

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

April 8, 2011 - 9:05 a.m.  
Public Utilities Commission  
21 South Fruit Street  
Suite 10  
Concord, New Hampshire

DAY 2  
DELIBERATIONS  
MORNING SESSION ONLY

RE: SEC DOCKET NO. 2010-01  
Application of Groton Wind, LLC,  
for a Certificate of Site and  
Facility for a 48 Megawatt Wind  
Energy Facility in Groton,  
Grafton County, New Hampshire.  
(DELIBERATIONS OF SUBCOMMITTEE)

PRESENT:	SITE EVALUATION SUBCOMMITTEE:
Chairman Thomas B. Getz (Presiding)	N.H. Public Utilities Comm.
Robert Scott, Director	Air Resources Division - DES
Brook Dupee, Bureau Chief	Dept. of Health & Human Serv.
Richard Boisvert	N.H. Div. of Historical Res.
Stephen Perry, Chief	Inland Fisheries - N.H. F&G
Charles Hood, Admin.	Dept of Transportation
Donald Kent, Admin.	Dept. of Resources & Econ. Dev.
Eric Steltzer	Office of Energy & Planning
Michael Harrington	Public Utilities Commission

\* \* \*

Counsel for the Committee: Michael Iacopino, Esq.

COURT REPORTER: Susan J. Robidas, LCR NO. 44

[DELIBERATIONS]

	I N D E X	
	ISSUE: NATURAL ENVIRONMENT	PAGE NO.
1		
2		
3	MOTION BY MR. KENT that there is no	3
4	unreasonable adverse effect on natural	
	environment...	
5	Second by Mr. Perry	6
6	VOTE TAKEN ON MOTION	13
7	ISSUE: HISTORICAL SITES	
8	Presentation by Mr. Boisvert	14
9	Discussion followed	21
10	MOTION BY MR. BOISVERT that there is no	53
11	unreasonable adverse effect on historical	
	sites with the conditions...	
12	Second by Mr. Steltzer	54
13	VOTE TAKEN ON MOTION	64
14	ISSUE: HISTORIC SITES RE: Adopting	
15	proposed condition by Public Counsel	
16	Presented by Chairman Getz	64
17	Discussion followed	64
18	VOTE TAKEN	65
19	ISSUE: HISTORIC SITES	
20	Proposed Condition by Intervenor Group	
	Buttolph/Lewis/Spring that the Applicant	
	pay all fees and hire a consultant	
21	Presented by Chairman Getz	66
22	Discussion followed	66
23	VOTE TAKEN	71
24		

[DELIBERATIONS]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

I N D E X (CONT'D)

ISSUE: HISTORIC SITES	PAGE NO.
Proposed Conditions by Intervenor Group Buttolph/Lewis/Spring Re: Paying Town of Rumney \$75,000...	
Presented by Chairman Getz	71
Discussion followed	71
VOTE TAKEN	72
ISSUE: PUBLIC HEALTH AND SAFETY	
Public Health Presented by Mr. Dupee	78
Discussion followed	84
Public Safety Presented by Mr. Hood	85
Discussion followed	86

[DELIBERATIONS]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

P R O C E E D I N G S

CHAIRMAN GETZ: Good morning, everyone. We're reopening the record in Docket No. 2010-01 and continue deliberations. And at the end of the deliberations yesterday, we indicated that we would call the question at the beginning of deliberations this morning with respect to the issue of are there unreasonable adverse effects on the natural environment. And Dr. Kent has -- I think this is a good idea -- is going to reformulate or restate his motion, because it was -- proceeded in several parts yesterday. And to make sure there's no confusion, he has written it down and handed it out, and we'll read it into the record. And after he reads it into the record, I guess in the form of a motion we'll be open to a second and then discussion and a vote. So, Dr. Kent.

DR. KENT: Thank you. I move that the Site Evaluation Committee find the Groton Wind Park will have no unreasonable adverse effect on the natural environment, subject to the following conditions: 1) the Applicant shall conduct post-construction breeding bird surveys that replicate or improve upon the Stantec preconstruction

[DELIBERATIONS]

1 surveys for the project; 2) the Applicant shall  
2 conduct spring and fall diurnal raptor surveys that  
3 replicate or improve upon the 2009 Stantec survey,  
4 except that the fall surveys will extend into  
5 November to ensure capturing eagle migration; 3) the  
6 Applicant shall conduct summer and early fall  
7 peregrine falcon surveys that replicate or improve  
8 upon the Stantec pre-construction surveys for the  
9 project; 4) the Applicant shall conduct spring and  
10 fall nocturnal migratory bird radar surveys and  
11 replicate or improve upon the Stantec  
12 pre-construction survey for the project; 5) the  
13 Applicant shall conduct acoustic surveys of bat  
14 activity that replicate or improve upon the Stantec  
15 pre-construction survey for the project; 6) the  
16 Applicant shall conduct bird and bat mortality  
17 surveys that replicate or improve upon the West,  
18 Incorporated 2010 post-construction fatality survey  
19 for the Lempster Wind Project. Bird and bat  
20 mortality surveys shall temporally coincide with  
21 breeding bird surveys, diurnal raptor surveys, and  
22 nocturnal migrating bird surveys and bat surveys;  
23 7) breeding bird survey, diurnal raptor survey,  
24 nocturnal migrating bird survey, bat survey, and d

[DELIBERATIONS]

6

1 and bat mortality survey shall have the duration of  
2 three years, commencing during the first year of  
3 operation; 8) New Hampshire Fish and Game, and U.S.  
4 Fish and Wildlife Service, shall review and approve  
5 all study protocols; 9) the Applicant shall commence  
6 informal monitoring as described in Iberdrola's Bird  
7 and Bat Protection Plan after completion of the  
8 aforementioned surveys. Said surveys shall continue  
9 for the life of the operation; 10) annual reports  
10 shall be submitted to and discussed with Fish and  
11 Game, and Fish and Wildlife Service, and shall serve  
12 as the basis for mitigation measures if effects are  
13 deemed unreasonably adverse.

14 CHAIRMAN GETZ: Do we have a second to  
15 the motion?

16 MR. PERRY: I'll second that.

17 CHAIRMAN GETZ: Mr. Perry. Okay.

18 Discussion? Mr. Scott.

19 MR. SCOTT: Just for clarification,  
20 Mr. Kent, throughout here you have the Applicant  
21 shall conduct whatever survey it is equal to or  
22 improve upon. I'm just curious. What's the measure  
23 if it's improved upon? Who gets to decide that, and  
24 how do they improve that or show that?

[DELIBERATIONS]

7

1 DR. KENT: All of this is going to  
2 happen in consultation with Fish and Game, and Fish  
3 and Wildlife Service. I also wanted to provide some  
4 leeway for the Applicant's representatives. If they  
5 found a better way, we've got more information, we  
6 could do a better job. I didn't want to lock the  
7 door down and force us into something we've been  
8 doing if we know a better way of doing it.

9 CHAIRMAN GETZ: Mr. Dupee.

10 MR. DUPEE: Thank you, Mr. Chairman.  
11 Point 10 refers to annual reports. I want to  
12 clarify. Does the annual report apply to the first  
13 three years plus the ongoing facility monitoring, or  
14 is it only the first three years?

15 DR. KENT: All of the reports.

16 MR. DUPEE: Thank you.

17 CHAIRMAN GETZ: Mr. Steltzer.

18 MR. STELTZER: Just note in No. 9,  
19 where it notes Iberdrola's Bird and Bat Protection  
20 Plan, that it's referred to as the "Avian" Bat --  
21 "Avian" and Bat Protection Plan, as opposed to  
22 "Bird." Maybe that addition might need to be made?

23 DR. KENT: Thank you.

24 CHAIRMAN GETZ: Any other discussion?

[DELIBERATIONS]

1 Mr. Harrington.

2 MR. HARRINGTON: As I said before, I'm  
3 just not comfortable with this because it goes beyond  
4 what any of the witnesses that we had on the stand,  
5 what they presented, either the Applicants or Public  
6 Counsel. And so there would be no chance to question  
7 this or cross-examine this. So I'll be voting  
8 against this. I think it just goes too far.

9 CHAIRMAN GETZ: Any other discussion?

10 Mr. Steltzer.

11 MR. STELTZER: I'll be voting against  
12 it as well. As I mentioned yesterday, I'm just  
13 concerned with the level of studies that are being  
14 done here versus what I perceive the risk to actually  
15 be. I think this is excessive.

16 MR. IACOPINO: I have one legal  
17 question, Mr. Chairman, or one legal thing to point  
18 out. In Condition 8, you have the study protocols  
19 being approved by New Hampshire Fish and Game, and  
20 U.S. Fish and Wildlife. You may want to consider  
21 what happens if the two agencies, the state and  
22 federal agency, disagree. I only raise that because  
23 right now we have essentially two different positions  
24 on the record from these agencies. So I would just

[DELIBERATIONS]

1 point that out as a legal point so that you don't  
2 whipsaw the Applicant, unless it is your intention to  
3 make sure that they attain the approval of both, and  
4 if one requires more, that they do more. But that  
5 should be specified, I would think, in any final  
6 condition that we put in the order. It may not be  
7 necessary for this motion, but I just raise that for  
8 the -- for your consideration from a legal  
9 standpoint.

10 CHAIRMAN GETZ: Let me just try to  
11 think this through, then. So the conditions set the  
12 fact that there will be the studies. There is a  
13 minimum requirement that the studies be consistent  
14 with the approaches that were previously taken. The  
15 motion permits something more stringent, more than  
16 what's -- of what was used.

17 And then I think you're raising the  
18 issue, Mr. Iacopino, within that context, to the  
19 extent that approval is accorded to two different  
20 agencies, one at the state level and one at the  
21 federal level, what if they didn't -- what if they  
22 had different views on whether the protocols that  
23 were proposed by the Applicant, what if there was a  
24 different view of whether they were sufficient or met

[DELIBERATIONS]

1 the terms of the condition.

2 MR. IACOPINO: If one agency, say U.S.  
3 Fish and Wildlife, determined the protocols needed to  
4 be more rigorous than what Fish and Game required, or  
5 vice versa.

6 CHAIRMAN GETZ: Mr. Perry.

7 MR. PERRY: One suggested revision to  
8 No. 8 that might address that issue would be to have  
9 it read: New Hampshire Fish and Game shall review  
10 and approve all study protocols in consultation with  
11 U.S. Fish and Wildlife Service.

12 CHAIRMAN GETZ: Sounds like a friendly  
13 amendment. Would you accept that amendment, Dr.  
14 Kent?

15 DR. KENT: I do. Thank you, Mr.  
16 Perry.

17 CHAIRMAN GETZ: And Mr. Perry was the  
18 second on that, so let's consider that friendly  
19 amendment adopted.

20 DR. KENT: Just to point to what you  
21 said, I don't imagine that any improvements would  
22 have to be more stringent. One of the reasons for  
23 going this path is that we don't seem to be able to  
24 make links between pre-construction and

[DELIBERATIONS]

1 post-construction currently. But I expect the  
2 science would continue to improve as people make  
3 analysis of projects here and elsewhere, and it may  
4 actually get simpler to do this work in the future.

5 CHAIRMAN GETZ: Mr. Scott.

6 MR. SCOTT: I guess a question for  
7 Mr. -- for Dr. Kent. First of all, let me make sure  
8 I get this right. So New Hampshire Fish and Game, as  
9 far as length of study right now, we have a document  
10 saying one year; correct?

11 DR. KENT: Fish and Game?

12 MR. SCOTT: Yes.

13 DR. KENT: No, they say one year of  
14 formal and then lifetime of informal.

15 MR. SCOTT: Right. I meant -- thank  
16 you. And the implication for the draft guidelines  
17 from Fish and Wildlife Service is three years?

18 DR. KENT: The draft guidelines range  
19 from two to five years, depending upon what level of  
20 risk you ascribe to this.

21 MR. SCOTT: So with that in mind, both  
22 of them basically have to have some level of  
23 agreement on the protocols? I just wanted your  
24 reaction. I'm not offering an amendment at this

[DELIBERATIONS]

1 point, but just your reaction. What would be -- my  
2 thought would be, rather than mandate a three-year  
3 duration, say at least two years, if that were to be  
4 an amendment, given that we understand that Fish and  
5 Wildlife has this broader thought. So if they have  
6 to buy off on it, we say at least two years. I'm  
7 wondering if that may -- what would your reaction to  
8 that be?

9 CHAIRMAN GETZ: Well, I'm not -- let  
10 me make sure. I think this was what I was trying to  
11 understand before, was the amendment sets the number  
12 of years and types of studies, that all their input  
13 would be on would be to make sure that the protocols  
14 for any of those studies are -- at least replicate  
15 what has been done before. So I don't -- that's what  
16 I took. Fish and Game, and Fish and Wildlife won't  
17 be in a position to say it should be one year or two  
18 years. It's just whatever you're doing, this is how  
19 you do it.

20 MR. SCOTT: Okay. I was obviously  
21 thinking that they would have an idea of how long you  
22 do that would be important because --

23 DR. KENT: No, that's not my intent.  
24 As a representative of the SEC, I have come to the

[DELIBERATIONS]

1 conclusion that we need at least three to get useful  
2 information out of this. That's the amendment.  
3 Essentially, the motion says three years.

4 MR. SCOTT: Thank you.

5 CHAIRMAN GETZ: But allows some  
6 flexibility, perhaps, about the protocols themselves  
7 in conducting those three years of studies.

8 DR. KENT: Correct.

9 CHAIRMAN GETZ: Anything else?

10 (No verbal response)

11 CHAIRMAN GETZ: Okay. Then I'll call  
12 the question. All those in favor of the motion,  
13 please signify their agreement by raising their hand.

14 (Multiple members raise hands.)

15 CHAIRMAN GETZ: Okay. I'll note for  
16 the record that the motion passes 7 to 2, and also  
17 note for the record that all nine members of the  
18 Committee are here today. So that all works out.

19 Mr. Dupee.

20 MR. DUPEE: Thank you, Mr. Chairman.  
21 I think I mentioned yesterday I have another  
22 engagement at 9:30 over in the Secretary of State's  
23 Office. I have a call in to see whether they have a  
24 quorum, which I've not heard back yet. And I'm not

[DELIBERATIONS]

14

1 sure what the agenda is or what order it will be.  
2 This meeting is scheduled from 9:30 to 11:00. I need  
3 to leave essentially right about now, and I will be  
4 back just as soon as I can, which I would assume  
5 would be no later than 11:15.

6 CHAIRMAN GETZ: Okay. Thank you. So  
7 you'll know what we're going to do next, we're going  
8 to turn to the issue of historic sites. We'll go  
9 through that. And I don't know how long that's going  
10 to take. And we'll decide whether to have the vote  
11 with eight members or wait until you return. And  
12 then we'll also turn to the issues of public health  
13 and safety. We may turn to Mr. Hood before you get  
14 back. So we'll just have to play it by ear.

15 MR. DUPEE: Thank you.

16 (Mr. Dupee leaves the proceedings.)

17 CHAIRMAN GETZ: So, Dr. Boisvert.

18 MR. BOISVERT: Thank you. The issue  
19 before us is the question of if there will be any  
20 unreasonable adverse effects on historic sites,  
21 historic resources. This situation is different than  
22 the preceding situations, in that the studies are by  
23 no means complete.

24 I can summarize just a little bit.

[DELIBERATIONS]

1 The Department of Historic Resources -- excuse me --  
2 Division of Historical Resources, DHR, is required to  
3 participate in what is known as a Section 106  
4 process, which is a process to identify and evaluate,  
5 and, if necessary, come up with mitigation treatments  
6 if a federal undertaking shall affect historic  
7 resources. This process is independent of the SEC  
8 process; however, it is running in tandem. That  
9 process has been started. Consultants have been  
10 hired by the Applicant to conduct their  
11 investigations. In the world of historic resources,  
12 this is divided into two areas: The below-ground or  
13 archaeology, and the above-ground or historic standing  
14 structures. They proceed in tandem, but there are  
15 often separate agreements that may be arrived at to  
16 treat the process and the resources.

17 The below-ground archeology proceeds  
18 through specific phases, Phase 1, 2 and 3, which are,  
19 briefly: Identification, evaluation and mitigation.  
20 This is a win-win process; which is to say a survey  
21 is done, and there may be a situation where no  
22 resources are found. A determination to that effect  
23 is made and submitted, commented upon by the federal  
24 agency and DHR. And if there's nothing there, then

[DELIBERATIONS]

1 they simply say the process is completed. In other  
2 cases, resources are identified. And when they're  
3 identified, a decision is made: Is there enough here  
4 to even spend time to evaluate them? And that  
5 process will continue. And it may happen that they  
6 are identified as being significant or not. That's  
7 the evaluation process.

8 At this point, the archeological  
9 process has actually reached completion for  
10 Section 106 compliance. The archeological surveys  
11 have been done in the primary facility area. The  
12 interconnector and substation were unknown at the  
13 start of this. They were identified as the project  
14 progressed. The archeological surveys were  
15 conducted. Reports were prepared and submitted to  
16 the Division of Historical Resources. And it happens  
17 that in the archeological section no resources were  
18 identified, and the recommendation's made that no  
19 additional work needed to be done for the  
20 archeological resources.

21 The above-ground process is largely  
22 similar. But because of the nature of the resources,  
23 and, in this case, the nature of the potential  
24 effects, this proceeded not only on a separate path,

[DELIBERATIONS]

1 but a slower path.

2 The process, in the identification  
3 phase, begins with an assessment of what is already  
4 known in an area. This is far easier for us in  
5 contemporary history and architecture because there  
6 you can see it. Archeological resources, they are  
7 below ground and hidden. There's abundant historical  
8 documentation that can be found in a number of  
9 sources.

10 So the process begins with simply  
11 going out and assembling what is already in the  
12 historic record and identifying what should be of  
13 interest within the area. This is accomplished in  
14 New Hampshire by completing a Project Area Form, a  
15 PAF. This was undertaken relatively early on in the  
16 process; however, completion of that particular step  
17 required that the Project Area Form be redone twice.  
18 On the third pass it was eventually reviewed and  
19 approved. That's where the process stands at this  
20 point in time for the standing structures. It is not  
21 feasible to complete this process before the SEC can  
22 complete its deliberations. There's simply not  
23 enough time. So we are at the situation where it is  
24 not yet known if there are significant historic

1 structures, historic districts that might be affected  
2 by this project -- which is to say, we know that  
3 there are structures out there; the question becomes  
4 are they significant, and will there be an adverse  
5 effect upon them. It's the issue of degree and kind  
6 of impact. My cold has revisited me.

7 And that's where we stand at this  
8 point in time. The process can indeed go forward.  
9 This is not uncommon. There are situations such as  
10 this where a reasonable expectation for adverse  
11 effects are such that they can be mitigated without  
12 requiring that the permit be held up or that the  
13 structure's not to be built. The mitigation steps,  
14 which are hypothetical at this point in time, include  
15 interpretive exhibits, pamphlets, walking tours,  
16 driving tours, installation of screen vegetation, any  
17 number of things. But it is premature to determine  
18 what the mitigation measures might be until we have a  
19 determination of effect.

20 Consequently, we need to develop a  
21 process that allows a successful completion of the  
22 Section 106 process and also meeting the SEC's needs  
23 for the treatment of historic resources.

24 To review a little bit, the Project

[DELIBERATIONS]

1 Area Form did a historical background. It was  
2 eventually determined to be complete. The  
3 intervenors noted that some portion of historic  
4 events were not included in the background,  
5 representative of John Stark being there and so  
6 forth. While accurate, this is not necessarily  
7 relevant. The issue at hand is impacts on historic  
8 resources. John Stark's presence in the area, the  
9 fact that he was camping there and the altercations  
10 with the community, there may be some archeological  
11 site associated with that, but there's no indication  
12 that such site would be impacted by the construction  
13 of the project.

14 For archeological resources, to  
15 clarify, the adverse effects have to do with the  
16 actual impact on the physical archeological site  
17 itself. Rarely is a visual intrusion considered to  
18 be an adverse effect on an archeological site,  
19 certainly here in New Hampshire. If you were in the  
20 American Southwest at a pueblo, there might be some  
21 objections to certain kinds of construction close to  
22 prehistoric architecture because it would affect its  
23 setting. We don't have equivalent kinds of  
24 archeological resources here in New Hampshire. So

[DELIBERATIONS]

1 the adverse effects would have to be construction  
2 activity that would directly impact the site. And  
3 there was some comments about other information we  
4 included that was not necessarily relevant, great  
5 detail on other individuals who may have lived there  
6 or passed through. Sometimes in the enthusiasm to  
7 get background information, not necessarily relevant  
8 material will be collected by the consultants, and  
9 there's not much you can do about that.

