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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

April 8, 2011 - 1:31 p.m.  
Public Utilities Commission  
21 South Fruit Street  
Suite 10  
Concord, New Hampshire

DAY 2

DELIBERATIONS  
AFTERNOON 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<br>(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, Administrator            | Dept. of Transportation         |
| Donald Kent, Administrator             | Dept. of Resources & Econ. Dev. |
| Eric Steltzer                          | Office of Energy & Planning     |
| Michael Harrington, Engineer           | Public Utilities Commission     |

\* \* \*

Counsel for the Committee: Michael Iacopino, Esq.

COURT REPORTER: STEVEN E. PATNAUDE, LCR No. 52

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P R O C E E D I N G

(Whereupon the Deliberations resumed at  
1:31 p.m.)

CHAIRMAN GETZ: All right. Let's get  
back on the record. We're back on the record in Site  
Evaluation Committee Docket 2010-01. Working on the  
deliberations in the proceeding. And, continue the  
conversation with respect to a potential condition with  
respect to the noise element of public health and safety  
conditions. So, Mr. Harrington.

MR. HARRINGTON: Yes. Well, this is  
back working again, without blowing up, right?

(Referring to microphone feedback.)

MR. PATNAUDE: Yes.

MR. HARRINGTON: Okay. I was just  
thinking about this a little bit over lunch, and there's,  
I think -- it seems like most people agree that we should  
apply the same stuff as we did from Lempster to the  
residential buildings in this case. Which has that  
standard above, you know, the 45, and then I think it's so  
much above ambient. But the questions seem to be on the  
campground area. And, you know, we did have the Lempster  
case talk about 30 decibels being inside of a home, if you  
had it mitigated, and wouldn't that be appropriate for a

## [DELIBERATIONS]

6

1 tent, because a tent doesn't provide much mitigation. But  
2 I think you also have to look at the anticipation of  
3 quiet. And, when you go to your house, when you go home,  
4 you go to your bedroom, you anticipate it's going be  
5 pretty quiet. Unless, you know, depending on -- or no  
6 noisier than it has been in the past.

7 If you're going into a public  
8 campground, where there's a lot of campers around in the  
9 area, your anticipation of quiet is quiet a bit higher  
10 than that, or "lower" I guess would be the correct term.  
11 You expect you're going to hear other people that are,  
12 even if it's past the curfew, they may be sitting outside  
13 talking quietly, but still they're audible. Much louder  
14 than the people that would be around your house at night,  
15 because there's probably no one sitting in your backyard  
16 talking. They're going to be going to the bathrooms, with  
17 the classic, you know, the screen door, "Ka-blam",  
18 "boom-boom-boom", that happens at every campground.  
19 There's going to be people walking around. So, I just  
20 think the level of anticipation of quiet isn't --  
21 shouldn't be put on the same par as what you'd expect to  
22 find in your bedroom at home.

23 So, maybe a more appropriate number for  
24 there would be 40 decibels anyplace on the campground

[DELIBERATIONS]

7

1 during the evening hours, and 45 during the daytime hours.  
2 Just throw that out for consideration.

3 CHAIRMAN GETZ: One thing, let me  
4 clarify. So, in your original comment, you talked about  
5 the Lempster residential noise restrictions, and I think  
6 you said "45". I thought the --

7 MR. HARRINGTON: Well, 45 at the house.

8 CHAIRMAN GETZ: Well, but I think the  
9 way it's written is "55 dBA as measured at 300 feet".

10 MR. HARRINGTON: Or, and then there's  
11 another standard, there's another condition for right  
12 outside the house, "45 or 5 above ambient", taken just  
13 outside the house.

14 CHAIRMAN GETZ: Yes. I think you're --

15 MR. HARRINGTON: Well, let me look.

16 CHAIRMAN GETZ: -- you're conflating two  
17 things. Because I think what's in the -- I think what's  
18 in the Groton agreement is what's in the Lempster order,  
19 and let's just make sure we got that straight.

20 MR. HARRINGTON: Well, it says "If sound  
21 levels generated by the project immediately outside any  
22 residence of a non-participating homeowner are found to be  
23 more than -- more than the greater of 45 dBA or 5 dBA  
24 above ambient sound level", I think I'm reading this right

[DELIBERATIONS]

1 out of the order.

2 CHAIRMAN GETZ: Yes, that's what I want  
3 to get clear on. On Page 47 of the Lempster order, and  
4 how that intersects with what's in the appendix to the  
5 order --

6 MR. HARRINGTON: That's where -- I'm in  
7 the appendix. At the very, very end of the order, where  
8 it talks about "Additional Conditions Pertaining to  
9 Noise", on Page 38. It's "Appendix IV, Certificate of  
10 Site and Facility Additional Conditions Pertaining to  
11 Noise". And, this is where that whole list of how one can  
12 mitigate it with sound mitigation using, you know,  
13 "exterior laminated glass storm windows", and so forth and  
14 so on, "ENERGY STAR rated glass insulated replacement  
15 windows, weather stripping" and all that. It's at the  
16 extreme end of the order.

17 CHAIRMAN GETZ: Yes. I'm looking at  
18 that, which I think recounts -- what's in the conditions  
19 at the back recounts what's in the body of the order. But  
20 then I'm trying to figure out what this is, this  
21 attachment of the agreement between the Town of Lempster.

22 MR. HARRINGTON: That talks about "55"  
23 at the boundary, or "300 feet away", or at the boundary.

24 CHAIRMAN GETZ: So, both things apply or



[DELIBERATIONS]

1 --

2 MR. HARRINGTON: I would think that's  
3 just the criteria we used at Lempster. Yes, they both  
4 apply. So, I'm thinking, what I'm saying here is, if you  
5 roll down on this additional conditions, if it's above 45  
6 outside of the residence or the greater of 45 or 5 above  
7 ambient, then it lists a bunch of mitigating things that  
8 need to be done. And, if you cannot -- the idea there is,  
9 if you have to get it down to 30 dBA or 5 above the  
10 ambient, whichever is greater, a sleeping area with any  
11 bedroom of the home.

12 CHAIRMAN GETZ: So, effectively, you  
13 would do what was done with respect to residences in  
14 Lempster, meaning both of the standard of the 55 dBA at  
15 the --

16 MR. HARRINGTON: Boundary, and the 45 at  
17 the house.

18 CHAIRMAN GETZ: Okay.

19 MR. HARRINGTON: And, then, I don't  
20 think that the 30, what it says here is what you've got to  
21 get to in the bedroom, should be the same for the  
22 campground. Because I think the anticipation of what  
23 someone expects to find for noise in the campground, when  
24 they're sleeping outdoors, with maybe 30 or 40 or 50

[DELIBERATIONS]

10

1 people within 150 feet of them is going to be quite a bit  
2 -- you expect it to be louder than you would in your  
3 bedroom at home.

4 CHAIRMAN GETZ: So, treat the residences  
5 in the Groton area the same way that they were treated in  
6 Lempster with both standards.

7 MR. HARRINGTON: Right.

8 CHAIRMAN GETZ: And, then, --

9 MR. HARRINGTON: An exception for the  
10 campground.

11 CHAIRMAN GETZ: Campground.

12 MR. HARRINGTON: Which would be 40 dBA),  
13 the greater of 40, or 5 above ambient.

14 CHAIRMAN GETZ: And, measured at  
15 anyplace or at the --

16 MR. HARRINGTON: Anyplace on the  
17 campground, because of some of the reasons that Mr. Scott  
18 said earlier, you really can't pick and choose the spot.

19 CHAIRMAN GETZ: All right. I think I've  
20 got it. Mr. Scott.

21 DIR. SCOTT: First, I don't have a  
22 problem with that suggestion, but to help inform perhaps.  
23 If you look at Lempster, the Lempster order as a template,  
24 it would help you, Mr. Harrington, I'm looking at the

[DELIBERATIONS]

11

1 bottom of the Page 46, where we talk about --

2 MR. HARRINGTON: Excuse me. That's of  
3 the order itself, not the appendixes?

4 DIR. SCOTT: The order. The decision,  
5 right. That's right. So, you're right. There was some  
6 talk about "30 dBA" inside your bedroom, but there's also  
7 consideration for people who sleep with their windows open  
8 at night. And, I would argue, people sleeping with their  
9 windows open at night have the same concerns or the same  
10 ramifications that you're talking about. You're expecting  
11 some noise from the outside, that type of thing. And,  
12 that, to me, may be the best analogy to sleeping in a  
13 tent. You're sleeping with your window open by your bed.  
14 And, again, I think we talked about "45 dBA" in that  
15 capacity. I'm fine with "40", I'm not arguing with that.  
16 I'm just -- it sounds like you're struggling with the  
17 "30". And, I would, you know, again, I'd just point to  
18 that, would argue for a higher number.

19 MR. HARRINGTON: The page you're on was  
20 47?

21 DIR. SCOTT: Forty-six (46), the top of  
22 Page 46.

23 MR. HARRINGTON: Of the actual order,  
24 not all these --

[DELIBERATIONS]

12

1 DIR. SCOTT: For Lempster.

2 MR. HARRINGTON: Okay.

3 CHAIRMAN GETZ: And, I think the "40" is  
4 the level effectively proposed by Counsel for the Public?

5 DIR. SCOTT: That's correct. So, I'd  
6 support 40. I just was trying to --

7 CHAIRMAN GETZ: For the campground?

8 DIR. SCOTT: Right.

9 CHAIRMAN GETZ: Mr. -- Or, Dr. Kent.

10 DR. KENT: I think I'm honing in on  
11 where you are. I was just curious where the 30 came in.  
12 And, apparently, that's measured. And, then, the question  
13 becomes, "well, we measured 30 in the bedrooms, but is 30  
14 what you need to sleep?" And, I think there's other  
15 evidence in testimony and supporting documents that  
16 suggest, just because 30 is it, on some occasions that's  
17 not what you need to sleep, then 40 is probably a better  
18 number. And, we were looking at 45 at some of the others.  
19 But 40, I would agree, is probably reasonable.

20 CHAIRMAN GETZ: Mr. Perry.

21 MR. PERRY: I just wanted to voice my  
22 concurrence with a consideration for a 40 for a  
23 campground.

24 CHAIRMAN GETZ: Anybody else? Are we

[DELIBERATIONS]

13

1 working on a consensus here? Mr. Steltzer.

2 MR. STELTZER: I think 40 would be fine.  
3 And, if it were an absolute value of 40, or if it was  
4 greater than 40, ambient difference of 5 dBA). I don't  
5 think you need to have any sort of seasonality added into  
6 it, as far as an April through October kind of a measure.

7 CHAIRMAN GETZ: All right. Well, then,  
8 let's hold that in place. Because I think we've gotten to  
9 a consensus on that issue, but I don't want to have formal  
10 votes until we discuss all of the issues that come under  
11 the heading of "public health and safety". But it sounds  
12 like we have a proposed condition in mind.

13 Mr. Hood, did you have other issues  
14 under "public health and safety"?

15 MR. HOOD: Yes. Address "fire safety"  
16 next. The Applicant asserts that a fire is unlikely to  
17 occur on the site since the turbines will be routinely  
18 inspected by qualified personnel in accordance with  
19 preventive maintenance schedules. Built-in safety design  
20 systems will minimize the chance of fire occurring in the  
21 turbines or electrical equipment. If a fire were to  
22 occur, the turbines would automatically shut down and the  
23 fire would be reported to the operation and maintenance  
24 building and to the Operations Center in Portland. And,

[DELIBERATIONS]

1 also mentioned that the site is monitored 24/7. And, if a  
2 fire did occur, the distance between the turbines makes it  
3 unlikely that the fire could spread to another unit.

4 The Applicant asserts that it will  
5 comply with all industry standards and fire codes relating  
6 to fire safety. A letter was received from the State Fire  
7 Marshal containing a number of conditions. It requested  
8 that all structures be constructed in accordance with  
9 Internal Building Code, 2009 Edition; NFPA 1, Fire Code,  
10 2009 Edition; NFPA 101, Life Safety Code, 2009 Edition;  
11 and NFPA 850, Recommended Practice for Fire Protection for  
12 Electric Generating Plants and High Voltage Direct Current  
13 Converter Stations, 2010 Edition.

