -- we can take them at their
9 word, we can require more evidence. And, there's some
10 procedural issues here about how you would go about this.
11 So, I mean, this is not binding, because it's all subject
12 to the certificate and to the project going forward.

13 MR. HARRINGTON: Okay. All right. So,
14 they would come back and say, in the case that they change
15 their mind, they would come back and say "we didn't look
16 at this close enough" or whatever. And, "here's some
17 additional", and then this negotiation would get reopened
18 for the Mitigation Agreement, I guess?

19 Okay. All right. That's what I needed
20 to follow. I wasn't quite sure how it would work.

21 CHAIRMAN GETZ: Director Normandeau.
22 DIR. NORMANDEAU: It would seem to me
23 that -- It would seem to me, you'd have to have this
24 looked at independently. If we're going to go that route,
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1 you need somebody else to go make that determination, it
2 would seem to me, just my comment. And, it seems as
3 though it would need to be made prior to the issuance of a
4 certificate also. Because once that certificate's issued,
5 I mean, it's issued, right? So, --

6 CHAIRMAN GETZ: Well, again, it depends
7 on how set it up. If it's subject to a condition, and
8 whether the condition is satisfied, if we have to say it
9 has to be satisfied, satisfied by a date certain, then, if
10 it's satisfied, then everything progresses. If it's not
11 satisfied, then the certificate isn't effective. But then
12 there's also the issue of, when you're going to set
13 conditions, are they conditions that can be objectively
14 determined? Like somebody's financing types of
15 conditions, that they can commence construction on the
16 condition that the loan documents be submitted.

17 DIR. NORMANDEAU: Right.

18 CHAIRMAN GETZ: Well, that's a pretty
19 objective type of review. But, if it's going to be
20 something that's going to require us to make a
21 determination, and it's more subjective, then that's a
22 very different type of condition, a very different kind of
23 process. But that's, you know, --

24 MR. HARRINGTON: All I would say on that
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1 is, I will almost guarantee that, if you looked hard
2 enough, you could find 20 people that could go out and do
3 this inspection and you could get ten of them to say
4 "sufficient" and ten of them to say "not sufficient". It
5 all depends on what you want to, you know, where you're
6 coming from. So, I just, I'm a little leery about putting
7 something so fuzzy out there like that, because --

8 DR. KENT: Well, let me -- Let's make it
9 less fuzzy. I'm not asking someone to make that kind of
10 assessment. I'm asking, keep it very simple, we know what
11 habitat we lost, we're losing on the ridge. Do we have
12 that same habitat in the mitigation parcels?

13 MR. HARRINGTON: That would seem to
14 help.

15 DR. KENT: Is it comparable? I mean,
16 what we're dealing up there is fairly black and white.
17 Either it's been logged or it hasn't been logged. Either
18 we have spruce-fir forest or we don't have spruce-fir
19 forest? We don't have to make it complicated.

20 MR. HARRINGTON: I think just the more
21 definitive we make what evaluation we want, the less
22 chance for misinterpretation of our intention there is for
23 whoever is going to do this six months from now.

24 CHAIRMAN GETZ: Well, that's why we have
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1 to be clear in what's the assignment, --

2 MR. HARRINGTON: Yes.

3 DR. KENT: Right.

4 CHAIRMAN GETZ: -- who's going to
5 undertake it, and what's the deadline?

6 MR. HARRINGTON: But, as far as the
7 concept, I have no problem with that, if we want to go to
8 that point right know.

9 DR. KENT: And, I respectfully disagree
10 with Executive Director Normandeau. I don't doubt the
11 voracity of Fish & Game. I think it's a problem of, this
12 agreement popped up in the middle of hearings. We didn't
13 go into detail on it. We didn't get any details on it,
14 other than the legal language. We didn't get
15 on-the-ground stuff. I would just like more information,
16 so we can all be comfortable that, in fact, this is pretty
17 much a tit-for-tat tradeoff.

18 CHAIRMAN GETZ: Well, rather than
19 address it through as a condition, perhaps similarly to
20 what -- we've already asked two record requests of the
21 Applicant. You know, maybe it's a request of Fish & Game,
22 I believe it was Mr. Weber, who signed the -- the Chief of
23 the Wildlife Division, to provide us with, you know, more
24 detail and description of the mitigation properties.

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1 MR. HARRINGTON: I have one question on
2 that. Can that be done with snow on the ground? Because
3 I'm sure there's still snow up there, and you may have to
4 wait another month or whatever or --

5 DR. KENT: No.

6 CHAIRMAN GETZ: Well, I would ask the
7 professional from DRED, rather than the lawyer from the
8 PUC.

9 DR. KENT: I don't think the snowpack is
10 covering the trees. So, I think they can do an adequate
11 assessment. And, I would be very open to that kind of
12 information request coming to us before we make a
13 decision, sure.

14 MR. IACOPI NO: Mr. Chairman, I would
15 point that, since Fish & Game is technically still a party
16 to this proceeding, you could issue a data request to them
17 as well.

18 CHAIRMAN GETZ: Let's make it so. Mr.
19 Scott?

20 DIR. SCOTT: On the Mitigation
21 Agreement, but another issue?

22 CHAIRMAN GETZ: Uh-huh.

23 DIR. SCOTT: If I may? What's unclear
24 to me in this Agreement is, we have the two one-time
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1 payments to Fish & Game. I think there was some
2 discussion earlier about, and I'll give, I think, a
3 plausible scenario, Director Normandeau has to go to
4 Governor and Council to accept this money. He's asked,
5 which would be an appropriate question, "does it cost your
6 agency anything to administer this money?" He says "yes."
7 And, the Executive Council would say "Well, money is real
8 tight for everybody right now in state government, so
9 therefore we disapproved." What would happen then I guess
10 would be something perhaps we ought to consider as we look
11 at this Mitigation Agreement.

12 CHAIRMAN GETZ: And, I think -- I think
13 that goes to the second issue that Dr. Kent brought up,

GRP-DLB2.txt

14 and I think it pops up later in these list of conditions,
15 that there should be a default provision.

16 MR. IACOPI NO: Mr. Chairman, I will
17 point out that Exhibit -- I'm sorry, not "Exhibit", but in
18 the Fish & Game's conditions, their Exhibit -- their
19 Condition D, as in "delta", contains a contingency for
20 Government and Executive Council disapproval of the Fish &
21 Game acceptance of the mitigation parcels.

22 MR. HARRINGTON: What page is that,
23 Mike?

24 MR. IACOPI NO: I'm not sure what page it
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1 is in the outline, but it's Condition D for Fish & Game.
2 I can read it: "If the Governor and Executive Council do
3 not approve the Fish & Game's acceptance of the mitigation
4 parcels and payments as contemplated in the High Elevation
5 Mitigation Settlement Agreement, GRP shall transfer such
6 mitigation parcels and payments to a conservation
7 organization chosen by consultation with Fish & Game." In
8 other words, the proposal from Fish & Game, in the event
9 Governor and Council disapprove of the plan, will be that
10 the Applicant would consult with Fish & Game, and then
11 deed the properties to, and possibly the payments, to a
12 conservation agency chosen, after consultation with Fish &
13 Game.

14 MR. HARRINGTON: Can I ask a question on
15 that? Yes, we had discussed this earlier --

16 MR. IACOPI NO: And, I'm not sure, I was
17 looking through the outline that I prepared for you, I
18 can't put me finger on it, and I may have actually somehow

19 deleted it out. But it is attached to Fish & Game's brief
20 as "Condition D".

21 MR. HARRINGTON: When we had discussed
22 this before, I had written this down, because I think the
23 issue had come up, but I have some real concerns about
24 telling a private company that they have to buy land and
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1 take a big hunk of money and give it to another private
2 organization. So, I would suggest, if we're going to have
3 a backup, let's make the backup be Coos County, and not
4 some to-be-determined conservation group. I just don't
5 see taking money from one private individual and giving it
6 to some other private group. I would have a real problem
7 with that.

8 CHAIRMAN GETZ: Dr. Kent.

9 DR. KENT: No. The point is to get it
10 to a conservation organization, and Coos County is not
11 wholly a conservation organization. And, it right there
12 obviates the intent of the whole tradeoff here. What if
13 we end up with an ATV park? Coos County could do anything
14 they wanted.

15 MR. HARRINGTON: Well, you could put
16 that, I think, in the agreement, like whoever it's
17 transferred to would have to live up to the terms of the
18 agreement. But, I mean, we could debate this for two
19 weeks, if you wanted. But I'll make it real clear, I'm
20 never going to endorse anything that transfers private
21 funds, as a condition of this Applicant, their money to
22 some other private organization. I just don't think it's
23 the right thing to do.

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CHAIRMAN GETZ: Okay. Well, I guess,

24

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1 suffice it to say, we need to have the details for a
2 alternative procedure, in the event that the Governor and
3 Council doesn't permit Fish & Game to accept the funds.

4 DIR. NORMANDEAU: Well, I suppose the
5 question would be, if that would be the case, are they
6 going to permit it to go to any State agency, and I don't
7 know what the difference would be, but -- so, it strikes
8 me that, if we don't have something that could go to a,
9 you know, a legitimate conservation organization, you may
10 be eliminating the Mitigation Agreement, if it doesn't go
11 through G&C.

12 CHAIRMAN GETZ: Or, I guess, presumably
13 it could go to Coos County, with, you know, specific --

14 DIR. NORMANDEAU: Instructions.

15 CHAIRMAN GETZ: -- conditions on what
16 the money can be used for, I mean, is another way of
17 approaching the issue. Mr. Scott, did you have something
18 on this?

19 DIR. SCOTT: I was just going to ask,
20 that example I used about the Governor and Council, I
21 presume, since Fish & Game was a party to this Agreement,
22 obviously, there's an inherent cost, and whether it's
23 \$750,000 or the \$250,000, there is an inherent cost in
24 administering that. I presume, since Fish & Game is a

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1 party, or Mr. Weber was a party, I won't look at
2 Mr. Normandeau, in this case, then there was an acceptance

3 that there were resources available. So, I just want to
4 elaborate, on my scenario, I would assume Fish & Game
5 could say "No, we have accounted for this, and we want to
6 take the money." So, I just want to clarify.

7 MR. HARRINGTON: And, just so we're
8 clear, I wasn't in any way insinuating that we should hand
9 the big bag of money to Coos County and say "Have fun."
10 It would come with all the strings associated with this,
11 exactly what they could spend it on, what they couldn't do
12 with the land and so forth.

13 CHAIRMAN GETZ: Okay. And, then, I
14 guess there's one other related condition at least that
15 goes in the area, and I think, again, this may have come
16 from Public Counsel. And, I think it goes to the issue of
17 I guess a timing of the payment under the Agreement. And,
18 I believe Public Counsel said "Applicant -- well, the
19 proposal, says "Applicant shall modify its Agreement", or
20 we can impose a condition, "that New Hampshire Fish & Game
21 and AMC provide the payment of all monies owed under the
22 Agreement and all deeds required to be delivered
23 thereunder shall be paid and delivered the earlier of 180
24 days after the issuance of the certificate or the date of
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1 the commencement of any construction activities." But
2 that's one other related condition.

3 Okay. Any other discussion about the --

4 MR. HARRINGTON: Quick question.

5 CHAIRMAN GETZ: -- that come up under
6 the High Elevation Mitigation Plan? Mr. Harrington.

7 MR. HARRINGTON: Just to save time,
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8 where does it address -- do you know where it addresses in
9 the Mitigation Plan when the payments would take place in
10 there, what Section that's in? I'm in a document with no
11 page numbers. I'm just trying to see what would change.

12 DR. KENT: The second page. The second
13 page, the paragraph right above "Mitigation Provisions".
14 It says "prior to conducting any construction activities".

15 MR. HARRINGTON: Oh. Okay.

16 MR. IACOPI NO: "Above 2,700".

17 DR. KENT: "Above 2,700". Thank you.

18 CHAIRMAN GETZ: And, I think that was
19 the distinction that may have been made on cross a couple
20 of times during the hearings. The distinction between
21 construction activities above 2,700 feet versus any
22 construction activities. And, presumably, construction
23 activities will occur, you know, a fair amount of time in
24 advance of construction activities above 2,700 feet.