10 So, where we stand right now is a need  
11 to complete the process to meet the needs of the  
12 federal requirements of Section 106 for compliance of  
13 the Historic Preservation Act and the needs of the  
14 SEC. To that end, I foresee what we need to do is  
15 simply develop a condition which will accommodate  
16 completing the identification of the effects, and  
17 should it be determined that there would be adverse  
18 effects on these historic resources, that the  
19 mitigation measures will be developed and that the  
20 process will go forward and meet the needs for both  
21 processes.

22 And I will invite assistance from the  
23 rest of the Committee. This is my first time on the  
24 SEC, and I may need a little assistance on properly

[DELIBERATIONS]

1           crafting the terminology here.

2                       MR. IACOPINO: Mr. Chairman, I would  
3           just point out, from a legal standpoint,  
4           RSA 162-H:16, VII, does permit the Committee to  
5           condition the certificate upon the results of  
6           required federal and state agency studies whose study  
7           period exceeds the application period. That's right  
8           within our statutory --

9                       CHAIRMAN GETZ: All right. Thank you.  
10          Any discussion? Mr. Scott.

11                      MR. SCOTT: On that same point, are  
12          you implying that -- again, I think Attorney Iacopino  
13          just kind of mentioned that, and it sounds like  
14          that's a federal process, and all that would be  
15          required, anyways, to complete the federal process.  
16          So is there -- would there be more that would need to  
17          happen, that we would need to condition, again, belts  
18          and suspenders type of thing, or would it be  
19          belts-and-suspenders redundant? Or are there more  
20          things that we need to condition I guess would be the  
21          question?

22                      MR. BOISVERT: We need to make sure  
23          that the needs of the SEC are met, as well as the  
24          Section 106 process.

[DELIBERATIONS]

1                   Just to go back to precedence. The  
2 Lempster project started off with a requirement to  
3 comply with Section 106. The project design changed,  
4 and Section 106 no longer applied; yet, the  
5 requirements for meeting the needs for the SEC were  
6 still there. That is not just a hypothetical. It  
7 did indeed occur in a previous wind farm project. So  
8 I just need to be consistent and recognize that we  
9 need to be addressing the whole situation and have it  
10 set out so that the SEC has a proper and replicable  
11 approach that we can use in future processes.

12                   CHAIRMAN GETZ: Mr. Steltzer.

13                   MR. STELTZER: Public Counsel had some  
14 questions regarding federal government not requiring  
15 mitigative measures if adverse impacts are noted.  
16 And Ms. Luhman provided testimony that she is not  
17 aware of a situation that has occurred where adverse  
18 impacts have been found, where mitigative measures  
19 have not been taken.

20                   I was just wondering if you could just  
21 share your input on would -- if adverse impacts are  
22 found, would mitigative measures be taken by DHR?

23                   MR. BOISVERT: DHR would be involved  
24 in the process. They would recommend various

[DELIBERATIONS]

1 treatments, mitigative measures. At that point it  
2 becomes a three-way negotiation among DHR, Corps of  
3 Engineers and the Applicant. And each has their own  
4 goals, and it's a matter of trying to parse it out.  
5 In this instance, the impacts are likely to be  
6 changing the setting -- the setting, in a sense of  
7 the look and the feel around the historic properties.  
8 That's what I mean by "setting." And those are quite  
9 subjective situations by their very nature. And this  
10 is raised a little bit with the aesthetics. The  
11 reason why certain properties are significant may  
12 include their setting. A hypothetical -- and I'm  
13 just doing this as a hypothetical -- a certain  
14 farmstead, the farmhouse, the barns, the  
15 outbuildings, stone walls, the open fields, all  
16 create a whole that is in some sense greater than the  
17 individual parts, that having them all together  
18 creates a feeling that allows you to understand what  
19 it would have been like to live on a back country  
20 farm in 1845, a situation that has very few replicas  
21 here in the modern day. If we're to understand their  
22 history and understand what it would be like to live  
23 at that point in time, then that setting is  
24 important. And maintaining the integrity of that

1 setting would be something that they would address.  
2 How you mitigate that then becomes a challenge. And  
3 there are different ways to do it. There have been  
4 various mitigative measures that have been used  
5 around the country for that sort of thing, and  
6 they're tailored to the resource setting, to the  
7 importance.

8 At Gettysburg, they have maintained  
9 the fields and the walls as best as they can as they  
10 were during the Battle of Gettysburg. And  
11 maintaining what the Peach Orchard area looked like  
12 is very, very important because that is such an  
13 essential part of American history, and Pickett's  
14 Charge and so forth. The level of significance there  
15 raises the bar for the desire to maintain a certain  
16 kind of integrity. Other areas, the bar would not be  
17 as high. And that's why I say it's subjective. And  
18 it would be a matter of negotiation among the  
19 parties, and they do the best they can.

20 CHAIRMAN GETZ: Mr. Harrington.

21 MR. HARRINGTON: Yeah, but to follow  
22 up on that, just a couple of process questions, if  
23 you can help me with them, and then follow-up  
24 comments to what you were just discussing.

[DELIBERATIONS]

25

1                   This Section 106, that's a federal  
2 law?

3                   MR. BOISVERT: Yes, Section 106 of the  
4 Historic Preservation Act of 1966, as amended.

5                   MR. HARRINGTON: And that process  
6 would go forward whether there was an SEC or not.

7                   MR. BOISVERT: Yes.

8                   MR. HARRINGTON: Are there also  
9 independent laws that would require the Department of  
10 Historical Records to do something on this? Let's  
11 just say it wasn't a power plant, so SEC wasn't  
12 involved.

13                   MR. BOISVERT: You mean the Division  
14 of Historical Resources.

15                   MR. HARRINGTON: Resources. I'm  
16 sorry.

17                   MR. BOISVERT: No. To back up just a  
18 little bit, the Division of Historical Resources does  
19 not have any permitting authority. Other state  
20 agencies do have permitting authority. The Division  
21 of Historical Resources does not.

22                   MR. HARRINGTON: Okay. So the 106  
23 process is going to go forward, regardless of what  
24 this Committee does or whether we even exist.

[DELIBERATIONS]

1                   MR. BOISVERT: So long as there is a  
2 federal involvement, yes.

3                   MR. HARRINGTON: And that federal  
4 involvement is, in this case, because the Army Corps  
5 of Engineers is involved with the permitting?

6                   MR. BOISVERT: Yes, with the major  
7 facility and also with the interconnector and  
8 substation.

9                   MR. HARRINGTON: All right. Thank  
10 you. That helps a lot. It's just kind of hard to  
11 follow in all this stuff.

12                   With a follow-up to Mr. Steltzer's  
13 comment, I think maybe we could take a specific  
14 look -- I know we were probably planning on doing the  
15 conditions separately. But since this is a single  
16 issue with a single condition, Public Counsel --  
17 basically, the concern that he's expressing is that  
18 Counsel for the Public proposes that any proposed  
19 mitigation -- and this is post-certification, because  
20 it's not going to happen before then -- for adverse  
21 effects on the region's historical resources that the  
22 Applicant makes be subject to formal review and  
23 approval by the Committee, and that the Committee  
24 retain jurisdiction to order additional mitigation.

[DELIBERATIONS]

1 I just think we should probably deal  
2 with that thing right now. I seem to think that it's  
3 unnecessary if the federal law is going to require  
4 this 106 process to go, regardless, and there is  
5 going to be involvement, as you've said, by the --  
6 let's see -- Division of Historical Resources. I  
7 mean, they're the experts. I don't see that this  
8 Committee is going to add any value by saying to send  
9 whatever those mitigation things back. I think they  
10 can just turn around and say, what do you think? And  
11 you're going to say, well, I already agreed with  
12 them. So we're going to say, all in favor, aye. So  
13 why go through the effort of doing that? So I'm just  
14 saying we could probably clean up that one here and  
15 just, you know, informally say that it's not  
16 necessary. That's on Page 11 of the Applicant's  
17 Response to Proposed Conditions, under Historical  
18 Sites.

19 CHAIRMAN GETZ: Let me lay out a  
20 couple of things before we get to that, because I  
21 think one thing that may be helpful is to actually  
22 read what happened in the Lempster case, which I  
23 think is more similar to here than the Granite  
24 Reliable case, where in the Granite Reliable case it

[DELIBERATIONS]

1 was a more remote area.

2 But in the order in Lempster, on  
3 Page 29 it says, "The Committee recognizes that the  
4 discovery and identification of historic sites and  
5 cultural resources can be a fluid process. Thus,  
6 certain conditions are necessary to ensure that  
7 construction and ultimate operation of the proposed  
8 facility does not interfere with any historic sites  
9 or cultural resources. In this regard, the  
10 Applicant, as a condition of its certificate, will be  
11 required to: 1)continue its consultations with the  
12 DHR and comply with all agreements and memos of  
13 understanding with that agency; 2) complete its Phase  
14 1A archeological survey and provide copies to DHR and  
15 the Committee; and, 3) undertake a Phase 1B  
16 archeological survey in all archeological-sensitive  
17 areas and file the reports of the survey with DHR and  
18 the Committee. Additionally, in the event that new  
19 information or evidence of a historic site or other  
20 cultural resources are found within the project site,  
21 the Applicant shall immediately report said findings  
22 to the DHR and the Committee. The foregoing  
23 conditions shall attach to the Certificate of Site  
24 and Facility." And then it concludes by saying, "The

[DELIBERATIONS]

1 Committee hereby delegates to the DHR the authority  
2 to determine what methods, studies, surveys or other  
3 techniques, practices or procedures shall be employed  
4 in conducting the Phase 1A and Phase 1one surveys,  
5 and any further surveys, studies or investigations in  
6 the event that archeological resources are discovered  
7 at the project site."

8 So that was the condition that was  
9 applied in that case. And as Mr. Harrington points  
10 out, Counsel for the Public goes in a slightly  
11 different direction and proposes that any proposal  
12 for mitigation for adverse effects on the region's  
13 historical resources that the Applicant makes are  
14 subject to formal review and approval by the  
15 Committee.

16 And there's also two other, what I  
17 take to be historic sites-related proposed  
18 conditions, and they come from the  
19 Buttolph/Lewis/Spring intervenor group. And one  
20 proposes that the Applicant pay fees and hire a  
21 consultant to handle all aspects of the nomination  
22 process of any buildings deemed eligible for the  
23 National Register. Property owners will be consulted  
24 as soon as properties are determined to be eligible

[DELIBERATIONS]

1 and continue to be part of the process, provided they  
2 are in support of their property being a part of the  
3 National Register; and also, a proposed condition  
4 that the Applicant pay the Town of Rumney the sum of  
5 \$75,000 to be used specifically for renovations to  
6 their Rumney Historical Society, or the Byron G.  
7 Merrill Library, both of which would be part of the  
8 Rumney Historical District, should they be deemed  
9 eligible.

10 So we have to, I think, consider at  
11 least how this issue was approached in Lempster and  
12 three different types of other conditions that would  
13 be proposed.

14 And one thing I would ask Dr. Boisvert  
15 is, with respect to the condition that was applied in  
16 Lempster, does that, you know, from your  
17 perspective -- well, how does that work, if we were  
18 to apply it here? Does that make sense or not make  
19 sense?

20 MR. BOISVERT: Yes, it does make  
21 sense. I was contemplating modifying the language,  
22 because the archeological aspect is no longer in  
23 play. But modifying it appropriately and  
24 recommending that as a condition, it keeps DHR

[DELIBERATIONS]

1 involved. It maintains the process in the event that  
2 Section 106 would no longer be applicable if the  
3 design changes, which is also a possibility. And  
4 that's what I had anticipated be a suggestion, that  
5 it comes back to the SEC instead of to the Committee.  
6 Maybe I'm being too picky. But we're a Subcommittee  
7 of the Committee. And I was wondering, did he really  
8 mean for it to come back to the Committee, which is  
9 the body above us, as I understand it, or this  
10 Subcommittee.

11 CHAIRMAN GETZ: You're talking there  
12 about Counsel for the Public's condition?

13 MR. BOISVERT: Yes. And I can see a  
14 benefit to that. But that's the larger issue. I  
15 think it's more for a precedent. And I'd like to  
16 just get feedback from other Committee members, to be  
17 honest with you -- Subcommittee members.

18 CHAIRMAN GETZ: With that piece --  
19 well, I'm just trying to think through what the  
20 process would be. Is it fair to say that a condition  
21 like the Lempster condition is kind of a baseline,  
22 and these other three conditions --

23 MR. BOISVERT: Yes.

24 CHAIRMAN GETZ: -- are additive to

[DELIBERATIONS]

1 that? They're not really incompatible with it --

2 MR. BOISVERT: The basic condition --

3 CHAIRMAN GETZ: Wait, wait. Just one  
4 person at a time, or Sue's not going to get this.

5 So, depending on how we approach the  
6 baseline, then it's a question of you could pick or  
7 choose among any of those other three, and they could  
8 either be added on or not added on, and it wouldn't  
9 be problematic, in terms of how you would -- how  
10 things would be administered. It's just a question  
11 of what the Committee's preference is in terms of  
12 conditions to apply. Is that fair?

13 MR. BOISVERT: Yes.

14 CHAIRMAN GETZ: Okay. Mr. Harrington.

15 MR. HARRINGTON: Mr. Chairman, I'm  
16 just trying to follow this. You mentioned this a  
17 couple of times now, and I don't understand how it  
18 works. You said that in the Lempster case something  
19 happened that -- and I won't read the whole big name  
20 of it, but just refer to it as Section 106 no longer  
21 applied. What happened to Lempster and what would  
22 happen here to make that occur, or could happen here?

23 MR. IACOPINO: I think that's a legal  
24 question, Mr. Chairman, if I can answer it.

1                   If there is a federal statutory  
2 involvement of an agency -- in Lempster originally,  
3 if you recall, they cut down a number of wetlands.  
4 There was Army Corps of Engineer involvement  
5 initially because of the amount of wetlands that was  
6 involved. And when they cut those wetlands out by  
7 eliminating --

8                   (Court Reporter interjects.)

9                   MR. IACOPINO: By eliminating the  
10 wetlands, they cut out the federal involvement.

11                   MR. HARRINGTON: They become non-  
12 jurisdictional to the Army Corps of Engineers?

13                   MR. IACOPINO: Right, so that it left  
14 them only dealing with the state Division of Historic  
15 Resources.

16                   In this particular case, the Army  
17 Corps is involved because of the programmatic -- and  
18 Mr. Scott can correct me if I'm wrong on this -- but  
19 because of a programmatic -- I think it's Section  
20 404, a programmatic permit for water quality -- or at  
21 401.

22                   MR. SCOTT: 401.

23                   MR. IACOPINO: So it's -- there's no  
24 specific permit that they have to get federally.

[DELIBERATIONS]

1           However, there is a programmatic permit across the  
2           state for this type of development, and that invokes  
3           the Army Corps of Engineers' jurisdiction for the  
4           purposes of the National Historic Preservation Act,  
5           Section 106.

6                         MR. HARRINGTON:   But Lempster didn't  
7           have this 401 requirement --

8                         MR. IACOPINO:   No.

9                         MR. HARRINGTON:  -- because of the  
10          size, the location.

11                        MR. IACOPINO:   Because they cut the  
12          wetlands out.

13                        MR. HARRINGTON:  Oh, okay.  And is  
14          there any other -- other than the statement in 16 --  
15          I mean 162-H:16-IV(c) that says "will not have an  
16          unreasonable adverse effect on esthetics, historic  
17          sites, air, water," et cetera, is there any other  
18          statutorial authority for the State of New Hampshire  
19          to look at historic sites, or are these the only  
20          things we have going, is just this unreasonable  
21          adverse effect on historic sites?

22                        MR. IACOPINO:   There is no permitting  
23          authority to the State of -- well, to the Division of  
24          Historic Resources, anyway, with respect to historic

[DELIBERATIONS]

1 sites. However, this Committee is specifically  
2 authorized to determine whether or not there are  
3 unreasonable adverse effects on historic sites. And  
4 also within the statute you can make conditions that  
5 would assure that there are no other such adverse  
6 effects.

7 MR. HARRINGTON: I'm just trying to  
8 find out the basis for this. For example: Let's say  
9 this was a project that was not an energy facility  
10 that was covered under 162-H. Is there, then, any  
11 other state statute that says, if you're going to,  
12 you know, put in a 500-acre golf course development,  
13 that you have to do something with historic sites?  
14 Or would that only be covered if the federal 106  
15 statute was invoked?

16 MR. IACOPINO: I think Dr. Boisvert  
17 has --

18 MR. BOISVERT: In that regard, in our  
19 legislation, RSA 227-C, I think it's colon nine --  
20 227:C, that other state agencies shall cooperate and  
21 assist with the DHR in identification, protection, et  
22 cetera, et cetera of the historic properties.

23 MR. HARRINGTON: Okay. I just wanted  
24 to make sure there was something else there instead

[DELIBERATIONS]

1 of these couple of words that --

2 MR. IACOPINO: I guess it would best  
3 be described as "consultative authority"; right?

4 MR. BOISVERT: Right.

5 MR. HARRINGTON: Thank you. That  
6 helps.

7 CHAIRMAN GETZ: Mr. scott.

8 MR. SCOTT: To clarify in my own mind,  
9 again, Counsel for the Public, on Page 10 of his  
10 closing memorandum, he's asked us, the Site  
11 Evaluation Committee, to retain jurisdiction over  
12 this issue. I guess my question is: If we were to  
13 put conditions such as Dr. Boisvert has suggested,  
14 would there not still be a venue, if somebody was  
15 aggrieved by that, to come back to SEC?

16 MR. IACOPINO: Well, depends if  
17 they -- somebody can always report a violation of a  
18 condition of a certificate, which the SEC can then  
19 determine how you want to proceed on that and invoke  
20 enforcement jurisdiction if you chose. However, it's  
21 going to depend upon what the certificate contains.  
22 If they're doing something that's not a violation of  
23 the certificate, but still people otherwise deem it  
24 to be unreasonable or having an unreasonable effect,

[DELIBERATIONS]

1           it's going to be tough for the Committee to enforce  
2           something that's not in the certificate.

3                       MR. SCOTT: I ask that question  
4           because I think, similar to Mr. Harrington, for the  
5           Committee to retain jurisdiction where there's a  
6           state agency who that's their expertise, I can't  
7           imagine a situation either where the state agency  
8           would say this makes sense and this doesn't, and  
9           we're going to do something different. So I just say  
10          that to inform the Committee.

11                      CHAIRMAN GETZ: Well, let me just ask  
12          Mr. Iacopino whether he reads this the way I think it  
13          reads. If you look at what the Committee did in  
14          Lempster was delegated authority --

15                      MR. IACOPINO: Yes.

16                      CHAIRMAN GETZ: -- and it sounds like  
17          what Counsel for the Public is basically saying don't  
18          delegate authority, retain jurisdiction with  
19          yourselves. You think -- is that a fair --

20                      MR. IACOPINO: Yeah, I think that's  
21          sort of -- he's added an extra layer over and above  
22          what we -- what this Committee did in the Lempster  
23          case. I don't recall -- and I know you have the  
24          decision there, Mr. Chairman. I don't recall a

[DELIBERATIONS]

1 specific reference to retaining jurisdiction in the  
2 Lempster docket. I don't recall such language. And  
3 as I've reported to you all earlier in these  
4 proceedings, you do have the authority to delegate to  
5 a state agency, and also to prescribe the methods and  
6 methodology and techniques that the agency may use,  
7 if you want to be that specific.

8 CHAIRMAN GETZ: I think the way I  
9 would read Lempster is that they were to continue to  
10 file reports with the Committee. But it looks like a  
11 delegation was made -- of authority was made to DHR.  
12 I don't read it with an expectation that there would  
13 be something similar to what Counsel for the Public  
14 is saying, that there would be further decisions  
15 required by the Committee.

16 MR. IACOPINO: And one other  
17 condition. You haven't spoken about this as a  
18 condition, Mr. Chairman. I'll just point out that  
19 it's in the record. It is on Page 12. It is the  
20 Applicant's response to Public Counsel's condition.  
21 And there, the Applicant suggests as a condition that  
22 they could support a condition that the Subcommittee  
23 condition the certificate on the Applicant continuing  
24 in the U.S. Army Corps of Engineers/DHR consultation

[DELIBERATIONS]

1 process. And if those agencies determined there are  
2 adverse effects on historic properties, the  
3 Subcommittee can require the Applicant to complete  
4 the mitigation measures required by the Corps of  
5 Engineers and DHR, as SEC did in the Lempster docket.  
6 So there is a -- I mean, it's not -- it's not brought  
7 out as brightly as a condition. But in their  
8 response to Counsel for the Public's condition, that  
9 is sort of a condition that they have suggested that  
10 the Committee must consider as well.