14 In addition, it was requested that  
15 monitored fire suppression systems be installed in each  
16 turbine. The Applicant asserts, however, that it is  
17 uncommon in the wind industry to have an automatic fire  
18 suppression system, since the risk of fire spreading  
19 beyond individual turbines is relatively small, and the  
20 risk of hazard to employees will increase once such system  
21 is enclosed. The Applicant states that, since this letter  
22 from the Fire Marshal, they have met with the Fire  
23 Marshal's Office, toured the Lempster facility and a  
24 facility under construction in New York. And, they feel

[DELIBERATIONS]

1 that the Fire Marshal's Office is mostly concerned with  
2 compliance with the codes and not necessarily the fire  
3 suppression systems now. To my knowledge, no letter  
4 stating that has been received at this time.

5 The Applicant states that "health and  
6 safety will be protected by the terms of the agreements  
7 with the Towns of Groton and Rumney, the design of the  
8 turbines, the practices of the Applicant, and the  
9 fire-fighting capabilities in the area."

10 Plymouth's Fire Chief, Chief Clogston,  
11 asserts that Plymouth does not have sufficient equipment  
12 and training to address a fire which may occur on the  
13 site. It should be noted that the Town of Groton does not  
14 have its own fire department, and they will rely on other  
15 fire departments to respond to a fire occurring at the  
16 site. Under the agreement between the Town of Groton and  
17 the Town of Rumney, the Fire Department of the Town of  
18 Rumney will respond in the event of a fire on the site.  
19 The Fire Department of the Town of Plymouth is required to  
20 respond to the fire at the site in accordance with the  
21 mutual aid agreement only if the Fire Department of the  
22 Town of Rumney requests its assistance.

23 Chief Clogston stated that, although it  
24 will not be the first responder in the event of a fire at

[DELIBERATIONS]

1 the site, Plymouth's Fire Department needs additional  
2 training and equipment in order to guarantee that any fire  
3 danger caused by the turbines will be addressed in a  
4 satisfactory manner.

5 Chief Clogston requests that the special  
6 committee order the Applicant to provide the Town of  
7 Plymouth with two Type 6 brush trucks, two six-person  
8 ATVs, six forestry -- and six forestry high pressure  
9 portable pumps. The Chief also asserts that the Fire  
10 Chief of the Town of Rumney indicated to him that the Town  
11 of Rumney's Fire Department concurs with the Town of  
12 Plymouth's request for ATVs and the brush trucks.

13 However, the Selectmen's Meeting Work Session for the Town  
14 of Rumney introduced by the Applicant indicates that the  
15 Fire Chief in Rumney has told the Selectmen that Rumney  
16 Fire Department does not need any additional equipment.  
17 There is an agreement between the Town of Rumney and the  
18 Applicant that provides for the following: "Prior to  
19 commencement of operations at the Wind Farm, the Owner  
20 shall provide three hours of classroom training at the  
21 Rumney Fire Department at no charge. Prior to the  
22 commencement of operations at the Wind Farm, the Owner  
23 shall provide training to the Town of Rumney Fire, EMS,  
24 and Police departments jointly, without charge to the



[DELIBERATIONS]

1 Town, consisting of a total of eight hours training at the  
2 Groton Wind Farm site, to include review of site safety  
3 plans, fire safety and fire suppression equipment, site  
4 access, and Groton Wind employee certifications. The  
5 Owner will provide annual training of a total of eight  
6 hours of training at the Wind Farm. Groton Wind shall  
7 work to accommodate reasonable requests by the Rumney  
8 Fire, EMS, or Police Department for responders from other  
9 mutual aid towns to also attend the annual training at the  
10 same time with Rumney responders."

11 The Agreement between the Applicant and  
12 the Town of Groton states the following: "The Owner shall  
13 cooperate with the Town's emergency services to determine  
14 the need for the purchase of any equipment required to  
15 provide an adequate response to an emergency at the Wind  
16 Farm that would not otherwise need to be purchased by the  
17 Town. If agreed between the Town and Owner, the Owner  
18 shall purchase any specialized equipment for storage at  
19 the Project Site. The Town and Owner shall review  
20 together on an annual basis the equipment requirements for  
21 emergency response at the Wind Farm.

22 And, I just want to note that the  
23 Counsel for the Public recommends that the Committee adopt  
24 the request of the Town of Plymouth for fire-fighting

[DELIBERATIONS]

1 apparatus.

2 I didn't know if you wanted to go  
3 through any of the conditions that were in the Applicant's  
4 response to conditions or just discuss what we've talk  
5 about?

6 CHAIRMAN GETZ: Well, on that issue, why  
7 don't you lay those out.

8 MR. HOOD: Okay. One request was the  
9 same as the Fire Chief of Plymouth. "The Applicant shall  
10 purchase a brush truck according to the recommendations of  
11 the Plymouth Fire Chief, who oversees the only full-time  
12 fire department in the area. The brush truck shall be  
13 kept on-site at the Project for emergency use. That was  
14 one request.

15 Another request was "The Applicant will  
16 provide eight hours of annual training for both Rumney and  
17 Plymouth Fire Departments, as well as their emergency  
18 medical personnel. In addition, a one-time payment of  
19 \$10,000 to the Rumney Fire Department will be made to  
20 provide for new equipment."

21 Next request was "Complaints of sound  
22 issues by either Groton or Rumney residents will be kept  
23 in a permanent log and submitted to the SEC annually. The  
24 Applicant will provide a phone number to both the Rumney

[DELIBERATIONS]

1 and Groton Town Offices. The Applicant will respond in  
2 writing to each complaint that has been voiced. After two  
3 complaints, the Applicant will pay to have the Town hire a  
4 sound consultant to perform sound studies. Any sound  
5 testing results which exceed the levels will require the  
6 Applicant to immediately make changes to reduce the sound  
7 levels. Possibilities include reducing hours the turbines  
8 are operational, mitigation that can be worked out between  
9 the Applicant and the complainant, to shutting down the  
10 Project altogether.

11 CHAIRMAN GETZ: Why don't we just focus  
12 on the fire safety related ones.

13 MR. HOOD: Okay. And, that was the end  
14 of those. That was it.

15 CHAIRMAN GETZ: But, effectively, it's,  
16 with respect to Plymouth, it's both the -- it's all of the  
17 intervenors, the Town of Plymouth, and Counsel for the  
18 Public are all talking about a condition that would  
19 provide a brush truck to the Town of Plymouth. Is that  
20 correct?

21 MR. IACOPINO: Mr. Chairman, there is  
22 one other condition. In the Applicant's Response to  
23 Proposed Conditions, it's on Page 4, Request Number 7,  
24 about a detailed emergency plan, involves police, fire,

[DELIBERATIONS]

20

1 and medical personnel. "A detailed emergency plan will be  
2 created and submitted to the Site Evaluation Committee for  
3 their approval. The emergency plan will include police,  
4 fire, and medical personnel response for situations  
5 occurring at the Project Site or on the access roads."

6 MR. HARRINGTON: Mr. Chairman, if I may?  
7 That issue was one that I had brought up during the  
8 hearings. And, I think it's not an equipment-related  
9 issue like this one, it's more of a plan-related issue.  
10 So, it may be better to discuss them separately.

11 CHAIRMAN GETZ: Okay. Yes. I guess,  
12 well, there's a difference between the -- we have the  
13 specific issue of the fire safety, and then there's kind  
14 of the emergency response, which I think, under the  
15 agreements with the Town, fire safety is as a subset.

16 MR. HARRINGTON: Well, I was  
17 specifically referring to --

18 CHAIRMAN GETZ: Right. The road --

19 MR. HARRINGTON: -- an emergency for the  
20 road when it was potentially blocked with those large  
21 trucks.

22 CHAIRMAN GETZ: Yes. Which is another  
23 term of -- type of emergency response, I guess. Okay.  
24 Well, let's focus on the fire issues, because I think that

[DELIBERATIONS]

1 may be a good place to start. And, then, we'll move on  
2 later to generally the emergency plan and the road, what  
3 happens on Groton Hollow Road and how that -- if that's  
4 covered enough by the agreements or not.

5 So, any discussion about the fire safety  
6 issues? Mr. Steltzer.

7 MR. STELTZER: My feeling is that the  
8 equipment that the Public Counsel and Town of Rumney --  
9 or, excuse me, Town of Plymouth are requesting, as well as  
10 some of the intervenors, isn't necessarily needed. I  
11 think the evidence was clear that these access roads can  
12 supply the vehicles to get up there. There's a low risk  
13 of the fire spreading to other turbines. Certainly, a  
14 brush truck, you know, if they can get a pickup truck up  
15 there, there are existing brush trucks that they have  
16 access through the fire districts, they can be used, in  
17 the case that there were a fire. Likewise, if they even  
18 just have the equipment for the -- that is attached or  
19 included to the brush vehicles, such as axes, shovels,  
20 that type of equipment that you would use to fight a brush  
21 fire, those can easily be put onto the pick-up trucks that  
22 are going to be used on-site in order to maintain the  
23 facility. So, I have some difficulty with considering  
24 additional equipment for the Town of Plymouth.

[DELIBERATIONS]

1 CHAIRMAN GETZ: Anyone else? Dr. Kent.

2 DR. KENT: In the agreement the  
3 Applicant has made with the Town of Groton, it says "The  
4 Owner shall construct and maintain roads at the Wind Farm  
5 and allow for year-round access to each wind turbine at a  
6 level that permits passage and turn-around of emergency  
7 response vehicles." I believe this is similar to what we  
8 have in Lempster, and there is no problem getting trucks  
9 in and out of there.

10 Secondly, I asked the State's Forest  
11 Management Chief, in a general fashion, if there was a  
12 need for additional forest fire fighting vehicles. And,  
13 he said "No, to the contrary, we usually have more  
14 vehicles than we would like, and they tend to clog the  
15 road. There is no need for additional vehicles."

16 CHAIRMAN GETZ: And, that's in New  
17 Hampshire, as a general matter?

18 DR. KENT: Yes.

19 CHAIRMAN GETZ: Mr. Harrington.

20 MR. HARRINGTON: Yes. I just -- let me  
21 just say I agree with what's already been stated, so I  
22 won't repeat it. But one other thing I think that we  
23 should just be thinking about on this is that this is a  
24 working forest area where it's being actively logged.

[DELIBERATIONS]

23

1 And, that also in itself presents, maybe not a large risk,  
2 but certainly a risk of starting fires. You have trucks,  
3 you have gasoline, oil, all sorts of things that could  
4 lend itself to starting a forest fire. So, this isn't in  
5 an area where there's nobody there but the birds and the  
6 bees and we're introducing something new. What we're  
7 introducing is a system that has a lot of automated  
8 facilities. So, if there was a fire, there would probably  
9 be quicker notice of it, and it would be determined  
10 faster. Even if the fire was caused by something other  
11 than the turbines, such as people, you know, foresting.

12 So, I just think that this extra  
13 equipment, if it was needed, it should have been needed  
14 before, because there still would have been a danger of  
15 forest fires. And, the towns, other than Plymouth, say  
16 they're not -- it's not needed. And, Plymouth is only one  
17 of 37 towns on the mutual aid. So, I just see no reason  
18 to authorize the payment for this equipment.

19 CHAIRMAN GETZ: Further discussion?

20 Mr. Scott.

21 DIR. SCOTT: Even more simply put, I  
22 just don't think Plymouth has made the case why they need  
23 these. To me, that it wasn't, between the Chief's  
24 testimony and what they provided, I don't see a case being

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1 made, certainly, the numbers and the whys and wherefores,  
2 to me, it didn't make sense, to pass that threshold.