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1 So, again, let's put that on the list of
2 --

3 MR. HARRINGTON: And, if you read this
4 paragraph a little further, it appears that this is --
5 there's more to it than just the initiation of payments,
6 because it says "however GRP shall have no obligations
7 hereunder if it does not commence such construction
8 activities." So, I'm reading this to say that, if they
9 start construction, but, for some reason, never get into
10 constructing anything over 2,700 feet, that they don't
11 have to buy the property and transfer it or make any
12 payments. Under the Public Counsel, they would --

13 starting any construction would obligate them to transfer
14 the property and make the payments. That, to me, is --
15 that's a fairly substantial change to the Agreement,
16 because we are talking quite a bit of money here. It's
17 just not a change, you know, it's not just making
18 "January 15th" to "March 15th". It's basically changing
19 the structure of the Agreement.

20 CHAIRMAN GETZ: Right. It goes to the
21 -- two related issues. When does the clock start? And,
22 then, when does the obligation vest? But, clearly, it's
23 within our purview to decide whether it should be 180 days
24 from construction or whether, you know, the mitigation
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1 provision should -- the payments would not be due until
2 you've gone above 2,700 feet. Now, certainly, I mean, I
3 guess the obvious argument on the latter side is, if you
4 don't ever go above 2,700 feet, and there's nothing to be
5 mitigated, --

6 MR. HARRINGTON: You've already spent
7 the money, though.

8 CHAIRMAN GETZ: -- then why would you.

9 MR. HARRINGTON: Yes.

10 CHAIRMAN GETZ: Though, I guess there
11 may be an argument that, under the Agreement, if you said
12 "the money shall be paid within 180 days after any
13 construction", whether it's doing something down at the
14 substation or the lay-down yard, but then they never go
15 above 2,700 feet and they never create the harm, then do
16 they have to, you know, basically it's a right of recision
17 to get that money back, because there's nothing to

18 mitigate. So, you know, I think we might want to address,
19 to the extent we're going to change what's in the
20 Agreement, then let's make sure we've thought through the
21 ramifications.

22 MR. HARRINGTON: Now you've made it even
23 more complicated. My initial point is I just didn't want
24 people to look at it and think all we're doing is changing
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1 the date. But there's a major thing, I mean, it's
2 possible they could start construction on the road,
3 something happens, the project never gets completed beyond
4 that, and they would have had a turnover, whatever it is,
5 two and a half million dollars worth of cash and land, to
6 Fish & Game and --

7 DIR. NORMANDEAU: There's another major
8 problem with that, that I haven't -- again, I don't know,
9 because I was not involved in the proceedings. However,
10 my guess would be that, if the project did, in fact, stop
11 shortly after it started for some reason, then there would
12 not be any lease payments to the property owners, which
13 would mean that perhaps the property owners aren't going
14 to be willing to sell this land, which means that, you
15 know, I am assuming that part of this involved dealing
16 with these property owners to get all of this lined up
17 prior to to start with. So, anything we impose here is
18 leaving a party out that -- namely, the people that own
19 this land right now. And, so, before we set out a whole
20 bunch of conditions that don't involve the actual property
21 owner, we might have to investigate that end of the
22 scenario, if you understand what I'm saying?

23 CHAIRMAN GETZ: Well, I'd just say, I'm
24 familiar with the general rule is "beware of unintended
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1 consequences --

2 DIR. NORMANDEAU: Consequences.

3 CHAIRMAN GETZ: -- of our actions." So,
4 let's make sure that, if we're going to impose additional
5 or different conditions, that we've thought through what
6 the implications are.

7 DIR. NORMANDEAU: And, again, I have no
8 knowledge of that, but I know that, if it was my property,
9 I'd be making sure I was getting what worked for me, so --

10 CHAIRMAN GETZ: Okay. Well, we're going
11 to have to come back to revisit this. You know, we're
12 getting a list of issues for a variety of conditions.

13 MR. HARRINGTON: Are we going forward or
14 backwards on these?

15 CHAIRMAN GETZ: Time is progressing.
16 Any other discussion about the High Elevation Settlement
17 Agreement?

18 (No verbal response)

19 CHAIRMAN GETZ: Okay. Hearing nothing,
20 then let's work our way through the rest of the conditions
21 here, to see, you know, some are covered, some aren't, but
22 let's just walk through them.

23 At the bottom of Page 9, after the
24 reference to the Mitigation Plan, says "areas above
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1 2,700 feet will be revegetated in accordance with the plan
2 to be developed by GRP, in consultation with Fish & Game."
3 And, this is the Applicant's Proposed Condition F appended
4 to its brief. Any thoughts?

5 MR. HARRINGTON: Well, this shows up in
6 two or three different places. I think Fish & Game has
7 similar words, and Appalachian Mountain Club has similar
8 words, as well as some additional stuff it looks like.

9 CHAIRMAN GETZ: Well, certainly, is
10 there any concern with the general notion?

11 DR. KENT: Well, it just occurred to me,
12 it should have occurred to me sooner, I suppose, being
13 from DRED. But, considering we're the forest and the
14 plants agency, wouldn't be bad to tack us on there, if
15 we're going to talk about revegetating.

16 CHAIRMAN GETZ: Okay. All right. Then,
17 if we move onto the top of the next page, and we've
18 already discussed the first two items with respect to the
19 monitor. So, the third item on that page, and this is
20 Public Counsel Condition 24: "Applicant shall not conduct
21 any clearing or road construction activities above
22 2,500 feet elevation on Mount Kelsey, Owlhead or Dixville
23 Peak between April 1 and August 1."

24 MR. HARRINGTON: Am I correct in
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1 assuming, does everybody agree, this is for the protection
2 of the Bicknell's thrush?

3 CHAIRMAN GETZ: Well, Mr. Scott, did you
4 -- well, you started to raise your hand.

5 DIR. SCOTT: Well, I didn't want to

6 interrupt Mr. Harrington. I remember this during our
7 Lancaster testimony. And, it was to the extent that, for
8 not only the thrush, but other species, the recommendation
9 was 1 April to 1 August was when the enhanced breeding
10 time would be the most impact if you cut trees down. So,
11 this makes sense to me. What I don't remember is the
12 2,500 feet, I'm not sure where that came from, I assume
13 the same testimony. And, I don't have the transcript in
14 front of me.

15 MR. HARRINGTON: Do we have -- excuse
16 me. I don't believe, do we have anything on the record at
17 all from the Applicant as to what effect this would have
18 on the project if this would not be enabled. I mean, when
19 you're looking at construction activities, if you close
20 out April 1st to August 1st, that doesn't leave a lot of
21 time before the snow starts coming again. It's only a few
22 months. And, I'm not sure if construction is feasible up
23 there in the wintertime. I would tend to think it's
24 probably not.

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1 MR. JANELLE: I guess I have a question.
2 It talks about "clearing and road construction". Is the
3 concern that you don't want to clear the trees while the
4 birds are nesting in the trees? If you clear the trees
5 after that date, and then you could -- and you could do
6 road construction within that clearer area the next
7 season?

8 DIR. SCOTT: Yes.

9 MR. JANELLE: Does that make sense?

10 DIR. SCOTT: That's my understanding of

11 what would be required in this case.

12 MR. JANELLE: To me, that would seem
13 reasonable.

14 MR. HARRINGTON: So, let me see if I get
15 this straight. So, you could, from August till whenever,
16 you could clear trees, and then you could go back the next
17 spring and do other stuff, as long as it didn't involve
18 clearing trees.

19 MR. JANELLE: So, I guess the road
20 construction piece of that, maybe to clarify, that road
21 construction can't occur within that first season.

22 CHAIRMAN GETZ: That it cannot?

23 MR. JANELLE: Well, it seems we don't
24 want to clear trees while the birds are nesting in the
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1 trees. Once the trees are cleared, then you can construct
2 within that cleared area.

3 CHAIRMAN GETZ: Mr. Normandeau.

4 DIR. NORMANDEAU: I think the intent of
5 this was that you wouldn't have nesting birds with eggs or
6 young that haven't fledged yet in the trees when they're
7 being cut, because, obviously, it will kill them. If the
8 trees aren't there, they're obviously not going to nest in
9 them. So, the idea would be, now I don't know about the
10 road construction part, but I think the idea from cutting,
11 I think, as I recall the Public Counsel's bird person that
12 spoke at Lancaster, you know, was discussing the fact that
13 most of these species are fledged out by August 1st. So,
14 the young can fly. So that the issue was, cut the trees,
15 you know, when the -- out of nesting season, if you will.

16 And, you can work -- I mean, I would think you can work
17 any time, but that was what they were leading up to, as I
18 recall, was just to avoid killing nesting birds that are
19 already in the bushes.

20 CHAIRMAN GETZ: Mr. Scott.

21 DIR. SCOTT: I concur. And, I think
22 where the confusion is is they have added "or road
23 construction", rather than just "clearing". What I
24 remember hearing is, we shouldn't be clearing or cutting
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1 trees down during that time frame. I concur, if the trees
2 are already down, I'm not sure why -- it's not apparent to
3 me why we would limit road construction during this time,
4 if the trees are already down. If they were cut the year
5 before, for instance.

6 CHAIRMAN GETZ: Okay. That's why I'd
7 like to take a look back at the testimony and the
8 cross-examination. I'd like to follow up on that issue
9 that you just pointed out, Mr. Scott, because, you know,
10 on the hand one, we want to -- if this is to proceed,
11 you've got to balance how you're going to minimize the
12 impact on the nesting bird species. But there also should
13 be a way to build the roads, and without limiting it to
14 the -- to the late fall, winter, and mud season. So,
15 let's go back and take a look at the testimony, I guess.

16 DIR. NORMANDEAU: And, this is -- we've
17 done this at the Department. We just had a scenario this
18 past year where a dam was being repaired, and we wouldn't
19 let them drain the water until August 1st, so the loons
20 were fledged and could fly out there, otherwise there

21 would be no water, no fish, and they would have died. So,
22 it's not an unheard of scenario.

23 CHAIRMAN GETZ: Okay. Thank you. All
24 right. Anything else on that?

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1 DR. KENT: I will. I'm hesitant, but,
2 you know, I actually want to add some sanity here. If
3 we're going the tell -- if our intent was to let them
4 construct this project, telling them they can't work from
5 April to August is as good as telling them they can't
6 construct the project. So, if that's the direction we're
7 going, we should just be up front about it, than monkey
8 around with worrying about a couple of birds that might be
9 in the trees, when we've already decided they can impact
10 the site.

11 MR. HARRINGTON: Yes. Which I guess --
12 though, I have that same concern, that's why I asked the
13 question, "if there was anything on the record?" I don't
14 believe there is of the Applicant responding to -- I mean,
15 if that is a "kiss of death" condition, then I think we
16 have to look at it a little differently, because we're
17 making a decision there and then whether the project goes
18 forward on that one condition. And, I don't know if it
19 is, but we really don't have anything to judge that on.

20 CHAIRMAN GETZ: Well, that's why I think
21 we need to track back. And, whether it's Mr. Scott's
22 recollection is the accurate one, the correct formulation,
23 that the original notion was "not conduct any clearing",
24 and that's been the focus of the inquiry in the case. But

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1 now all of a sudden we have a condition that's just is
2 brand-new and reducing a restriction that hasn't been
3 visited at all in the discussion. So, how do we have a
4 basis for, you know, making a ruling?

5 And, I guess, you know, typically, I
6 mean if there has been no evidence on it, then, you know,
7 then we're really not in a position to just impose a
8 condition, without having any understanding of what the
9 impacts are. But, Mr. Scott, did you have a --

10 DIR. SCOTT: I believe it's, again, it's
11 Mr. Lloyd-Evans, and we discussed it up in Lancaster, and
12 I'm reading my own transcript here, and I referenced
13 Page 9, when I asked him a question about it. And, he has
14 apparently, on Page 9, recommended a moratorium on
15 construction. So, --

16 MR. HARRINGTON: That's in his prefiled.

17 DIR. SCOTT: That's in his prefiled.

18 MR. IACOPIANO: And, he does go into more
19 detail around Page 40, he's asked more questions about,
20 and explains why he chose those dates, Pages 42 and 43.
21 And, that's the March 19th transcript that contained
22 Dr. Lloyd-Evans' testimony. He also indicates that he
23 would defer to New Hampshire Fish & Game experts with
24 respect to the start date of the moratorium.

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1 CHAIRMAN GETZ: And, certainly, I agree,
2 Dr. Kent, with your, I guess, underlying position, is
3 there's no point in granting some elusory authority to do
4 something that really can't be done. So, let's make sure

5 we understand what the condition entails.

6 DIR. NORMANDEAU: Mr. Chairman, I wasn't
7 necessarily speaking in one direction or the other, just
8 trying to explain what I thought they were getting at, if
9 you know what I mean?