11 (Pause as Chairman reads document.)

12 CHAIRMAN GETZ: I'd ask Dr. Boisvert.  
13 Would the -- well, two things: Would what the  
14 Applicant proposes meld with the approach in  
15 Lempster, or would it be incompatible if it didn't,  
16 and would it make sense to? What's your view on  
17 that?

18 MR. BOISVERT: I looked at both, and  
19 my reaction is to go with the modification of the  
20 condition in the Lempster condition. It retains the  
21 role with DHR and to follow DHR's determinative  
22 method of studies, procedures, et cetera, which says,  
23 tilted to DHR, sort of like what we just discussed in  
24 terms of New Hampshire Fish and Game and the federal

[DELIBERATIONS]

1 Wildlife Service, where it was in consultation with.  
2 But this is different than the Section 106 process.  
3 But in a sense, it parallels our approach on that  
4 particular condition with the avian and bat  
5 situation. That would be my first preference.

6 CHAIRMAN GETZ: To go with the  
7 Lempster-type condition alone.

8 MR. BOISVERT: Yes. And in part  
9 because -- and I don't anticipate it in this  
10 situation. But, you know, belt and suspenders, as it  
11 were, that we'd still want to see consideration for  
12 mitigating the adverse effects on historic  
13 properties. We have the federal process in play.  
14 This just is the backup to it, in my mind.

15 CHAIRMAN GETZ: Mr. Steltzer.

16 MR. STELTZER: I'm just interested  
17 about following up a little bit on what Mr. Scott was  
18 bringing up about these aggrieved parties. And he  
19 talked a little bit about the negotiation that goes  
20 on. And I was wondering if you could just expand on  
21 that and whether the property owners who would be  
22 affected and have an adverse impact on their property  
23 were included in those negotiating processes.

24 MR. BOISVERT: Yes. They're known as

[DELIBERATIONS]

1 "consulting parties" in the process, and they are  
2 consulted. And even if they're not officially  
3 stepping forward, it is part of the process. DHR  
4 seeks public input from the public in general and  
5 property owners, or, say, members of a historical  
6 society which owns a historic property, not direct  
7 owners. Yes, it is part of our process, and it is  
8 part of the obligation. And in a very real-world  
9 sense, for things like historic preservation, it does  
10 not happen unless there's community support.

11 MR. STELTZER: Is there a situation  
12 where the town itself could be one of those  
13 consulting parties as well?

14 MR. BOISVERT: Yes.

15 MR. STELTZER: Okay.

16 MR. BOISVERT: And in fact, in some  
17 communities there are official structures for that.  
18 Certified Local Governments, which is a federal  
19 program. Communities are certified as to having  
20 possession -- they have within their communities  
21 historic properties, and they also have historic  
22 district commissions and appropriate measures to  
23 protect their historic properties. And they have a  
24 role to play. And in fact, they get 10 percent of

[DELIBERATIONS]

1 the federal money that is directed to each state. It  
2 has to be re-granted to the Certified Local  
3 Government. So there are very official processes if  
4 communities want to get into it. But they can be  
5 involved, regardless.

6 MR. STELTZER: And that decision is  
7 made by DHR, whether that party is participating as a  
8 consulting party or not? Or is there an appeals  
9 process to that?

10 MR. BOISVERT: For a consulting party  
11 status in a Section 106 process, they come forward  
12 and they're recognized. And, in fact, DHR cannot say  
13 you cannot be a consulting party. They're recognized  
14 by the federal agency. And it's a very liberal  
15 standard. And for archeological situations, which  
16 don't apply here, the agency is directed to contact  
17 the tribes and invite them in. And they have an  
18 explicit obligation to invite Native American  
19 commentary if there's Native American sites involved.  
20 It happens that's not the case here.

21 CHAIRMAN GETZ: Mr. Harrington.

22 MR. HARRINGTON: I guess just another  
23 informational question. Under this Section 106,  
24 again, does the DHR have mandatory involvement in

[DELIBERATIONS]

1           that? Is that required?

2                       MR. BOISVERT: Let me turn it around a  
3 little bit. It is required that the federal agency  
4 seek consultation with and comments from the state  
5 historic preservation officer. The state historic  
6 preservation officer in New Hampshire is the director  
7 of the Division of Historical Resources. Each state  
8 lodges it however they see fit. So the Division of  
9 Historical Resources is obligated to be part of the  
10 process, and that is because the federal agencies  
11 required it to get comments. And this is a program  
12 that's been in existence for quite some time. It has  
13 its own set of procedures. CFR 800 covers that. And  
14 there is a very extensive protocol to execute this  
15 process. So the short answer is yes. Not quite the  
16 way you stated it, but yes.

17                      MR. HARRINGTON: So it sounds to me,  
18 then, if this 106 process is applicable to this site,  
19 which appears it is, and will stay that way, that it  
20 gets the involvement of DHR to the same extent that  
21 some other project that wasn't -- that didn't involve  
22 106, for example, that required permitting by a New  
23 Hampshire agency. But you said earlier that they  
24 have to consult with DHR on these issues and so

1           forth.

2                               So, you know, after seeing the  
3 presentations where this 106 process results in  
4 someone finding out that some guy from the Lewis and  
5 Clark Expedition moved to Missouri and died penniless  
6 because of the earthquake, and many pounds of cheese  
7 were produced in 1862 or whatever, I think it's so  
8 extensive, I don't see the need to put on any  
9 additional requirements. Just simply say that the  
10 Applicant will complete and -- let me ask one more  
11 question. Does the 106 process, I assume, involve  
12 some approval by the federal government or some  
13 agency? You just don't go through it. In other  
14 words, at the end of the process, if the, whatever  
15 the official federal agency is, says you need to do  
16 the following five mitigations, they have to do those  
17 in order to go forward with their project?

18                           MR. BOISVERT: Yes. To back up a  
19 little bit, the short answer is yes. The federal  
20 agency is required to go through the process. If  
21 there's a dispute, the community -- the SHPO,  
22 whatever, disputes the findings of the federal  
23 agency. It is then brought before the Advisory  
24 Council on Historic Preservation, which is composed

[DELIBERATIONS]

1 of Cabinet-level individuals, the architect of the  
2 Capitol, people appointed by the President. It is  
3 the only agency in the federal government which can  
4 sue the federal government without asking permission.  
5 And they have done that in one case.

6 So it goes before them. It is a  
7 possibility, an outcome of the Section 106 process,  
8 that there can be a finding of adverse effect on a  
9 significant property, and the federal agency can say  
10 thank you for your opinion, we're going to destroy  
11 the building anyway. They can do that. That's when  
12 you appeal to the Advisory Council. It does not  
13 happen often. It is an outcome, a potential outcome.  
14 The process is designed for elaborate consultation  
15 and efforts to find solutions, and it's  
16 extraordinarily rare that it happens. But it does  
17 happen.

18 MR. HARRINGTON: Well, I guess my  
19 point --

20 CHAIRMAN GETZ: Mr. Harrington, let me  
21 just ask, is the important of your question basically  
22 that, is there a simpler way to propose a condition  
23 rather than the way it was proposed in Lempster?

24 MR. HARRINGTON: Yeah. Basically what

[DELIBERATIONS]

46

1 I'm saying, from everything I've heard about this  
2 106. That covers everything you could possibly think  
3 of. So just simply say that the Applicant must  
4 comply with the requirements of 106 and get whatever  
5 permit or do whatever mitigation is out of there and  
6 end of discussion. I don't think we need to put any  
7 other terms on there. The federal law seems to have  
8 it covered completely, independent of anything this  
9 Committee's going to do, anyways.

10 CHAIRMAN GETZ: Mr. Iacopino, do you  
11 have a view on that, whether --

12 MR. IACOPINO: I think that's  
13 essentially what your Applicant is saying as well, is  
14 that you can condition them to complete the 106  
15 process and comply with the mitigation required by  
16 the Corps of Engineers, with the consultation of DHR.

17 CHAIRMAN GETZ: So, effectively, one  
18 way of looking at it is in the Lempster case, the  
19 order went into unnecessary detail, in terms of the  
20 condition that it imposed? Or what's the best way of  
21 viewing that?

22 MR. IACOPINO: Depends what you mean  
23 when you say "unnecessary." The Subcommittee that  
24 sat on Lempster found that to be necessary, at least

[DELIBERATIONS]

1 in order to make sure that the process -- that the  
2 project did not adversely affect -- unreasonably  
3 adversely affect historic sites. I mean...

4 CHAIRMAN GETZ: Well, take off the  
5 table any kind of qualitative judgment, whether it  
6 was necessary, unnecessary. But --

7 MR. IACOPINO: Was it more than was  
8 required by statute? Probably, yes.

9 CHAIRMAN GETZ: But just as a --

10 MR. IACOPINO: More than required by  
11 existing law. I'm sorry.

12 CHAIRMAN GETZ: Greater versus lesser  
13 detail to get to the same end?

14 MR. IACOPINO: Yes, I would assume  
15 that. It eventually did reach the same end, because  
16 in Lempster they got through. They negotiated their  
17 mitigation and came to, as I understand it, a  
18 memorandum of understanding with the DHR and settled  
19 any mitigation differences that they had, which, as I  
20 understand the process, is what, even in the 106  
21 process with the Army Corps, is really what they  
22 strive for -- if there is a dispute over what the  
23 mitigation would be, there will be, for lack of a  
24 better term, a mediation type of process where Army

[DELIBERATIONS]

1 Corps, DHR, the Applicant, any other consulting  
2 parties -- and in the Lempster case, we actually had  
3 the Town of Lempster involved in that. I was  
4 actually there, as well. And we had a mediation  
5 session basically to resolve any differences. And my  
6 understanding about the 106 process is that it  
7 strives for the same sort of result, so that at the  
8 end, rather than having a hearing before an advisory  
9 council, you have an agreement amongst the parties.

10 CHAIRMAN GETZ: What I'm sensing is, I  
11 think, some agreement among the members that a  
12 Lempster-type condition with respect to historic  
13 sites may be appropriate. What we may be struggling  
14 with is what's the appropriate language. And in some  
15 respects, you know, I guess I would turn to Dr.  
16 Boisvert to make a motion. But I think, whether it's  
17 in greater detail or lesser detail, I don't have any  
18 strong preference myself, but it's more a question of  
19 what -- do you have a proposal for which way to go?

20 MR. BOISVERT: Yeah, I can make a  
21 motion with the condition. And having made that,  
22 we'll have more discussion. So whatever I would like  
23 to say will come out -- I guess, at your pleasure,  
24 should we have the discussion in more detail now

[DELIBERATIONS]

1 before I submit the condition, or would you prefer I  
2 submit the condition and then we can discuss it and  
3 carry forward?

4 MR. IACOPINO: Mr. Chairman, I don't  
5 think you need to do it in a formal motion.

6 Maybe if you could just tell the  
7 Committee what you're thinking about as a condition  
8 and then discuss that before we get into formally  
9 adopting a no-unreasonable-adverse-effect issue.

10 MR. BOISVERT: All right.  
11 Notwithstanding cutting to the chase, in doing the  
12 process, information needs to be brought forward, the  
13 Project Area Form and so forth. And Mr. Harrington  
14 made reference to a tremendous amount of detail was  
15 done and so forth. But sometimes the consultants  
16 will apply an awful lot of effort to an area which  
17 they need not do. I agree the fellow who went off on  
18 the Lewis and Clark Expedition and so forth, that was  
19 an interesting interlude. But they failed to satisfy  
20 the needs for the Project Area Form, provided a lot  
21 of one kind of information, but not necessarily what  
22 they needed for the other; hence, going through three  
23 rounds, which is why I think there needs to be a  
24 condition to make sure that the process will apply.

[DELIBERATIONS]

1           The Lempster project changed, and the  
2 memorandum of understanding had to be amended and so  
3 forth. And I believe that, you know, hypothetically,  
4 this could happen, or some other eventuality. So I  
5 would suggest that we put in a condition that they  
6 continue consultation with the DHR. There is a  
7 Section 106 process. But I believe it's important  
8 that there be the assurance of continued  
9 coordination, regardless of other federal processes.  
10 It is before the SEC, that we shall ensure there will  
11 be no unnecessary adverse effects. And we need to  
12 pay attention to that requirement for ourselves. So  
13 that's why I'm suggesting that condition.

14           As for the additional conditions  
15 suggested by the intervenors, I believe that is  
16 getting ahead of the process. Those kinds of  
17 conditions might be the outcome of getting the full  
18 information of what are the adverse effects, what  
19 properties will be adversely affected. There may be  
20 12 significant properties and districts, but only 2  
21 might be affected. We don't know which two yet. I  
22 think that specifying a certain amount of money for  
23 investment in rehabilitating a building or something  
24 like that is potentially ahead of the process,

[DELIBERATIONS]

1           although I do recognize that in Lempster there was a  
2           donation of \$10,000 to the Lempster Historical  
3           Society. But I would not want to presume at this  
4           point in time that \$75,000 investment of money -- or  
5           expenditure of money would be the appropriate  
6           mitigated measure in this instance because we haven't  
7           got that far yet.

8                         CHAIRMAN GETZ: Well, in terms of  
9           process, I suggest that we deal with the baseline  
10          condition and have a vote on that. Then we'll turn  
11          to a discussion of the Public Counsel condition and  
12          the two other conditions by the intervenor group, and  
13          then just have a -- after discussion, have an up or  
14          down vote on those three other conditions.

15                        So, any discussion about what Dr.  
16          Boisvert just had to say, in terms of the -- sounds  
17          like where he would go with the proposed condition?

18                        MR. HARRINGTON: I'm still not sure  
19          what the motion is, what exactly -- do we have a  
20          motion?

21                        CHAIRMAN GETZ: We don't have a motion  
22          yet. But I think it sounded like, Mr. Harrington, in  
23          terms of the greater versus lesser detail issue, I  
24          think that Dr. Boisvert is leaning toward more detail

[DELIBERATIONS]

1 and more similar to the Lempster condition than you  
2 were suggesting, for a condition with lesser detail.

3 Mr. Scott.

4 MR. SCOTT: I'm fine with that  
5 sentiment. I just wanted to add, also, on Page 30 of  
6 the Lempster decision, on the top -- I think this is  
7 helpful, too -- it says, "Additionally, in the event  
8 that new information or evidence of an historic site  
9 or cultural resource is found, the Applicant will  
10 report to DHR and the Committee." And I think that's  
11 helpful, too, because in the event that something's  
12 undiscovered, so to speak, it doesn't require the  
13 Committee to do anything, but it lets us be aware of  
14 that so we could elect to do something. And I think  
15 that's a good condition to have in there also.

16 MR. BOISVERT: I agree. And this is  
17 relatively standard. It's especially relevant to  
18 archeological resources. There are many situations  
19 where the work has been done in good faith, up to  
20 standards and so forth, and it just happens to be  
21 something that was missed. And it's not common.  
22 It's a low, a very low, but very predictable  
23 probability. And that is a standard inclusion that  
24 needs to be there.

[DELIBERATIONS]

1                   MR. SCOTT: And getting ahead of the  
2 discussion, I know we're going to discuss Public  
3 Counsel's request a little bit later.

4                   This to me would mean there's even  
5 less need if we can do something like that to have  
6 the Committee retain jurisdiction.

7                   CHAIRMAN GETZ: Any other discussion?  
8 Are you ready to make a motion?

9                   MR. BOISVERT: All right. So I move  
10 that the Site Evaluation Committee find that Groton  
11 Wind Park will have no unreasonable adverse effect on  
12 historic sites, subject to the following condition:  
13 that the Applicant, as a condition of this  
14 certificate, will be required to continue its  
15 consultations with the Division of Historical  
16 Resources and comply with all agreements and  
17 memorandums of understanding with that agency.  
18 Additionally, in the event that new information or  
19 evidence of a historic site or other cultural  
20 resource are found in the project area, the Applicant  
21 shall immediately report said findings to DHR and the  
22 Committee. The foregoing condition shall attach to  
23 the certificate of site and facility. The Committee  
24 hereby delegates to DHR the authority to determine

[DELIBERATIONS]

1 what methods, studies, surveys, or other techniques,  
2 practices and procedures shall be employed.

3 CHAIRMAN GETZ: We have a second? Mr.  
4 Steltzer.

5 Any further discussion? Mr.  
6 Harrington.

7 MR. HARRINGTON: Yeah. As I think  
8 people have figured out by now, I don't support this.  
9 I think it goes -- it's way overkill. We are  
10 authorizing a department authority which it doesn't  
11 have under state law, basically, by saying the  
12 Applicant must go along with what they say and  
13 memorandums of agreement and so forth and so on.

14 So I guess I'd offer an amendment to  
15 that, to the effect I'm not going to give it the  
16 vote: The Applicant shall follow and comply with the  
17 Section 106 process and any required mitigation  
18 measures. Should the DHR feel these mitigation  
19 measures will not protect historical sites from  
20 unreasonable adverse effects, they shall report this  
21 to the SEC, who will take action as necessary, and  
22 then leaving the part in that talks about reporting  
23 any new historical sites being found.

24 CHAIRMAN GETZ: Well, any other

[DELIBERATIONS]

1 discussion about that? Mr. Hood.

2 MR. HOOD: Well, I would agree that we  
3 can do something a little simpler along the lines of  
4 what Mr. Harrington said. And I think -- and Dr.  
5 Boisvert can correct me -- I think if we got  
6 something into there that just said you have to have  
7 a successful completion of the Section 106 process, I  
8 think that would cover a lot of things.

9 We do a lot of stuff with DHR at the  
10 Department of Transportation, and that's a lot of the  
11 language that's in those things. As I said, you have  
12 to have a successful completion of the Section 106  
13 process. It doesn't dictate whether it's going to  
14 be -- you know, what's going to happen, you know,  
15 good for the Applicant or bad. It just says you have  
16 to complete that process. And that's part of the  
17 work that has to be done that allows for the Advisory  
18 Council involvement if necessary. It covers all  
19 things Dr. Boisvert was talking about. It doesn't  
20 specifically talk about all the possibilities, but  
21 all the possibilities are still there.

22 CHAIRMAN GETZ: Dr. Kent.

23 DR. KENT: As a follow-up to that,  
24 that's what I was a little confused about. If we

[DELIBERATIONS]

1 complete those 106 processes, doesn't it obviate the  
2 Applicant agreeing to do what you stated in your  
3 motion to continue to talk to DHR?

4 MR. BOISVERT: It does. However, in  
5 the event that there's no Section 106 requirement,  
6 then we'd be on a different footing. Now, as I  
7 understand the amendment, it would follow the  
8 process. And I would interpret that -- and counsel  
9 can correct me if I'm wrong. I would interpret that  
10 to mean, even if there were no federal agency  
11 requirement, there are situations where Section 106  
12 requirements are applied, in terms of the only area  
13 that the Division of Historical Resources has  
14 permitting authority, and that is for archeological  
15 investigations on state and municipal property. The  
16 state archeologist must review the proposal to do the  
17 archeological work, decide if it's being done by  
18 qualified personnel, et cetera. And the federal  
19 requirement processes are applied there to a state  
20 undertaking, okay. As I understand his amendment,  
21 and what Mr. Hood is suggesting, that this process  
22 would apply even in the absence of the requirement of  
23 federal agency involvement. Now, basically using it  
24 as the template of how things will be done, there's

[DELIBERATIONS]

1 simply no federal agency. But that is how I  
2 understand your amendment. I don't know if that's  
3 the intent.

4 MR. HARRINGTON: That was my intent,  
5 because --

6 MR. BOISVERT: Okay.

7 MR. HARRINGTON: -- let me just  
8 explain why. Because the only thing I see in our law  
9 is this will not have a reasonable adverse effect on  
10 historic sites. We don't have anything to base what  
11 that means. Apparently, this process is out there  
12 and it's been used, and it more than likely will be  
13 used on this project because it's going to be  
14 required to be used. So I would say if for some  
15 reason the design changes and it's not required, use  
16 that as the basis for making the determination,  
17 because we don't have anything else to use.