3 CHAIRMAN GETZ: Well, then, how about  
4 the alternative request from the Town of Plymouth, which  
5 is that we require the Applicant to negotiate with the  
6 Town in good faith on emergency preparedness issues and  
7 enter into an appropriate agreement? Have you thought  
8 about that? And, I guess also, maybe we should -- let's  
9 have a discussion about both these issues. Because  
10 there's another proposed condition, and this comes in  
11 under the intervenors. That "The Applicant provide eight  
12 hours of annual training for Plymouth and Rumney Fire  
13 Departments, as well as emergency medical, and that a  
14 one-time payment of \$10,000 to the Rumney Fire Department  
15 to provide new equipment." I think, so, we can discuss  
16 that in terms of its, you know, the specifics of that  
17 particular request, or maybe more generally as "does it  
18 make sense to require some additional annual training or  
19 funding at any level or some level for equipment?"

20 Mr. Harrington.

21 MR. HARRINGTON: I guess, again, there  
22 was -- there's an agreement with the Applicant and the  
23 Town of Rumney, who's the -- I guess the Town of Rumney is  
24 the first responder in the event of a fire. And, I think



1 they -- I don't see that there would be any reason to  
2 think that they wouldn't have considered such things as  
3 training and other equipment. They certainly would have  
4 nothing to lose by simply disagreeing with the Applicant  
5 and bringing their case to this Committee, even if it was  
6 only in the form of a letter. They seem to be happy with  
7 the agreement that was reached. They're the people that  
8 are responsible for fighting the fires and know what  
9 equipment they need. So, I'd defer to their agreement and  
10 say that there's no need to take any further action on  
11 this.

12 CHAIRMAN GETZ: Well, and, in fact,  
13 Section 6.2 of the agreement with the Town of Rumney says  
14 that "Prior to commencement of operations, the Owner shall  
15 provide three hours of classroom training at the Fire  
16 Department." And, it also talks about "providing training  
17 to Fire, EMS, and Police, consisting of a total of eight  
18 hours of training at the Groton Wind Farm site." So,  
19 there is some training requirements addressed in that  
20 agreement.

21 MR. HARRINGTON: And, my point is that  
22 that's exactly what I'm referring to. That that agreement  
23 was made, and I have to assume that they feel it's  
24 adequate. And, I just don't think we should be second

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1 guessing them on that. Where they have no reason why, if  
2 they didn't think it was adequate, why they wouldn't have  
3 come here and stated so.

4 CHAIRMAN GETZ: Mr. Steltzer.

5 MR. STELTZER: I would agree, that I  
6 don't think anything in addition to what the Applicant has  
7 already worked out in an agreement with the Town of Rumney  
8 is needed for additional hours or additional costs.  
9 However, I would think that there would be no problem for  
10 the Town of Plymouth to have some of their fire people  
11 attend some of these trainings, such as this three hour  
12 classroom training that's held at Rumney Fire Department,  
13 additional education that it could -- it certainly could  
14 be a benefit for a full-time fire department, such as  
15 Plymouth, to be there as well.

16 CHAIRMAN GETZ: Mr. Perry.

17 MR. PERRY: Unless I'm not reading this  
18 correctly, at the end of the agreement with the Town of  
19 Rumney, after it talks about hours of training, it says  
20 that "Groton Wind shall work to accommodate reasonable  
21 requests by Rumney Fire, EMS, or Police Department, for  
22 responders from other mutual aid towns to also attend  
23 annual training at the same time as the Rumney  
24 responders." So, they have made an accommodation that, if

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1 the Town of Rumney feels that some of their other mutual  
2 aid responders need to have that training, that that  
3 provision is there.

4 CHAIRMAN GETZ: Mr. Dupee.

5 MR. DUPEE: Just to note I concur with  
6 Mr. Harrington's analysis.

7 CHAIRMAN GETZ: I think then, you know,  
8 responding to Mr. Perry, I guess the only distinction then  
9 is whether it's -- the language is "Groton Wind shall work  
10 to accommodate reasonable requests by Rumney Fire, EMS, or  
11 Police Department for responders from other mutual aid  
12 towns." So, I guess it's -- how would this work? Rumney  
13 would have to ask, "can somebody from Plymouth or  
14 someplace else come?" So, it wouldn't be a right of  
15 Plymouth. I guess, though, they could ask, and Rumney  
16 could ask on their behalf, and then I guess that the  
17 Applicant would try to reasonably accommodate. So, I'm  
18 trying to think through allowed how it would work.

19 MR. PERRY: That would be my, you know,  
20 reading of it, is that the Town of Rumney would listen to  
21 any reasonable request and respond to their mutual aid  
22 counterparts. So, if the Town of Plymouth came to them  
23 and said "Jeez, we'd like to participate in this training  
24 session", and they felt that was a reasonable request,

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1 that they would go ahead and say "yes."

2 CHAIRMAN GETZ: And, you could, I guess,  
3 think maybe the opposite side of the coin might apply,  
4 that the folks in Rumney, to the extent they're going to  
5 -- might be in the position of trying to invoke mutual  
6 aid, that they would actually be reaching out to see if  
7 somebody else would like the training. But I guess that  
8 would be their call.

9 MR. HARRINGTON: Well, I just think  
10 common sense would tell you that no fire department is  
11 going to turn around and say "I want to make sure that the  
12 people that we call on mutual aid aren't trained to the  
13 maximum extent possible", because they're going to be  
14 backing up, literally, these people with their lives. So,  
15 I'm sure that they're going to want -- they're going to  
16 invoke that option to get people from whatever town  
17 trained.

18 CHAIRMAN GETZ: Any other discussion  
19 about those issues?

20 (No verbal response)

21 CHAIRMAN GETZ: So, I'm taking that the  
22 sense of the Committee at this point is that there's  
23 really no need or the case hasn't been made to adopt any  
24 of these additional proposed conditions with respect to

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1 fire safety. Is that a fair characterization?

2 (No verbal response)

3 CHAIRMAN GETZ: Okay. And, noting that  
4 there's no objection to that characterization. I don't  
5 know how we want to handle this. Do you want to go to it,  
6 Mr. Harrington, in terms of the issue about the subset of  
7 emergency response going to the issue of the Groton Hollow  
8 Road and --

9 MR. IACOPINO: Mr. Chairman, if I can  
10 interrupt for a minute. There is one other issue that I  
11 think the Committee is called upon to decide here, and  
12 that deals with the Fire Marshal's conditions. The Fire  
13 Marshal, at least in what we've received, has required  
14 onboard fire suppression systems in the turbines in his  
15 letter to us. There was a representation made by  
16 Mr. Cherian that that's no longer the case, but we haven't  
17 received anything official there. But I think the  
18 Committee should deliberate on and decide whether or not  
19 to require the onboard fire suppression systems within the  
20 turbines themselves.

21 CHAIRMAN GETZ: It's no longer -- the  
22 representation that "it's no longer the case", that that's  
23 what --

24 MR. IACOPINO: That the Fire Marshal.

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1 CHAIRMAN GETZ: -- the Fire Marshal is  
2 insisting upon?

3 MR. IACOPINO: Right.

4 MR. HARRINGTON: Mr. Chairman, just a  
5 question on this, maybe for counsel. There's a list of  
6 various or -- on different things that apply to this, and  
7 there's a statement that the NFPA 850, Recommended  
8 Practices, is the one that's probably the most  
9 appropriate.

10 MR. IACOPINO: But they're not  
11 exclusive.

12 MR. HARRINGTON: Not exclusive. But  
13 then there's a whole mess of other codes that are listed.  
14 Is there -- and then it says, in the last requirement  
15 here, "In addition to any code required fire protection  
16 systems, monitored fire suppression systems shall be  
17 installed in each of the nacelle and the generator  
18 housing."

19 Now, is this simply a desire on the part  
20 of the Fire Marshal that his goal is to make these as  
21 fire-proof as possible? Or, does he have statutory  
22 authority to invoke that? Or, is it just his idea of a  
23 good idea?

24 MR. IACOPINO: It's what -- well, --

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1 MR. HARRINGTON: I guess my point is, if  
2 he has some authority as the State Fire Marshal to impose  
3 this requirement is one thing. If he's just speaking as  
4 someone who's very knowledgeable in fire defense and  
5 thinks it's a good idea to have it, that's quite another.

6 MR. IACOPINO: The State Fire -- as I  
7 understand it, the State Fire Marshal has jurisdiction  
8 over the Town of Groton because they don't have a building  
9 inspector. So that the Fire Marshal's Office is the  
10 default inspector for towns that don't have their own  
11 building inspector. And, in those situations, the Fire  
12 Marshal has the authority to enforce the provisions of the  
13 State Building Code.

14 MR. HARRINGTON: And, my question is  
15 from there, let me just give you an example maybe. Does  
16 he have the authority to require -- I don't believe he has  
17 the authority to say "I think that a new house being built  
18 in Groton should have a fire suppression system inside  
19 it", therefore you have to do it," unless that's backed up  
20 by some building code or state law. And, I'm assuming  
21 it's the same in this case, and that's what I'm trying to  
22 determine. Does he have -- is this a legal authority that  
23 he's speaking from or is he just saying it's a good idea?

24 MR. IACOPINO: No. In actuality, as he

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1 put in his letter, "in addition to any code".

2 MR. HARRINGTON: Okay. So, he has --  
3 Okay.

4 MR. IACOPINO: He's requesting this to  
5 be in addition to the requirements of the other codes. I  
6 don't think, I know that in my memo in general to you I  
7 referenced "NFPA 850 being the most pertinent code", but  
8 that wasn't meant to exclude the Building Code or the Life  
9 Safety Code or any of the other codes. That was just to  
10 draw attention to which code appeared to be the most  
11 relevant.

12 In addition, and it's not in -- in  
13 addition, the Fire Marshal has also asked as a condition  
14 that his office review all plans relative to the Project,  
15 and be permitted to perform routine compliance  
16 expectations during construction, and a final acceptance  
17 inspection. And, that any plans have to be stamped by a  
18 New Hampshire licensed engineer. And, also, allowing the  
19 State Fire Marshal to employ outside independent third  
20 party review, in accordance with the Building Code -- I'm  
21 sorry, in accordance with NFPA 1, which is the Fire Code.  
22 Those are a couple of additional ones that are part of his  
23 letter, which is marked as "Buttolph Exhibit Number 8",  
24 and that's a letter from Fire Marshal Degnan, dated



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1 October 17, 2010. Are you able to see that?

2 MR. HARRINGTON: No, that's fine. Given  
3 that, I would say that I don't think we should impose  
4 these suppression systems as a condition. If the codes  
5 require it, the Fire Marshal has the authority to do that  
6 unilaterally. And, if they don't, then I don't think we  
7 should be imposing non-code required conditions. I don't  
8 think it was imposed in Lempster, or Granite Reliable, for  
9 that matter.

10 CHAIRMAN GETZ: And, I'm trying to  
11 actually take a look at both of those orders to see if  
12 there's any --

13 MR. IACOPINO: No, this is the first  
14 wind project where the Fire Marshal has participated. I  
15 think Lempster had a building inspector. I'm not sure.  
16 So that, in Lempster, it might not necessarily have even  
17 involved the Fire Marshal. I can't imagine he wouldn't be  
18 the building inspector for the Coos County farm, though.  
19 But this is the first time he's become involved. And, I  
20 don't know if it's -- it may even be a different State  
21 Fire Marshal then, when we did Lempster. I'm not sure.  
22 I'm not sure how long Fire Marshal Degnan has been in that  
23 office.

24 CHAIRMAN GETZ: Quite a while.

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1 MR. IACOPINO: Has he?

2 CHAIRMAN GETZ: But I'm not going to  
3 testify to the length of his service. Any other  
4 discussion about that issue?

5 (No verbal response)

6 CHAIRMAN GETZ: Well, let's hold off  
7 then. Under the emergency plan, did you have any  
8 background on that, Mr. Hood, or does it turn to  
9 Mr. Harrington on this?