10 CHAIRMAN GETZ: Well, and again, that's
11 -- I think the purpose of last Friday, today, and how many
12 ever days we do this again, is to -- let's lay out all the
13 issues, pro/con, let's understand them, let's have a
14 discussion, and let's see where that leads us, in terms of
15 whether there should be a certificate, not a certificate,
16 or a certificate subject to conditions.

17 So, to the extent there are
18 criminologists who are trying to read where we're going,
19 what we might decide, the purpose of this is to have a
20 open discussion about the issues for and against on every
21 one of these items, so that we can make an informed
22 decision and make the findings that the statute requires
23 of us.

24 So, let's keep moving ahead. The next
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1 condition talks about "Prior to the commencement of
2 construction, Applicant shall retain the services of a
3 professional engineer with experience in designing a
4 project of this type and scale in high elevation. Said
5 engineer shall provide a comment and recommendation to the
6 Applicant and the Subcommittee concerning: Vernal pools,
7 safety and stability, functionality of the storm water
8 system, and the Subcommittee, upon reviewing such a
9 comment and report, may order additional conditions." Is

10 there any thoughts on that comment? Mr. Scott.

11 DIR. SCOTT: More than the details, I'm
12 sure, but the Public Counsel does talk a lot about
13 deferring things to the Subcommittee. And, I guess a
14 question to be answered would be that, after, assuming
15 there is a certificate issued, does the Subcommittee still
16 exist? Or, wouldn't it not be more appropriate for
17 documents going to the Committee at that point, given that
18 the Committee is designated by statute, and the
19 Subcommittee necessarily are individuals who may or may
20 not still hold those offices after we issue the
21 certificate.

22 CHAIRMAN GETZ: Well, putting aside the
23 very last part of that, I mean, there's a couple ways to
24 proceed. And, this goes to something I discussed earlier
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1 about "can you have an objective condition that's
2 obviously met?" And, I think, essentially, what the
3 Public Counsel is proposing here is another step where we
4 would have, you know, more information, possibly
5 testimony, possibly, you know, putting us in a position
6 where someone says "Oh, yes. Is it satisfactory under the
7 condition?" "It's not satisfactory under the condition?"
8 And, that we would have to make a decision about whether
9 the condition is met. And, do we want to be in that
10 position of having another round to this, regardless, you
11 know, putting aside who's doing it. And, I guess, to my
12 way of thinking, it depends on the importance of the
13 issue.

14 But, stepping back from that, I mean,
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15 some of the subsets here, I mean, you know, the "vernal
16 pools" issue is being addressed elsewhere, "functionality
17 of the storm water system", I think we've already spoken
18 to, there's a proposed plan under the DES -- one of the
19 DES permits. And, the "safety and stability of the design
20 of the roads and turbine pads", I think we're, you know,
21 in some respects, maybe discussing this now is premature,
22 because I think we're going to get to the road issues and
23 how those would be conducted.

24 So, I guess my suggestion is we move
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1 ahead, recognizing we're going to deal with some of the
2 substantive issues, and I think it will be premature to
3 conclude that we've got to have a second round of hearings
4 coming back to the Subcommittee. But, when you're talking
5 about what happens in enforcement, if we issue a decision
6 subject to conditions, and I think the enforcement goes
7 back to the Committee, once, you know, once this
8 Subcommittee is dissolved. So, I think that's the way
9 that could operate. Mr. Harrington.

10 MR. HARRINGTON: I guess this is kind of
11 -- this is maybe somewhat repeating what Chairman Getz
12 just said. That, I mean, the question here is "do we want
13 to have a review on a review of our review?" And, if you
14 say "yes", for a third or fourth, whatever layer this is,
15 why not a fifth, a sixth, or a seventh? I think we have a
16 process pretty well laid out here. We have numerous State
17 agencies involved, federal agencies, this committee here.
18 We already have professional engineers making the design.
19 I think he can probably say it's in the Company's best

20 interest that they build something that's not going to
21 fall apart and so forth, if they want to make money out of
22 it. I just think this is just a "if you're going to build
23 it, we're going to make it hurt" clause. I don't really
24 see it. If you're going to do this, I mean, why not have
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1 a separate outside DE -- someone review everything DES did
2 over again one more time. I think we've got enough
3 reviews built into the system, we don't have to, you know,
4 we don't have to put in additional ones. And, as you
5 said, a lot of this stuff is already covered someplace
6 else.

7 CHAIRMAN GETZ: Anything else on that?

8 (No verbal response)

9 CHAIRMAN GETZ: Well, the next proposal
10 is the proposed condition "The Applicant shall provide for
11 the subterranean installation of any electrical collection
12 facilities located within 1,000 feet of any turbine."
13 And, I guess this is another issue where we have to take a
14 look back at the record. I don't remember the source of
15 the 1,000 feet, where that came from. My understanding,
16 and I hope it's correct, that the lines to the turbine
17 will be underground, but the -- I guess I'm just not clear
18 what the source of this particular condition is or if it
19 was discussed on the record.

20 MR. IACOPINO: I think there was a
21 discussion of one section, of transmission lines, Mr.
22 Getz, that goes down a steep slope at the southern end of
23 the string or the southernmost string that was not going
24 to be underground because of the terrain and had to be up.

1 And, I think that came -- I can't find it right now, but I
2 think it came in a discussion with one of the witnesses
3 about birds resting on transmission lines, and perhaps
4 coming to premature deaths as a result of landing on
5 transmission lines. My recollection about the project and
6 the plans that were submitted is there is one area coming
7 down a steep slope where they could not put the collection
8 line underground. I don't have the maps here, but I
9 believe it was from the southernmost turbine string on
10 Fishbrook, I believe.

11 MR. HARRINGTON: Does anybody else have
12 an idea as to what the -- why a thousand feet? Is there
13 any particular basis for that or does it just sound like a
14 good number?

15 MR. IACOPINO: I think that might come
16 from the concern about the birds resting on the wires.

17 MR. HARRINGTON: Okay. Well, I think we
18 can eliminate that concern right now. I mean, unless they
19 have incredibly long feet, they're going to have a hard
20 time getting electrocuted being on an overhead wire.

21 MR. IACOPINO: Well, I'm simply
22 summarizing what I believe the testimony was.

23 CHAIRMAN GETZ: Mr. Normandeau.

24 DIR. NORMANDEAU: I think, too, I recall
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1 something associated, when they were talking about --
2 there was a discussion about a windpark, I believe it was

3 in California, where the towers had guy wires on them that
4 attracted the birds to sit on them. And, so, with the guy
5 wires there next to the turbine blades, that posed a
6 potential threat. And, this may be the same thing,
7 because I believe Public Counsel was asking some questions
8 about birds liking to sit on wires. And, if the wires
9 were near the turbines, maybe it would act as an, I don't
10 know, attractive nuisance for birds, I guess, or something
11 to that effect.

12 CHAIRMAN GETZ: Okay. Well, any need
13 for further discussion about that?

14 (No verbal response)

15 CHAIRMAN GETZ: Then, let's move on.
16 "The Applicant" -- Proposed Condition: "The Applicant
17 shall employ a certified wetlands scientist", and we've
18 already discussed this, about the 10 acres and vernal
19 pools. And, so, I think we can move on. And, --

20 MR. IACOPINO: Mr. Chairman, if I could
21 just point out, that there was one -- Public Counsel's
22 Condition 30, for some reason I must have cut it out
23 altogether instead of pasting it. But it says that "The
24 Subcommittee shall retain jurisdiction until all the
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1 studies are completed and additional information is
2 submitted, to order additional conditions, including
3 restrictions on operations or construction." That
4 followed the condition you all were speaking about before.
5 And, I think it goes along the lines of the discussion
6 that you had a few minutes ago. And, I just wanted to
7 point that out, because for some reason it fell out of the

8 memo. I probably cut it from the wrong document.

9 CHAIRMAN GETZ: Okay. And, I guess,
10 again, that goes to the issues of how we want to compose
11 this thing in the first instance, whether -- with respect
12 to conditions and additional steps or objective or
13 subjective conditional steps. On Page 11, well, --

14 MR. HARRINGTON: Excuse me, Mr.
15 Chairman, I just wanted to, there is a description of
16 that, if you want to just write this down. Page 57 of
17 Volume 1, there's a description of the electrical
18 collection system, if people want to look at it for that
19 1,000 yard [feet?] thing, it gives some information.

20 CHAIRMAN GETZ: But does it speak
21 specifically to the 1,000 feet or you're saying it gives
22 you a better understanding of the layout?

23 MR. HARRINGTON: It gives you a better
24 understanding of the layout. It does not mention the
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1 1,000. It says that they looked at "underground
2 collection, open conductor overhead lines and closed
3 conductor overhead lines. The final design utilizes a
4 combination of collection systems to minimize the overall
5 footprint." It does speak about, "Based on work conducted
6 by the Audubon Society, GRP focused on ways to both
7 re-route the collection lines to follow the access roads
8 and utilize areas previously disturbed primarily from
9 commercial timber activities." And, "Secondly, by
10 engaging the adjacent landowner, Bayroot, the collection
11 lines, substation, interconnecting switching station and
12 laydown areas were rerouted to run parallel to Dummer Pond

13 Road obviating the need to install six new miles of
14 electrical line through the forest." It's on Page 57.

15 CHAIRMAN GETZ: The next issue, well,
16 under Part C, New Hampshire Fish & Game, that just
17 reiterates the Re-Vegetation Plan issue. So, then, we
18 turn to D, Application Mountain Club.

19 MR. HARRINGTON: Tell me if I'm going
20 down the wrong road here. But we have the proposed one by
21 the Applicant on this reforestation. And, I guess it's on
22 one of the first ones there. Yes, it's on the bottom of
23 VI, I don't know what page it is, I think it's Page 9.
24 And, then, we have the Fish & Game one. Now, they're
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1 pretty similar. We have the advantage of someone from
2 Fish & Game here. Would it be possible to just ask them
3 if they could tell us if there's a substantial difference
4 between those two or is that one in the same?

5 CHAIRMAN GETZ: Yes. That's one path I
6 don't want to go down.

7 MR. HARRINGTON: Okay. All right.
8 That's why I asked, if it was okay.

9 CHAIRMAN GETZ: Let's make sure we've
10 laid out all the alternatives, and then we'll walk through
11 the alternatives.

12 MR. HARRINGTON: Okay.

13 CHAIRMAN GETZ: But, again, then we're
14 talking the same kind of subject matter, and I think we
15 need to put these side-by-side and make -- ultimately make
16 the decision of what we think is the appropriate language
17 for such a condition. But let's talk about the road

18 construction and the rock sandwich techniques. I don't
19 think we've gotten to that yet today. It seems to me
20 that's one issue that there's been a consensus around from
21 all the parties. To the extent that this goes forward,
22 that the rock sandwich approach to road construction is
23 the way to do it. You know, I guess I could turn to our
24 man from DOT on that one.

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1 MR. JANELLE: Yes. I mean, it seems
2 like all the parties, the AMC, the Applicant, and Public
3 Counsel seem to be in favor of the rock sandwich. It
4 seems to be incorporated in the plans, it seems to be
5 approved as part of the permit. It seemed to make sense.

6 CHAIRMAN GETZ: Any issues about that?

7 (No verbal response)

8 CHAIRMAN GETZ: Okay. Well, the next
9 item then talks about the culverts issue, of course,
10 described by Mr. Scott, referring to the DES permits.
11 And, this is the area of the aquatic biota that was raised
12 by -- already raised by Mr. Kent, so we can move on from
13 there.

14 MR. HARRINGTON: Excuse me, just on as
15 far as raising it, did we ever -- we left that with "did
16 the culvert design that we know address this issue?" And,
17 we're saying "we're not sure if it does or not"?

18 CHAIRMAN GETZ: Well, I guess it wasn't
19 clear on the language of this whether it did. And, I
20 think the proposal by Dr. Kent was that "it should".

21 MR. HARRINGTON: Okay.

22 CHAIRMAN GETZ: If there's going to be

23 such a condition. Well, and again, we have here the third
24 one, it seems that we're talking again about disturbed
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1 areas above 2,700 feet revegetation. So, I think, you
2 know, what we're going to have to do in the next effort
3 is, whenever we get to these issues that have comparable
4 conditions, we ought to lay them all out. But, Mr. Scott,
5 did you have something?