18 CHAIRMAN GETZ: I guess I'm really  
19 having a tough time discerning the substantive  
20 difference between the motion and the amendment, in  
21 terms of what would actually occur. And, you know,  
22 it may be very possible I'm missing something. But I  
23 don't know if --

24 MR. HARRINGTON: Well, if you could

[DELIBERATIONS]

1 read the beginning of the motion where it talked  
2 about that the Applicant will deal with DHR with  
3 memorandums of understanding or something to that  
4 effect.

5 MR. BOISVERT: I'm reading from the  
6 conditions from the Lempster findings.

7 MR. HARRINGTON: Okay.

8 MR. BOISVERT: "The Applicant, as a  
9 condition of the certificate, will be required to  
10 continue its consultations with DHR and comply with  
11 all agreements and memos of understanding with that  
12 agency."

13 MR. HARRINGTON: I guess I'm not sure  
14 what that does. That's what --

15 CHAIRMAN GETZ: Well, I guess I  
16 took -- well, does that mean that they basically keep  
17 pursuing the 106 process, effectively?

18 MR. BOISVERT: It includes that, yes.

19 CHAIRMAN GETZ: And maybe something  
20 else.

21 MR. BOISVERT: If there's no 106  
22 process -- if the requirement to adhere to Section  
23 106 is not there, for whatever reason, then they  
24 would still need to come to the DHR.

[DELIBERATIONS]

59

1                   CHAIRMAN GETZ: But the 106 process is  
2 there because there's a requirement of a 401  
3 dredge-and-fill permit.

4                   MR. IACOPINO: Yes. But I think what  
5 Dr. Boisvert's concern is, as in Lempster, if for  
6 some reason there's a change in design, that  
7 eliminates the federal jurisdiction for the 106  
8 process.

9                   MR. BOISVERT: Or a change in the  
10 administrative opinion. The Army Corps of Engineers  
11 may decide that the permit's not needed, for whatever  
12 reason. I discovered, much to my surprise, that  
13 Boston Harbor is not a navigable corridor. According  
14 to the Army Corps of Engineers, it is not a navigable  
15 body of water because the U.S. Congress says so. And  
16 Lake Winnepesaukee is not.

17                   MR. IACOPINO: I have no legal opinion  
18 on that.

19                   MR. BOISVERT: Lake Winnepesaukee is  
20 not a navigable water for the same reason.

21                   CHAIRMAN GETZ: Nor a Great Lake.

22                   MR. BOISVERT: Well, that's not  
23 debatable.

24                   But it is -- in addition to changing

[DELIBERATIONS]

60

1 the construction design, there are other, for lack of  
2 a better word, bureaucratic situations where it might  
3 apply.

4 MR. HARRINGTON: Well, I guess what  
5 I'm trying to do is not impose, over-impose maybe the  
6 same thing redundantly. I'd be willing to say,  
7 provided that the Section 106 process still applies;  
8 if not, then we can go to Plan B. But I just think,  
9 as long as that applies, it would seem to cover  
10 everything. Plan B would be his amendment, or his  
11 original plan. But it looks to me as if this is  
12 going to apply. It seems like on the basis of having  
13 dredge-and-fill permits and all those water crossings  
14 and the various things talked about there -- and  
15 Mr. Scott maybe can voice an opinion on that -- but  
16 seems difficult for me to see how they would be able  
17 to get away from the, what is it, the nine water  
18 crossings when they're getting involved with Groton  
19 Hollow Road.

20 MR. SCOTT: I would say it probably  
21 would apply. But, again, it's not impossible that  
22 they could do something different.

23 MR. HARRINGTON: Well, maybe we could  
24 put it that way, then. Provided Section 106 applies

[DELIBERATIONS]

1 or has jurisdiction, whatever the legal word is. And  
2 then the next paragraph, if Section 106 is found not  
3 to apply, then we just use the exact words he said.

4 CHAIRMAN GETZ: But isn't that  
5 essentially what he's saying in the first instance?

6 MR. BOISVERT: That was my intent.

7 CHAIRMAN GETZ: I think that's the  
8 import of the first section, to continue its  
9 consultations with the DHR, comply with all  
10 agreements and memos of understanding with that  
11 agency, that it subsumes that 106 is in there; and if  
12 it's not, then you drop back to what you were calling  
13 the second step. I think that's --

14 MR. BOISVERT: Including the Section  
15 106 process meets the conditions. If there's no  
16 Section 106 process, this condition carries forward  
17 with a less -- probably less structured, formally  
18 structured, which may be a good thing -- a less  
19 structured approach. But that was my intent. I  
20 think that this is a similar -- I mean, I think we're  
21 in agreement in principle, but I think that this is a  
22 crisper way to do it, a more efficient way to draft  
23 the condition.

24 MR. HARRINGTON: Let me put it this

[DELIBERATIONS]

1 way: Is what you're proposing -- let's assume that  
2 the 106 provision will apply, because it seems like  
3 it will. So, assuming that is the case, is what  
4 you're proposing anything beyond what 106 would  
5 require, other than maybe the part about them finding  
6 a new something? But I --

7 MR. BOISVERT: But that's a separate  
8 thing that I think we would all agree should apply.  
9 Frame your question again, please? I want to make  
10 sure I --

11 MR. HARRINGTON: If 106 were to apply,  
12 what you're proposing, would it impose any additional  
13 requirements beyond the requirements of Section 106?

14 MR. BOISVERT: Can I ask counsel to  
15 weigh in on this?

16 MR. IACOPINO: Under Section 106, the  
17 Army Corps of Engineers is directed to consult with  
18 Division of Historical Resources. So, although under  
19 the 106 process the Applicant is -- it's a  
20 three-way -- it's like a triangle. The Applicant is  
21 consulting with both DHR and Army Corps, but Army  
22 Corps has the authority under that statute. So,  
23 again, in a way it is. I don't know what's in any  
24 agreements or memorandums of understanding that may

[DELIBERATIONS]

1 exist at this point that may go beyond something that  
2 the Applicant has already decided to do that goes  
3 beyond the 106 process. But at this point, if it's  
4 in an agreement or a memorandum of understanding,  
5 they've already agreed to do it. So I think if your  
6 concern is are we adding additional requirements on  
7 to them, nothing more than they've already agreed to.

8 MR. HARRINGTON: All right. That  
9 helps quite a bit. Thank you. Let's try it again.

10 CHAIRMAN GETZ: And consistent with  
11 what was done at a previous project that they've been  
12 involved with, if you were to adopt the Lempster --

13 MR. HARRINGTON: Yeah. Doesn't mean  
14 we can't get that --

15 CHAIRMAN GETZ: Absolutely.

16 MR. IACOPINO: Wasn't it the  
17 agreements and memorandums of understanding that was  
18 causing you some concern in --

19 MR. HARRINGTON: A little bit, yes.

20 CHAIRMAN GETZ: Okay. So then,  
21 reverting back to the original motion and the  
22 second --

23 MR. HARRINGTON: I'll withdraw my  
24 amendment.

[DELIBERATIONS]

1 CHAIRMAN GETZ: So we'll call the  
2 question. All those in favor of the motion, please  
3 signify by raising their hand.

4 (Multiple members raise hands.)

5 CHAIRMAN GETZ: All those opposed?

6 (No members raised hands.)

7 CHAIRMAN GETZ: Abstained?

8 (One member raised hand.)

9 CHAIRMAN GETZ: Okay. So the motion  
10 carries eight to zero, with one abstention.

11 All right. Let's now turn to the  
12 three other conditions. Any discussion about  
13 the conditions proposed by Public Counsel?

14 MR. HARRINGTON: I'm sorry. We're  
15 talking about the Public conditions under Historic  
16 Sites?

17 CHAIRMAN GETZ: Yes. So we're going  
18 to go through Public Counsel's condition and then the  
19 two conditions proposed by the intervenors. So, any  
20 discussion on -- well, we've had some discussions and  
21 some observation about Public Counsel, but --  
22 Mr. Scott.

23 MR. SCOTT: In that case, I guess I'm  
24 restating that I don't feel Public Counsel's request

[DELIBERATIONS]

1 or proposal to have the Committee retain jurisdiction  
2 is necessary.

3 CHAIRMAN GETZ: Any other discussion  
4 on that?

5 MR. HARRINGTON: I agree.

6 DR. KENT: I agree also.

7 CHAIRMAN GETZ: Okay. Well, then,  
8 let's -- ready for a vote on that? I guess as to the  
9 proposed condition, all those in favor of adopting  
10 the proposed condition by Counsel for the Public  
11 signify their agreement by raising their hand.

12 (No show of hands.)

13 CHAIRMAN GETZ: All those opposed?

14 (Multiple members raise hands.)

15 CHAIRMAN GETZ: It's unanimous that --

16 MR. HARRINGTON: Mr. Chairman, just so  
17 we're clear --

18 (Court Reporter interjects.)

19 CHAIRMAN GETZ: It's unanimous that  
20 the condition is denied.

21 MR. HARRINGTON: I just want to make  
22 sure what we're referencing. I mean, this is on --  
23 I'm looking at the April 5th one from Orr & Reno,  
24 Page 11, Historical Sites, Request 3.

[DELIBERATIONS]

66

1 CHAIRMAN GETZ: Yeah, which is the  
2 same as what's in Public Counsel's closing memorandum  
3 and proposed condition at --

4 MR. SCOTT: Page 10.

5 CHAIRMAN GETZ: -- at Page 10.

6 MR. HARRINGTON: Yeah, he just didn't  
7 number them, Public Counsel.

8 CHAIRMAN GETZ: Okay. So we need to  
9 address, then, the proposed conditions.

10 I've taken a look at these, and I  
11 think they're faithfully reproduced. But if everyone  
12 has the April 5th response to conditions by the  
13 Applicant, if you could turn to Page 2 and Request  
14 No. 2, that the Applicant pay all fees and hire a  
15 consultant to handle all aspects of the nomination  
16 process of any buildings deemed eligible for the  
17 National Register. Is there any discussion about  
18 that proposed condition?

19 Mr. Harrington.

20 MR. HARRINGTON: I would be opposed to  
21 this condition. I don't think it's necessary.

22 CHAIRMAN GETZ: Dr. Boisvert, did  
23 you -- I'm not sure if you addressed that condition  
24 before.

[DELIBERATIONS]

1 MR. BOISVERT: No, I did not. Would  
2 you prefer others weigh in first, or do you want  
3 my --

4 CHAIRMAN GETZ: Dr. Kent, did you have  
5 something or --

6 DR. KENT: My comment is that the  
7 condition we just approved would seem to subsume this  
8 request.

9 MR. BOISVERT: The condition that we  
10 just approved could -- it could be a mitigation  
11 measure, that the effect is a -- I won't say a  
12 comment, but it's certainly not an unknown mitigation  
13 measure to nominate properties to the National  
14 Register of Historical Places.

15 To delve into the weeds here of  
16 details, there are two statuses: Eligible for  
17 listing on the National Register and listed on the  
18 National Register. For compliance with the Section  
19 106 process, you go through the effort to mitigate  
20 the adverse effects if a property is listed or  
21 eligible for listing on the National Register.  
22 Eligibility is a shorter process that is basically  
23 concurrence between the state historic preservation  
24 officer and the federal agency. It does not require

[DELIBERATIONS]

1 concurrence by the property owner. It's just that  
2 it's eligible. It's a condition. It's a state of  
3 being, as it were.

4 The listing on the National Register  
5 does involve agreement of the property owner in most  
6 circumstances. In some districts it would not. But  
7 for our purposes, it does. And being listed on the  
8 National Register then confers upon that property  
9 eligibility for certain kinds of considerations. For  
10 instance: If a property is listed on the National  
11 Register and is an income-producing property -- say  
12 it's a country store -- then, if a person proposes to  
13 rehabilitate it, complying with proper procedures  
14 outlined by the Secretary of the Interior, they want  
15 to, you know, restore the porch that used to be  
16 there, repaint it, take off an addition that just  
17 makes it -- that is not historic, then the person can  
18 receive significant tax considerations, a 20-percent  
19 tax consideration, for that investment. It's an  
20 investment tax credit. It also makes it eligible for  
21 certain grant programs, if it's listed on the  
22 National Register of Historic Places. It does not  
23 have those potentials if it's merely eligible. So  
24 those are some distinctions.

[DELIBERATIONS]

1                   This condition goes ahead of the  
2                   Section 106 process. So, for any buildings deemed  
3                   eligible to the National Register, it could very well  
4                   be that in the process there are X-number of  
5                   properties deemed eligible for listing on the  
6                   National Register as part of these studies, but it  
7                   may be that one half one them are not going to be  
8                   adversely affected by the project. This would  
9                   require the Applicant to place on the National  
10                  Register eligible properties that were not adversely  
11                  affected, which I think may be going too far. There  
12                  are situations where listing is considered to be the  
13                  appropriate mitigative measure. But that's decided  
14                  on a case-by-case basis in consultation back and  
15                  forth between the state historic preservation officer  
16                  and the federal agency, and it would include the  
17                  property owner. For some reason, the property owner  
18                  may decide they do not want their property listed on  
19                  the National Register, for whatever reason. I  
20                  think -- and the property owner's willingness is  
21                  integrated into this condition.

22                               CHAIRMAN GETZ: Let me also just say,  
23                               then, I want to point out that these conditions are  
24                               in the intervenor group Buttolph/Lewis/Spring.

[DELIBERATIONS]

1 They're also in their Attachment A, what I've  
2 described as two historic sites-related conditions.  
3 They put it under the heading of Property Values, but  
4 I think they are somewhat related to historic sites.

5 So, is there any other discussion  
6 about this proposed condition relating to the  
7 National Register? Mr. Harrington.

8 MR. HARRINGTON: Again, I think you  
9 just explained there's a process that we're going to  
10 go through. And if through that process this becomes  
11 when one of the mitigation methods that everybody  
12 agrees is the appropriate way to handle it, that's  
13 fine. But if it doesn't, then putting this extra  
14 burden on the Applicant to pay all these fees I think  
15 is unreasonable and shouldn't be imposed.

16 CHAIRMAN GETZ: Okay. Mr. Scott.

17 MR. SCOTT: I concur. It sounds -- in  
18 my opinion, I think the best route would be to let  
19 the process happen naturally, rather than prematurely  
20 have something in there. I guess it's unnecessary.

21 CHAIRMAN GETZ: Well, let me call the  
22 question. All those in favor of adopting the  
23 proposed condition by the Buttolph/Lewis/Spring  
24 intervenor group with respect to the nomination

[DELIBERATIONS]

1 process for the National Register, signify your  
2 approval by raising your hand.

3 (No show of hands.)

4 CHAIRMAN GETZ: All those opposed?

5 (Multiple members raise hands.)

6 CHAIRMAN GETZ: I'll note that there  
7 were no votes in favor, and it's unanimous to deny  
8 the proposed condition.

9 So then we move on to the condition to  
10 pay the Town of Rumney the sum of \$75,000 for  
11 renovations to either the Rumney Historical Society  
12 or the Byron G. Merrill Library. Again, we've had  
13 some discussion on this. Any further discussion with  
14 respect to this condition?

15 MR. BOISVERT: I would have to say  
16 that I'm opposed to it because it provides no  
17 guidelines as to how it would be renovated. They  
18 could do bad things with good intentions. It's a  
19 little too loose. And secondarily, it's premature as  
20 to whether or not this would be an appropriate  
21 mitigated measure to adverse effects. And I think  
22 this is -- it could be a mitigation measure once it  
23 goes through the process, but I think at this point  
24 it's premature to specify this.

[DELIBERATIONS]

72

1 CHAIRMAN GETZ: Ready to call the  
2 question? Okay. All those who are in favor of the  
3 Buttolph/Lewis/Spring intervenor group to adopt the  
4 condition that would pay the sum of \$75,000 to the  
5 Town of Rumney, please signify your approval by  
6 raising your hand.

7 (No show of hands)

8 CHAIRMAN GETZ: All those opposed?

9 (Multiple members raise hands.)

10 CHAIRMAN GETZ: I'll note for the  
11 record that it's unanimous to deny the condition.

12 So, I think at this time Mr. Iacopino  
13 has something to say.

14 MR. IACOPINO: I would just point  
15 out -- were you about to leave historic sites?

16 CHAIRMAN GETZ: Yes. Is there  
17 something else?

18 MR. IACOPINO: Before you do that, I  
19 would just point out that in virtually every other  
20 certificate, we've included an additional certificate  
21 regarding, if during excavation, during construction,  
22 additional architectural resources are found, that  
23 they have to notify Division of Historic Resources,  
24 and for them to determine if there's a need for

[DELIBERATIONS]

1 additional study. I didn't know if Dr. Boisvert was  
2 going to suggest a condition like that or not in this  
3 case.

4 MR. BOISVERT: Yeah. I apologize for  
5 not having made that part of that. Yes, I agree that  
6 should be in there. In addition to historic  
7 resources, that would cover archeological sites and  
8 some historic structures that might have been missed  
9 for some reason, a small sugar shack out there that  
10 was the first sugar shack in New Hampshire or  
11 whatever.

12 CHAIRMAN GETZ: I think he used the  
13 language from the Lempster order that said, "In the  
14 event that new information or evidence of a historic  
15 site or other cultural resource is found, then the  
16 Applicant shall..."

17 MR. IACOPINO: No, I don't think that  
18 would cover an archeological excavation, though.

19 MR. BOISVERT: Well, it says evidence  
20 of a historic site. This jargon is a common term  
21 with an uncommon definition. In my world, "historic"  
22 means archeological, as well as a historic building,  
23 a bridge and so forth. Here it says "a historic  
24 site." It could be misconstrued to only be a

1 standing structure. I prefer the use of the term  
2 "cultural resource," which includes even things like,  
3 not applicable here, but a statue, a Civil War  
4 cannon. It's not an archeological site. It's not a  
5 structure. But it's a historic resource. A  
6 locomotive is a good example. So just amend that, if  
7 you would, to read --

8 CHAIRMAN GETZ: Well, let's try to do  
9 this -- I think informally, I think we can handle  
10 this. The language says "historic site or other  
11 cultural resource." That's what was used in  
12 Lempster. That was, I think, the language used in  
13 the condition proposed today. I think it's a fair  
14 reading of that, that's included I think in what Dr.  
15 Boisvert described initially as basically  
16 "above-ground" and "below-ground resources."

17 MR. BOISVERT: Right.

18 CHAIRMAN GETZ: So, is there any  
19 objection that the condition as it's memorialized in  
20 the order by counsel make it clear that that includes  
21 archeological resources as well?

22 (No verbal response)

23 CHAIRMAN GETZ: Hearing no objection,  
24 I'll take that to be the position of the Committee.

[DELIBERATIONS]

1 Mr. Scott.

2 MR. SCOTT: In the same sentence from  
3 Lempster, again, top of Page 30 of the Lempster  
4 condition, I just wanted to explore a little bit more  
5 with the Committee. It says, "Additionally, in the  
6 event new information is" --

7 (Court Reporter interjects.)

8 MR. SCOTT: I'm sorry. I was trying  
9 to paraphrase it. Basically, I'm asking the question  
10 about it says "are found within the project site."  
11 So is that sufficient, or do we need to modify that  
12 to say "in an area impacted by the project"?

13 MR. BOISVERT: This is, in our world,  
14 referred to as the "area of potential effect," or  
15 APE. So it is not just the footprint of where a  
16 turbine would go, but the area that might be affected  
17 by it, the road that goes up to it, in relation to  
18 settings, its visibility and so forth. So it would  
19 be the area of potential effect --

20 MR. SCOTT: And I hear you. But I  
21 would suggest that the average citizen reading this  
22 would say that's the footprint of the actual site  
23 itself. And is that what we really mean?

24 CHAIRMAN GETZ: Well, again, we can

[DELIBERATIONS]

1 address this informally, whether it's appropriate to  
2 substitute the phrase, the more technical phrase,  
3 "area of potential effect" for the nomenclature of  
4 "site" that was used in the proposed condition. Is  
5 that what you suggest?

6 MR. BOISVERT: Hmm-hmm.

7 CHAIRMAN GETZ: Okay. Dr. Boisvert  
8 agrees.

9 Does anyone object to that  
10 substitution of the technical term for the more  
11 general term?

12 (No verbal response)

13 CHAIRMAN GETZ: Seeing no objection,  
14 Mr. Iacopino, does that address the issue?

15 MR. IACOPINO: I think so. I'll list  
16 it as the "area of potential effect" in the written  
17 order.

18 And I would point out that we didn't  
19 have the benefit of having somebody from Historic  
20 Resources at the time of the Lempster decision  
21 because they weren't a statutory member of the  
22 Committee at that time.

