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November 1, 2010

Via Hand Delivery
NH Site Evaluation Committee
c/o Jane Murray, Secretary
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

***Re: Docket 2010-01 Application of Groton Wind, LLC
for a Certificate of Site and Facility for a Renewable Energy Facility***

Dear Ms. Murray:

Enclosed for filing with the New Hampshire Site Evaluation Committee in the above-captioned matter please find an original and four copies of a Partially Assented-To Motion For Protective Order And Confidential Treatment.

Please do not hesitate to contact me if you have any questions. Thank you for your assistance and cooperation in this matter.

Very truly yours,



Rachel A. Goldwasser

Maureen D. Smith
(Of Counsel)

cc: Parties (via electronic mail)
Enclosures

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STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2010-01

**RE: APPLICATION OF GROTON WIND, LLC
FOR A CERTIFICATE OF SITE AND FACILITY
FOR A RENEWABLE ENERGY FACILITY IN GROTON, NH**

**PARTIALLY ASSENTED-TO MOTION FOR PROTECTIVE ORDER AND
CONFIDENTIAL TREATMENT**

NOW COMES Groton Wind, LLC (“the Applicant”) by and through its undersigned attorneys and respectfully moves that the Site Evaluation Committee (“SEC” or “Committee”) issue a protective order which preserves the confidentiality of certain information submitted as part of the October 12, 2010 supplemental filing made by the Applicant in the above-captioned matter. In support of this Motion, the Applicant states as follows:

1. NH RSA 162-H:16, IV(c) requires that an application for a certificate of site and facility must, *inter alia*, demonstrate that the project will not have an unreasonable adverse effect on historic sites. Similarly, N.H. Admin. Rule Site 301.03(i) requires that an applicant, include in its application, information “regarding the effects of the facility on, and plan for mitigation of any effects” on historic resources.

2. Pursuant to the foregoing requirements, on October 12, 2010, the Applicant submitted, *inter alia*, a document contained in its Supplement to Application which included information regarding historic sites as part of the End-of-Field Letter

regarding Phase 1B Archeological Investigation from Louis Berger Group. *See Supplement to Application*, Volume 1A, Exhibit 50, Figure 3.

3. Figure 3 to Appendix 50 in Volume 1A includes specific information which shows the location of an archeological site. If the locations of these archeological resources are left in the public domain, there is a potential risk of destruction and/or "looting" (stealing of artifacts) of the site. In these circumstances, this document should be protected from public disclosure.

4. RSA 91-A:5, IV. provides, *inter alia*, that records pertaining to confidential information are exempt from the public disclosure requirements of RSA 91-A. Confidential treatment is warranted in this case to protect the sensitive nature of the archeological site. Protecting the location of the site is in the public interest and the Applicant requests that Appendix 50, Figure 3 be maintained confidentially.

5. Such a request is reasonable given the nature of the site and the potential for damage to it. For example, federal law recognizes the significance of such sites and requires that archaeological sites be treated confidentially under the federal Freedom of Information Act (FOIA). According to the Archaeological Resources Protection Act of 1979, a map including information regarding the location of an archaeological resource should be maintained confidentially. "Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under [FOIA]." 16 U.S.C. 470hh(a); *see also* 16 U.S.C.A. § 470w-3 (regarding confidential treatment under the National Historic Preservation Act). Disclosure is only permitted if the federal land manager determines that it will "further the purposes of the Archaeological Resources Protection Act of 1979 and will "not create a

risk of harm to such resources or to the site at which such resources are located.” *Id.* at 470hh(a)(1)-(2). In this case, publicity of the location of the site will not further any public purpose, but it *will* result in a risk of harm to the archeological resources.

6. Under the balancing test set forth in *Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997), the above-described interests of in non-disclosure and protection of archeological resources outweigh any public interest in providing this information.

7. The Applicant has already provided electronic copies of Appendix 50, Figure 3 to the parties in the above-captioned matter. The Applicant respectfully requests that the Commission order that Appendix 50, Figure 3 be maintained confidentially by the parties, and that a protective order issue requiring that Appendix 50, Figure 3 remain confidential.

8. Pursuant to N.H. Admin Rule Site 202.14(d), the undersigned has made a good faith effort to obtain concurrence with the relief sought herein from all of the parties. As of the time of this Motion, Counsel for the Public and Cheryl Lewis have indicated their assent.

WHEREFORE, Groton Wind, LLC respectfully requests that this Committee:

A. Issue a protective order as requested herein that requires the confidentiality of the document that is the subject of this Motion.

B. Grant such further relief as it deems appropriate.

Respectfully submitted,

Groton Wind, LLC
By Its Attorneys

Dated: November 1, 2010

(For)

RACHEL A. GOLDWASSER

NH BAR #
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Certificate of Service

I hereby certify that, on the date written below, I caused the foregoing objection to be sent by electronic mail and/or hand delivery to the persons on the service list (exclusive of Committee members).

Date



Rachel Aslin Goldwasser

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