10 MR. HOOD: I think Mr. Harrington.

11 MR. HARRINGTON: I guess the easiest way  
12 to focus this is to just go back to the transcript, I  
13 don't know if you want to follow along, of Day 3, the  
14 morning, on Page -- starting on Page 102. Actually, maybe  
15 it's Page -- I guess it's a littler earlier than that, on  
16 Page 100. These were questions I asked. "Do you know of  
17 any plans", and talking about -- you can just look at it,  
18 I'm not going to read the whole thing. But my concern  
19 was, they're moving up a bunch of these very, very large  
20 trucks, which take up the whole road. The Applicant  
21 stated that it would block the road, two-way traffic would  
22 not be allowed. There's going to be a large number of the  
23 trucks that take 20 to 25 minutes apiece to get through  
24 that section of Groton Hollow Road, up to where I guess it

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1 becomes a private road. And, they said it was -- they  
2 assumed it would take 20 minutes, 15 to 20 minutes for  
3 each truck to get through. And, there's going to be a lot  
4 of trucks. And, my concern is, what happens if there's a  
5 breakdown of one of those trucks; a flat tire, there's a  
6 shift in the equipment on there, such that it's no longer  
7 safe to move it forward? One of those trucks could be  
8 there for a substantial amount of time, because you're not  
9 going to bring in the local tow truck from down the -- the  
10 gas station down the street and pull one of those out of  
11 there. You may have to bring in equipment to offload the  
12 truck to empty it, maybe bringing a crane down from the  
13 site or whatever. But an extensive amount of time could  
14 be when the road is locked up in an emergency situation.  
15 So, I asked that they come up with some type of a plan  
16 that addresses that. That they come up with something  
17 that would address these conditions. And, the Applicant  
18 46, proposed conditions to deal with circumstances that  
19 might arise on Groton Hollow Road with respect to  
20 breakdown of the trucks delivering equipment is taken to  
21 be, and that was a question from Chairman Getz to myself,  
22 and I said "yes". We don't know how many trucks there's  
23 going to be. It takes 20 minutes per truck, and there's  
24 going to be a large number of them. And, I mentioned and

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1 talked about possibly a medical emergency or a fire or  
2 something like that.

3 That was responded to by the Applicant,  
4 basically saying "we conform with the New Hampshire state  
5 rules of moving extra large equipment or oversized  
6 equipment. We'll have a State Police truck -- car in the  
7 front and the back, which didn't do anything to address my  
8 concern. Because my concern is, again, if someone has a  
9 heart attack while the truck was broken down on the road,  
10 let's say, for example, how do you get them off? Having  
11 two State Police cars isn't going to do it, because you've  
12 got this big huge truck in the middle of it. If there's a  
13 fire in one of the houses, how do you make provisions for  
14 getting somebody up there.

15 I think that this is a public road, and  
16 the statutes for, you know, the rules for DOT talk about  
17 "oversized vehicles", are talking about a road where, you  
18 know, you're not going to completely block the  
19 thoroughfare if something happened like that. This is  
20 kind of an abnormal situation for an oversized load. You  
21 don't usually see these going up. And, we've all seen  
22 that road, it's in pretty tough shape, and it's narrow and  
23 it's winding. And, I just think there has to be some plan  
24 beyond that.

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1                   Now, if you read the transcript, to me  
2                   it was pretty clear what I was asking for. That's not  
3                   what the Applicant provided. So, we're going to have to,  
4                   I believe, come up with some condition that requires them  
5                   very explicitly to come up with some way of dealing with  
6                   that.

7                   And, I'd also say that there should be,  
8                   on the non-emergency basis, there has got to be, at a  
9                   minimum, a notification requirement, that "During these  
10                  times you will not be able to get out." For the simple  
11                  thing, if someone has a dentist appointment or whatever,  
12                  or they work second shift, and they leave at noontime,  
13                  they have to be told in advance that, "on next Tuesday and  
14                  Wednesday, you're not going to be able to leave for work  
15                  on your normal time, because the road is going to be  
16                  basically closed off for a couple of hours." And, that's  
17                  for normal transit, I'm not talking about breakdowns. So,  
18                  those are inconveniences I don't think should be borne by  
19                  the people that live on Groton Hollow Road to the minimum  
20                  extent possible.

21                  So, the Applicant should have a  
22                  provision for notifying people. And, if even necessary,  
23                  for shuttling people to where they need to be. So, if  
24                  they can't get their own vehicle out because of these

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1 trucks, they could walk down the hill or something, and  
2 then the Applicant makes provisions for a cab to take them  
3 where they need to be. I think it's just, they should not  
4 be put out because of this, you know, private money-making  
5 deal, which is a good thing, there's nothing wrong with  
6 that. But, if they're inconveniencing other people, they  
7 ought to be compensated for that or made whole.

8 But, with the emergency part, but I  
9 think that, as a minimum, I was hoping to see something  
10 come back from them. I would have expected that. But, in  
11 lieu of that, it's almost like at this point I think we'd  
12 have to say that they will come up with some emergency  
13 plan for getting around or getting people out and  
14 emergency vehicles in during the time of the transit of  
15 those trucks. Or, in the event a truck breaks down and is  
16 stuck there for an extended period of time, and have them  
17 work out something that is acceptable to the local  
18 emergency services personnel, be it the police, fire, or  
19 whatever.

20 CHAIRMAN GETZ: Mr. Steltzer.

21 MR. STELTZER: I wouldn't necessarily  
22 disagree that an emergency plan might be nice to have.  
23 But I would maybe argue that the number of different  
24 emergency responses that might come up, the type of

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1 service that would be needed would be vastly different.  
2 And, so, whether there's a heart attack at one of those  
3 residences or whether there's a fire, it's all different  
4 situations. And, by having -- and, that the trained  
5 individuals, those trained State Troopers that are there  
6 on-site, know how to handle situations as they come up,  
7 and some of that is going to need to be flexible. And,  
8 that simply having a State Trooper there, two State  
9 Troopers there to facilitate the emergency response, and  
10 not have to have any sort of delay in that situation,  
11 could alleviate, you know, a huge concern, and might be  
12 able to meet the need, as far as an emergency response.  
13 And, could this plan that is drafted identify all the  
14 situations that could come up. And, maybe that could just  
15 be handled by the State Troopers on an "as needed" basis.

16 MR. HARRINGTON: If I could respond,  
17 Mr. Chairman? Yes, I wasn't trying to say that they  
18 wouldn't be of any use being there. Obviously, that gives  
19 you the advantage to, with their radio potential to make  
20 outside contacts real quick. But, I mean, State Troopers  
21 are big. And, even if you had 20 of them, they're not  
22 going to move these trucks out of the way. And, you know,  
23 if a fire is up there or someone that is non-ambulatory  
24 has to be taken out, carrying somebody down off of a road

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1 such as that would require a large number of people with a  
2 litter. So, I think there has to be something in as  
3 backup for that.

4 And, even beyond just the emergency, the  
5 actual emergency, if a truck breaks down there, you're not  
6 necessarily going to have a fire or you're not necessarily  
7 going to have a medical emergency. But, what happens is,  
8 every minute that it stays there, the chances of something  
9 like that occurring increases. So, they need to have a  
10 plan for what they're going to do in the event if a truck  
11 breaks down. I don't know how these trucks operate. But  
12 it could be very possible, if there's a breakdown of the  
13 truck from a flat fire or some kind of an overheating of  
14 brakes or something, or whatever, they may have to unload  
15 the truck in order to tow it out of there. And, now,  
16 you've got these very, very large pieces of equipment.  
17 And, again, you're going to need specialized equipment to  
18 come up there and take them off.

19 What is -- what's the plan? Is it  
20 possible to even get that? We have had no -- no one has  
21 presented us information saying "well, yes, if one of  
22 those trucks breaks down, we have to get a 8-ton crane in  
23 there. And, oops, we don't even know if we've got an  
24 8-ton crane that will fit up that road next to the



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1 existing truck." That's the type of things I'd be looking  
2 for to be considered. Not to say that we're trying to  
3 look at every distinct possibility. But is there a way to  
4 remove a broken down -- a truck that needs to -- that  
5 can't go in a reasonable amount of time?

6 MR. STELTZER: And, I see those as two  
7 different issues. One is, is there a plan for how that  
8 truck needs to be removed? And, then, the second part of  
9 that is, when the truck is there that's disabled, how do  
10 you handle an emergency situation that's above the --

11 MR. HARRINGTON: Well, the two may go  
12 together. If there's a house on fire, again, a State  
13 Trooper with a fire extinguisher probably isn't going to  
14 put it out. So, you want to have -- how are we going to  
15 get this truck out of the way in the fastest possible  
16 method? Maybe at that point you can drag it ten feet with  
17 a huge tow truck, enough for a fire truck to get by, I  
18 don't know. The point is, we don't need to come up with  
19 that plan. The Applicant should have come up with the  
20 plan and they didn't.

21 CHAIRMAN GETZ: Mr. Iacopino.

22 MR. IACOPINO: If I can just inject just  
23 one legal point that you all may want to be aware of. As  
24 I understand, and, Mr. Hood, please correct me if I'm

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1 wrong, the Department of Transportation's oversized load  
2 regulations are actually expired as administrative  
3 regulations, but there is a guidance pamphlet or booklet  
4 that they have put out. And, although the Applicant  
5 asserts that State Troopers are required on the movement  
6 of oversized loads, when I looked through that guidance, I  
7 understand that it actually can be a private company that  
8 follows these trucks up and down a highway, "flag trucks"  
9 or whatever they're called. And, that they're -- and the  
10 guidance is for them to be compact cars.

11 So, I'm just pointing that out, because  
12 I think there's a -- I think you're all working on an  
13 assumption that, if you just go with the DOT regulations  
14 or the DOT guidance has a requirement of State Troopers,  
15 I'm not sure that that is so. And, you may want to  
16 consider that in any conditions that you make.

17 MR. HOOD: I think that's correct.  
18 Plus, once they get off of state roads, our guidance and  
19 our oversized and overweight policy are strictly for our  
20 highways and our bridges. Once they get off of those,  
21 onto a town road such as this, it's up to the Town to have  
22 their engineer work with the Applicant to work out  
23 whatever -- whatever safety controls, whatever size and  
24 weight restrictions the Town wants to put on it, the DOT

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1 would no longer have any jurisdiction on it, once it's off  
2 of our state roads or state bridges.

3 CHAIRMAN GETZ: Dr. Kent.

4 DR. KENT: I endorse Mr. Harrington's  
5 suggestions. I don't think it's a burden on the Applicant  
6 to come up with a plan to handle not only inconveniences,  
7 but medical and potential fire emergencies during the  
8 situation. And, I would endorse a condition in the  
9 certificate to such effect.

10 CHAIRMAN GETZ: Mr. Harrington, let me  
11 ask this question. Well, first, in terms of context, this  
12 is really focused on Groton Hollow Road?

13 MR. HARRINGTON: Correct.

14 CHAIRMAN GETZ: And, it's through the  
15 period of bringing the large -- the large trucks bringing  
16 in the turbine pieces and the blades. Was part of your  
17 proposal that there be either some specific notice of when  
18 these trips would it be occurring and/or some limitation  
19 on when, you know, the trucks could be going up the road?

20 MR. HARRINGTON: Well, I would think, as  
21 a minimum, you'd want to give people notice. So, they  
22 don't, you know, pull out to the end of their driveway and  
23 see more of these trucks coming up a couple of minutes  
24 apart, each taking 20 minutes to get by, and realizing

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1 they can't get out for 40 minutes. That just to me is a  
2 minimum.

3 As far as a limitation on the amount,  
4 again, I was hoping that what we would have seen is a plan  
5 that would address issues like that. To say that, you  
6 know, "there will be a 15-minute break between each" --  
7 I'm just putting out a number -- "each truck going up to  
8 allow residents to leave and come back into their  
9 property, something like that. Obviously, they have to do  
10 something to accommodate getting the trucks up there. You  
11 can't just say "no", because then there's no project.

12 But that's why, I think at this stage,  
13 it would be best to do something, maybe, you know, almost  
14 using the words of Dr. Kent, and saying -- pushing it to  
15 the town to work with the Applicant to come up with  
16 something that's successful to address, you know, the  
17 emergency and inconvenience features associated with these  
18 oversized loads going up Groton Hollow Road. Because I  
19 don't think we're going to be able to come up with any  
20 words today that are going to cover all the possibilities.

21 CHAIRMAN GETZ: And, that's one of the  
22 things that I'm trying to think through, is "what are the  
23 mechanics?" But there's two parts. There's notice, so  
24 folks can make judgments in advance. And, that's assuming

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1 that everything goes smoothly.