6 DIR. SCOTT: Yes. The parentheses in
7 this one indicates that it would -- it would somehow be in
8 conflict with the Wetlands Bureau proposed condition and
9 the Terrain Alteration proposed condition. I don't see
10 that as a conflict at all. The only difference I can see
11 is AMC is recommending a 90 percent vegetation cover be
12 re-established. And, the Department of Environmental
13 Services' rules, which I think is Env-Wq 1506 basically
14 goes by 85 percent. So, that's the only difference I can
15 see. I just want to note that, because the parentheses
16 with the note implies that this would supercede the DES
17 stuff and DES conditions, and that it's somehow markedly
18 different. And, I just don't see it really as being that
19 much --

20 CHAIRMAN GETZ: You're basically saying
21 "it seeks more"?

22 DIR. SCOTT: Exactly.

23 CHAIRMAN GETZ: So, it's more than the
24 minimum requirement.

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1 DIR. SCOTT: I could argue "how would
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2 you see a 5 percent difference of vegetation cover?" But
3 that's another issue. But, yes, instead of 85 percent,
4 it's asking for 90 percent, as far as I can tell.

5 CHAIRMAN GETZ: Well, the next item goes
6 to the environmental monitor. I think we've talked about
7 that. Well, the next two items, 4 and 5 talk about the
8 environmental monitor.

9 Well, then, let's turn down to Ms.
10 Keene, and the high elevation mitigation. And, she
11 proposes that we not render a decision until an answer is
12 received from Governor and Council, I guess with respect
13 to the issue of "can Fish & Game accept funds and/or
14 land?" And, I think we've pretty much discussed this, of
15 the need to have a backup plan, a default plan, in the
16 event such circumstances occurs. And, it seems to me that
17 that would be a reasonable basis to proceed, rather than
18 holding a decision in abeyance. And, I'm not sure that
19 Governor and Council would accept such a proposal the
20 first instance. But -- Because then they would be, I
21 guess, ruling on some prospective possibility, rather than
22 an actual decision presented to them. But, in any event,
23 I guess I would suggest that it's not necessary to hold
24 off on a decision based on the prospect of G&C not

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1 approving the transfers.

2 So, then it says -- the second one is
3 "Granite Reliable shall secure an agreement that will
4 prohibit any wind turbines from being constructed on any
5 lands now or in the future on properties owned by the
6 State of New Hampshire or the Bayroot parcel and Phillips

7 Brook parcel .

8 Is there any discussion about that?

9 MR. HARRINGTON: They'd have to be able
10 to get the Legislature to go along with them, I would
11 guess, in order to make it illegal to build wind turbines
12 on any state of New Hampshire land. So, I think this is
13 probably impossible for someone to comply with if it was
14 imposed.

15 CHAIRMAN GETZ: Mr. Normandeau.

16 DIR. NORMANDEAU: You know, you're
17 basically trying to impose on some private landowners this
18 condition, I don't know how you do that.

19 MR. HARRINGTON: Well, you could pay
20 them a lot of money, I suppose.

21 DIR. NORMANDEAU: Yes. You can induce
22 them maybe, but I don't know if you can impose upon them.

23 CHAIRMAN GETZ: Right. And, I guess --
24 yes. The way it's phrased is that "Granite Reliable or
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1 subsequent owners of the wind facility shall secure an
2 agreement between the landowner and the State of New
3 Hampshire." Well, again, I'm not sure how you would
4 effectuate such a condition.

5 DIR. SCOTT: I'd say it's outside our
6 purview. We can't do this.

7 CHAIRMAN GETZ: And, I think we have one
8 provision that there would be no turbines built on the
9 adjoining --

10 MR. HARRINGTON: Whittcomb.

11 CHAIRMAN GETZ: -- one of the adjoining
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12 properties.

13 MR. IACOPI NO: Mount Whi tcomb.

14 CHAI RMAN GETZ: Whi tcomb.

15 MR. IACOPI NO: It's part of the High

16 El evati on Mi ti gati on Agreement.

17 CHAI RMAN GETZ: Whi ch I thi nk some of
18 the thi nki ng behi nd that was that that, you know, that may
19 be one possi ble physi cal extensi on that coul d be made from
20 the existi ng constructi on. And, so, --

21 MR. IACOPI NO: I bel i eve i t's al so
22 wi thi n, I bel i eve what we're di scussi ng, i s l and that
23 actual ly may be owned by one of the l andowners that the
24 Appl i cant i s present ly l easi ng from. The High El evati on
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1 Mi ti gati on Agreement al so i ndi cates on the Appl i cant's
2 part that they wi ll not al low thei r col l ecti on l i nes to
3 harves t, I don' t know i f that's the ri ght word, but to
4 accept any el ectri ci ty generated from any wi ndmi l l s i f
5 somebody el se I guess were to bui l d them on Whi tcomb.

6 CHAI RMAN GETZ: Al l ri ght. Thank you.
7 Wel l, I thi nk, effecti vel y, thi s woul d be an i mpossi ble
8 condi ti on to effectuate. And, to the extent that there's
9 al ready some provi si ons that woul d be appl i ed to other
10 turbi nes, I thi nk that's about as far as we coul d go wi th
11 the extent of our authori ty.

12 So, Number 3 i s that "Grani te Rel i able
13 shal l provi de recordabl e survei s of the l ands to be
14 transferre d." And, I thi nk that's al ready address ed. The
15 fourth, "Grani te Rel i able shal l provi de recordabl e copi es
16 of topographi cal maps del i neati ng al l wetl ands and

17 existing logging roads being conveyed. Construction will
18 not commence until such time as all land is transferred
19 and duly recorded." And, I'm not -- I don't recall that
20 language.

21 MR. HARRINGTON: Well, I would guess
22 that anyplace where a wetland is going to be disturbed,
23 that is already on a map, because we saw all those maps of
24 all the various wetlands. And, to the extent that they're
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1 not going to be disturbed, I'm not even sure what they
2 mean here by "all wetlands". "All wetlands" where? If
3 they're not going to be disturbed, if they're disturbed by
4 the construction, then they have already been recorded on
5 maps. If they're not disturbed by the construction, where
6 are we stopping? At the entire property that's owned by
7 somebody else or the next property? I just don't see
8 where this stops.

9 MR. JANELLE: I'd just, I mean,
10 typically, the purpose of recording a plan is to document
11 the boundaries of the property. It's not my understanding
12 that you would typically record a wetlands plan or a
13 topographic plan. It's usually the boundary plan itself
14 that describes the metes and bounds of the property being
15 conveyed.

16 CHAIRMAN GETZ: Well, in this, we're
17 talking here about the parcels being conveyed in the
18 Mitigation Settlement. Aren't we kind of back to
19 Dr. Kent's issue of looking for more -- essentially
20 looking for some more definition?

21 DIR. NORMANDEAU: And, it looks like she
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22 wants all the properties, and I assume she's meaning the
23 600 and some acres of wetlands mitigation and the
24 1,700 acres of other elevation, that all of the conveyed
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1 properties would have all of the existing logging roads,
2 wetlands, and everything else that's on them mapped out.
3 At least that's how I read that paragraph.

4 CHAIRMAN GETZ: Dr. Kent.

5 DR. KENT: Yes. This does relate in
6 some sense. But the difference is that DES Wetlands has
7 walked this mitigation property, the wetlands mitigation
8 property, with the Applicant representative, and come to
9 agreement about the extent of wetlands, the condition of
10 wetlands, and surrounding properties.

11 MR. HARRINGTON: I guess I'd just ask
12 the question, "okay. So, let's just say that there's a
13 topographical map delineating all wetlands and existing
14 logging roads. So, what do we do with it?" I mean, of
15 what use is that? This is protected land. No one's going
16 to go in there for eternity and do anything. It's --
17 Knowing where there's a wetland and not knowing where it
18 is, I'm not quite sure it provides any useful information
19 to anybody.

20 CHAIRMAN GETZ: Well, I guess I can read
21 it in this light. That it's intended to accomplish
22 somewhat of what Dr. Kent was intending. Is that all the
23 land that's being conveyed as part of the Mitigation
24 Settlement, that there be a, you know, kind of a full and
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1 complete understanding of what's there. And, I think
2 we've already kind of addressed that. But, Mr. Janelle.

3 MR. JANELLE: I can agree and see the
4 connection between what Dr. Kent has said and what's in
5 this condition. But I still question why it would need to
6 be recorded in the Registry of Deeds, and why it possibly
7 couldn't be provided to this Committee. And, whatever
8 agreement we reach with the condition, could that satisfy
9 it, instead of it being recorded in the Registry of Deeds?

10 CHAIRMAN GETZ: No, I would agree with
11 that. I don't think there's any need, and I'm not even
12 sure if it's permissible for that type of recording. But
13 I think -- I would suggest that, in the request we've
14 already -- that we're already going to pursue, based on
15 what Dr. Kent requested, would satisfy the substance of
16 what would be laid out here.

17 Okay. Number 5, then "Granite Reliable
18 shall provide an agreement that states that only the lands
19 where the turbines will be constructed be disturbed by
20 construction. Post construction spruce-fir saplings
21 should be planted in accordance with Fish & Game
22 recommendations." And, "the 500 foot buffer will not be
23 disturbed by the removal of trees and filling in
24 wetlands." Anything on that?

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1 MR. HARRINGTON: Seems to me like most
2 of this stuff has already been covered. I mean, we've
3 talked about the replanting, and the wetlands and buffer
4 zones are all part of the original plan that was

5 submitted.

6 CHAIRMAN GETZ: Is the 500 foot buffer,
7 is that the -- again, that's another one of these numbers
8 I don't recall the source. But I think -- I think you're
9 correct, that the general direction of this goes to
10 revegetation.

11 MR. HARRINGTON: Which we've already got
12 a couple of conditions on.

13 CHAIRMAN GETZ: Okay. Any other
14 discussion about that that we need to take up?

15 (No verbal response)

16 CHAIRMAN GETZ: And, Number 6, "Granite
17 Reliable shall not commence construction until all
18 payments in the Settlement Agreement have been secured and
19 put in a fund for disbursement to Fish & Game." And,
20 we've discussed that issue. And, then, the Site
21 Evaluation Committee shall include the High Elevation
22 Settlement for birds and bats monitoring." We've
23 discussed --

24 MR. HARRINGTON: What exactly is that?
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1 MR. IACOPI NO: I have it in the wrong
2 place. It should be down under VII, Section VII.

3 MR. HARRINGTON: Is there a High
4 Elevation Settlement, is that the one --

5 MR. IACOPI NO: There's some monitoring
6 requirements in --

7 MR. HARRINGTON: It's already in here?

8 MR. IACOPI NO: -- in Exhibit 48, yes.

9 MR. HARRINGTON: Okay.

10 CHAIRMAN GETZ: So, then we turn to
11 "Construction of Roads". And, "Granite Reliable shall
12 fund a hydrologist to conduct an analysis to assess
13 localized storm water flow and ground water flow
14 diversions." Certainly talked about the storm water issue
15 before. And, I don't know if we need to go into that any
16 further, except it seems to add an additional notion about
17 "funding a hydrologist" to conduct some additional
18 analyses, I guess.

19 MR. JANELLE: If I could? If I remember
20 correctly, I believe Mr. LaFrance talked to this issue.
21 And, the issue was the blasting of ledge and the effect of
22 that blasting on hydrology in the area. And, I believe
23 his response was that they didn't know exactly where they
24 would need to blast. And, in order to determine that,
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1 they would have to clear and do test borings throughout
2 the area of the road to define that area to see where the
3 effect would occur.

4 CHAIRMAN GETZ: Well, I guess the next
5 item here does say that "Granite Reliable shall conduct
6 pre-construction blasting evaluations to assess the
7 potential for bedrock fracture impacts that may affect
8 nearby wetlands." So, is it your recollection that the
9 two items were linked?

10 MR. JANELLE: They're connected.

11 CHAIRMAN GETZ: Yes.

12 MR. NORTHROP: Mr. Chairman? I think
13 also Mr. LaFrance's testimony, I'd have to look back at
14 the transcript, but my recollection was that, in his

15 response, he said that blasting might impact wetlands by
16 -- might affect wetlands, but it might also create -- it
17 might change the way water flows, and they wouldn't
18 necessarily know how that -- wouldn't be able to predict
19 that, is my sense of what his response was.

20 CHAIRMAN GETZ: Okay. Well, let's --
21 I'd like to go back and look at the testimony and the
22 cross around that. And, then, the third item talks to the
23 "rock sandwich" issue, which we've covered. And, then, we
24 have the issue of "delivery and placement of wind
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1 turbines", and proposed condition that "helicopters
2 deliver any turbines that are going to be placed above
3 2,000 feet."