23 CHAIRMAN GETZ: All right. I guess if  
24 there's nothing else on historic sites, I think it's

[DELIBERATIONS]

77

1 time for a recess. And then we'll turn to, when we  
2 return, to the issues related to public health and  
3 safety. So we'll take about 10 or 15 minutes.

4 (Whereupon a recess was taken at 10:41  
5 a.m. and the hearing resumed at 11:06 a.m.)

6 CHAIRMAN GETZ: Okay. We're back on  
7 the record in the deliberations in Docket 2010-01.

8 Turning to the issue of public health  
9 and safety under the statute, I think what we'll do  
10 is we'll turn, first, to Mr. Dupee.

11 And I'll note that, in terms of order  
12 of issues that are going to be treated, there's a --  
13 in the Applicant's application, Volume I, in their  
14 table of contents they list out eight different  
15 subheadings.

16 So, Mr. Dupee, were you going to  
17 follow that, beginning with ice shed? Or what order  
18 were you thinking of discussing these issues in?

19 MR. DUPEE: I was actually thinking of  
20 taking a more global response, Mr. Chairman,  
21 because -- and not so much the safety side of things,  
22 which would be the ice throws, which I view as more  
23 of a safety matter than a specific health matter. So  
24 I was going to focus my attention more on the

1           vibroacoustic disease, on the wind tunnel syndrome,  
2           those types of concerns.

3                   CHAIRMAN GETZ: Okay. And I think Mr.  
4           Hood was going to discuss some of the other issues.

5                   MR. HOOD: Right. And the noise part  
6           of it is going to be some of the things that Mr.  
7           Dupee's covers. If he covers those, I'll just kind  
8           of stick strictly to the noise --

9                           (Court Reporter interjects.)

10                   MR. DUPEE: I'll stick to the noise  
11           issues themselves and not the health part of the wind  
12           syndrome and the vibroacoustic problems.

13                   CHAIRMAN GETZ: Mr. Dupee.

14                   MR. DUPEE: Thank you, Mr. Chairman.  
15           I guess I'll note first for the record, what we are  
16           trying to evaluate here is whether or not there would  
17           be an unreasonable adverse effect under RSA 162-H:16,  
18           IV on public health. So the statutory duty is not to  
19           say there would be no effects, but could there be  
20           unreasonable adverse effects. I guess that's an  
21           important point to consider. Now, that's clear, but  
22           now we're going to move on to an area which becomes  
23           somewhat less clear, and that is noise.

24                           And we started at a very low level of

[DELIBERATIONS]

79

1 noise, which might be indistinguishable in a  
2 background for which we have no effect, feel nothing  
3 about, to maybe a greater level of noise which might  
4 strike us as being a nuisance. We can't hear around  
5 it or it disturbs our sleep or something. Maybe a  
6 greater level of noise than that, individuals might,  
7 in some instances, might feel like they're developing  
8 symptoms such as headache, tinnitus, can't sleep,  
9 which are consistent with the symptoms and signs that  
10 are ascribed to wind turbine syndrome, to higher  
11 levels of exposure, where actually the sound pressure  
12 is such that you create physical damage, rupture a  
13 eardrum, or perhaps create something known as  
14 vibroacoustic disease. So we're talking a dose  
15 response in this case to a physical event, a sound  
16 wave propagation. And we know that there is no  
17 bright line. We can't say that at a certain point  
18 that all people develop a certain symptom or sign.  
19 We can say in general ways that at certain levels  
20 most people will be affected at some level. I'll  
21 contrast that to where you might have, let's say, an  
22 allergy situation where most of the people in this  
23 room might be able to eat a peanut butter sandwich,  
24 and maybe a few of us cannot because of peanut

[DELIBERATIONS]

1 allergies. So the plan there is you sort of provide  
2 a control or a work-around for the folks who have an  
3 allergy. You don't necessarily stop the entire  
4 process, because there are offsetting public  
5 benefits.

6 So, going back now more particularly to -- I'm  
7 going to talk more to the level of the wind turbine  
8 syndrome. We heard Dr. Mazur talk about it in his  
9 Exhibits 12 and 13 -- excuse me -- 13 and 15. And he  
10 wanted to note that vibroacoustic -- excuse me --  
11 wind turbine syndrome is based upon a book prepared  
12 by a physician, Dr. Peter Pierpont, referenced by Dr.  
13 Mazur. And I want to say that, regarding that work,  
14 what that physician created, Dr. Pierpont, is  
15 something called a "case series study." The case  
16 series study occurs when a physician or other health  
17 professional studied individuals and basically  
18 records the signs and symptoms which they feel they  
19 have been afflicted with. It is meant to create  
20 patterns. Maybe you might see as a doctor a certain  
21 series of symptoms that might potentially relate to  
22 environmental exposure, in which case generates  
23 another type of study, called an epidemiological  
24 study, which is more rigorous and more in depth and

[DELIBERATIONS]

1 requires, among other things, sort of a randomization  
2 of events. So you've got individuals are exposed,  
3 and the accounting for that works out so that you  
4 have not a self-selected group of individuals, but,  
5 rather, you have a more random assignment for trials.  
6 Or if you're doing something in a survey sort of  
7 mode, you try to get individuals who might both be in  
8 the presence and not in the presence of the event you  
9 think is causing the insult.

10 In the case of the wind turbine syndrome work,  
11 it was not an epi study, an epidemiological study.  
12 It was more of a case series study, which the author  
13 acknowledges. So, from that we cannot draw an  
14 inference that, because an individual near a wind  
15 turbine spoke of having a certain health effect, that  
16 that indeed is cause and effect. Dr. Pierpont did  
17 not go to, for example, houses next door to the homes  
18 where she visited and asked those individuals whether  
19 they had tinnitus or whether they had sleep  
20 disturbances. So we really don't know -- individuals  
21 close to a wind tunnel, by only surveying certain  
22 people, we don't know and cannot predict or state  
23 with any confidence that any one effect is due to  
24 another factor in the environment.

1           Another point I want to mention is that when we  
2 do a case series study, and you sort of create an  
3 impression that there may be a need for further  
4 research, others in the field will evaluate that, and  
5 you'll find that there will be attention spent if the  
6 thinking is that there is something really here to  
7 study. And I would note that Dr. Mazur did bring his  
8 concern to the National Institutes of Health and  
9 asked them to do a study. Their response back to him  
10 was that there may be some options under climate  
11 change and that he should pursue those. But there  
12 was nothing in response by the NIH to suggest that  
13 they felt there was something here of immediate  
14 concern which required people to reach out there and  
15 do that sort of work.

16           We also know that there are several other papers  
17 submitted to us, and they also essentially are one  
18 group of researchers out of Portugal. As far as I  
19 was able to tell, there are no other groups out there  
20 who are duplicating those findings, or even  
21 supporting those findings.

22           Lastly, I'll speak about the vibroacoustic  
23 illness. We go back to the concept of dose response,  
24 that, as far as I have read, that sort of condition

[DELIBERATIONS]

1 occurs when you have really large amounts of sound  
2 pressure. So if you're working near -- a jet  
3 aircraft mechanic I think was one of the examples he  
4 gave in some of the studies, which is an entirely  
5 different exposure level to somebody exposed to sound  
6 in the low Hertz level.

7 So I guess I'd also go on to say next that we  
8 also looked for local input, even though under the  
9 statute the reason this group exists is to be able to  
10 look across and through areas and make decisions on a  
11 broader societal point. But having done that, we  
12 also pay attention closely to what individuals at the  
13 local level have to say. And I think that we  
14 actually have letters of support from the selectmen  
15 that could have either been opposed to the project or  
16 could have been neutral on the project, but they  
17 actually chose to support the project. So we have to  
18 think that, in terms of their accountability to their  
19 own population, their own citizens, that that's the  
20 choice they've chosen to make.

21 So, with that -- and I realize, Mr. Chairman,  
22 it's sort of a general overview, but I'm really  
23 talking to the health effects here rather than the  
24 safety side, which Mr. Hood will address.

[DELIBERATIONS]

1           So if you look at that, I would be willing, and  
2 I'll probably put a motion on the table that may  
3 amended, depending upon what Mr. Hood has to say. I  
4 would make a motion that this Subcommittee find the  
5 project as proposed will not have an unreasonable  
6 adverse effect on public health.

7           CHAIRMAN GETZ: Well, I think we need  
8 to be -- as it applies to any potential effects from  
9 the vibroacoustic disease? Because there may be  
10 other issues that come under the heading of Public  
11 Health and Safety. So why don't -- I'm trying to  
12 think what's the best way to structure this, because  
13 I think maybe your introductory remarks were that  
14 most of the other things, like fire protection, those  
15 other things really come under safety, and this is  
16 really the one issue that you would -- that's been  
17 laid out that comes under the subheading of Public  
18 Health.

19           MR. DUPEE: That's correct.

20           DR. KENT: Where are we going to fit  
21 noise?

22           CHAIRMAN GETZ: Well, I'm looking at  
23 this as one aspect of noise. I think that there's  
24 the effects on public health and safety from noise

[DELIBERATIONS]

1 from the turbines in two respects: One is, is there  
2 a vibroacoustic disease effect on humans; and the  
3 other is, is there more of an annoyance factor with  
4 respect to either people in residences or businesses,  
5 such as the campground. So I think that's the  
6 demarcation that --

7 MR. DUPEE: That's correct, Mr.  
8 Chairman.

9 CHAIRMAN GETZ: Mr. Hood.

10 MR. HOOD: Perhaps I could go through  
11 the noise part that I was going to talk about.  
12 There's a little bit of overlap there because I was  
13 going to mention a couple of things about the wind  
14 syndrome and some things that Dr. Mazur had  
15 mentioned, I guess some contradictory things. So  
16 maybe if you'd like, I could go through that part and  
17 touch on the noise, about the annoyance thing being  
18 at the campground and things like that, but also  
19 touch a little bit on some of the other things that  
20 Mr. Dupee talked about, and then maybe we can make a  
21 finding of no unreasonable adverse impact to noise.  
22 And if that's what everybody agrees to --

23 (Court Reporter interjects.)

24 MR. HOOD: -- and if that's what

[DELIBERATIONS]

1 everybody agrees to, and we have some agreement on  
2 both the noise from an annoyance type of view and  
3 then health effects.

4 CHAIRMAN GETZ: Yeah, why don't we get  
5 to discussion, and then if there are things that can  
6 be combined, then we can do that. If there are  
7 things that need to be separated, then we'll do that.  
8 Why don't we get the full discussion on the table  
9 first.

10 MR. HARRINGTON: This is more of a  
11 formal question. I don't know quite the name of it  
12 again, audio whatever disease you were just talking  
13 about. Is that -- now, when you're saying that  
14 there's no effect on that, is that based on the  
15 decibel levels as projected at this project? Or are  
16 you saying that the disease, either, one, doesn't  
17 exist; two, it would only exist at levels that are  
18 extremely higher than the projected noise levels for  
19 this project?

20 MR. DUPEE: Right. If you look at the  
21 three levels that I outlined, we have a nuisance  
22 level, which would be very low, and that's at -- I  
23 realize there are not necessarily slight -- sharp  
24 lines here. Next level up may be something that's

[DELIBERATIONS]

1           been described as "wind turbine syndrome," which I  
2           described as something that is a concept that is not  
3           at this moment a proven condition; and then, thirdly,  
4           you would have a level of sound pressure so great  
5           that you would physically be causing damage. And I  
6           think an example might ruptured eardrums from  
7           being --

8                         MR. HARRINGTON: So what you're  
9           eliminating as of right now, you're saying we don't  
10          have to concern ourselves with the third level.

11                        MR. DUPEE: Correct.

12                        MR. HARRINGTON: Okay. But you  
13          haven't -- but still the other two are open.

14                        MR. DUPEE: Yes.

15                        MR. HARRINGTON: Okay. Just so I get  
16          it clear. Thank you.

17                        CHAIRMAN GETZ: Mr. Hood.

18                        MR. HOOD: I might just clarify that.  
19          Mr. Tocci, who was the expert for the Counsel for the  
20          Public, stated in his testimony that sound waves  
21          propagated by turbines could affect the connective  
22          tissue of such body organs in humans as --

23                                 (Court Reporter interjects.)

24                        MR. HOOD: I'm sorry. Sound waves

[DELIBERATIONS]

1           propagated by turbines could affect the connective  
2           tissue of such body organs in humans as hearts and  
3           lungs. But then he went on to say, but he  
4           understands that it would have to be at noise levels  
5           greater than those produced by noise turbines -- or  
6           produced by wind turbines.

7                           CHAIRMAN GETZ: And was that in the  
8           context of the discussion of the employees at the  
9           Portuguese airline manufacturing facility?

10                          MR. HOOD: I'm not sure. The way it  
11           came up in the conversation, the question was asked,  
12           was he familiar with the syndrome referred to as  
13           vibroacoustic disease. And he said, yes, he was, but  
14           he understood it be something that would have to be  
15           at higher levels than what's produced by wind  
16           turbines.

17                          CHAIRMAN GETZ: All right.

18                          MR. HOOD: The issue of the noise  
19           impact on the local residents in general and on the  
20           visitors of the campground owned by Ms. Lewis  
21           specifically was vigorously disputed by the parties.  
22           Specifically, the issue of noise impact on human  
23           health was a source of contention between the parties  
24           and was extensively argued before us.

[DELIBERATIONS]

1                   The Applicant states that the  
2                   project's noise will not have an unreasonable adverse  
3                   impact on the health and safety of the residents of  
4                   the region. The worst-case sound-level assessment  
5                   demonstrated that sound levels due to wind turbine  
6                   operation will be less than 45 dBA, with most  
7                   residences having noise levels less than 40 dBA. The  
8                   Applicant implied that such sound levels should be  
9                   considered safe by the Subcommittee, since the same  
10                  sound levels received the Committee's approval for  
11                  the Lempster Wind project.

12                  In addition, the Applicant asserts  
13                  that the interconnection line, together with the  
14                  step-up voltage facility, will not have an  
15                  unreasonable adverse effect on the region, where the  
16                  worst-case sound levels from the transformer is going  
17                  to be 29 dBA, and such sound level is as low or is  
18                  lower than existing sound levels in the area from  
19                  traffic or other natural or man-made sources.

20                  The Mazur intervenors are concerned  
21                  with the wind turbine syndrome and a related illness  
22                  known as vibroacoustic disease. In addition, Mr.  
23                  Wetterer introduced a number of articles addressing  
24                  the impact of noise on human health in support of his

[DELIBERATIONS]

1 position that the noise generated by the turbines may  
2 have an adverse effect on human health. Dr. Mazur  
3 and Mr. Wetterer recognize that it is unclear whether  
4 the wind turbines may cause the wind turbine  
5 syndrome, where it is not widely recognized by the  
6 scientific community and may need further research  
7 and analysis. Dr. Mazur and Mr. Wetterer urged the  
8 Subcommittee to suspend the certification of the  
9 project until a more comprehensive scientific or  
10 medical assessment on the impact of noise generated  
11 by the wind turbines on human health is made. And as  
12 Mr. Dupee stated, the Natural Institutes of Health  
13 are not currently supporting research on wind turbine  
14 syndrome.

15 Counsel for the Public, through his  
16 expert, Mr. Tocci, acknowledged that the issues of  
17 effects of infrasound produced by the wind farms have  
18 been discussed in literature. However, according to  
19 Mr. Tocci, none of the literature was able to prove  
20 the causation between incidences of wind turbine  
21 syndrome with sound levels at the receptor locations.  
22 As to the vibroacoustic disease, Mr. Tocci agreed  
23 that it is possible that certain sound waves could  
24 affect the connective tissue of the hearts and lungs.

[DELIBERATIONS]

1           However, according to Mr. Tocci, the sound levels  
2           produced by the wind turbines do not rise to that  
3           level as previously mentioned.

4                       As to the modulated broadband sound,  
5           often described as "swooshing sound," Mr. Tocci  
6           acknowledged that it's undisputed that some low-level  
7           sound may cause annoyance and disruption of regular  
8           indoor and outdoor activities. Mr. Tocci asserts  
9           that in order to avoid such impact on health, that  
10          the project's sound levels should not exceed 40 dBA  
11          outside residential homes. Such a requirement was  
12          recommended in the World Health Organization Night  
13          Noise Guidelines for Europe. In addition, the  
14          Acoustic Ecology Institute stated that noise levels  
15          over 40 dBA would result in a dramatic increase in  
16          the proportion of people annoyed by turbine noise.

17                      In addition, Mr. Tocci recommends that  
18          a baseline sound level requirement be applied to  
19          ensure that noise generated by the wind turbines will  
20          not adversely affect public health and safety. Mr.  
21          Tocci went on to state that he would evaluate the  
22          potential sound level impact of the wind farm on the  
23          region by considering up to a 5 dBA increase over  
24          baseline sound is no impact; a 5 to 10 dBA increase

[DELIBERATIONS]

1 is a minor impact; and a greater than 10 dBA increase  
2 is a significant impact.

3 Mr. Tocci submits that the Committee  
4 should require the Applicant to apply some noise  
5 control measures where the impact is significant or,  
6 under some circumstances, the impact is minor.  
7 According to Mr. Tocci, such a two-level sound  
8 control condition will guard against modulated  
9 broadband sound and against infrasound and will  
10 guarantee that the noise generated by the facility  
11 will not have unreasonable adverse effects upon  
12 public health and safety.

13 The Applicant disputed Mr. Tocci's  
14 position that modulated broadband sound would have  
15 any effect on human health and offered a paper by Bel  
16 Acoustic Consulting, dated June 30, 2004, which, in  
17 part, states that there is no evidence to indicate  
18 that low-frequency sound or infrasound from current  
19 models of wind turbine generators should cause  
20 concern.

21 The Town of Groton has also considered  
22 the project's noise impact and has an agreement in  
23 place with the Applicant for residential noise  
24 restrictions.

1                   The Applicant also asserts that  
2 members of the public will be able to address their  
3 concerns with the impact of the project on their  
4 health and safety with the plant manager or may at  
5 any time call the Portland center.

6                   A little bit more on the effect of the  
7 noise on the local tourism industry, and Ms. Lewis's  
8 campground in particular. The Applicant asserts that  
9 it will not be adversely affected by the facility,  
10 since under the worst-case scenario the sound levels  
11 predicted by Mr. Tocci will result in noise levels at  
12 the campground to increase to approximately -- only  
13 to approximately 33 decibels.

14                  Mr. Tocci did state that at the quietest time,  
15 for one to three hours beginning at midnight, the  
16 wind farm will be frequently audible at the  
17 campground where it will generate sound exceeding the  
18 baseline by eight to nine decibels, and at all other  
19 times will be intermittently. This eight to nine  
20 decibel increase would be, in his words, "a minor  
21 impact at the campground."

22                  The Buttolph Group asserted that the noise  
23 produced by the wind farm will diminish the quiet  
24 environment of the campground for those wishing to

[DELIBERATIONS]

1 avail themselves of a quiet woodland experience, and  
2 adversely impact the business at the campground.

3 Ms. Lewis requested the Subcommittee adopt the  
4 standard established in the Deerfield project by  
5 requiring the Applicant to ensure that the noise  
6 level outside an interior bedroom and tents of the  
7 campground should not exceed 30 decibels between the  
8 hours of 10:00 p.m. and 8:00 a.m.

9 There were several conditions, I guess, put on  
10 these things. I don't know if you wanted to talk  
11 about those at this time or how you wanted to go from  
12 here.

13 CHAIRMAN GETZ: Well, why don't we  
14 just get a general discussion. You're saying there  
15 was a proposed condition by Counsel for the Public.  
16 There were -- well, I guess it had several parts may  
17 be one way of looking at it. And then we also have  
18 noise conditions proposed by intervenors. But, yeah,  
19 why don't you -- maybe it'll be good to get on the  
20 table what the proposals are for informal discussion.

21 MR. HOOD: One of the proposals that  
22 the campground folks wanted to make, they wanted the  
23 sound limited to 30 decibels between 10:00 p.m. at  
24 night and 8:00 a.m. in the morning. And I don't see

[DELIBERATIONS]

1 how that could happen, where we've already said that  
2 the noise level's going to be approximately  
3 33 decibels at the campground. So that was one of  
4 the requests. I don't think that could actually even  
5 be met. So my opinion is we would not want to impose  
6 that condition on the Applicant.

7 CHAIRMAN GETZ: Well, that would  
8 effectually say that one or more turbines in close  
9 proximity would be required to be shut down during  
10 those hours.