2 MR. HARRINGTON: Right.

3 CHAIRMAN GETZ: And, then, the other  
4 issue is, if things don't go smoothly, and there is some  
5 breakdown of a truck, then, whether it's an emergency  
6 situation or not, that people either can't be accessed, if  
7 there's an emergency, or they just can't get out for --

8 MR. HARRINGTON: Or something as simple  
9 as -- I mean, I'm assuming that the requirements for  
10 moving these are fairly extensive. And, it's in the best  
11 interest of the Applicant to make sure that, whoever they  
12 hire to move these things, it knows what they're doing and  
13 does a very good job of it. Because it's their money,  
14 they only stand to lose money. There's not going to be  
15 something gained on not doing this properly. But the fact  
16 remains that we are dealing with a kind of shaky road  
17 here. And, there's a possibility, because we have  
18 residents there, that something could happen. So, --

19 CHAIRMAN GETZ: But let's think about  
20 it. So, what the condition would look like then, I guess,  
21 is whether it would be "work something out with -- to  
22 address these issues with the Town of Groton" --

23 MR. HARRINGTON: I guess. Yes.

24 CHAIRMAN GETZ: -- "and let us know if

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1 there's a problem." Or, "work something out and submit it  
2 for our review." I'm just trying to think which way we  
3 would actually --

4 MR. HARRINGTON: Well, I would defer to  
5 the rest of the Committee what they thought was correct on  
6 that. I would think that, if the issue was brought to the  
7 attention of the Town of Groton to what we're specifically  
8 referring to, and they didn't have much representation  
9 during the hearing, so they're probably not even aware of  
10 that part of the transcript. But that, if we simply said  
11 "the Applicant must work out an agreement dealing with  
12 notification of expected and unexpected transit conditions  
13 associated with the transit of the trucks on Groton Hollow  
14 Road and", you know, "submit that back to us", that would  
15 probably be sufficient for me, because I'm assuming the  
16 Town of Groton would only have the best interests of their  
17 citizens involved.

18 CHAIRMAN GETZ: Dr. Boisvert.

19 DR. BOISVERT: I'm in agreement of what  
20 you're saying. And, I recall going to a public hearing  
21 in, I believe, Plymouth, where a number of residents of  
22 Groton Hollow Road were present. And, they had a lot of  
23 sincere opinions and feelings of being somewhat left out.  
24 It would seem to me it would be appropriate to include

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1 input specifically from the Groton Hollow Road residents,  
2 either in the form of a public hearing or some  
3 solicitation of their input as to these plans. Because  
4 they may be aware of situations that are unusual or unique  
5 to them that they want the Town to be sure to take into  
6 consideration, a disabled person who lives in that area,  
7 that sort of thing. And, again, I'm grasping.

8 But I would like to see that, not only  
9 will they development something, but they will explicitly  
10 include the input of the residents of Groton Hollow Road  
11 in some fashion.

12 MR. HARRINGTON: And, I would have no  
13 problem with that suggestion. It makes sense,  
14 specifically with people's special medical conditions or  
15 something.

16 MR. IACOPINO: Mr. Chairman, I would  
17 just point out, as you deliberate on the mechanics of such  
18 a condition, if that's what you intend to do, that the  
19 Town of Groton Agreement, Applicant Exhibit Number 32,  
20 contains three different sections that address somewhat of  
21 Mr. Harrington's concern, but not all of it. At  
22 Section 7, which deals with "Emergency Response",  
23 Section 8, under "Roads", does require some coordination  
24 between the -- some notification of the use of overweight

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1 loads to the Town. And, then, Section 9 as well, there is  
2 some notification requirements, I believe, where they have  
3 to advise the Town of a schedule of construction  
4 activities, including the use of public roads for  
5 oversized and overweight -- overweight loads. And, then,  
6 finally, in Section 9.7, requires that overweight loads  
7 will only use the roads on "routes approved by the Town",  
8 but also that "the Town shall be notified at least 24  
9 hours before each construction vehicle with a Gross  
10 Vehicle Weight greater than 88,000 pounds is to use a Town  
11 road."

12 I just want to point those out, because  
13 those are in the agreement that has already been agreed  
14 upon between the Town of Groton and the Applicant. So  
15 that, as you consider the mechanics, if you're going to  
16 require a further condition, you know what's in that  
17 agreement already.

18 MR. HARRINGTON: Mr. Chairman, I am  
19 familiar with these, and they do part of it, but I don't  
20 think they go far enough. And, to be quite honest, having  
21 lived in a fairly small town for quite some time, "giving  
22 the Town notice of something" does not mean people in the  
23 Town are aware of it, sometimes not for weeks later. And,  
24 you know, if it's a 24-hour notice, and you happen to be



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1 out of town that day, you come back, and all of a sudden  
2 you can't get into your house for three hours, and you  
3 want to -- and you are supposed to be at work in an hour  
4 and a half. And, those are issues that really come up.  
5 There's no mass notification system in rural towns that  
6 I'm aware of.

7 CHAIRMAN GETZ: Any other discussion of  
8 that issue? I'm sorry, --

9 MS. LEWIS: I think you meant "Rumney",  
10 not "Groton".

11 MR. HARRINGTON: Yes, it is Rumney.  
12 It's Groton Hollow Road is in Rumney, yes.

13 CHAIRMAN GETZ: Well, any other  
14 discussion on that issue?

15 (No verbal response)

16 CHAIRMAN GETZ: Okay. So, I guess,  
17 again, this is another subset where it looks like there's  
18 some inclination to pose a condition to try to address the  
19 issue. We'll worry about the precise language when we get  
20 to the end of this subsection. Mr. Hood.

21 MR. HOOD: Just would like to touch on  
22 the aviation safety as part of the "public health and  
23 safety". The Applicant states that "the tower locations  
24 were reviewed by the FAA, and four locations were shifted

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1 so they would not be a hazard to aviation." The Applicant  
2 goes on to state that "the Project will comply with all  
3 applicable FAA safety requirements, and they have received  
4 the determination of "no hazard to air navigation" for all  
5 of the proposed turbines from the FAA." And, that's it.

6 CHAIRMAN GETZ: Any discussion about the  
7 aviation safety issues?

8 (No verbal response)

9 CHAIRMAN GETZ: Well, then, there's  
10 several other issues that were set out in the Applicant's  
11 Application, and that we haven't discussed, concerning ice  
12 shed or ice throw, lightning strikes, tower collapse, and  
13 stray voltage. I think we should at least make some  
14 mention of those, even though there wasn't a tremendous  
15 amount of discussion during the proceeding. And, those  
16 are on Pages -- beginning on Page 81 of the Application.  
17 And, it talks about "ice shed". "Icing conditions have  
18 been known to occur during certain winter conditions of  
19 temperature and precipitation." And, the Company notes  
20 that "Project access roads will have visible signs warning  
21 of the danger of potential falling ice."

22 With respect to lightning strikes, the  
23 Applicant points out that it "has an extensive grounding  
24 system that includes copper rods. The grounding system

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1 typically includes an embedded copper ring as the base."  
2 And, "there will be an underground collector system that  
3 dissipates the effects of lightning."

4 With respect to tower collapse and blade  
5 throw, the Applicant indicates it "will construct and  
6 operate the Project consistent with...all state and  
7 Federal OSHA safety regulations." And, "each turbine is  
8 certified according to international engineering  
9 standards." And, "all electrical equipment will be  
10 inspected by Iberdrola under commissioning procedures."  
11 And, "in normal operating conditions, the wind turbine  
12 uses the blades as an aerodynamic brake when it's  
13 necessary to stop rotation." So that, effectively, it  
14 contends that there's no unreasonable adverse effect on  
15 public health and safety relative to that issue.

16 And, with respect to stray voltage, it  
17 notes that "while concerns of stray voltage are  
18 legitimate, it's...largely preventable with proper  
19 electrical and grounding practices." And, "a grounding  
20 study, as well as a step and touch calculation will be  
21 conducted." And, the Applicant indicates that the  
22 "collection system will be properly grounded and will not  
23 be connected to the local electrical distribution lines  
24 that provide service to local residences."

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1                   So, the Applicant takes the position,  
2                   again, with those, in those four areas of ice shed,  
3                   lightning strikes, tower collapse or blade throw, and  
4                   stray voltage, that there are no issues of safety or  
5                   public health concern that we -- that would rise to an  
6                   unreasonable adverse effect.

7                   Is there any discussion about any of  
8                   those items? Mr. Harrington.

9                   MR. HARRINGTON: Well, with regard to  
10                  the ice throw thing. You know, I reviewed this, and I  
11                  don't have the specifics written down here, but the  
12                  mechanisms they have in place are very similar to the ones  
13                  that were at the other locations that we've looked at.  
14                  The anti-vibration device or the vibration detection  
15                  device that would pick up -- the vibration detection  
16                  devices on the blade enable them to pick up the buildup of  
17                  even a small amount of ice, and the redundant braking  
18                  systems should go a long ways to mitigating any dangerous  
19                  ice throws.

20                  CHAIRMAN GETZ: And, there's actually  
21                  one other general area that the Applicant speaks to under  
22                  the subheading of "Mitigation", on Page 86 of its  
23                  Application. What it really speaks to is  
24                  "setbacks/gates/signage". And, it contends that the

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1 Project is "designed such that setbacks from residences,  
2 roads, and utilities will protect the public's health and  
3 safety by allowing ample space for the safe construction  
4 and operation of the facility." Notes that "the entire  
5 Project is located on private land." And, "no public  
6 access to the site." And, so, that's one other issue that  
7 they set forth or describe under the heading of "Public  
8 Health and Safety".

9 We do have some other proposed  
10 conditions with respect to roads, but I guess I would  
11 suggest that, well, let me take a look at those, just in  
12 case there's anything that should be addressed under this  
13 heading or if they can be dealt with separately.

14 Well, I'm not seeing anything that I  
15 think it's critical that we deal with under this heading.  
16 I think what I'd like to do, towards the end of the  
17 proceedings, whether it's today or some day next week, is  
18 to go through each of the conditions, make sure that we've  
19 addressed them and that we haven't left anything out.  
20 And, we'd also, in the context of that review, also let's  
21 go through the two town agreements, to make sure that  
22 we're comfortable with those, and make a decision whether  
23 they should be approved and made conditions to the  
24 certificate, whether, again, we'll add anything to them.

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1                   So, then, I would pose this question:  
2                   Is there any -- any other discussion that the members  
3                   would like to have at this point about anything that comes  
4                   under the heading of "Public Health and Safety"?

5                   (No verbal response)

6                   CHAIRMAN GETZ: Okay. Hearing nothing,  
7                   then this is where I think we are. We're at the point of  
8                   entertaining a motion with respect to whether there's  
9                   unreasonable adverse effect of the project on public  
10                  health and safety, so long as -- I think I'm looking at  
11                  three conditions: One, which I think there's some  
12                  agreement with on noise that somebody is going to have to  
13                  describe; the other is this Groton Hollow Road in Rumney  
14                  issue about dealing with the issue of how to notify the  
15                  residents of Groton Hollow Road and to make -- have the  
16                  Applicant make some arrangements with the Town to have an  
17                  agreement about how to deal with the protection of the  
18                  residents, in the event that there is a truck breakdown;  
19                  and the third, I think there's something here, which is  
20                  with respect to the Fire Marshal's letter. What  
21                  conditions, if any, of the -- proposed by the Fire Marshal  
22                  should be adopted? I guess I'm a little concerned that  
23                  there may have been some change in the Fire Marshal's  
24                  position, but we don't have it on the record.

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1 MR. IACOPINO: We don't have it from the  
2 Fire Marshal, Mr. Chairman. We have testimony from  
3 Mr. Cherian.

4 CHAIRMAN GETZ: Oh, that was actually  
5 testimony during the proceeding. Okay. Because I would  
6 just say this, as a general matter, I would be inclined to  
7 give some deference to what the Fire Marshal is proposing.  
8 And, what I can't locate, of all the pieces of paper, is  
9 that actual letter from the Fire Marshal.