4 DIR. NORMANDEAU: I would assume that
5 that might be impractical. I'd be -- I'm not sure if any
6 helicopter around can lift an 80 ton nacelle.

7 CHAIRMAN GETZ: Mr. Scott.

8 DIR. SCOTT: I concur. I wouldn't be
9 comfortable putting a condition in there that I'm not sure
10 is even possible of being done.

11 MR. HARRINGTON: And, you've got to look
12 at the damage. What if they dropped one?

13 DIR. SCOTT: Well, I have to assume, if
14 you have the interest in putting a wind farm up there,
15 there's probably winds up there, too, and that may
16 complicate things.

17 CHAIRMAN GETZ: All right. Well, that
18 gets us up to VII, "Adverse Impacts - Natural
19 Environment". And, --

20 MR. HARRINGTON: Excuse me. Could I ask
21 you a question?

22 CHAIRMAN GETZ: Sure.

23 MR. HARRINGTON: We went over the -- I
24 guess I'm trying to figure out, where are we going to do
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1 the Coos County Agreement thing? Is that going to be --

2 CHAIRMAN GETZ: Well, actually, that
3 comes up, if you work through the --

4 MR. HARRINGTON: Just keep going, okay.
5 I didn't know how, if we were going to do that separately
6 or --

7 CHAIRMAN GETZ: Yes. If you go through
8 VII and "Natural Environment", and then, under VIII, the
9 first item is the "Agreement with Coos County".

10 MR. HARRINGTON: Oh. Okay, I missed
11 that.

12 CHAIRMAN GETZ: So, I would just take it
13 up, when we finish our discussion of the "natural
14 environment", then I would go to -- let's just talk about
15 the Coos County Agreement.

16 So, I think, if Steve doesn't need a
17 recess, I think the rest of us might. So, let's take
18 about 15 minutes.

19 (Recess taken at 3:07 p.m. and the
20 deliberations resumed at 3:37 p.m.)

21 CHAIRMAN GETZ: Okay. We'll resume the
22 public meeting in Site Evaluation Committee Docket
23 2008-04. And, let's pick up with our walk through the
24 proposed conditions, under VII, on Page 13 of the compiled

1 conditions: "Adverse Impacts" regarding "Natural
2 Environment".

3 And, the first condition speaks to
4 "Avian Species protection", that says "The Project shall
5 conduct post-construction avian and bat mortality surveys
6 similar to those implemented at other constructed wind
7 projects in the United States, using protocols generally
8 outlined", well, it says "below."

9 MR. IACOPI NO: Yes, this is all one, "D.
10 Avian Species", and just cut and pasted right out of the
11 conditions suggested by the Applicant. So, it goes all
12 the way down to --

13 CHAIRMAN GETZ: Oh, Condition (e) on the
14 --

15 MR. IACOPI NO: It goes all the way down
16 to the cut-out for Public Counsel.

17 CHAIRMAN GETZ: Okay. It says "The
18 purpose of the surveys will be to provide a quantitative
19 analysis of the level of direct mortality occurring as a
20 result of the operation of the project. Surveys will be
21 conducted for a period of three years following commercial
22 operation of the project, from April 15 through October
23 15, to include both spring and fall migration seasons."

24 And, I guess, rather than read
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1 word-for-word all of these, that certainly each of us can
2 read the subsections (b), (c), (d), and (e). But I think
3 we need to take up generally the topic of the avian and

4 bat mortality surveys. And, you know, the essential
5 argument I think before us is "are the pre-construction
6 surveys sufficient?" And "what would be the content of
7 the post-construction surveys? And, are they sufficient
8 to address any of the issues that we have before us?"

9 So, does anyone want to speak to any of
10 those issues? Dr. Kent.

11 DR. KENT: Yes. I'd like to start with
12 the pre-construction surveys. I didn't hear anybody agree
13 with Stantec's assessment that their surveys were
14 adequate. In fact, there was pretty much universal
15 disagreement that their surveys were adequate. So, to
16 that end, it would be great, I would put on the table for
17 the Committee, an initial one year pre-construction for
18 breeding birds, one for migratory birds and one for
19 migratory raptors, conducted in a way that Fish & Game was
20 happy with it, and we could use those as a baseline, which
21 is the fundamental issue here. There's no agreement that
22 we have pre-construction surveys that provide us a
23 baseline for assessing post-construction impacts, then
24 we're wasting our time with post-construction impacts.

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1 CHAIRMAN GETZ: Any other?

2 MR. HARRINGTON: Just a follow-up to
3 that. I'm kind of -- what you're saying is that we would
4 issue a condition that would say "you have to do surveys
5 for a year before you can start construction." Is that
6 what you're proposing? I'm just trying to get that
7 straight.

8 DR. KENT: Yes. I'm putting on the
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9 table the idea of getting another year's worth of
10 pre-construction surveys in.

11 MR. HARRINGTON: And, just --

12 DR. KENT: And, in a way that the
13 parties and the experts can agree is sufficient to provide
14 us a comparison for post-construction surveys.

15 MR. HARRINGTON: Might, and I just raise
16 this as a potential issue, if we put something like that
17 in there, I wonder how that would affect the financing
18 ability through these, you know, government loans or
19 whatever that is out there as part of the Stimulus
20 Package, if they delay starting the construction an
21 additional year, from whatever other delays that would be
22 --

23 DR. KENT: I don't think they would have
24 to start construction a year later. They're not going to
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1 start construction up on the high elevation this year,
2 correct? Until late?

3 MR. HARRINGTON: I don't know. Yes.
4 Yes.

5 DR. KENT: Maybe we should check the
6 construction schedule.

7 MR. HARRINGTON: So, what you're saying
8 is it would be -- you're talking about construction on the
9 top of the mountains, but not like building the substation
10 or the access road or something like that?

11 DR. KENT: Yes. All those surveys were
12 conducted up high, in the high elevation areas.

13 MR. IACOPI NO: Mr. Kent, you wanted
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14 surveys for breeding birds, breeding raptors, and there
15 was a third category as well?

16 DR. KENT: And migratory. We probably
17 should do the bats, too, since those weren't acknowledged
18 as sufficient or adequate by anybody about Stantec as
19 well.

20 MR. HARRINGTON: And, just another
21 question on this.

22 CHAIRMAN GETZ: Go ahead.

23 MR. HARRINGTON: I'm just trying to get
24 what we're trying to accomplish here. Because if you read
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1 up at the very -- I guess it's kind of hard to tell which
2 exactly it is -- it's part of A, and it's on the second
3 page. "The purpose of the surveys will be to provide a
4 quantitative analysis of the level of direct mortality
5 occurring as a result of the operation of the project."
6 So, it sounds like what they're proposing here is some
7 method of trying to come up with the amount of bats and
8 birds that get killed by the presence of the windmills.
9 And, if we're trying figure -- if that's indeed what we're
10 trying to figure out, are you talking about something
11 different then? Because I don't think you would need --
12 you wouldn't need to know how many bats were there before
13 you constructed, if what you're trying to find out is how
14 much the construction kills. I think this involves, you
15 know, somehow counting carcasses and having some type of a
16 correction factor for ones that you might miss. So,
17 they're proposing to kind of come up with how many birds
18 get killed. And, are you proposing something different?

19 By "pre-construction", I assume you want to know how many
20 birds are present?

21 DR. KENT: I'm proposing something in
22 addition.

23 MR. HARRINGTON: Okay.

24 DR. KENT: Post-construction surveys, if
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1 we're going to issue a certificate, are necessary. But
2 you cannot assess impact without having good
3 pre-construction information. If I find 30 birds dead
4 around a turbine, is 30 a lot or is 30 a little? And, I
5 don't know that unless I have quantified what was there
6 before.

7 MR. HARRINGTON: Okay. So, unless you
8 actually go out and count dead birds prior to construction
9 or whatever it is?

10 DR. KENT: No, no, no. Live birds.
11 We're not going to get dead birds from wind turbines
12 before there's wind turbines.

13 MR. HARRINGTON: Well, that's my point.
14 I guess it seems like you're talking about -- I'm just
15 trying to get this straight. Because it appears to me
16 what they're proposing here is to put the turbines up,
17 count how many bats and birds die. And, then, if it's
18 unreasonable adverse impact on any avian species, then
19 take appropriate action. So, how is knowing how many
20 birds or bats are there before construction going to make
21 -- I don't see how that's going to change the results of
22 this. If you get a certain amount of dead ones, you're
23 going to say "this is too many." And, if you get very few

24 dead ones, you're going to say "this appears to be okay."
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1 DR. KENT: What's your basis for that
2 decision, if you don't know what was there before? How do
3 you know what's a lot or what's a little?

4 MR. HARRINGTON: What do you mean, as a
5 percentage of population, is that what you're referring to
6 then?

7 DR. KENT: You could do it as a percent
8 of population.

9 MR. HARRINGTON: Okay. Yes, I guess you
10 could. I'm not sure, but I guess I don't know what the
11 results are, and that was one of my questions with this
12 whole thing here, was the Site Evaluation Committee
13 determines it having an unreasonable impact. I have no
14 idea what an "unreasonable impact" would be.

15 DR. KENT: Right.

16 MR. HARRINGTON: I mean, is it 50 dead
17 birds a year? Or is it a thousand? Or...

18 DR. KENT: Let me give you a couple
19 examples, maybe it will help. If we do a quantified
20 breeding bird survey and we find that there's 30
21 Bicknell's thrush living in the area. And, we find 30
22 dead after the turbines are up, then it's pretty simple to
23 make a decision that we've got a significant impact on the
24 population.

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1 MR. HARRINGTON: Of course, there's no

2 Bicknell's thrush to worry about then.

3 DR. KENT: Unless something swooped in.
4 If we find -- If we did migratory studies and we found
5 6,000 birds flew over the ridge, and afterwards we find
6 three, after the turbines are up, I'd say we're not having
7 much of an impact. So, what we're trying to do is create
8 a basis for making an assessment.

9 MR. HARRINGTON: Okay.

10 CHAIRMAN GETZ: Mr. Scott.

11 DIR. SCOTT: Just an inquiry to help
12 remind me, maybe the counsel can help, but what I don't
13 remember in the testimony, is the Applicant still doing
14 ongoing studies?

15 MR. IACOPI NO: I don't think so. I
16 mean, I think there -- I don't know. I don't know the
17 answer off the top of my head.

18 DIR. SCOTT: Neither do I, which is why
19 I asked the question.

20 MR. IACOPI NO: I can try to find that
21 out pretty quickly.

22 CHAIRMAN GETZ: Okay. Well, we can
23 search the record on that. Was there something to follow
24 up on that or --

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1 DIR. SCOTT: Just to help inform.

2 CHAIRMAN GETZ: Mr. Northrop.

3 MR. NORTHROP: If we did have a
4 condition that required some additional pre-construction
5 bird/bat/avian species analysis, and then that study was
6 done, would that then require -- would that then have to

7 come back to the Committee or the Subcommittee to have
8 some sort of an analysis of whether that -- whether that
9 study was in itself adequate? Would it sort of go back to
10 Chairman Getz's point of opening up another process where
11 it would be somewhat of a subjective decision on the
12 Subcommittee's part or the Committee's part?

13 DR. KENT: Absolutely not. No, I'm not
14 creating any more work for the SEC. After we're done,
15 we're done. If we tie it to Fish & Game, they bless it.
16 If the Applicant would like to talk to the Fish & Wildlife
17 Service, I'm sure we can entertain that condition also.
18 But I think you throw this in Fish & Game's lap and let
19 them make the decision.

20 CHAIRMAN GETZ: Well, I guess, let me
21 make sure I understand the proposal. So, there would be a
22 condition that additional pre-construction studies or
23 additional studies be performed, and that's a condition of
24 the certificate, they -- and that just is to provide
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1 baseline data against which to compare the
2 post-construction mortality studies, and then I guess to
3 make judgments then on what types of adapt -- well, then,
4 I guess you would know what the size of the issue is, if
5 there are birds -- bird and bat mortalities. And, then,
6 that gives you, I guess, an informed judgment about what
7 types of adaptive procedures you would require of the
8 Applicant?

9 DR. KENT: Yes. One immediate purpose
10 would be to help the Applicant perform better in the short
11 term and the long term. And, it would probably also help

12 the SEC perform better as we go forward with alternative
13 projects.