11 MR. HOOD: Right.

12 CHAIRMAN GETZ: Okay. Do we know how  
13 many or which ones?

14 MR. HARRINGTON: Did I miss -- maybe I  
15 misinterpreted. Were you saying that the levels at  
16 the campground without the wind project being built  
17 are 33?

18 MR. HOOD: No. The measurements that  
19 Mr. Tocci showed were that the levels at the  
20 campground would be about 24 decibels. Once the wind  
21 turbines went into effect, it would be up to about  
22 33 decibels.

23 MR. HARRINGTON: Okay.

24 MR. HOOD: And then the particular

1 Deerfield ordinance that they wanted to put in says  
2 that you couldn't have noise levels higher than 30,  
3 which we already, from at least the studies done to  
4 date, show you're not going to get less than 33 at  
5 that location.

6 MR. HARRINGTON: And just a follow-up  
7 question. There was -- in the response by the  
8 Applicant, they just seemed to dispute whether that  
9 was actually conditioned in the Deerfield request.  
10 There was nothing in the record to support this  
11 condition. The Vermont Energy --

12 (Court Reporter interjects.)

13 MR. HARRINGTON: I'll slow down here.  
14 I'll start from the beginning.

15 There is nothing in the record to  
16 support this condition. The conditions that apply to  
17 a Vermont wind energy facility are not relevant to  
18 the Groton Wind Farm. Furthermore, this is not the  
19 Deerfield Wind Farm -- wind project's permit  
20 condition. So there seems to be some dispute as to  
21 whether that's in that wind farm's permit condition  
22 or not.

23 MR. HOOD: Yeah, I wouldn't -- I guess  
24 I couldn't speak one way or the other on that. That

[DELIBERATIONS]

1 is what the Buttolph Group had stated.

2 I believe that was the crux of the  
3 conditions, except for it would seem like something  
4 for the Committee to think about was that the  
5 conditions that were put on for the Lempster project  
6 seemed to be working. There don't seem to be  
7 complaints from folks out that way. And maybe the  
8 thing to do is think about conditions of no  
9 unreasonable adverse impact on noise with making sure  
10 that the Lempster conditions were installed at the  
11 Groton Wind Farm as well. I think that's something  
12 to discuss.

13 CHAIRMAN GETZ: And the Lempster  
14 conditions that were... the 55 dBA, 300 feet from any  
15 existing occupied building?

16 MR. HOOD: Correct. Sound pressure  
17 levels shall not be exceeded for more than three  
18 minutes in any hour of the day for non-participating  
19 landowners. If the existing ambient sound pressure  
20 levels exceeds 55 dBA, the standard shall be ambient  
21 plus 5 dBA. And then the last was sound from the  
22 project immediately outside of any residence of a  
23 non-participating homeowner shall be limited to 45  
24 dBA.

[DELIBERATIONS]

1                   MR. HARRINGTON: I guess I would say,  
2                   you know, a lot of this is somewhat conjecture,  
3                   scientific conjecture as far as what the noise level  
4                   would be. People can make projections on them, and  
5                   maybe they're quite accurate. But because of things  
6                   like terrain and buildings, or lack thereof, trees,  
7                   that can vary quite a bit.

8                   So I think the Committee should  
9                   probably start out with the idea that they have to  
10                  impose some limits, and then exactly what those are  
11                  going to be and where would be the next step. I  
12                  think it would be irresponsible for us to say, for  
13                  example, based on the studies, there shouldn't be any  
14                  problem at this campground; therefore, we don't have  
15                  to impose any conditions. I think there actually has  
16                  to be some real conditions that would need to be met  
17                  by the Applicant; or, if not, they'd have to take  
18                  some mitigating actions to make sure that the levels  
19                  didn't exceed that amount.

20                  CHAIRMAN GETZ: Any other discussion?  
21                  Mr. Steltzer.

22                  MR. STELTZER: I just wanted to note,  
23                  from some of the conversations that Mr. -- or  
24                  statements that Mr. Hood had made about the baseline

[DELIBERATIONS]

1 noise of noise is 24.8 at Baker River Campground and  
2 that it would increase when the turbines are on to  
3 about 33, resulting into an 8 or 9 decibel on the  
4 filter difference. That would be the worst-case  
5 scenario, from my understanding from the testimony.  
6 And that would be in the case where the wind is  
7 blowing -- or where the receptor is downwind from the  
8 turbines itself. So there was testimony provided, as  
9 far as the windrose that was provided in Applicant's  
10 Exhibit 42, which provided the direction of the wind  
11 and where it comes from the majority of the time.  
12 And out of that information, it does show that the  
13 majority of the wind is coming from the northwest  
14 direction. As a result, the portion that Rumney, as  
15 well as the Baker River Campground area there, would  
16 be exposed to that level of sound, that would be the  
17 absolute highest that it could be, would be very,  
18 very low, just due to the fact of where is the  
19 predominant wind coming from.

20 CHAIRMAN GETZ: Mr. Dupee.

21 MR. DUPEE: Just a point. I think I  
22 know the answer to this question. But we know  
23 there's already agreement between the Applicant and  
24 the Town of Groton, which we have a signed copy

[DELIBERATIONS]

100

1           thereof. The levels of sound in that agreement are,  
2           as described by Mr. Hood, and consistent with the  
3           state ordinance and state law. So if the Committee  
4           were to find something different, would that then  
5           negate the agreement with the Town of Groton that's  
6           been signed between that party and the Applicant?

7                         MR. IACOPINO: The Committee is under  
8           no obligation to even adopt the agreement between the  
9           Town of Groton and the Applicant as a condition to a  
10          certificate. You can certainly require conditions  
11          that go above and beyond the agreement, or you could  
12          say the agreement burdens the Applicant too much in  
13          this particular area and require something less. But  
14          the final decision is up to the Committee. It's not  
15          up to the parties who make agreements between them.  
16          Each of those parties have asked the Committee to  
17          adopt that agreement as a condition to the  
18          certificate.

19                        MR. DUPEE: In other words, if the  
20          Committee does not take action, this does not apply.  
21          It's no longer --

22                        MR. IACOPINO: Right. If the Town of  
23          Groton agreement is not specifically voted on as  
24          being a condition of the certificate, it's not going

[DELIBERATIONS]

1 to be a condition of the certificate.

2 MR. DUPEE: Thank you.

3 MR. IACOPINO: That's something that  
4 would have to occur.

5 CHAIRMAN GETZ: But if there are --  
6 well, it's not -- I don't think it's likely that  
7 we'll not say something about noise.

8 MR. IACOPINO: Right. But you could  
9 say something entirely different than what their  
10 agreement says. And actually, I think what we  
11 actually did in Lempster was we actually adopted the  
12 agreement with the town and then added on additional  
13 conditions over and above pertaining to individual  
14 residences. And that was sort of the process that we  
15 used.

16 And just as a reminder, Mr. Chairman,  
17 we probably do need to go over whatever agreement --  
18 at the end, when we do go through the list of  
19 conditions, we probably need to review the various  
20 agreements that have been reached in this case  
21 amongst parties and either approve or disapprove  
22 them.

23 CHAIRMAN GETZ: Okay. Other  
24 discussion about the noise issues? Dr. Kent.

[DELIBERATIONS]

1 DR. KENT: I've looked at Lempster.  
2 I've looked at the testimony and the reporting and  
3 the wind turbine sound and health effects. I guess  
4 the easiest thing to do is to say that I don't see  
5 any evidence that we're talking about health issues.  
6 We're talking about annoyance issues. So I'll limit  
7 my remarks to that.

8 Lempster used 55 daytime, and in the  
9 initial conditions talked about 45 dBA at the school.  
10 And I guess I'm unfamiliar with what other conditions  
11 are added after that for -- the agreement with  
12 Groton -- or between Groton and the Applicant, if I  
13 get to the right place, I'm pretty happy with the two  
14 conditions: Residential noise restrictions, 55 dBA,  
15 measured 300 feet, post-construction noise  
16 measurements.

17 I would throw out for the Committee's  
18 consideration that the only thing missing is the  
19 nighttime, particularly since we have a potentially  
20 sensitive receptor in this case. The World Health  
21 Organization and the EPA have both come out pretty  
22 much around 55 dBA during the daytime and 45 dBA at  
23 night to allow people to sleep. And I would  
24 recommend that, or at least put forward for the

[DELIBERATIONS]

103

1 Committee's consideration that the Town of Groton's  
2 noise restrictions are appropriate if we amend them  
3 to include a 45 dBA for the nighttime, which still  
4 should not burden the Applicant, since we're looking  
5 at less than that at the receptors, anyways.

6 MR. HARRINGTON: Follow-up question?

7 CHAIRMAN GETZ: Mr. Harrington.

8 MR. HARRINGTON: I don't have the  
9 Lempster one in front of me. But wasn't there some  
10 condition in there where we said something at the  
11 edge of a property and then something at the  
12 actual -- right outside or adjoining residence?

13 MR. SCOTT: That's correct.

14 MR. HARRINGTON: I thought we had it  
15 at so much at the property edge of 300 feet from the  
16 residence and then immediately outside the residence  
17 there was a different level.

18 MR. HOOD: If I could?

19 MR. HARRINGTON: Sure.

20 MR. HOOD: What it seems to say is  
21 audible sound from the project shall not exceed 55  
22 dBA measured at 300 feet from any existing occupied  
23 building or at the property line, if the property  
24 line is less than 300 feet from an existing occupied

[DELIBERATIONS]

1 building for non-participating landowners.

2 MR. HARRINGTON: That's the Lempster.

3 MR. HOOD: Yeah.

4 MR. HARRINGTON: Wasn't there another  
5 provision where it was -- I thought there was a  
6 second provision just outside of the -- maybe I'm  
7 wrong -- but just outside the buildings. Maybe it  
8 was just a second nighttime one.

9 DR. KENT: There was a 45 dBA for the  
10 school.

11 MR. HOOD: And it says, "Sound from  
12 the project immediately outside of any residence of a  
13 non-participating homeowner shall be limited to 45  
14 dBA."

15 MR. HARRINGTON: That's what I'm  
16 referring to, yeah. And was that day and night? Was  
17 that --

18 MR. HOOD: It didn't specify.

19 MR. HARRINGTON: So, immediately  
20 outside. All right. But that would seem to be -- I  
21 don't see why those things wouldn't be appropriate  
22 here. Maybe the only difference there was that we  
23 also -- there was talk of mitigation methods if they  
24 were exceeded, some of which would not be appropriate

[DELIBERATIONS]

1 or not -- just couldn't do, as Dr. Kent talked about,  
2 because of the sensitive area, the campground. I  
3 mean, it's pretty hard to put storm windows up on a  
4 tent to cut down on the noise level. So I think  
5 that's, you know, something we have to look at. But  
6 if the Applicant's expert says they're not going to  
7 exceed that, that's a risk they'll just have to take.

8 MR. HOOD: I think it was also Counsel  
9 for the Public's legal -- or expert witness that said  
10 that he used data from the Epsilon study that said  
11 that those noise levels would be 33 decibels. So it  
12 was also Counsel for the Public's expert that said  
13 that as well.

14 CHAIRMAN GETZ: Mr. Scott.

15 MR. SCOTT: In reference to Mr.  
16 Harrington's comments, obviously, you're right for  
17 Lempster. We did focus on soundproofing houses as a  
18 potential. But again, I'll state the obvious. Also  
19 during Lempster, we also talked about there is a  
20 potential, whether it's the facility feathering the  
21 blades or -- but the facility itself can do  
22 adjustments to impact their sound impact also.

23 So my guess is, for the campground,  
24 should it get to that, I agree. Those levels of

[DELIBERATIONS]

1 sound -- and it sounds like it won't -- those would  
2 most likely be the type of thing we'd be talking  
3 about.

4 MR. HARRINGTON: The only other thing  
5 I'd put out for consideration, and I'm still thinking  
6 on this, but the campground presents kind of a  
7 different thing to me, because the mitigation methods  
8 are a lot different. And you also have to start  
9 dealing with it's a business. And the fact is, if  
10 people get annoyed there even a slight amount -- if  
11 it was in your house you might say, well, I'll turn  
12 the radio up a little bit for a little bit of time  
13 when this is bothering me or whatever. If you're in  
14 a campground and you have any type of annoyance from  
15 noise at night, whether it be from the windmill or  
16 from people partying or whatever, you're just going  
17 to say, well, I won't go back to that campground  
18 again. So I'm just wondering if we need to maybe  
19 even consider a lower standard for that, because you  
20 do have people sleeping outside at night in tents,  
21 and the potential for effect is a lot higher, and the  
22 ability for those people to simply go away is a lot  
23 easier. They just won't go back, and then the  
24 business could suffer, you know, could go out of

[DELIBERATIONS]

1 business from it.

2 CHAIRMAN GETZ: Let me try to talk  
3 about, I guess what I think is the range of our  
4 options, because I think part of this may go to what  
5 Mr. Steltzer spoke to and, I think in the first  
6 instance, trying to look in a predictive way of where  
7 the noise effects are going to be and how often. And  
8 I think what -- and correct me if I'm wrong, Mr.  
9 Steltzer -- but you were pointing to the windrose  
10 evidence suggests that in the direction of the Baker  
11 River Campground, in that area of the town, the  
12 likelihood of the wind effects occurring is a small  
13 percentage of the time, given the normal wind  
14 direction; is that fair?

15 MR. STELTZER: That's fair. You know,  
16 from my understanding of looking at the data, that 8-  
17 or 9-degree decibel difference, which is the maximum,  
18 would be a very, very small proportion of the time to  
19 the project. Could there be a lower level of sound  
20 to that site, to the campground itself at times?  
21 Yes. But based off of the windrose data, it is still  
22 predominantly coming from the northwest, so it  
23 wouldn't have as dramatic an effect on the property.

24 CHAIRMAN GETZ: Because I think that

[DELIBERATIONS]

1 goes to the options we can pursue. I mean, I think  
2 it depends on the facts of the situation. I mean,  
3 are there, for instance, one or two or more turbines  
4 that the predominant wind directions are going to be  
5 such that there will be this problem a large  
6 percentage of the time? And, you know, that may lead  
7 you to one conclusion, that maybe you don't grant  
8 permission to build a particular turbine or more. On  
9 the other hand, if it's the situation that the data  
10 suggests, that it's the less likely set of  
11 circumstances that the wind would be blowing in the  
12 direction of these receptors, maybe you adopt a  
13 different approach in terms of permitting the  
14 turbines to be built, which I think is similar to  
15 what happened in Lempster, but setting a standard --  
16 trying to set a reasonable standard, and to the  
17 extent that over time you study the issue. And if  
18 the standard is violated, then you require some  
19 mitigation, which could be a variety of things,  
20 including, I guess the most obvious situation here,  
21 the Baker River Campground, maybe the condition is  
22 that, if the standard is violated, that between some  
23 nighttime hours during, apparently it would be the  
24 summer months when the campground is in operation,

[DELIBERATIONS]

1 that the one or more turbines that are causing the  
2 problem wouldn't be allowed to be operated.

3 So I think that's at least a couple of  
4 ways of approaching the issue, in terms of what's the  
5 analysis. I don't know if there's other options we  
6 have or that occurred to anyone or -- I think that's  
7 somewhat consistent with what we did in Lempster.

8 But I guess we still have the issue of  
9 what's the right decibel level. And what we've done  
10 in the past -- you know, and what distinguishes it  
11 here is it's tents, not homes. It's a business that  
12 relies on that. So I don't know. I just think we  
13 need more discussion about if that implies a  
14 different level or how you would come to that level  
15 or what, but... any other thoughts about that? Dr.  
16 Kent.

17 DR. KENT: Yeah. I think there is  
18 something we need to clarify here. CTA, which turns  
19 out to be Cavanaugh & Tocci Associates -- it's not an  
20 independent organization, umbrella organization  
21 figuring this out. Cavanaugh & Tocci, Public  
22 Counsel's expert, proposed a baseline sound level  
23 above which we have an impact. So if you go above  
24 the baseline by 5 dBA, you should have no impact. If

[DELIBERATIONS]

110

1           you go 10, you have minor impact; greater than 10,  
2           you have significant impact. But it doesn't -- that  
3           categorization doesn't address the issue of if we're  
4           above a certain threshold or not. And what I mean by  
5           that is, the World Health Organization, EPA -- and I  
6           should read that so it's clear to everybody. Forgive  
7           me. I've got about 12 windows open here.

8                         This is the World Health Organization:  
9           "At night, sound levels at the outside facades of the  
10          living spaces should not exceed an Leq of 45 dBA, so  
11          that people may sleep with bedroom windows open. The  
12          EPA opposes" -- let's see. They have a 55 daytime  
13          outdoors, and then they impose a 10 dBA penalty. So  
14          they're talking about 45 dBA for sound levels at  
15          night. This level will permit normal speech  
16          communication and would also protect against sleep  
17          interference inside a home with the windows open. So  
18          these two larger organizations have settled on 45.

19                        Now, it's not clear whether Mr. Tocci  
20          meant his scale to apply regardless of ambient sound  
21          levels, or once we've exceeded a certain threshold,  
22          like 45. And it's pertinent, because when we're  
23          talking about the campground, we're talking about  
24          33 decibels. Does it matter that we went from 33 to

[DELIBERATIONS]

111

1 34, or 33 to 41 or 2? Or does it not matter because  
2 we're still below the 45 recommended by these larger  
3 umbrella organizations who have looked at the  
4 annoyance factor for people who are trying to sleep  
5 with windows open, basically a tent. I read that to  
6 be, if I'm below 45, I'm not expecting annoyance for  
7 people trying to sleep with their windows open, and  
8 maybe loosely extrapolating that to a ten. And then  
9 automatically having an increase when we're starting  
10 with such a low background, I haven't seen any  
11 information that says we're going to create that  
12 annoyance.

13 CHAIRMAN GETZ: Mr. Steltzer.

14 MR. STELTZER: I think how I'm  
15 understanding what you're saying is that, so long as  
16 it's underneath 45, there isn't an annoyance? Or are  
17 you saying -- and this is what I think you're  
18 saying -- is that it depends on what the baseline  
19 actually is? So if the baseline is at, say, at 20  
20 dBA, and you're increasing it to 40 dBA, the  
21 likelihood of having a greater annoyance by that 20,  
22 you know, decibel difference is greater, but it would  
23 still be underneath the 45.

24 DR. KENT: I'm actually asking the

1 question because I haven't seen testimony or data in  
2 any of the supplemental papers provided to us that  
3 answers that question. I don't know with any  
4 certainty the answer to that question, if I have to  
5 care about changes below 45, or I should only start  
6 to care about changes in decibels of 45 onward. I  
7 was hoping somebody else had seen something to  
8 support it.

9 MR. HARRINGTON: So if I have it  
10 straight, what you're talking about is linear, no  
11 threshold situation, where it doesn't really make any  
12 difference how low it is, we're only interested in  
13 the delta? Or is there a threshold point, where once  
14 you get below a certain point, raising it up, as long  
15 as you stay below that threshold it does not create  
16 any problems?

17 DR. KENT: Exactly. And in  
18 retrospect, I wish I had asked Mr. Tocci that: When  
19 he created the scale, if the scale starts from zero  
20 decibels or it starts at some other point, and what  
21 the relevance would be to the campground  
22 measurements.

23 CHAIRMAN GETZ: Mr. Perry.

24 MR. PERRY: One thing that occurs to

[DELIBERATIONS]

113

1 me, too, is maybe an assumption was made that those  
2 who are using the campground have been there long  
3 enough to adjust to a 24 dBA background, as opposed  
4 to where they came from, which their general  
5 background noise level would have been much higher  
6 than 24. So I think it becomes a relative matter as  
7 far as a 5 to 10 to more change based on what you're  
8 used to. I mean, the first night at a campground,  
9 I'm not sure that you'd notice, you know, that  
10 change. So I guess I'm more supportive of going with  
11 these established set ranges of 45 at night and 55  
12 during the day than to say, well, if it's 24 as an  
13 established background, and then you add 10 to that,  
14 and anything above 10 would be too excessive. It's  
15 just not clicking with me, taking that approach.