10 MR. IACOPINO: That is Exhibit Buttolph  
11 8. I can get it for you, sir. It's right here. Tom,  
12 that's my only copy, but that's it. And, just as  
13 logistically, if the Committee is inclined to, if it has  
14 some concern whether there's been a change, you could  
15 always pass whatever condition you think is advisable on  
16 this record, with the proviso that the Fire Marshal can  
17 waive off, if presented to him.

18 CHAIRMAN GETZ: All right. Well, let's  
19 get a little more discussion in about the Fire Marshal's  
20 letter. I think Mr. Harrington expressed an opinion I  
21 think on at least a piece of it, but where are the rest of  
22 the Committee on whether we should adopt the conditions as  
23 set forth in the Fire Marshal's letter from October 17th?  
24 Have the folks taken a look at that? Mr. Perry.

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1                   MR. PERRY: Yes. My leanings is towards  
2 what Mr. Harrington said. That those portions of the Fire  
3 Marshal's letters that are backed by code requirements be  
4 the ones that we consider. And, that the last item there  
5 that talked about "fire suppression" doesn't appear to be  
6 an actual code. And, we have testimony that the Applicant  
7 and of the State Fire Marshal's have discussed that issue,  
8 and it appears it may be withdrawn. So, I would not want  
9 to consider that last item as part of the condition.

10                   DIR. SCOTT: Mr. Chair?

11                   CHAIRMAN GETZ: Yes.

12                   DIR. SCOTT: Is there a mechanism? I'm  
13 just a little bit uncomfortable, like, as you say, since  
14 we don't have in the record anything new from the Fire  
15 Marshal, his letter is fairly explicit. He thinks -- you  
16 know, this is what he thinks, this should happen. Is  
17 there a way to have to have a door open for him to come  
18 back somehow to us if --

19                   CHAIRMAN GETZ: Well, I guess, yes,  
20 there's at least a couple of ways. I think one way would  
21 be that the -- the way that I think Mr. Iacopino is posing  
22 it, is you adopt all of the four recommendations,  
23 including the suppression systems, except to the extent  
24 that the Fire Marshal waives in writing what was here.



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1 Or, the opposite is, we adopt the other conditions, but  
2 say that "the Fire Marshal may request separately or renew  
3 his request for the fire suppression systems." I think  
4 there's -- you can get to the same, I think, result, but  
5 what's easier administratively? What's easier to write?  
6 What has fewer steps? I think is maybe more the issue.  
7 Dr. Kent.

8 DR. KENT: I'm borrowing this from the  
9 Applicant's post hearing brief. And, I take this to be  
10 true. No reason to doubt it. It says "The Fire Marshal's  
11 letter did not meet the deadlines for state agency  
12 filings." "The Fire Marshal did not submit testimony, did  
13 not appear at the hearing, was not subject to discovery."  
14 And, there was an expectation the Fire Marshal was going  
15 to submit a clarifying letter, but never did. So, it  
16 makes it difficult to give weight to this letter, because  
17 of the confusion that now surrounds it. And, whether it's  
18 really the Fire Marshal's opinion at this point, since he  
19 chose not to clarify or endorse or testify or even file on  
20 time.

21 CHAIRMAN GETZ: Dr. Boisvert.

22 DR. BOISVERT: I like your first option  
23 of including it, unless the Fire Marshal waives it with a  
24 letter. That puts the burden back on the Fire Marshal to

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1 represent his opinion, considering that he was going to  
2 withdraw it. This leaves it in there and puts the burden  
3 of responsibility on the Applicant to the Fire Marshal to  
4 withdraw it.

5 DIR. SCOTT: Mr. Chair? It's exactly  
6 the Fire Marshal's lack of action on this, lack of  
7 engagement, is why I want to do the opposite. Because, if  
8 the Fire Marshal's Office stays true to form, if we put it  
9 in, even if the Fire Marshal's Office really doesn't think  
10 it needs to be there, they have taken no actions beyond  
11 this letter since. If they maintain that, then the  
12 Applicant is left with it, just due to inaction from the  
13 Office, not because the Office thinks it's necessary.

14 So, based on that, I think I'd err the  
15 other way and say we don't include it, but, again, I'd  
16 look for a way to open the door, that the Fire Marshal's  
17 Office, if they really do think this is an issue, can get  
18 it put back in. Does that make sense?

19 CHAIRMAN GETZ: I think, yes, well,  
20 there's certainly some logic to that. I'm trying to think  
21 through a way of phrasing that so that there's,  
22 effectively, it -- well, again, you can go the negative  
23 approach or the positive approach. Whether, if such  
24 action is taken within a certain amount of time, then it

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1 either is or isn't in.

2 DIR. SCOTT: I just don't want the  
3 Applicant held hostage, if the Office doesn't do anything,  
4 then they're held hostage to that.

5 CHAIRMAN GETZ: Mr. Harrington.

6 MR. HARRINGTON: Well, I agree with  
7 Mr. Scott's idea there, but I don't think it's necessary,  
8 if you agree with my idea. Because mine is that, if this  
9 is not required by code, then the Fire Marshal does not  
10 have the authority to impose this. And, just because he's  
11 the Fire Marshal does not give him the right to write fire  
12 codes for the State of New Hampshire that I'm aware of.  
13 I'm sure there's a process that these codes go through.  
14 There's legislative committees, whatever, that adopt the  
15 various codes. And, just at his will decides to do  
16 something, we shouldn't be granting him that authority.  
17 He has no more authority I can see to impose fire  
18 suppression systems here than he would if he's the  
19 building inspector for the Town of Rumney. Someone was  
20 building a new residential house, and he decided it would  
21 be a good idea to put in fire suppression systems, that's  
22 not the law in the State of New Hampshire. There's no  
23 code that requires it to be that way. And, I don't think  
24 we should be -- this Committee should be granting him the

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1 authority to arbitrarily go above and beyond the codes,  
2 simply because he says it's a good idea. And, to  
3 reiterate what Dr. Kent said, no one's had a chance to  
4 question his ideas, no one's had a chance to cross-examine  
5 him on this. And, to just take it as "I think it's a good  
6 idea, I'm the Fire Marshal, I'm going to make you do it",  
7 I can't go along with that.

8 So, I would say leave the provision off  
9 completely. And, if the Fire Marshal wants to -- think  
10 it's such an important issue, then he must have other  
11 vehicles that he can do this through his Fire Marshal's  
12 Office. I don't think it's our responsibility or do we  
13 have the authority to impose something that he just thinks  
14 is a good idea on the Applicant?

15 CHAIRMAN GETZ: Well, I think,  
16 certainly, we have the authority under our general  
17 conditioning power under public health and safety. I  
18 mean, I don't think that he's only -- that a  
19 recommendation by a state official is limited to what's  
20 specifically set out in a code. I think it would be  
21 permissible. Again, it's a different issue of whether we  
22 want to do it or not, but we certainly --

23 MR. HARRINGTON: Let me change then from  
24 "authority" to "we shouldn't do it". Okay?

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1 CHAIRMAN GETZ: Okay. Any other  
2 discussion?

3 DR. KENT: Is there anyplace else in  
4 testimony or in the Application that indicates they're  
5 adhering to all the codes, so that the Fire Marshal's  
6 references to codes become moot points?

7 CHAIRMAN GETZ: I don't know. Let's  
8 see.

9 DR. KENT: This is the first hit I got.  
10 The first search for codes was under -- in the  
11 Application, in Section F.5(a), "Construction Process".  
12 Refers to "American Concrete Institute", "Institute for  
13 Electrical and Electronic Engineers", "National Electric  
14 Code", "National Fire Protection Agency", "Construction  
15 Standards Institute". Let me see if I can find more  
16 quickly. "The Project engineering team ensures that all  
17 aspects of the specifications, as well as the actual  
18 on-site construction, comply with all applicable federal,  
19 state, and local codes and good industry practice." So,  
20 that's Page 25 of the Application.

21 In addition, "The Project developer  
22 and/or contractor will coordinate directly with the local  
23 code enforcement officers in order to assure that all  
24 aspects of Project specifications/inspections are properly

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1       communicated and understood."

2                   CHAIRMAN GETZ: Did you have something,  
3       Mr. Iacopino, on this?

4                   MR. IACOPINO: No, I was just --

5                   CHAIRMAN GETZ: Because I'm trying to  
6       figure out where we are. So, in terms of the four items  
7       set forth by the Fire Marshal, as a minimum proposal is to  
8       put aside the fourth one with respect to fire suppression.  
9       And, I know, Mr. Harrington, Mr. Perry, I think you've  
10      spoken to this mostly, and maybe Mr. Scott somewhat. But  
11      does that leave all of the other three intact or does it  
12      require us to make -- are you proposing some other changes  
13      to those as well? Though, I think, actually, Dr. Kent was  
14      suggesting -- may have been suggesting we don't even go  
15      down this path at all. But I just need some clarity.

16                  MR. DUPEE: I'll try to un muddy the  
17      water then. I think I agree with you, is that ignoring  
18      the State Fire Marshal is probably not a good plan.  
19      Obviously, he spent time to write this letter. I know  
20      that office is woefully understaffed. And, the fact  
21      they've got back to you at all is actually telling. In  
22      the second page, he talks about having an investigator  
23      particularly assigned to this Project. So, I believe that  
24      we should not -- not not include 1 through 3, certainly.

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1 CHAIRMAN GETZ: "Not not include it"?

2 MR. DUPEE: Right.

3 MR. IACOPINO: In other words, you  
4 should include it.

5 CHAIRMAN GETZ: Because I can see the  
6 argument for including -- that you have a condition set  
7 the requirements. And, I think this maybe go to some of  
8 Mr. Scott's point is, but are we also going to require a  
9 sign-off and inspection, when --

10 MR. DUPEE: It certainly implies on Page  
11 1 that he has authority over things going on in Groton  
12 being the Fire Marshal. So, if that's the case, if he's  
13 serving as the local building code inspector, then that's  
14 going to happen without input from us.

15 CHAIRMAN GETZ: Which I guess goes maybe  
16 to Mr. Harrington's -- one of Mr. Harrington's original  
17 positions, to the extent the law applies, we could have a  
18 condition saying that "the law should apply."

19 MR. DUPEE: Easy enough.

20 CHAIRMAN GETZ: But, to the extent the  
21 law doesn't apply, --

22 MR. DUPEE: It doesn't apply.

23 CHAIRMAN GETZ: Is that a fair  
24 characterization of your position, Mr. Harrington?

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1 MR. HARRINGTON: Well, I guess my  
2 position would be, if it's already in the law and it's  
3 already going to occur, we don't need to say it again  
4 here. It's sort of like shooting him in the head three  
5 times with a .45; you're dead after the first time.

6 MR. DUPEE: Not always.

7 CHAIRMAN GETZ: Yeah, let's not debate  
8 that issue.

9 MR. HARRINGTON: And, of course, that's  
10 a bad analogy, but I think you understand what I'm getting  
11 at. Is that, I don't think this Committee has to look at  
12 every possible thing that's invoked by the law, because  
13 we're going to be arbitrary in which ones we pick, because  
14 there's hundreds of different sign-offs that are involved  
15 in all of these codes and requirements that have to be  
16 met. And, just saying "we're going to invoke the code" is  
17 fine with me. The only thing I don't want is adding that  
18 additional fire protection system. So, putting it in that  
19 they're "going to be done to this code" is very similar to  
20 like we do with DES, when we say "all the various water  
21 permits and air permits and everything that you have to  
22 get you have to get", and they become conditions of the  
23 certificate. But we don't turn around and then say that  
24 we want a specific sign-off submitted to the Committee for



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1 each one of those. And, we let the existing laws do their  
2 -- existing departments do their job. So, whatever  
3 sign-offs are required by all the building codes and fire  
4 codes and everything will be done.

5 DR. KENT: Maybe I have a Solomon moment  
6 here. If our condition was something along these lines:  
7 "The Project engineering team will ensure that all aspects  
8 of the specifications, as well as the actual on-site  
9 construction, comply with all applicable federal, state  
10 and local codes and good industry practice. The State  
11 Fire Marshal or his designee will be afforded an  
12 opportunity to review all plans relative to the Project  
13 and perform routine compliance inspections during  
14 construction and final acceptance inspection." That way  
15 we haven't - we have covered all the codes and we haven't  
16 ignored the Fire Marshal.