14 MR. HARRINGTON: Just another follow-up
15 question on this. I'm just trying to nail this thing down
16 in my head. Excuse me. If we did the pre-construction or
17 pre-clearing, whatever the correct term is, survey, and we
18 found a certain amount of bats and a certain amount of
19 birds in the area, then, presumably, even if the turbines
20 never run, there is going to be less bats and birds, once
21 we clear out a pretty good size area for the roads and for
22 the footprints for the turbines and so forth. So, are we
23 trying to -- are we trying to find out here how many bats
24 and birds we might have relocated to another place because
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1 of the construction or are we just interested in how many
2 get killed by the operation of the turbines.

3 DR. KENT: We're interested ultimately
4 in the extent of the adverse impacts. Most of that will
5 be from getting whacked by a rotor. But there will be a
6 reduction in habitat, which will mean less nesting birds.
7 We know that's going to happen. What we're doing is
8 quantifying the impacts. If we issue a certificate, we're
9 accepting those impacts.

10 MR. HARRINGTON: No, I understand that.

11 DR. KENT: Now, we don't have those
12 impacts to find. We're just are going to accept the
13 impacts if we grant a certificate. This way, we quantify
14 this quite a bit more, and we'll understand what the
15 trade-off was.

16 MR. HARRINGTON: Yes.

17 DR. KENT: And, if there's any measures
18 we can take to ameliorate those.

19 MR. HARRINGTON: I understand what
20 you're trying to get at. I'm just trying to get it
21 straight and making sure we're going to get some
22 meaningful data. Because let's say if there's a
23 25 percent decrease in population due to, you know, the
24 construction activities, how will we -- you know, how do
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1 we balance that against the fact that there's going to be
2 some killed after that? But, I mean, even if the turbines
3 never run, there will still be 25 percent less than
4 whatever is in the area, just because of the construction.
5 But I don't know, I say "25 percent", it could be 5
6 percent, it could be 50 percent, I don't have a clue.
7 That's the part I guess I'm trying to figure how we're
8 going to, you know, are we comparing apples to apples
9 here? If we're going to base it on saying we assume
10 there's a population of 30 nesting Bicknell's thrushes
11 prior to construction, and, then, if we find 15 dead ones,
12 we should be basing that on 30, or maybe 10 of them moved
13 out of the area, so we should be basing the 15 dead ones
14 on the population of only 20 left in the area, and not 30.
15 You see what I'm getting at? I mean, I don't know how
16 involved you want to make this thing. I'm just trying to
17 see if we can get meaning -- I just don't want to end up
18 doing a study for the sake of doing a study. I want to
19 make sure we're getting meaningful data from it.

20 CHAIRMAN GETZ: Well, is there an issue
21 between, I mean, different types of species, depending on,

22 I mean, I guess the Bicknell thrush likely would -- I
23 mean, there's a couple of issues raised. But, if you're
24 disturbing their habitat by the construction and by
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1 cutting back along the roadways, that could impact them.
2 Those -- I guess there was some argument about, you know,
3 during certain times of the season, they will be at an
4 altitude that might be impacted by the blades. But some
5 of the impact on on the lower altitude species I think is
6 meant to be mitigated by the other land, which I don't
7 know how you make that judgment. But, like the raptors or
8 the bats who might be impacted by the turbines, that's a
9 different issue. Where you might be -- I guess the data
10 could tell you, you know, what was there before and what's
11 the impact. Or, if it was on a migratory route, what's
12 the impact on them? And, then, you could, I guess, make a
13 judgment about what adaptive --

14 MR. HARRINGTON: Basically, you've got
15 to be real careful, to make sure we get something that's
16 actually useful, and we're just not putting in the full
17 employment for bird counters, you know.

18 CHAIRMAN GETZ: Mr. Normandeau.

19 DIR. NORMANDEAU: Yes. I wouldn't see
20 myself that, given the regulatory -- apparent regulatory
21 timeline here, that, you know, a season of -- I wouldn't
22 think they would have anything going on this year,
23 potentially. So, certainly, there was a lot of criticism
24 about the baseline and to know what -- how that will
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1 compare with the future could be beneficial. I do recall
2 that, as far as that Stimulus money, as I understood it,
3 they had to start prior to December 2010. So, I don't
4 believe that will be affected.

5 MR. HARRINGTON: Well, especially if we
6 go the way Dr. Kent implied, that you would do the
7 counting in the area where you're going to put the blades.
8 So, I mean, you could start, for example, on the
9 substation or the road or something like that, while this
10 was ongoing.

11 DIR. NORMANDEAU: But, again, it doesn't
12 -- if they were on the case here with this type of thing
13 in the next little while, shall we say, I mean, I don't
14 know that any construction will be fully permitted this
15 bird breeding season.

16 CHAIRMAN GETZ: Any other discussion
17 about --

18 MR. HARRINGTON: Well, that brings up
19 another point, though, I guess, maybe to get clarity.
20 Would this, and I don't know the answer to this, would
21 this have to be targeted to a particular time of the year
22 or would you just do it, you know, once a month or once a
23 quarter or something like that? Or, would you try to pick
24 a -- I mean, some of these birds are migratory, obviously,
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1 that means they spend part of the time someplace else.
2 So, it's kind of hard to count them.

3 DR. KENT: Right. You're making me
4 design their survey, which is not my job here today.
5 Breeding survey, we're probably going to start, you know,

6 in another month. They could get out sometime between in
7 May and June. We do migration in the fall for raptors and
8 passerines. What are we missing? Bats, we've probably
9 got to get them towards the end of the summer, so probably
10 in August.

11 MR. HARRINGTON: So, it sounds like what
12 you'd be saying is it would just be more of a develop a
13 bird -- sampling of bird surveying program that
14 accomplishes -- that gives you the following types of
15 data, and then leaving the particulars to the Applicant to
16 say exactly what days they're going to do it -- go do
17 what, or would you want to have somebody look at their
18 plan?

19 DR. KENT: My ideal condition would be
20 that they would work it out with Fish & Game.

21 MR. HARRINGTON: Okay.

22 DR. KENT: I won't even push Fish &
23 Wildlife Service on them, although they would be smart to
24 take care of that this time around. And, get them
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1 designed in a way that they're adequate. There were a
2 number of different kind of flaws in the baseline
3 information. So, they correct those and get us some
4 quantifiable information we could use, all of us could
5 use, the Applicant as well, to drive the business, that
6 would be helpful.

7 MR. HARRINGTON: Yes. Because, long
8 term, that's the point that -- we shouldn't be forgotten.
9 Because it does seem to be somewhat controversial, this
10 idea of how many birds and bats that these windmills kill.

11 And, if you can be armed with the facts, it gives you some
12 way of presenting that your project is not doing what
13 otherwise people can say "you're killing thousands of
14 them", how do you prove them wrong.

15 CHAIRMAN GETZ: Mr. Janelle.

16 MR. JANELLE: So, if I can just ask a
17 question. So, the results of this survey, it really
18 doesn't matter how many birds you find in the area, that
19 wouldn't impact this project moving forward. It's just to
20 tally what's there, so that you have something to measure
21 what's impacted in the Applicant's situation, is that
22 correct?

23 DR. KENT: Yes. One benefit of this is
24 that we actually define the impacts and we grant it. So,
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1 that informs us going forward. It also informs the
2 Applicant and the operator of the wind farm, as to what
3 kind of impacts they're dealing with. Right now, their
4 post-construction surveys aren't going to give them any
5 useful information, and it's not going to give us helpful
6 information to inform decisions in the future.

7 MR. JANELLE: But, assuming, if we were
8 to issue a certificate, they could still move forward with
9 their construction, do the survey, knowing that the survey
10 -- results of the survey wouldn't stop the wind farm.

11 DR. KENT: No, it wouldn't stop -- I'm
12 not proposing we would stop the wind farm because of any
13 particular result. I'm anticipating that, from the
14 Applicant's standpoint, they're going to learn from it,
15 and probably the manufacturer of the windmills are going

16 to learn from it, if we were somehow to find significant
17 mortality.

18 CHAIRMAN GETZ: Anything else on those
19 issues? Well, then, if we --

20 MR. IACOPI NO: Mr. Scott had a point.

21 CHAIRMAN GETZ: Mr. Scott.

22 DIR. SCOTT: I had a post-construction
23 issue, if I can put it in.

24 CHAIRMAN GETZ: Okay.

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1 DIR. SCOTT: I find it, looking at the
2 Applicant's proposals, and comparing them to the Public
3 Counsel, the Applicant's, I just wanted to note for the
4 record, the Applicant is apparently asking for --
5 suggesting three years of avian and bat mortality studies,
6 where the Public Counsel was only asking for two years,
7 which is interesting. But, having said that, also I think
8 it may be informative for the Committee to look at what
9 was required in the certificate for the Lempster wind
10 farm, if I may, and that did require two years of studies,
11 and it established, as I think the Public Counsel
12 recommends, it established a Technical Committee to look
13 at those findings and potentially report to the SEC if
14 they found a problem.

15 CHAIRMAN GETZ: Okay. Thank you. Any
16 discussion about that, about the post-construction or some
17 of the alternative proposed conditions? Mr. Normandeau.

18 DIR. NORMANDEAU: Just that Fish & Game
19 also is requesting three years, when you get down to the
20 Fish & Game part, for their migratory and bat post.

21 DR. KENT: I would vote for the three.

22 CHAIRMAN GETZ: Okay. Well, what about
23 this notion of a Technical Advisory Committee? I think,
24 as Mr. Scott points out, there was such a body in the
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1 Lempster case. And, I think it was primarily with the
2 Town of Lempster.

3 MR. HARRINGTON: Just a question, what's
4 "ACE"? I can't remember that one. A-C-E?

5 DIR. SCOTT: Army Corps of Engineers.

6 MR. HARRINGTON: Oh.

7 DIR. SCOTT: I have the text in front of
8 me from Lempster, if that would -- I could read that, if
9 that would be of help.

10 CHAIRMAN GETZ: Please.

11 DIR. SCOTT: The condition is under
12 "Avian Species Protection". It says "A balanced technical
13 committee shall be established with voluntary
14 participation of organizations, including New Hampshire
15 Fish & Game Department, U.S. Fish & Wildlife Service, the
16 NHOAG", which I'm trying to remember who that is?

17 FROM THE FLOOR: Attorney General.

18 DIR. SCOTT: AG's Office, okay.
19 Attorney General's Office. "The Town of Lempster, New
20 Hampshire Audubon, representatives of the Project,
21 representatives of Public Service Company of New
22 Hampshire, and a technical" -- "and technical consultant
23 selected by the Attorney General's Office and the
24 Project." And, that composes the Technical Committee.

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1 And, they are supposed to receive reports starting after
2 the first full year of commercial operation, which I don't
3 know exactly when Lempster started, but I don't think it's
4 been a full year certainly yet.

5 CHAIRMAN GETZ: Any other thoughts on
6 that?

7 MR. HARRINGTON: Just a question on
8 that, Bob. Did it have a funding mechanism in there? I
9 can't remember this one. I thought there was one.

10 DIR. SCOTT: I don't see it, but I'm
11 quite sure it was the Applicant.

12 CHAIRMAN GETZ: Yes. I guess, in the
13 proposal by Public Counsel, it requires the "Applicant
14 shall fund the Technical Advisory Committee's activities,
15 including the employment of consultants in an amount to
16 exceed" -- "not to exceed \$300,000." And, I think that's
17 a significant departure from what was done in the Lempster
18 case.

19 MR. HARRINGTON: I can't remember. Let
20 me take a look at it.

21 MR. IACOPI NO: I've got the Lempster
22 decision up here. And, I'm just looking to see if there's
23 -- on Pages 17 and 18 of the conditions of the Lempster
24 decision addresses the Technical Advisory Committee. And,
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1 I can't see where the Site Evaluation Committee assigned
2 any financial responsibility to -- for the Technical
3 Committee in that case, although I'm just scanning it now.

4 MR. HARRINGTON: I can't find anything
5 either.

6 DIR. SCOTT: Mr. Chairman, what I was
7 reading from was Page 79 of that document.

8 CHAIRMAN GETZ: Well, let me, I guess
9 while we're trying to research what was actually done in
10 Lempster, I mean, if I look at this proposal about what
11 the Technical Advisory Committee might do, and I guess I
12 would turn to Dr. Kent again on this issue, it talks about
13 the Advisory Committee designing a scope of work and the
14 studies. I understood what you were proposing was that
15 that would be basically done by Fish & Game with the
16 Applicant. Is that correct?