16 CHAIRMAN GETZ: Other discussion?

17 Mr. Scott.

18 MR. SCOTT: I think, again, I look at  
19 the Lempster condition. I think it's on Page 42. I  
20 agree there's -- we need to come to a conclusion on  
21 55, 45, or, as Public Counsel's requested, I think,  
22 40. But when I look at the Lempster restrictions,  
23 they also account for when measurements are taken for  
24 the background -- and I believe that means

[DELIBERATIONS]

114

1 independent of the wind farm -- levels exceed these.  
2 Clearly, you have to take into account what the cause  
3 is. And so their conditions -- for instance, they  
4 say if the existing ambient sound pressure exceeds,  
5 that the standard shall be ambient plus 5 dBA. So I  
6 would be more comfortable with that type of language,  
7 I think, taking into account that there could be  
8 external sources independent of the wind farm. And I  
9 think what we did at Lempster was a little bit more  
10 thorough in that respect. So I just wanted to  
11 interject that.

12 CHAIRMAN GETZ: And it appears, as  
13 well, that the -- is this the -- the Town of Groton  
14 agreement seems to use the residential noise  
15 restrictions from the Lempster order just for a point  
16 of reference.

17 DR. KENT: Yeah, that's a good point.  
18 And I think I was sloppy with my language.

19 How we discern between other noises  
20 and the project in Lempster is to talk about audible  
21 sound from a project, to distinguish it from trucks  
22 rolling by or anything else. I think that's  
23 important clarifying language to put in if we had an  
24 amendment, say, to the Groton agreement.

[DELIBERATIONS]

1                   CHAIRMAN GETZ: The point being that  
2                   you establish a metric, whatever it is. If the  
3                   metric is violated, in effect, by nature, by ambient,  
4                   whatever is going on, then you have a delta above  
5                   that ambient that would also trigger some enforcement  
6                   of some sort. Is that the way you would see it?

7                   DR. KENT: So you're saying no matter  
8                   what the background is? Is that what you're  
9                   proposing?

10                  MR. SCOTT: I'm just saying, as we did  
11                  in Lempster -- and you're correct in the agreement  
12                  with Groton. The language is somewhat in there. We  
13                  just need to take that into account, I think, in  
14                  order to be -- clearly, the end result needs to be  
15                  we're talking about noise impact from the project and  
16                  not from other things.

17                  DR. KENT: Right. And then if I  
18                  could, just for clarification. For example: It says  
19                  audible sound from the project at the Goshen/Lempster  
20                  School shall not exceed 45 dBA. So we're talking  
21                  about what we could measure from a -- estimate from a  
22                  project.

23                  MR. SCOTT: Right. But then it goes  
24                  on to say, as you know, if the ambient pressure -- so

[DELIBERATIONS]

1 if the ambient levels were above that --

2 DR. KENT: Right. Above that, above  
3 the 45. Right. I think we're on the same page.  
4 Thanks.

5 CHAIRMAN GETZ: So, in terms of  
6 approach, what happened in Lempster, where there was  
7 a general metric set with respect to residences, and  
8 there was a specific, more restrictive standard set  
9 with respect to the school, we could consider whether  
10 to kind of replicate that here and substitute the  
11 campground for the school.

12 Now, it still raises the issue that  
13 Mr. Harrington raised, whether it should be a lower  
14 number. I think what Dr. Kent has pointed out is the  
15 World Health Organization's number right outside a  
16 home with an open window and whether that should  
17 substitute for the campground, as opposed to the  
18 other general residential metric which is 55 dBA,  
19 300 feet from the house, depending on what the  
20 property line is. So you have -- which I think a lot  
21 of the discussion in the Lempster case was, well,  
22 maybe 55 dBA, 300 feet from the house, by the time it  
23 gets to the house, you know, it's like a lower  
24 number, whatever that number might be. So whether

[DELIBERATIONS]

117

1 it's above or below 45, I don't know.

2 MR. HARRINGTON: Mr. Chairman, do we  
3 have the -- I know we have Mr. Tocci's estimate that  
4 the levels will only exceed 33 decibels at the  
5 campground. Do we have the Applicant's? Anyone have  
6 that handy? Did they put out a figure?

7 MR. HOOD: I don't believe they did  
8 one at the campground. Counsel for the Public's  
9 expert kind of extrapolated and took some information  
10 from the Applicant's noise expert, and using his, I  
11 guess expertise, determined what that level would be  
12 at the campground, which was 33 decibels.

13 DR. KENT: Actually did measurements.  
14 This was his first testimony. And then he actually  
15 went out and measured in October, I believe.

16 MR. HOOD: That's when he --

17 DR. KENT: Tocci measured in  
18 October --

19 (Court Reporter interjects.)

20 DR. KENT: And then in October Mr.  
21 Tocci went out and made his own measurements and came  
22 back to us with amended numbers, revised numbers.

23 MR. HOOD: And what he took was the  
24 existing noise levels out there, and then he came up

[DELIBERATIONS]

1 with what would happen with wind turbines operating  
2 would at the 33-decibel number.

3 MR. IACOPINO: And Mr. Chairman, can I  
4 just clarify? I think it's 36 to 38 that Mr. Tocci  
5 came up with. If you look at his testimony from  
6 October 22nd, Counsel for the Public Exhibit No. 2,  
7 Page 11, he has his chart there. He's got total wind  
8 farm plus baseline, 36 to 38.

9 MR. HOOD: And then I think it was  
10 pointed out by the Applicant's consultant that he had  
11 done some kind of calculations wrong, and he redid  
12 that to come up with the 32 to 33. And with the wind  
13 farm and the baseline, it was going to be 33 or 34.  
14 And he went down -- and that's how he got down  
15 underneath. He had called that "a significant  
16 impact" when he originally did his numbers. And then  
17 after it was pointed out that he had some problems  
18 with what he had calculated for numbers, he got down  
19 to that 8 to 9 decibels, which made it the minor  
20 impact. He had 12 to 13 when he did his original  
21 numbers.

22 DR. KENT: Mike, that's the 31st of  
23 March, 2011, supplemental testimony.

24 MR. IACOPINO: March 31 supplemental?

[DELIBERATIONS]

119

1 DR. KENT: That's what I have. Oh,  
2 this is from the Attorney General. Wait a minute.  
3 Let me -- yeah, that's right. And actually, the  
4 addendum itself is November 12th of 2010. My copy  
5 actually has draft changes on it. Does yours?

6 MR. HOOD: Yeah.

7 MR. IACOPINO: I'm going to have to  
8 get that from you. I want to make sure I have it  
9 exactly when I have to write the order.

10 DR. KENT: Do you have a hard copy?

11 MR. HOOD: Yeah.

12 MR. IACOPINO: I'll just get that from  
13 you afterwards. It's more important that you all  
14 discuss this. I just want to make sure I have the  
15 resources to write down whatever you decide.

16 CHAIRMAN GETZ: So, in terms of what  
17 the metric is, I think we have to, I guess -- going  
18 from low to high, the intervenors suggest 30 dBA.  
19 And it's not clear to me whether that's at the edge  
20 of the property or right at the edge of a tent and/or  
21 house. And then we have what was done in -- and then  
22 I believe Counsel for the Public is saying 40 dBA.  
23 And we have 45 dBA and 55 dBA, which is what was used  
24 in the Lempster, which I guess could be replicated

[DELIBERATIONS]

120

1 here, effectively making two categories. Is that the  
2 range of the proposed options?

3 MR. BOISVERT: It says 30 dBA as  
4 measured in home bedrooms.

5 CHAIRMAN GETZ: Okay. Thank you.

6 MR. BOISVERT: For the intervenor.

7 CHAIRMAN GETZ: Mr. Steltzer.

8 MR. STELTZER: Added to that, I think  
9 we need a -- I think from -- if I'm remembering right  
10 from what I read there, there was a condition,  
11 though, that if the baseline was already exceeding 30  
12 dBA, and then you would have some sort of deviation  
13 from that. And I guess I'm just raising up that  
14 question because there's a number of sites here that  
15 are already over 30 dBA by their baseline, and the  
16 incremental difference isn't all that much. So, how  
17 to handle those situations.

18 And then I have a second point to that  
19 to make it a little more complicated, too.

20 CHAIRMAN GETZ: Go for it.

21 MR. STELTZER: Should we handle it  
22 differently for different seasons, recognizing that  
23 people aren't necessarily camping during the  
24 wintertime and people don't necessarily have their

[DELIBERATIONS]

121

1 windows open during the wintertime? And so, as a  
2 result, should it be a different scale for when the  
3 use might be higher, specifically the campground?

4 CHAIRMAN GETZ: Well, yeah, I mean,  
5 you can approach that a couple different ways, where  
6 you set different standards by season, or that when  
7 you fashion a potential condition, that such a  
8 condition would only apply if the standard was met.  
9 It may probably be during the summer hours or  
10 whatever.

11 So, effectively, I guess you would end  
12 up at the same place, just a question of how you  
13 would phrase it. But I think that's -- the real  
14 issue here, with respect to the campground, is when  
15 they're in their normal operating hours, if there's  
16 some problem.

17 MR. STELTZER: And I think the concept  
18 of at least doing it on a seasonal basis only really  
19 comes into play in one of two situations: One, where  
20 the absolute value of the dBA is low enough that it  
21 could be exceeded; or two, where the difference in  
22 the ambient decibels is low enough as well. For  
23 example: If you had 45-decibel as an absolute, we  
24 don't need to worry about seasons because, based off

[DELIBERATIONS]

122

1 of both parties' expert witnesses, it won't exceed  
2 that. But if we start to consider lower absolute  
3 values, around the 30 dBA, then I think -- or if we  
4 start to think about a smaller delta difference in  
5 ambient levels, such as 5 dBA, that's where we might  
6 want to consider some sort of seasonality to it.

7 CHAIRMAN GETZ: Dr. Kent.

8 DR. KENT: I thought Ms. Lewis  
9 testified that she does have campers in the winter.  
10 But I haven't had a chance to verify that.

11 And I think there's one more thing we  
12 probably should throw in the mix. We have an  
13 operating facility in Lempster which has 55 and 45.  
14 And my understanding is that there's no complaints.  
15 One? That was a hearing aid? One complaint, and  
16 that was a hearing aid problem. So other than the  
17 hearing aid problem, we didn't have any complaints.  
18 And we shouldn't ignore empirical information in the  
19 wrestling of this.

20 CHAIRMAN GETZ: Mr. Harrington.

21 MR. HARRINGTON: Well, let me -- one  
22 thing on what Dr. Kent's said. When you camp in the  
23 winter, you always wear a hat. So that helps, too.  
24 And usually your sleeping bag over your head.

[DELIBERATIONS]

123

1                   In the Lempster one, it talks about  
2 greater than 45, or 5 dBA above the ambient sound  
3 level. And it appears, if we were to impose that  
4 here -- maybe I'm missing -- getting this wrong, but  
5 I thought the level at the campground was 24 and go  
6 to 33? So it would exceed that, at least based on  
7 the estimates; is that correct? Do I have that  
8 right? The background at the campground was 24, and  
9 it would be estimated, with the wind turbines going,  
10 go up to 33. So that would be great -- that would  
11 exceed what we imposed at Lempster outside of a  
12 residence, which said the greater of -- no. Okay.  
13 It's the greater of 45, or 5 dBA above the ambient.  
14 So it's got to be above 45. All right. Okay. I was  
15 reading it backwards. Okay.

16                   CHAIRMAN GETZ: Mr. Scott.

17                   MR. SCOTT: You've already alluded to  
18 it, Mr. Chairman, but I'm inclined that we do treat,  
19 much like we did the school at Lempster, we treat the  
20 campground to a little bit different capacity, a  
21 different standard. As we mentioned, it's not a  
22 residence, it's not a permanent structure. I'm not  
23 really compelled myself to looking to get seasonality  
24 involved. But I do think there is a case to be made

[DELIBERATIONS]

124

1 that the campground ought to be -- we ought to be  
2 looking at a different level than necessarily  
3 residences for the campground. And I'm inclined that  
4 the same levels we used for Lempster, we just replace  
5 where we talk about the school, we talk about the  
6 campground in that case.

7 CHAIRMAN GETZ: Mr. Perry.

8 MR. PERRY: Just this difference  
9 between the 45 and the 40. I mean, we heard  
10 testimony that a 5-dBA change would be essentially  
11 not noticed. So, a 40 or 45 would certainly be the  
12 same. If you went 40, then you could go down to 35  
13 and not notice a difference. The way I'm  
14 understanding this, if there's not a 5-decibel  
15 change, it's not really noticeable.

16 MR. HOOD: No. It's a -- a 5-decibel  
17 change is definitely noticeable. A 3-decibel change  
18 is just about where the human ear would start to pick  
19 up something. So three decibels is just barely, and  
20 5 is definitely you hear it. And then if you got a  
21 10-decibel increase or decrease, it's like doubling  
22 or halving of the noise.

23 MR. PERRY: Okay. Thank you.

24 CHAIRMAN GETZ: Well, in terms of how

[DELIBERATIONS]

125

1 we proceed with -- we're going to have to look at  
2 pieces of all of these things that come under Public  
3 Health and Safety. I think maybe if we can -- I  
4 would suggest we try to see if there's a consensus  
5 about what the condition with respect to noise should  
6 be, and if we have some agreement on that, then move  
7 on to the other areas that come under the generalized  
8 topic of public health and safety. And then at the  
9 end, depending on what other conditions may or may  
10 not apply in each of the subcategories, then we would  
11 entertain an overall motion about public health and  
12 safety, subject to whatever conditions might come up.

13 And so, for purposes of where we are  
14 right now on the noise issues, I just want to see if  
15 we can come to an agreement, without a vote  
16 necessarily, on what the conditions should be. And I  
17 think one thing on the table, I guess, as  
18 characterized by Mr. Scott, is apply the Lempster  
19 noise conditions, but effectively substituting the  
20 campground for the school. Does that --

21 MR. SCOTT: That's correct.

22 CHAIRMAN GETZ: -- characterize it?  
23 Does anybody have any thoughts, pro or con on that?

24 MR. BOISVERT: I can see treating

[DELIBERATIONS]

126

1 the -- I can see treating the campground different  
2 than a residence because of the different sleeping  
3 circumstances, the fact that people will elect to go  
4 to a campground or not, depending upon the conditions  
5 there, which would include noise. So having a  
6 separate consideration for the campground I think is  
7 appropriate. However, comparing it to the school I  
8 think is quite different because the school is only  
9 operating during the day, and the issue of the noise  
10 is will it affect construction and so forth, which is  
11 quite different than sleeping. So, to treat it  
12 differently than the residences, I agree. To treat  
13 it the same as the school, I don't see the parallel.

14 CHAIRMAN GETZ: In treating it -- in  
15 giving it a different metric at all or in -- are you  
16 suggesting that it might be a more restrictive metric  
17 for the -- a lower dBA standard for the campground as  
18 compared to the school? I'm trying to follow  
19 where -- what would be the ramifications of what  
20 you're saying.

21 MR. BOISVERT: Okay. Working off the  
22 logic that the school was treated differently than  
23 residences because of its particular function in  
24 Lempster, that there needed to be special

[DELIBERATIONS]

127

1 consideration for the school because it was a school  
2 and not a residence, that is the logic, as I  
3 understand it. I could -- I can understand that you  
4 would treat a commercial campground which relies upon  
5 return business and so forth, word-of-mouth  
6 advertising, as qualifying for a different standard  
7 than a residence, where you could insulate it for  
8 sound, et cetera. So I agree that we can treat the  
9 campground differently than the residences. Having  
10 said that, though, the conditions -- the reasons why  
11 the campground ought to be different are different  
12 than the reasons why the school would be treated  
13 different. Does that logic ring?

14 CHAIRMAN GETZ: I think that's -- you  
15 know, I think that's fair in explaining why you're  
16 treating them differently. And I think you've kind  
17 of laid it out what's the difference between the  
18 school and the campground, I guess. But then, where  
19 do you -- wait, wait, wait -- what would you -- what  
20 metric would you use? Is it the same metric but just  
21 a different rationale to get there?

22 MR. BOISVERT: It might be. And this  
23 is where I am uncertain as to how I would proceed.  
24 This is a real challenge for me to resolve. What

[DELIBERATIONS]

128

1 would be an appropriate treatment? What would be the  
2 kind of condition that this Committee can recommend  
3 or impose? I don't have a number to give you. I'm  
4 just agreeing with you so far as to say it's  
5 legitimate to consider it on its own merits and that  
6 commercial campgrounds are different than residences.  
7 But to say let's treat it like the school in  
8 Lempster, the categorical differences between a  
9 school, a public school and a commercial campground,  
10 and the times at which you are concerned about quiet,  
11 the noise, I mean, they're literally night and day.

12 CHAIRMAN GETZ: Sure.

13 Mr. Harrington.

14 MR. HARRINGTON: As far as Lempster, I  
15 guess the school, we don't really define where at the  
16 school. It just says audible sound from the wind  
17 park at the Goshen Lempster School shall not exceed  
18 45 dBA. If the ambient sound pressure level at the  
19 school exceeds 45 dBA at the school, the standard  
20 shall be the ambient plus 5 dBA, which is sort of the  
21 same thing we're imposing on the immediate outside of  
22 the residence. So I guess this must mean anywhere on  
23 the school property, including the playground and  
24 stuff like that.

[DELIBERATIONS]

129

1           But I would agree with what you just  
2           said. We're talking about trying to allow people to  
3           sleep. So it may be -- the idea is good. I agree  
4           with the concept that we should look at the  
5           campground differently. But to just blanketly shift  
6           over to what we did at the school may or may not be  
7           appropriate. But certainly, just because we did it  
8           separately, we should evaluate that number and see if  
9           it makes sense. Maybe the 45 in this case would  
10          be -- if we apply it the same way as the school,  
11          you'd be applying it at the edge of the campground  
12          property, for example, as compared to the 55 that  
13          we're talking about 300 feet away from people's  
14          houses. It's a different set of circumstances.  
15          Plus, I don't know how close the tents are to the  
16          edge of the property and all that other stuff. So it  
17          makes it a little more complicated.

18                   CHAIRMAN GETZ: Sure. Other --  
19                   Mr. Steltzer.

20                   MR. STELTZER: What I'm trying to  
21          figure out, too, is with the -- Dr. Kent, maybe if  
22          you still have it on your computer there, the World  
23          Health Organization, their 45-decibel level during  
24          nighttime, that's measured outside the property, the

[DELIBERATIONS]

1 outside of the walls.

2 Where I'm going with that is that, to  
3 impose a level of 45, even if it was at the property  
4 boundary of the campground, you don't have that  
5 barrier to help reduce that level of sound. So what  
6 is the appropriate level of sound inside a home in  
7 order to sleep? And it might be lower than that 45  
8 level.

9 MR. HARRINGTON: Well, I think in  
10 Lempster we had it down to 30 inside the bedroom or  
11 something like that. There were specific conditions  
12 in there. I'll try to get to them.

13 CHAIRMAN GETZ: Well, one thing I  
14 guess Dr. Kent has that may be responsive, Mr.  
15 Steltzer, is that it's 45 dBA at the living space  
16 with an open window.

17 DR. KENT: Sound levels at the outside  
18 facades of living spaces so that people may sleep  
19 with their bedroom windows open. So, measured on the  
20 outside.

21 MR. STELTZER: With a window open. So  
22 that 45-decibel would resonate into the bedroom  
23 itself.

24 (Pause due to technical difficulties

[DELIBERATIONS]

1 with microphones.)

2 CHAIRMAN GETZ: Well, do we have a  
3 proposal or a refinement of the -- of what was done  
4 in the -- again, there's a different rationale for  
5 getting there, but it's still --

6 MR. HARRINGTON: What I was trying to  
7 get to is in the Lempster thing, we talked about if  
8 the value exceeds what we were -- the minimum -- the  
9 maximum amount, then it says they can do all these  
10 mitigation levels to install, at the Applicant's  
11 expense, install a package of sound mitigation  
12 measures to ensure the sound level within the home is  
13 reduced to less than 30 dBA, or 5 dBA above interior  
14 home ambient sound levels, whichever is greater.

15 So, maybe going along with concept of  
16 what a couple people just stated, I mean, is that we  
17 should be looking at, you know, in the tenting areas  
18 of the campground that it's 30 dBA? Is that possible  
19 or -- I'm just throwing that out, because what we're  
20 saying is inside the house, we said it's got to be  
21 brought down to 30. If it exceeded the 45 outside  
22 the house, I guess -- if the sound levels generated  
23 by the project immediately outside of any residence  
24 of a non-participating homeowner are found to be more

[DELIBERATIONS]

1 than 45 or 5 above ambient, then... or generating a  
2 measurable harmonic or beating noise effect at short  
3 cycles that fluctuates with an amplitude of 5 dBA or  
4 more, both as measured at the exterior facade of the  
5 home, then the Applicant shall, within 90 days of  
6 confirmation of such exceedences, and at its option,  
7 either complete action or reduce project-generated  
8 noise below the specified sound levels on a  
9 going-forward basis, or offer the homeowner a package  
10 that would increase that, and that decreases -- it  
11 says within the home is reduced to less than 30 dBA  
12 or 5 dBA above interior home sound levels, whichever  
13 is greater.