17 CHAIRMAN GETZ: Any comment? Mr. Scott.

18 DIR. SCOTT: I'm fine with that. I  
19 would argue that, certainly, there is a benefit, for  
20 instance, in this case, to the Fire Marshal's Office to us  
21 incorporating some of his requirements into our  
22 certificate, where we get into issues of enforcement and  
23 ability to enforce and that type of thing. So, I  
24 certainly agree that, for State agencies, especially like

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1 the Fire Marshal's Office, there's a benefit to that. So,  
2 I wouldn't want to minimize that benefit of putting it  
3 into the certificate. So, I support that part. But, no,  
4 I'm fine with what Dr. Kent just said.

5 MR. HARRINGTON: I guess I'd still say,  
6 I would leave it at the codes that were in the Fire  
7 Marshal's letter, which are kind of numbered funky here,  
8 1, 2, and then there's no 2, 3, 4, or 5, just 6. But "All  
9 structures, including but not limited to...Internal  
10 [International?] Building Code, NFPA," "NFPA" again and  
11 "NFPA" again, just put those in as "compliance with the  
12 following codes is required as a condition for the  
13 certificate." End of condition.

14 CHAIRMAN GETZ: So, the condition would  
15 be that "the Applicant shall comply with the codes set  
16 forth in the Fire Marshal's letter of October 17th, as  
17 described in Section 1 of his letter"?

18 MR. HARRINGTON: I don't have the letter  
19 in front of me. But, yes, you could even list the codes,  
20 if you wanted to. I mean, they're not that -- it's just a  
21 paragraph. Just say "the following codes and standards  
22 with regard to fire protection."

23 DR. KENT: Mr. Harrington, can I ask you  
24 one question?

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1 MR. HARRINGTON: Sure.

2 DR. KENT: Okay. Since I don't know  
3 these codes, can you vouch that these codes are actually  
4 applicable? I don't want to put something in that's not  
5 applicable. If you can say they are, then I'll --

6 MR. HARRINGTON: I don't know. I'm not  
7 a fire code expert. I'm assuming these were codes that  
8 were referenced by the Fire Marshal. And, they weren't,  
9 best I can tell, that part was not objected to by the  
10 Applicant, is that correct? They objected to the fire  
11 suppression system.

12 DR. KENT: Let me look for that  
13 testimony.

14 MR. HARRINGTON: This was the Buttolph  
15 list of conditions, right?

16 MR. IACOPINO: It was -- Buttolph Number  
17 8 is the Fire Marshal's letter.

18 MR. HARRINGTON: Do you have any idea  
19 what page that's on? Does anyone have that?

20 MR. IACOPINO: I don't believe it's  
21 included in the list of conditions. I think I just raised  
22 this with the Chair.

23 MR. HARRINGTON: Oh. Can I see your  
24 copy of it then? Is it in the Buttolph filing?

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1 MR. IACOPINO: Yes. Buttolph Number 8.

2 MR. HARRINGTON: Okay. So, it should be  
3 in the back of their filing?

4 MR. IACOPINO: No. That's their --

5 MR. HARRINGTON: This is their final  
6 brief.

7 MR. IACOPINO: Yes, but this is an  
8 exhibit that they entered during the course of the  
9 proceeding. And, actually, --

10 MR. HARRINGTON: Didn't they make it as  
11 a condition?

12 MR. IACOPINO: No. No, they didn't  
13 include it in their conditions.

14 MR. HARRINGTON: That's odd.

15 DR. KENT: The Applicant's position on  
16 this is that they "expected the Fire Marshal to submit a  
17 letter clarifying its position, i.e. that the Fire  
18 Marshal's Office is more concerned about compliance with  
19 the intent of the codes than the actual specifications.  
20 No such letter had been filed." And, so, that just  
21 muddies the waters here. It doesn't get to your question,  
22 "did the Applicant agree that those codes are applicable  
23 and would follow them?"

24 MR. HARRINGTON: Okay. So, these were

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1 never put out as a condition by Buttolph. This was just a  
2 letter that they put in as an exhibit?

3 MR. IACOPINO: But, we did, in fact --  
4 the SEC did, in fact, receive this letter.

5 MR. HARRINGTON: Right.

6 MR. IACOPINO: Albeit not within the  
7 time frame when State agencies were supposed to respond.  
8 But the SEC did, in fact, receive this record from a State  
9 agency, and this is a -- it's from a State agency, we  
10 would normally include it in our record of the  
11 proceedings, regardless of the fact that -- even if it  
12 hadn't been introduced as an exhibit by one of the  
13 parties. It's very similar to the letters that we get  
14 from the Department of Environmental Services, on their  
15 progress on wetlands or alteration of terrain, and their  
16 final recommendations and permits on those.

17 CHAIRMAN GETZ: Dr. Kent.

18 DR. KENT: Let me ask this question  
19 then. If we were to make a condition that referenced  
20 these codes, and they turned out to be inapplicable, is  
21 that something that could just be handled between the  
22 Applicant and the Fire Marshal or does that require our  
23 involvement again?

24 MR. IACOPINO: In terms of drafting a

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1 condition, you could say that "all applicable codes,  
2 including, but not limited to, the following". And, by  
3 using the word "applicable" before you have addressed  
4 them, if they're not applicable, the Fire Marshal couldn't  
5 apply them, they wouldn't be applicable. I mean, quite  
6 frankly, I don't know if NFPA 850 is anything that's  
7 actually been adopted by New Hampshire law. I know that,  
8 in the Laidlaw -- the recent Laidlaw certificate case,  
9 that was required, as well as these other. Because I  
10 believe NFPA 101, NFPA 1, and the International Building  
11 Code 2009 Edition are all statutorily required as a  
12 minimum in New Hampshire. I'm not sure about the Fire  
13 Protection for Electric Generating Plants. I'm not sure  
14 if that's actually an adopted code. But, clearly, it  
15 appears to be something that would have some bearing on a  
16 power facility.

17 CHAIRMAN GETZ: So, a condition stating  
18 that "The Applicant shall comply with those applicable  
19 codes set forth in the Fire Marshal's letter to the  
20 Committee dated October 17, 2010" would get us where we  
21 want to be? Is that fair? Does anybody have any  
22 objection to that approach? Mr. Scott.

23 DIR. SCOTT: Two things I guess I would  
24 ask. If we're going to just -- perhaps it might be

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1 simpler yet to just say "they shall meet all applicable  
2 fire codes." But, reading the Fire Marshal's letter here,  
3 and, again, I don't know what NFPA 1 and 1.15, but it's  
4 implied that, in Number 3, "If technical assistance is  
5 required, the Fire Marshal may require an independent  
6 third party review", that sounds like something the  
7 Applicant would have to pay for. And, that doesn't sound  
8 like a code. That sounds like he wants a condition saying  
9 "If I need this, the Applicant will pay for it." I don't  
10 know that, but, again, it's difficult without the Fire  
11 Marshal here.

12 MR. IACOPINO: Actually, I think they  
13 may, under the Fire Code. I'm not sure, but I think they  
14 may.

15 DIR. SCOTT: You mean that would require  
16 them to pay under the Fire Code? I mean, that's the  
17 implication here.

18 CHAIRMAN GETZ: And, that's, again,  
19 where in Subsections 2 and 3, it's not clear to me whether  
20 they're both subsumed in what the law and the codes are.  
21 And, you're saying, "are those things in addition to that  
22 he's seeking as conditions?" And, I guess it's just not  
23 clear.

24 DIR. SCOTT: If I could continue?

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1 CHAIRMAN GETZ: Sure.

2 DIR. SCOTT: Number 2, again, I'm just  
3 stating what we have in front of us, Number 2 is "To  
4 insure compliance with codes and standards...[it] shall be  
5 stamped." So, that sounds like it's not a requirement,  
6 other than his letter. Again, I'm assuming. So, I guess  
7 at the moment I'm inclined to just -- maybe just a simple  
8 statement that "the Applicant should comply with all Fire  
9 Codes" and be done with it, "all applicable Fire Codes".

10 MR. HARRINGTON: That would work for me.

11 CHAIRMAN GETZ: Is there any concern  
12 with that approach? Counsel?

13 MR. IACOPINO: I would just point out, I  
14 don't have a concern, because you all will make the  
15 decision. I will just point out, though, that they're not  
16 all just Fire Codes. They're the Building Code, Life  
17 Safety Code, and Fire Code are three different types of  
18 codes that have been cited by the Fire Marshal in this  
19 letter. Although, they all are under NFPA, which is  
20 National, except for the International Building Code.

21 MR. HARRINGTON: Just a question. And,  
22 maybe that part of the problem is that it seems like the  
23 Fire Marshal here is working as -- the State Fire Marshal  
24 also is the sort of default building inspector for the



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1 town. The Internal [International?] Building Code and the  
2 Life Safety Code, though, like you said, the Life Safety  
3 Code is under NFPA. I mean, we could say "all applicable  
4 Fire Codes and Internal Building Code, 2009 Edition." You  
5 know, people are more comfortable with that, I'm not sure  
6 what that is, the Internal Building Code. It's not an  
7 NFPA. So, I don't even know what standard it is. There's  
8 no -- there's no organization that's -- in almost all of  
9 these standards, there's something that precedes it, OSHA  
10 Standard, NRC Standard, or NFPA Standard. But this is  
11 just an Internal Building Code. Is the Internal Building  
12 Code --

13 MR. IACOPINO: International Building  
14 Code. I'm sorry, does it say "Internal" in what you're  
15 reading?

16 MR. HARRINGTON: Yes.

17 MR. IACOPINO: It's "International  
18 Building Code".

19 MR. HARRINGTON: Oh.

20 MR. IACOPINO: 2009 Edition.

21 MR. HARRINGTON: Oh. Okay. Then, I  
22 have no idea whether there is any jurisdiction to that  
23 code in New Hampshire. And, again, I'd be hesitant until  
24 we found out. And, someone -- you're shaking your head,

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1 Mr. Boisvert?

2 DR. BOISVERT: I just had a discussion  
3 in my division regarding --

4 (Court reporter interruption.)

5 DR. BOISVERT: I'm sorry. I have been  
6 party to discussions in my division regarding the  
7 applicability of the International Codes to historic  
8 buildings. Basically, there are exemptions that are made  
9 available, it's my understanding, when they apply.

10 CHAIRMAN GETZ: But, in terms of clarity  
11 for setting a condition, I'm thinking again maybe it goes  
12 back to, consistent what counsel is suggesting, it would  
13 just say "adopt as conditions those codes set forth in the  
14 Fire Marshal's letter, to the extent that they apply in  
15 the State of New Hampshire." Does that get us to where we  
16 need to be?

17 MR. STELTZER: One easier way to go  
18 about this is to just say "state building code". And,  
19 that's defined in the RSAs as far as which codes are  
20 included into that. And, that includes International  
21 Building Code, the Energy Codes, Electrical Codes, the --

22 MR. HARRINGTON: Yes, I think that's  
23 very appropriate. My concern, I'm looking at this  
24 International Building Code, and it's extremely extensive.

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1 I mean, under fires, it's got "automatic sprinkler system,  
2 alternative automatic fire extinguishing system, standpipe  
3 systems, smoke control systems, smoke and heat vents, fire  
4 command center, fire department connections, fire pump,  
5 emergency responder radios." I mean, I'm not sure if this  
6 has even been adopted by the State of New Hampshire. So,  
7 I would go along with Mr. Steltzer saying that, you know,  
8 say "the fire and safety codes as required by the State of  
9 New Hampshire Building Code" or just "the State of New  
10 Hampshire" -- "all appropriate State of New Hampshire  
11 building codes."

12 CHAIRMAN GETZ: I guess that's the  
13 larger case, the larger set, and these are subsets within  
14 it, I guess is your suggestion?

15 MR. STELTZER: Yes. Yes. Certainly,  
16 that's the case. You know, and that issue, and it's going  
17 on right now where there's a bill to consider adding in  
18 existing building codes and adding that code subject to  
19 the definition of what the "state building code" is. And,  
20 so, if you say "New Hampshire state building code", it  
21 does encompass a vast array of all the building codes that  
22 need to be considered.