17 DR. KENT: Right. And, they're the
18 agency charged with expertise in wildlife issues. I would
19 suggest that an Advisory Committee would be inefficient
20 and ineffective.

21 CHAIRMAN GETZ: And, I think it depends
22 on some combination of should there be some participation,
23 but then where does the decision-making lie? And, to the
24 extent, if it were a committee of multiple members who
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1 were going to actually make the decision on the -- what
2 would be the scope of work and how the studies would be
3 done, I guess I would have some concerns that we'd be back
4 here pretty quickly trying to, you know, make a judgment
5 about that. Where I think I guess I would tend towards
6 where you're suggesting, is that's basically a Fish & Game
7 decision, with such input that it wanted to take. And, I
8 don't see Director Normandeau leaping out of his seat.

9 But, I mean, it seems to me like a reasonable approach to
10 that.

11 But, again, it's like the -- the notion,
12 it's an advisory committee or, you know, it's like it
13 talks -- it speaks to it as being an advisory committee,
14 but then it gives it authority, and I think we want to
15 avoid that. To the extent that there's input into these
16 things, then I think that, you know, that's always useful
17 to the process. So, let's just --

18 MR. HARRINGTON: Would that be --
19 constitute a problem with the \$300,000? I mean, who on
20 the Technical Advisory Committee would be authorized to
21 expend funds, for example?

22 CHAIRMAN GETZ: Well, yes, that's
23 another step I think removed. Of whether -- it's not
24 clear to me why there would need to be consultants and why
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1 there would be, you know, how we got to this next step.
2 And, this pops up in a few areas of additional steps and
3 additional monies. We haven't even got to the, you know,
4 some of the proposals, you know, about what DRED would do.
5 But I guess I would suggest that we, to the extent we do
6 something in this regard, we know we have the proposal by
7 Dr. Kent about how we would handle these baseline studies.
8 And, let's think about how Fish & Game would be involved.
9 And, if there is some role for some input from others in
10 an advisory kind of status, let's consider that. Because,
11 you know, it's after 4:00. You know, clearly, we're going
12 to have to come back, because we know have other
13 information that we're waiting for. And, I'll just note

14 for the record and for those of you that are here today,
15 we're going to resume next Wednesday, April 29th, at 1:00,
16 would be the next, when we recess today, we will recess
17 until the 29th.

18 So, I suggest we, you know, put that
19 condition aside for the moment and try to keep walking
20 through the rest of these conditions so that we've got
21 them all covered.

22 Yes. The next one is that 1,000 feet
23 subterranean installation, we've discussed that. Here's
24 the Public Counsel condition that Mr. Iacopino thought he
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1 had not included, but it appears, in fact, to be here.
2 So, then we go to the bird and bat post-construction
3 mortality study, and I think we've effectively referred to
4 that. So, then that gets us down to --

5 MR. HARRINGTON: Just before we -- am I
6 reading this correctly then that Fish & Game did not
7 request a pre-construction study, additional
8 pre-construction study? This would be where it would be,
9 right?

10 CHAIRMAN GETZ: Right. I think what
11 Fish & Game is speaking to is how the post-construction
12 studies would be -- how many years they would last and
13 what would be the, you know, the protocols, etcetera. But
14 purely post-construction, as I understand it.

15 MR. HARRINGTON: Okay.

16 CHAIRMAN GETZ: And, then, Ms. Keene
17 proposes, you know, fines that would be levied, to the
18 extent that there are any bat, bird, or mammal carcasses

19 found in the turbine zone, that they pay \$10,000 a piece.
20 And, then, she proposes, under the heading of the
21 "Wildlife Habitat", "for any destruction that is done on
22 sensitive wildlife high elevation and wetlands", "fine
23 amounts be not less than \$30,000 for each violation that
24 occurs".

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1 And, I guess I -- well, I think there's
2 a question about our legal authority in that regard. I
3 would turn to counsel, as to whether we have that type of
4 authority in the first instance?

5 MR. IACOPI NO: Might be able to levy a
6 fine, but I don't know how you would enforce it.

7 CHAIRMAN GETZ: Well, --

8 MR. IACOPI NO: The idea would be it
9 would have to be a condition of them going forward, so
10 that, by accepting the certificate and building, they're
11 agreeing to the payment of the fine, as opposed to coming
12 from any law enforcement authority to fine somebody.

13 MR. HARRINGTON: In this case, wouldn't
14 it be safe to assume that, if they were to deviate from
15 the permits and so forth, such as the DES ones, DES would
16 fine them, I'm guessing. Correct, Mr. Scott?

17 MR. IACOPI NO: You have the best
18 availability to discipline an Applicant by revoking their
19 certificate. So, that's a pretty big fine, if you think
20 about it.

21 MR. HARRINGTON: Yes, 280 million, I
22 think, isn't it?

23 MR. IACOPI NO: I'm sorry. Mr. Scott was

24 going to speak.

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1 DIR. SCOTT: I was responding to Mr.
2 Harrington's question. Certainly, that, for wetlands
3 violation, potentially there could be a fine, could be a
4 civil penalty, which is even larger, or it could be other
5 conditions required of the offender. So, that, yes, DES
6 has full venue to do program enforcements.

7 CHAIRMAN GETZ: Okay. Well, I'll ask
8 this question. Is there anyone that thinks this is a path
9 that would be useful to proceed under, in trying to
10 impose, to the extent we could, fines like these?

11 (No verbal response)

12 CHAIRMAN GETZ: Okay. All right. Seems
13 to be that the sense of the Committee is that neither of
14 those conditions should be pursued.

15 And, then, the last is -- suggests that
16 "the turbines located on Mount Kelsey and Dixville Peak
17 will be shut down during the Bicknell thrush breeding
18 seasons." And, I think some of that, I think again, maybe
19 goes back to some of the issues that Dr. Kent has raised.
20 Until we know what the effect is, until we know what the
21 baseline is, it would be -- it seems to me it would be
22 premature to make some kind of overly broad condition at
23 this point that all the turbines -- the turbines on those
24 two mountains should be shut down for the extent of the

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1 breeding season. And, I think, at least as I take it,
2 that the post-construction studies will give us

3 information about what types of adaptive measures are
4 necessary and would be required of the Applicant.

5 So, I think that gets us through that
6 issue, and then brings us to the "Agreement with Coos
7 County", if we can take a look at that for a moment. And,
8 I think, in a lot of respects, this is probably fairly
9 similar to the agreement in Lempster that was executed
10 with the Town of Lempster in that case.

11 MR. IACOPI NO: And, Mr. Chairman, I
12 would point out that the completely signed agreement
13 apparently has been received by Chairman Burack's office.
14 So that the document that is attached to the Applicant's
15 brief has, in fact, been signed by both parties now, and
16 has been filed with our Chairman's office.

17 CHAIRMAN GETZ: Well, signed in the --
18 as submitted, do we know that?

19 MR. IACOPI NO: As is attached to the
20 brief. Yes, because there's two versions floating around.
21 It's the version that is attached to Applicant's brief.

22 CHAIRMAN GETZ: Okay.

23 MR. HARRINGTON: Mike, procedurally
24 then, if we look at something in here and we say this
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1 should be an (a), instead of a (b), we could just simply
2 make the condition to say "we accept the agreement between
3 Coos County and Granite Reliable Power with the following
4 modifications or exceptions" or something like that?
5 Would that be the way it's done?

6 MR. IACOPI NO: You could do that,
7 because you have the authority to condition the

8 certificate; the County has no such authority.

9 MR. HARRINGTON: So, we wouldn't have to
10 send the agreement back and have them redo the agreement?

11 MR. IACOPINO: No, but, I mean, that's
12 something they may wish to do on their own.

13 MR. HARRINGTON: Okay.

14 MR. IACOPINO: But you can fashion a
15 certificate condition that is what you require, and that
16 will be the guiding principle of the certificate that they
17 will have to follow in order to maintain that certificate.
18 I think what happens generally, Mr. Harrington, is that,
19 because the towns and the counties or whoever the
20 governing body is in the area wants to make sure that
21 there are certain public interests that are protected, and
22 that's why they make these agreements. And, in this case,
23 I'm sure that they expected that the Applicant would
24 present it to us as conditions of the certificate, which
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1 they have.

2 CHAIRMAN GETZ: I think the issue might
3 be it depends on whether we add something or we change
4 something. So, if we're really like changing the
5 agreement, or won't accept the agreement between them as
6 is for some reason, but, to the extent we're going to, you
7 know, say under "liability insurance", it talks about
8 "\$10 million insurance", and we said "no, it should be
9 15", then I don't think there would be a need for them to
10 renegotiate or re-sign the agreement. That we would just
11 approve -- could approve this as is, and then -- but add
12 an additional condition. I think that, for form sake, I

13 think that would satisfy. So, you know, just briefly
14 looking at the headings, it talks about warnings near the
15 electrical collection facilities, interconnections of
16 substations, the turbines, talks about access, liability
17 insurance, indemnification, a variety of issues regard to
18 the wind turbine equipment and facilities, the project
19 security, public information, complaints, emergency
20 response, public roads, construction period requirements,
21 operating period requirements, and decommissioning. I
22 know there are some thoughts at least about
23 decommissioning, but let's talk about -- are there
24 anything that we want to discuss or anything that causes
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1 concern with respect to the first 11 items, prior to
2 talking about decommissioning? Mr. Harrington.

3 MR. HARRINGTON: Yes, I had a couple of
4 them. In the second paragraph, where it talks about
5 putting reflectors and flagging guy wires, I think
6 probably 10 feet is a little bit short, because there's a
7 potential for 10 feet of snow up there in the wintertime.

8 CHAIRMAN GETZ: I'm sorry, where are
9 you?

10 MR. HARRINGTON: Right here. The front
11 page, the first page under "Warnings", the second
12 paragraph. I would just say 15 or 20 feet would be more
13 appropriate for that. Because someone buzzing along on a
14 snow machine, if there was a lot of snow, might hit one of
15 those wires and never see the warning, the reflector on it
16 if it was covered with snow. Along the same idea, the
17 next paragraph talks about "visible warning signs"

18 concerning safety risks related to winter or storm
19 conditions." I believe there was some evidence presented
20 that the manufacturer recommends a 1,300 foot avoidance
21 zone, and I know there was some mention of this in --
22 somewhere else, I can't put my finger on it right now.
23 But I think we'd need to have signs that are further back
24 than 300 feet, and also at places other than access roads.
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1 Because, in the wintertime, everything becomes an access
2 road if you're riding a snow machine. And, you know, so
3 they have to be periodically places, and I would guess
4 1,300 feet from the turbine base, because that's what the
5 manufacturer is saying is the area where people need to be
6 cognizant of ice throw, there's the potential.

7 CHAIRMAN GETZ: Mr. Normandeau.

8 DIR. NORMANDEAU: Just a quick comment
9 on the snow machines. I believe there is a trail through
10 there, and the public would have to stay on that trail.
11 You can't ride a snow machine on anybody's land off of --
12 outside of the trail system, unless you have their written
13 permission on your person. So, while it's true, I guess
14 people could wander around on snow machines, they would be
15 doing it illegally. Just --

16 MR. HARRINGTON: Well, even -- let's
17 assume, for the sake of example, that snowmobilers never
18 break the law. This still doesn't cover putting signs on
19 snowmobile trails, and it doesn't cover 1,300 feet away,
20 it just says "300 feet away on access roads".

21 DIR. NORMANDEAU: Right.

22 MR. HARRINGTON: And, I mean, my concern
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23 is, in the wintertime, you get some not-too-mature 17, 18,
24 19 year-old driving a snow machine, they see these, "hey,
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1 let's go up and look at the wind turbines." And, they're
2 going to say "Oh, we can't go over there because we'll be
3 off the trail and we're breaking the law"? To some,
4 that's not going to stop them. But maybe, at least if
5 they had a sign that said, you know, "Danger - Ice Throw",
6 at least you could say, hey, you let them know what was a
7 possibility to keep out of there. So, I just think we
8 need, in general, more, maybe we need to look at the whole
9 -- I thought it was mentioned someplace else about signs,
10 but we need to get a little bit more detail on signs.

11 And, the other question I had was, --
12 well, it gets me to the -- 5(b), "Controls and Brakes",
13 gets me back to the need for that Altona root cause again,
14 because I think that failure had to do with failure of the
15 braking systems.