14 And I think this brings us to the  
15 problem that we're talking about. If we're saying,  
16 you know, outside of the 10, should we be treating  
17 that the same way we do here, as inside of a house?  
18 I don't see a tent gives you a lot of mitigation, you  
19 know, as far as reduction of sound, where clearly,  
20 you know, a sound, even with the windows open, being  
21 on the inside of a building is going to reduce sounds  
22 quite a bit, unless you have you know, 35-foot-wide  
23 windows or something on the side of your house.

24 CHAIRMAN GETZ: Well, I'm trying to

[DELIBERATIONS]

133

1 think about the practicality of the application,  
2 because in one instance, you know, with Lempster  
3 we're talking about individual private residences.  
4 Here we're talking about a campground with a number  
5 of tents and/or RVs, as I recall. I'm presuming that  
6 we wouldn't have a receptor at each of the sites.

7 MR. HARRINGTON: No.

8 CHAIRMAN GETZ: Maybe there's one or  
9 two that are closest to the turbines that are up on  
10 the hill. I guess that would be receptors that would  
11 be used. Obviously, the further ones are going to be  
12 more insulated from the sound than the closer ones.  
13 Or do we just say something -- do we look at the  
14 property boundary and really not try to make a  
15 judgment about where the sites are, and then maybe  
16 just say that, like whatever it is, a 45 dBA be at  
17 the boundary of the campground, and that it plays out  
18 from there, recognizing that it's unlikely that you  
19 would have a series of tents right on, well, I guess  
20 what would presumably be the river.

21 But Dr. Boisvert.

22 MR. BOISVERT: It strikes me as the  
23 somewhat parallel situation that I observed on  
24 certain highways, where sound baffles are erected to

[DELIBERATIONS]

1 lower the sound to residences behind it, where you're  
2 not trying to protect --

3 (Pause due to technical problems with  
4 microphones.)

5 MR. BOISVERT: I'll talk loud then.  
6 Maybe our representative from DOT can speak much more  
7 knowledgeably to it. But what is the application.  
8 and effectiveness of the sound barriers that are  
9 erected along the highways? I assume for the same  
10 reason, it's to reduce the sound getting to  
11 residences, particularly because it's annoying when  
12 people are trying to sleep.

13 We're already going through mitigation  
14 measures here, as opposed to trying to set a level.  
15 But that does seem to have developed in conversation  
16 of how would you deal with it if it got too high,  
17 once we decided what "too high" is.

18 MR. HOOD: The highway aspect is quite  
19 a bit different from what you folks have been dealing  
20 with when I was on this Committee and started looking  
21 at the past ones, looking at the noise.

22 With highway noise, we follow Federal  
23 Highway Administration Noise Guidelines that are used  
24 throughout the country. We use a level of

1           66 decibels before we -- and it's exterior, on ground  
2           level, outside areas -- before we start to look at --  
3           consider that to be impacted.

4                     The other criteria we talked about a  
5           little bit here that we would use would be if our  
6           project is going to do something that increases noise  
7           levels over existing noise levels by 15 decibels or  
8           more, that would also be an impact. So those two  
9           things would be what would be considered an impact.  
10          If we got to that point, then we would look at how  
11          can we reduce that noise, and that's when we get into  
12          putting up the sound barriers. We have quite a thing  
13          to go through. It has to be cost-effective and, you  
14          know, reduce noise levels. But those sound barriers,  
15          though, usually do reduce noise levels by about  
16          10 decibels at each of the locations that we're at.  
17          But we have a lot higher threshold that has to be met  
18          before we would look into abatement.

19                     MR. BOISVERT: Okay.

20                     CHAIRMAN GETZ: And is there a  
21          difference between I guess in a highway situation  
22          where the wall is built in a direct line between the  
23          emitter and receptor?

24                     MR. HOOD: You need to break the line

[DELIBERATIONS]

136

1 of sight between the noise from -- and usually it's  
2 from trucks. It's from the stack height of a truck  
3 to an area that -- noise travels in a straight line.  
4 So where the noise is coming from, like the truck to  
5 the receptor in the backyard, we'd put the wall up to  
6 break up that line of sight. By breaking that line  
7 of sight, that's what reduces the noise levels.

8 CHAIRMAN GETZ: And so I'm just  
9 wondering, you know, is there a difference between --  
10 of course, we don't have any testimony about this in  
11 the record -- but the difference between the  
12 situation where you're building a wall between the  
13 road and some homes, and we have the wind turbines up  
14 on a hill at an altitude above the receptor. I just  
15 don't know how that plays out.

16 MR. IACOPINO: I would just point out,  
17 also, that you do have testimony in the record about  
18 some of these sites during Ms. Lewis's testimony.  
19 There was some -- she was cross-examined about where  
20 some of these sites are. And I leave you to your  
21 recollection or research of the record. But I don't  
22 think you're going to be able to put a wall along the  
23 river, as some of her sites were along the river.

24 CHAIRMAN GETZ: Mr. Scott.

[DELIBERATIONS]

137

1 MR. SCOTT: In answer to your earlier  
2 laying out of an example of property line or where on  
3 the campsite, my feeling is that it should just be  
4 anywhere on that property, the impact -- meaning, as  
5 it was just mentioned from Mr. Hood, you could have  
6 trees, you could have -- on the property line, you  
7 could have something that's actually blocking the  
8 sound, where further in the property it could  
9 actually be louder.

10 And the other thing I would want to be  
11 careful about is I wouldn't want to, by doing this,  
12 somehow restrict Ms. Lewis's ability to use her whole  
13 property for tents and that type of thing. So, you  
14 know, gee, we only have tents here today and not --  
15 but it's louder over there.

16 Anyways, my bottom line is I think it  
17 would be safer just to say whatever sound level we  
18 pick -- again, I'm picking 45, plus or minus 5 over  
19 ambient anywhere on her property -- would be the  
20 safest way, in my opinion.

21 CHAIRMAN GETZ: Mr. Steltzer.

22 MR. STELTZER: Yeah, I'll be a little  
23 daring here and just throw out some numbers and ideas  
24 and see whether it -- how it sits with folks.

[DELIBERATIONS]

138

1                   If we set up an absolute value of 55  
2                   daytime, 45 nighttime, similar to what was done in  
3                   Lempster, and then made conditions on the campground,  
4                   that at nighttime it's 30 dBA from April through  
5                   October.

6                   CHAIRMAN GETZ: Mr. Harrington.

7                   MR. HARRINGTON: That's probably  
8                   something along those lines. I'm not sure if those  
9                   are the exact right numbers. But I think that's  
10                  probably something that could be worked on. But one  
11                  of the things I think we ought to be careful on in  
12                  this case is that, especially with the campground, is  
13                  it is a commercial application. So, I mean, you  
14                  could run into a situation where, as Mr. Scott just  
15                  described, it's different levels at different parts  
16                  of the campground. And it may be because it is a  
17                  commercial application and not a home that you could  
18                  have these five tent sites over here where the noise  
19                  is too loud, but that's really the only five where it  
20                  applies. And rather than say you have to have a  
21                  certain level for the entire campground, maybe you  
22                  could simply impose some type of commercial solution  
23                  to that, you know, basically that the wind farm could  
24                  effectively rent those camp sites for the summer. It

[DELIBERATIONS]

139

1 may be cheaper for them and just as financially okay  
2 for the campground owner to do that, as compared to  
3 building fences and, you know, setting a standard for  
4 the entire campground. I'm just saying we shouldn't  
5 be overly prescriptive of the solution to the  
6 problem, but allow maximum flexibility. Because this  
7 isn't like a house where someone's going to say, oh,  
8 well, you just buy my bedroom and I'll be happy  
9 because I'll move into the living room. This is  
10 simply a case where, you know, we'll give you  
11 X-amount of money not to rent those tent sites, and  
12 that alleviates the problem because they only exist  
13 at these three or four tent sites. So I'd just like  
14 the option to be as broad as possible rather being  
15 real specific of if it doesn't reach this, then they  
16 have to build a fence or put up trees or cut back on  
17 the wind production, because we are talking about a  
18 commercial endeavor here, so...

19 CHAIRMAN GETZ: And I'm just trying to  
20 think how that condition would be written, which I  
21 think may be a challenge. If it would be -- because  
22 I think you have to set a standard. And then I guess  
23 what you're kind of saying is, to the extent the  
24 standard is violated, whether there should be an

[DELIBERATIONS]

140

1 option between the parties to come to some other  
2 commercial agreement?

3 MR. HARRINGTON: Yeah.

4 CHAIRMAN GETZ: Which I guess they  
5 always would have that option.

6 MR. HARRINGTON: Well, not if we said  
7 that it's got to be -- let's just use what Mr.  
8 Steltzer said. It's got to be 30 dBA at night  
9 between these times, or it must be mitigated by, you  
10 know, reducing the operation of the turbines or  
11 putting up fences or whatever you wanted to say. You  
12 could do that. That would not give you the option.  
13 But I would add to that. All I'm saying is you would  
14 say or if other financial agreements or other  
15 agreements could be reached between the campground  
16 owner and the Applicant -- because, I mean, we're  
17 talking about renting of camp spaces. And if they're  
18 rented 60 percent of the time during those months and  
19 the campground owner got paid that money, and that  
20 turned out to be a lot cheaper to the Applicant than  
21 turning off a particular windmill for, you know, how  
22 many hundreds of hours during the summer, that would  
23 seem to be the way to go. We'd solve the problem  
24 then, because the only thing would be bothered would

[DELIBERATIONS]

141

1 be, you know, a tree someplace. But there's not  
2 going to be anybody sleeping there.

3 CHAIRMAN GETZ: But that would be at  
4 the mutual agreement of the parties.

5 MR. HARRINGTON: It would have to be a  
6 mutual agreement. Well, maybe you have to put  
7 something in so you couldn't have them say, well,  
8 that campsite rents for \$1,000 a night now. You  
9 know, that's by mutual agreement. I want you to rent  
10 it for \$1,000 a night, because that's not what they  
11 would have collected out of it otherwise. So I'm not  
12 sure how to do that. But you have to put some  
13 common-sense limit on it as well.

14 CHAIRMAN GETZ: Well, I'm just saying  
15 that it had to be mutual.

16 MR. HARRINGTON: Yeah.

17 CHAIRMAN GETZ: Mr. Scott.

18 MR. SCOTT: With that said, I mean, I  
19 could see something to the effect that it shall meet  
20 these limits, so that's your absolute, unless  
21 mitigated to the satisfaction of the property owner,  
22 in which case that's -- you know, by definition, a  
23 that's mutual agreement.

24 MR. HARRINGTON: But my only concern

[DELIBERATIONS]

142

1           there is that we know the property owner doesn't want  
2           the windmills there for reasons beyond just sound.  
3           They don't want -- they claim people don't want to  
4           look at them, people won't -- whatever. I wouldn't  
5           want to give them, well, a blank check from the  
6           Applicant to say, okay, you know, it's going to cost  
7           you \$2,000 a day to mitigate these by cutting back on  
8           one of your turbines. So I want \$1800 a day for my  
9           three campsites that I usually rent for \$35 a night  
10          apiece. We have to have some way to make sure we're  
11          not giving them a license to steal, because we know  
12          the campground owner doesn't want the wind mills  
13          there at all. It's not just the problem with the  
14          noise. But they need to be compensated if it's  
15          causing them to lose money, too.

16                         MR. SCOTT: But if we agreed that  
17                         there is -- again, for conversation's sake, let's say  
18                         the 45 dBA, if we agreed anything above that, there's  
19                         an action that needs to be taken, and if that is what  
20                         the project and the property owner would want -- I'm  
21                         not suggesting this -- but the Applicant buys the  
22                         campground in that case, and that makes them all  
23                         happy, why does that matter to us? I think what we  
24                         should be saying is here's your level where it's

[DELIBERATIONS]

1 unacceptable. You need to do something about it.  
2 And what they do, whether you think it's extortion or  
3 not -- my word, not yours -- I'm not sure why we care  
4 about that, why we should get involved in that.

5 MR. HARRINGTON: It's something to  
6 think about.

7 CHAIRMAN GETZ: Yeah, let's go back  
8 to, I guess, Mr. Steltzer's proposal. I mean,  
9 there's a very different level that would be applied  
10 for effectively the summer months. Any discussion  
11 about, you know, basically whether it should be 30  
12 versus 45?

13 MR. STELTZER: I see these two ideas  
14 blending very well together. Basically, as Mr. Scott  
15 said, here are the absolutes. And we could even add  
16 in a component, as far as a certain level above  
17 ambient if we wanted to, recognizing that some of the  
18 sites that might be down by the river might be a  
19 little -- and this is going to what Mr. Harrington  
20 was saying -- some sites down by the river might be a  
21 little louder than, say, these four sites that are up  
22 underneath the elm trees. And then if that isn't  
23 met, the mitigative measure, I would just take it a  
24 step farther and say that it needs to be in agreement

[DELIBERATIONS]

1 by both parties, the Applicant as well as the  
2 property owner, and not just leave it to what the  
3 property owner is suggesting.

4 CHAIRMAN GETZ: Well, I think the  
5 mechanics work. I guess what's very different is the  
6 level. Rather than being 45, you're suggesting it be  
7 30.

8 MR. HARRINGTON: Mr. Chairman, on that  
9 level, I mean, that comes right out of the -- the  
10 sound levels within the home is reduced to less than  
11 30, or 5 dBA above the interior home's ambient  
12 sounds, that's from what we've already decided in  
13 Lempster. And I guess maybe you could specify 30 in  
14 the area of tent sites as compared in the area where  
15 the RVs are parked, where you could go with the 45.  
16 Maybe I -- I don't want to overnuke this thing. But,  
17 you know, we're starting to get there. But it's just  
18 that a tent I don't think gives you any protection  
19 from noise. So it would be equivalent to being  
20 inside the home, which in Lempster we're saying is  
21 30. I think that's probably where Mr. Steltzer got  
22 the number from. But the whole campground doesn't  
23 necessarily have to be at that level either. So  
24 maybe just in the areas of the existing tent

[DELIBERATIONS]

1 site areas.

2 CHAIRMAN GETZ: Well, I think that  
3 kind of gets back to my issue about where do you  
4 measure.

5 MR. HARRINGTON: Well, existing tent  
6 site areas I guess I'd measure, you know, as compared  
7 to at the ball field that people aren't using at  
8 night, if there's a ball field there. Or in the  
9 RV -- or the areas where the RVs go, which is usually  
10 segregated from regular tent sites because, again,  
11 they're more like a house; you're sleeping inside of  
12 a trailer. So, I mean, that would be the difference  
13 I think I would make, because the 30 should only  
14 apply in the immediate vicinity where the tents are  
15 going to be.

16 CHAIRMAN GETZ: And I'm not sure what  
17 Mr. Steltzer was suggesting. At one point I think we  
18 were talking about maybe 45 at the property line,  
19 which I don't know what that gets you once you  
20 start -- you know, the sound fades, versus is it 30  
21 at the property line, or is it 30 somewhere else next  
22 to the nearest site? I don't know.

23 MR. STELTZER: I specifically didn't  
24 mention where on the site it needs to be figured out

[DELIBERATIONS]

146

1 because I think it can vary so greatly. If we say  
2 the property boundary that's closest to the river,  
3 well, that means quite a lot than the property  
4 boundary that's, you know, on the other side of the  
5 access road into the site. So I don't know  
6 whether -- where I was thinking it could go is to  
7 leave that decision on where that receptor needs to  
8 be located up to the sound engineers to determine  
9 what would be best to get a greatest sense for the  
10 tent sites specifically.

11 CHAIRMAN GETZ: Well, yeah, I think we  
12 have to... my concern is we may need to be a little  
13 more directive in the conditions. And that's part of  
14 what was going on, I think in reading the Lempster  
15 decision. You had to make some decisions about, you  
16 know, is it going to be applied at the residence or  
17 applied to the property line. That implies different  
18 numbers to try to effectively get to the same result  
19 in some respects.

20 Mr. Scott.

21 MR. SCOTT: Again, I would argue for  
22 anywhere on the property because -- and I'll take Mr.  
23 Harrington's suggestion of existing campsites, that  
24 type of thing. I mean, what that implies is that the

[DELIBERATIONS]

147

1 property owner can't develop, do any development on  
2 their own property to add camp sites, can't change  
3 where -- gee, RVs were here last year, we're going to  
4 put a tent here this year. That, to me, throws a  
5 restriction on where you have tents today is where  
6 they'll always be, unless you want to bear the brunt  
7 of the extra sound. And I don't think that's fair to  
8 the business. I think the business ought to have an  
9 opportunity to do what they wish within their  
10 property, which is why I suggest anywhere on the  
11 property. If that's the metric we use, it should be  
12 anywhere on the property.

13 CHAIRMAN GETZ: Do you have a feeling  
14 one way or the other for 30, 40, 45?

15 MR. SCOTT: No.

16 MR. HOOD: Mr. Chairman.

17 CHAIRMAN GETZ: Mr. Hood.

18 MR. HOOD: I just wonder why we  
19 wouldn't want to use a number above the ambient and  
20 then -- because things are going to change. If we  
21 put some number on it, and then five years from now  
22 another development goes in someplace, traffic picks  
23 up on 25, noise levels are going to change. If we  
24 put a number on it, we don't take advantage of the

1 ambient. The ambient is what's there, and then we  
2 take the difference caused by the wind farm. If we  
3 just put a number, that number could be exceeded  
4 almost all the time if there's some other change that  
5 makes the ambient noise levels go up. So it seems  
6 like we could put what's there, not caused by the  
7 wind farm, and then put a level of 3 decibels, 5  
8 decibels above what's there, and if it gets to that,  
9 then something needs to be done.

10 CHAIRMAN GETZ: But isn't that  
11 effectively the way the Lempster conditions work? If  
12 there's a number, and then there's a -- to the extent  
13 that number is exceeded by ambient, then there's a  
14 delta above that?

15 MR. HOOD: If you put -- okay. If  
16 you put -- so then that's --

17 MR. HARRINGTON: Mr. Chairman, there's  
18 a floor in the Lempster case. Are you referring to  
19 not having a floor at all? Just say measured  
20 ambient, and then if it exceeds the ambient by  
21 whatever, regardless of what that is? I guess that  
22 gets into the question we were talking about before  
23 that Dr. Kent brought up, is the whole concept of is  
24 there a threshold that once you get below, you don't

[DELIBERATIONS]

149

1 care? So if the ambient is -- let's say the ambient  
2 is 24 at the campground, and we have 5-decibel  
3 average of that, or even a 6-decibel that gets you to  
4 30. I mean, I think what Dr. Kent was alluding to  
5 was that you wouldn't care that it went up to 31,  
6 because at that level it's still so low, it's not a  
7 problem; whereas if you had a 45 level and it went up  
8 and -- the background was 46 and it went up another  
9 5, that would be a problem. So that's the only  
10 problem, without having a minimum where it applies  
11 to.

12 CHAIRMAN GETZ: Well, let me say this.  
13 It's 12:35. I think we need --

14 MR. HARRINGTON: We all agree on that.

15 CHAIRMAN GETZ: We need to have lunch  
16 and digest some of this as well. Let's recess until  
17 1:30, because we still have a lot of ground to cover.

18 (WHEREUPON, the Day 2 Morning Session  
19 of Deliberations recessed for lunch at  
20 12:35 p.m. Day 2 Afternoon Session to  
21 resume under separate cover so designated.)  
22  
23  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

C E R T I F I C A T E

I, Susan J. Robidas, a Licensed  
Shorthand Court Reporter and Notary Public of  
the State of New Hampshire, do hereby  
certify that the foregoing is a true and  
accurate transcript of my stenographic notes  
of these proceedings taken at the place and  
on the date hereinbefore set forth, to the  
best of my skill and ability under the  
conditions present at the time.

I further certify that I am neither  
attorney or counsel for, nor related to or  
employed by any of the parties to the action;  
and further, that I am not a relative or  
employee of any attorney or counsel employed  
in this case, nor am I financially interested  
in this action.

---

Susan J. Robidas, LCR/RPR  
Licensed Shorthand Court Reporter  
Registered Professional Reporter  
N.H. LCR No. 44 (RSA 310-A:173)