16 Where it says "Project Security", I
17 thought these towers were climbable from the inside. But
18 this says "shall not be climbable up to 15 feet above
19 ground surface." Does that imply that there is going to
20 be like a ladder going up the outside of the towers? And,
21 if so, again, 15 feet, with snow, if you've got 8 or
22 9 feet of snow, 8 feet of snow, you could easily reach up
23 and grab something that was, you know, 7 feet off the
24 ground. And, the next thing you know we've got someone
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1 climbing up the outside of this thing, if indeed there are
2 ladders on the outside. This would lead you to believe
3 that, but I'm not sure what that statement means. Does
4 anyone know the answer to that?

5 CHAIRMAN GETZ: Well, let's check that.
6 I'm sure we got that in the record.

7 MR. HARRINGTON: But if they are -- if
8 there is going to be a fixed ladder on the outside, I'd
9 like to see it raised, so it's not climbable, to 20 feet
10 above the ground surface.

11 CHAIRMAN GETZ: Okay.

12 MR. HARRINGTON: And, that was all I had
13 on the beginning part.

14 CHAIRMAN GETZ: Okay. Anyone else?
15 Mr. Scott.

16 DIR. SCOTT: I actually had a comment on
17 Mr. Harrington's comment, if I may. I agree that -- I
18 remember the "1,300 feet" being the danger zone potential,
19 based on the manufacturer's warnings. I would just argue
20 a small, minor point. That I would think, first of all,
21 the Public Counsel suggests maybe signs at 1,500 feet. I
22 don't know if that's the right amount, but I would think
23 something beyond 1,300 feet, rather than "By the way,
24 you're in a danger zone now", how about "You're coming to
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1 one". It's a minor point.

2 MR. HARRINGTON: And, maybe just as a
3 follow-up on that, maybe it would be appropriate to have
4 these down at the beginning of these trails, where the
5 snowmobiles would park, where the hikers would park,

6 because you know they're going to go through that section.
7 Once they get up in the woods, they can kind of wander
8 around themselves a little bit. But they're going to
9 start out from the parking lot, almost everybody would.
10 So, maybe some type of warning signs down there, you know,
11 that give a little bit more information about windmills
12 and what the associated dangers are, so people won't think
13 they're just a tourist attraction, if you will.

14 CHAIRMAN GETZ: Okay. Anything else?
15 Well, let's turn to decommissioning. I guess one of the
16 main issues that was addressed during hearings was,
17 basically, the financing schedule. And, the last item is
18 Subsection (d) on Page 9. Says that "The project will
19 ensure that financial assurance for Total Estimated Net
20 Decommissioning Cost will be fully established within the
21 first ten years." And, it says "On or prior to December
22 31 of each year, in years one to ten, 10 percent of the
23 Total Estimated Net Decommissioning Cost will be secured
24 in a form acceptable to the County." And, then, "Prior to
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1 establishment of the Fund, Granite Reliable shall on an
2 annual basis provide the County with proof (through
3 insurance or other means) of its financial ability to
4 carry out decommissioning should it be required to prior
5 to year ten."

6 So, that's the summary of the scheduling
7 of decommissioning funds.

8 MR. HARRINGTON: I believe that last
9 thing you just read is new to this. It wasn't in the
10 previous one, correct? Because that allays my concerns

11 that I had, because I did have a concern that, after a
12 year, let's say after the three year bird survey, we're
13 find we're killing every Bicknell thrush around, then we
14 decide this thing has to get shut down, then you want to
15 make sure they have funding ability to decommission. And,
16 this would seem to address that concern. So...

17 CHAIRMAN GETZ: Anybody else on
18 decommissioning? Or anything else in the agreement with
19 Coos County? Dr. Kent.

20 DR. KENT: I'd just like to reconcile
21 the language we spoke of earlier for revegetation with the
22 language that's in here. On Page 8, second paragraph
23 discusses "rehabilitating and reseeding road shoulders".
24 And, if we could just reconcile that with our previous
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1 discussions, about natives and Fish & Game Agreement and
2 so forth, endemic species.

3 MR. HARRINGTON: I'm sorry, what page
4 are you on again?

5 DR. KENT: Page 8.

6 CHAIRMAN GETZ: Page 8 of the Coos
7 County Agreement.

8 DR. KENT: The second paragraph.

9 CHAIRMAN GETZ: Oh. "Construction pads
10 will be rehabilitated and reseeded", that --

11 DR. KENT: "Road shoulders will be
12 revegetated", correct. And, we've discussed this issue
13 for high elevation. And, I would ask that that high
14 elevation revegetation language we were discussing earlier
15 be reconciled with this language.

16 MR. HARRINGTON: So, let me, just so I
17 understand what you're saying. The revegetation they
18 would use to bring the roads back to the 12 foot width
19 pads after the construction is complete, that same type of
20 revegetation you're saying they should be using when the
21 project is completely decommissioned?

22 DR. KENT: Correct.

23 MR. HARRINGTON: Okay.

24 CHAIRMAN GETZ: So, this should set the
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1 standard?

2 MR. HARRINGTON: I think the other one
3 should.

4 DR. KENT: The other one.

5 CHAIRMAN GETZ: Okay.

6 DR. KENT: The one I view is under, on
7 Page 9 of the summary that Mr. Iacopino put together,
8 under "Adverse Impact - Water Quality".

9 MR. IACOPI NO: I think the revegetation
10 conditions offered by the Applicant and Public Counsel had
11 more detail than is contained --

12 DR. KENT: Correct.

13 MR. IACOPI NO: -- in the agreement with
14 Coos County, which you would expect, because they're
15 closer to those issues, and have witnesses and consultants
16 addressing those issues through this proceeding. Whereas,
17 the County hasn't had the benefit of having a proceeding
18 like this.

19 CHAIRMAN GETZ: Mr. Scott.

20 DIR. SCOTT: Similar to that comment, I

21 do notice, right after where it says "Road shoulders will
22 be revegetated within 12 feet", it says "Culverts will
23 remain in place." And, then, we look to the Appalachian
24 Mountain Club comments on decommissioning, and they ask
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1 that "Culverts be removed if they're in a stream channel".
2 So, we have, again, we have some deconfliction needed if
3 we want to make everybody happy, somebody happy.

4 CHAIRMAN GETZ: Mr. Northrop.

5 MR. NORTHROP: Along the same lines with
6 the construction, this same second paragraph on Page 8,
7 "Construction pads will be rehabilitated and reseeded.
8 Road shoulders will be revegetated to a width of 12 feet."
9 If this were to be decommissioned, and you go up and
10 remove the towers and remove the turbines and remove the
11 pads and remove the concrete, wouldn't you also remove the
12 roads? I'm just wondering why it's "revegetated" -- it
13 says "Road shoulders will be revegetated to a width of
14 12 feet", which implies to me that the roads will remain
15 12 feet wide. But, I'm just wondering, wouldn't -- if
16 you're decommissioning and removing everything, would you
17 also not -- would you also want to essentially remove the
18 roads and revegetate the entire road width, so that
19 eventually those roads that were built on the ridges to
20 get to the towers would no longer be there once the
21 vegetation grew up, and it would essentially become back
22 to its original, natural state?

23 CHAIRMAN GETZ: Mr. Janelle.

24 MR. JANELLE: I think one of the
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1 concerns is from an erosion control standpoint. If you've
2 got an existing road that's -- a road was constructed,
3 that's established, and you decommission the plant, then
4 you're creating a whole situation of erosion if you remove
5 that mass of earth and soil in the area, which could cause
6 other problems. I think that was one of the reasons why
7 they chose to leave the roads in place.

8 MR. NORTHROP: Yes, I would agree with
9 that. You'd leave the fill and the rock and everything
10 you brought in. But the surface of the road you would --
11 I think you would want to revegetate that so that -- so
12 that it becomes as natural a state as possible. As
13 opposed to what you were saying, and I agree with you, you
14 don't want to go in and remove all of this thousands and
15 millions of cubic yards of gravel and fill and blasting
16 debris and everything that's been put in there to create
17 those roads. You don't necessarily want to bring the
18 contours of the land back to their original state. I
19 think that the contours of land would be there as the
20 roads, but they would -- but the road surfaces would be
21 covered with something to revegetate them back to their --
22 to the surrounding conditions, I guess.

23 MR. HARRINGTON: Is it possible, if you
24 had this, you know, gravel hard-packed road that's capable
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1 of hauling or supporting a truck that's got an 80 ton
2 turbine on it, is anything really going to grow on that?

3 MR. NORTHROP: I don't --

4 MR. HARRINGTON: I don't think -- you

5 can leave the roads the way they are, and eventually, over
6 a long --

7 MR. NORTHROP: Over time.

8 MR. HARRINGTON: -- period of time, that
9 probably something will happen. But, in the short term,
10 the only option would be to dig up the stuff and get it
11 out of there, because I don't think too much is going to
12 grow on this extremely hard-packed gravel. So...

13 CHAIRMAN GETZ: Okay. Other discussion
14 about any of the items that are discussed in the Coos
15 County Agreement?

16 MR. HARRINGTON: The only other thing I
17 wanted to mention in here that there was a bunch of things
18 under the emergency response, and it was -- since this was
19 negotiated by the County, presumably after consulting with
20 their emergency response people, I would think that what's
21 in here in Section 8 would probably be better than what
22 Public Counsel submitted, where they talk about, you know,
23 "buy this type of equipment" and so forth. This is more
24 of a "we'll tell you what we need, if we need it, and you
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1 can buy it for us" type of thing. So, this is -- would
2 make a better approach that's outlined in Section 8 than
3 what we saw in the other sections.

4 CHAIRMAN GETZ: Okay. I'm looking now
5 under "Public Health and Safety", VIII. And, I guess you
6 were pointing to these other one, two, three -- four
7 conditions by Public Counsel.

8 MR. HARRINGTON: Uh-huh.

9 CHAIRMAN GETZ: We know at least the
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10 second one has already been taken care of, the storm
11 water. You know, "a detailed safety and access plan",
12 "gate access protocols", which seems to be addressed by
13 the Agreement. And, there's this whole notion of -- it
14 would be 17 of the outline of conditions, the second to
15 last page of the document --

16 MR. HARRINGTON: Okay.

17 CHAIRMAN GETZ: -- that Mr. Iacopino put
18 together for us. And, the --

19 MR. HARRINGTON: Yes, I was thinking
20 that like the "detailed emergency response plan" is sort
21 of covered in the Section 8.

22 CHAIRMAN GETZ: If the county has come
23 to agreement, and I just don't know if anybody has ever
24 spoken to them about having a couple of extra fire
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1 fighting apparatus, but I guess I would lean towards what
2 they, if we go down this route, what they have agreed to
3 as being adequate.

4 MR. HARRINGTON: That was my point.

5 CHAIRMAN GETZ: Yes. Thank you. So, I
6 think that, you know, we've managed to walk through all
7 the proposed conditions and have a discussion about them.
8 It's a little after 4:30 now. So, I would propose that we
9 recess until next Wednesday, at 1:00, and with the goal of
10 making a final decision and trying to come to, well, in
11 the first instance, making a final decision, and, to the
12 extent that we're going to -- if this project gets
13 approved and there's conditions, then there's a lot of
14 work to do on what the -- how to reconcile all of these

15 conditions in a way that fits together in an integrated
16 package. So, there's a number of issues that have been
17 raised by various folks today that we all should take
18 under consideration. I know from my notes I have a number
19 of issues that have been raised where I want to go back
20 and look at the record and the testimony and the
21 cross-examination, to make sure I'm comfortable with the
22 arguments and whether the -- whether the Applicant has met
23 its burden, and whether the conditions would be adequate
24 in any event.

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1 So, before we go, is there any
2 discussion before we recess for the day?

3 MR. HARRINGTON: Just a quick question.
4 I've just started going over my list of things that I came
5 up with along the way of what I referred to as
6 "contingencies". So, it's possible that there may be
7 something in this list that hasn't been addressed as a
8 condition by somebody else. So, I'll bring those up at
9 the next meeting? I'm not saying there is, I'm just
10 saying it's possible.

11 DIR. NORMANDEAU: Do we need to remove
12 all of our goodies?

13 CHAIRMAN GETZ: Yes. Yes. We've got
14 hearings here tomorrow.

15 MR. HARRINGTON: We'll rent you some
16 storage space.

17 DIR. NORMANDEAU: What a bummer.

18 CHAIRMAN GETZ: All right. Then,
19 hearing nothing else, we'll recess the public meeting for

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20 today and resume next Wednesday. Thank you, everyone.

21 (Whereupon the deliberations were

22 adjourned at 4:36 p.m. and the

23 deliberations to resume on April 29,

24 2009, commencing at 1:00 p.m.)

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