23 CHAIRMAN GETZ: Okay. Any other issues?  
24 Mr. Scott.

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1 DIR. SCOTT: I was just going to offer  
2 up perhaps, the language could be such that we, again, to  
3 try to simplify the statement of "the Applicant shall  
4 comply with all applicable state and federal Building,  
5 Safety, and Fire Codes", and be done with it.

6 CHAIRMAN GETZ: Any objection to that  
7 approach?

8 (No verbal response)

9 CHAIRMAN GETZ: Be prepared when I call  
10 on you for that motion. Any other public health and  
11 safety issues we need to discuss? Because I think then we  
12 need to think through how this motion is going to proceed.  
13 Mr. Dupee.

14 MR. DUPEE: We do have a motion before  
15 us, the one that I made, but that had been never seconded.

16 CHAIRMAN GETZ: That was --

17 MR. DUPEE: Very simple. It was the  
18 motion that "the Subcommittee find that this Project, as  
19 proposed, will not have an unreasonable adverse effect on  
20 public health and safety." And, that's as far as I had  
21 gotten.

22 CHAIRMAN GETZ: Yes. And, then, I guess  
23 it's so long as the following conditions --

24 MR. DUPEE: Yes.

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1                   CHAIRMAN GETZ: -- are applied, and then  
2 we need a description of three conditions: One with  
3 respect to noise; one with respect to Building Codes, and  
4 one with respect to treatment of Groton Hollow Road.

5                   So, the first issue being, so we have a  
6 generalized motion to which we want to attach three  
7 conditions. And, Mr. Scott, before you forget, why don't  
8 you describe what the condition with respect to Fire,  
9 Building and Safety Codes is.

10                  DIR. SCOTT: I'm suggesting a condition  
11 to the extent "the Applicant shall comply with all  
12 applicable state and federal Building, Safety and Fire  
13 Codes."

14                  CHAIRMAN GETZ: Good. Thank you.  
15 Mr. Harrington, did you have proposed language with  
16 respect to how you would treat the issue of Groton Hollow  
17 Road and dealing with -- the Applicant dealing with the  
18 Town of Rumney?

19                  MR. HARRINGTON: Yeah, I did have one,  
20 but I wanted to get the sense of the Committee on one  
21 item, as far as just notification was required or had been  
22 suggested that a public hearing so there could be input  
23 from the residents. And, we didn't really talk about  
24 that, and I wanted to get a feel for what other people say

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1 before I try to write something on it.

2 MR. STELTZER: Mr. Harrington, is that  
3 in response to the emergency plan and have a public  
4 hearing on the emergency plan? Or, is that a public  
5 hearing on when they would be using Groton Hollow Road for  
6 oversized loads?

7 MR. HARRINGTON: On the plan itself.

8 MR. STELTZER: Okay.

9 MR. HARRINGTON: For two-way  
10 communication, it was suggested. Maybe there's somebody  
11 on there that's diabetic or has some medical condition  
12 that the people should be aware of in advance when they're  
13 making this plan. But I'm hoping people are going to say  
14 something like "it's a good idea", "it's a bad idea",  
15 "it's necessary", "it's not necessary."

16 CHAIRMAN GETZ: Well, I'm not sure that  
17 it's necessary to have a public hearing. If we're going  
18 to delegate to the Town to reach agreement with the  
19 Applicant, I guess you could say, "and the Town should  
20 collaborate or it should consult with Groton Hollow Road  
21 residents." How they do their consultation, --

22 MR. HARRINGTON: Okay.

23 CHAIRMAN GETZ: -- I guess I don't see  
24 any real need to take that extra step to describe how that

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1 consultation should occur.

2 MR. HARRINGTON: Okay. Then, roughly,  
3 I've got something worked out then. It gets a little  
4 wordy, but --

5 CHAIRMAN GETZ: So, this would be the  
6 second proposed condition under the general motion?

7 MR. HARRINGTON: Yes. This would be  
8 just -- this would specifically address Groton Hollow  
9 Road. So, we "develop a plan to address, with the Town of  
10 Rumney, develop a plan with the Town of Rumney that  
11 addresses the following: (1) Adequate advance  
12 notification to the residents of Groton Hollow Road of the  
13 movement of oversized loads on Groton Hollow Road.  
14 Notification shall include date and time when vehicle  
15 traffic will be blocked on Groton Hollow Road. Alternate  
16 transportation for residents of Groton Hollow Road during  
17 the times when Groton Hollow Road is blocked to normal  
18 vehicle traffic." And, this is not specifying what that  
19 has to be, just that they have to address that in the  
20 plan. And, then, "(3) would be a plan to deal with  
21 emergencies that may occur on Groton Hollow Road during  
22 times when Groton Hollow Road is blocked to emergency  
23 vehicle traffic. Plan shall include provisions for  
24 reestablishing access to Groton Hollow Road for emergency

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1 vehicles as soon as reasonably achievable and will address  
2 the type and location of equipment needed to perform  
3 this."

4 MR. STELTZER: I might suggest that, as  
5 it's laid out there, the emergency plan would be  
6 specifically focusing on removing the equipment. And,  
7 that there may be, in those discussions on emergency plan,  
8 ways to get around the vehicle, as opposed to moving it,  
9 depending on time constraints for the specific emergency  
10 at hand.

11 MR. HARRINGTON: Well, let me read it  
12 back again, because I agree with your thought. And, if  
13 I'm not saying that, then I need to change my wording.

14 MR. STELTZER: Okay.

15 MR. HARRINGTON: Let me try one more  
16 time here. It says "The plan shall include provisions for  
17 reestablishing access to Groton Hollow Road for emergency  
18 vehicles as soon as reasonably achievable." So, access  
19 could mean "cutting down trees in the woods and driving  
20 around it" or "dragging the thing off to the side".  
21 Whatever it has to do to allow the emergency vehicle to  
22 get by. It doesn't have to be removing the broken down  
23 truck. It could be, you know, figuring out a way to drive  
24 through somebody's backyard. It's access is all I'm



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1 trying to get. Is that not clear enough or --

2 MR. STELTZER: I think it's a little  
3 loose. Because I think it's, again, in my head, I don't  
4 necessarily think that a vehicle has to get up there to  
5 get to the incident that's happening. And, that it could  
6 be, if someone is having a heart attack, all they need to  
7 do is bring up a stretcher, --

8 MR. HARRINGTON: Okay.

9 MR. STELTZER: -- and get that stretcher  
10 around it. And, so, somehow to incorporate it, so that it  
11 leaves it open to not necessarily moving equipment, but  
12 "accessing the site", maybe that's how you would simply  
13 put it.

14 MR. HARRINGTON: How about if I did this  
15 then? "The plan shall include provisions for  
16 reestablishing access" --

17 (Court reporter interruption.)

18 MR. HARRINGTON: "The plan shall include  
19 provisions for reestablishing access as needed to address  
20 the emergency." Does that take care of it?

21 MR. STELTZER: I think that would do it.  
22 Fine. I mean, I think the record is clear then as far as  
23 what it should entail.

24 CHAIRMAN GETZ: Dr. Boisvert.

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1 DR. BOISVERT: And, to weave into your  
2 conditions that these plans shall include input from the  
3 residents on Groton Hollow Road.

4 MR. HARRINGTON: That was my last one,  
5 yes. That the Town will consult with the residents on  
6 Groton Hollow on developing this plan. And, I will get  
7 something that someone can actually read besides me.

8 MR. IACOPINO: I'm going to need a copy  
9 of that, okay?

10 DR. KENT: One more piece of guidance  
11 for you. You know, I always try to stop, when we've given  
12 them the goals to achieve, we're not telling somebody to  
13 make a plan and not start to tell them how to do it. And,  
14 that word "access" constrains the solution to the problem  
15 you've presented to the Town and the Applicant. For  
16 example, one of the simplest solutions is to put emergency  
17 vehicles at the top end of the road before you start  
18 moving heavy equipment through. So, when the truck gets  
19 stuck in the middle, there's a fire truck there, an  
20 ambulance there or whatever, who can provide medical  
21 treatment. So, I would suggest stopping short at defining  
22 the goals, and then let them solve the problem.

23 MR. HARRINGTON: That's probably a good  
24 idea. I think that's a good suggestion. Let me cut this

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1 back to, to the extent, this would be the idea of it, "a  
2 plan would be developed to deal with emergencies that may  
3 occur on Groton Hollow Road during times when the Groton  
4 Hollow Road is blocked to emergency vehicle or traffic."

5 DR. KENT: Period.

6 CHAIRMAN GETZ: And, I think what I'm  
7 going to suggest is, it's probably time for a recess. So,  
8 I think it may help the record if, we'll take a recess,  
9 and you try to write that out and restate it when we come  
10 back and take a vote.

11 But, before we -- I want to try and see  
12 if I can summarize the noise issues before we take a  
13 break. But does anybody else have anything to speak to on  
14 the Groton Hollow Road issue?

15 (No verbal response)

16 CHAIRMAN GETZ: Okay. This is what I  
17 think, in the shortest description possible, is where we  
18 are on noise. That, for residential noise restrictions,  
19 we apply the conditions that were employed in the Lempster  
20 case. For the Baker River Campground, we would apply a  
21 condition that said, and I'm going to paraphrase what was  
22 used in Lempster, it would say "audible sound from the  
23 facility at the Baker River Campground shall not exceed 40  
24 dBA. If the ambient sound pressure level at the

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1       Campground exceeds 40 dBA, the standard shall be ambient  
2       plus 5."

3                       MR. HARRINGTON:   Yes.

4                       MR. STELTZER:   I would just say, there  
5       were some discussions about where it's being measured on  
6       the site, and maybe that could get included into it, and  
7       that is "any location".

8                       CHAIRMAN GETZ:   Yes.   We can make that.  
9       Okay.   I'll take that under advisement.   Let's take a ten  
10       or fifteen minute recess.   We'll come back, and I think  
11       we're ready to make -- we should be ready to make a  
12       motion.   And, so, it will be Mr. Scott, then  
13       Mr. Harrington, and myself.

14                      (Whereupon a recess was taken at 3:21  
15                      p.m. and the deliberations resumed at  
16                      3:42 p.m.)

17                      CHAIRMAN GETZ:   Okay.   We're back on the  
18       record in Site Evaluation Committee Docket 2010-01  
19       deliberations.   Let me get back to the scheduling issue.  
20       I don't expect that we're going to wrap everything up  
21       today, plan to go to 5:00.   We will resume Monday morning  
22       at 9:00 a.m.   And, we'll go -- hopefully, we'll complete  
23       on Monday, but, in no case, are we going to go past  
24       lunchtime.   We expect to go to 12:00 or so.   And, I'll

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1 just note that -- well, I think Mr. Perry has already  
2 noted this on the record that he's out of town on  
3 business, but that we'll have the -- the other eight  
4 members have indicated that they will be available Monday  
5 morning. So, that's that issue.

6 Let's take this opportunity then to  
7 reprise. There's the motion on the floor by Mr. Dupee  
8 that we find that the project will not have an  
9 unreasonable adverse effect on public health and safety,  
10 so long as three conditions are met. The first condition,  
11 Mr. Scott, being?

12 DIR. SCOTT: I'll try this. "All  
13 structures constructed", I think, "shall comply with all  
14 applicable state and federal Fire, Safety and Building  
15 Codes."

16 CHAIRMAN GETZ: And, I'll take the  
17 second condition with respect to noise. Is that "The  
18 project be subject to the noise restrictions imposed in  
19 the Lempster case as to residences. And that, in addition  
20 to the residential noise restrictions from the Lempster  
21 proceeding, that, with respect to the Baker River  
22 Campground, audible sound from the Project at the  
23 Campground at any location shall not exceed 40 dBA. If  
24 the ambient sound pressure level at the Campground exceeds

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1 40 dBA, the standard shall be ambient plus 5."

2 And, then, the third condition,

3 Mr. Harrington.

4 MR. HARRINGTON: Yes. "The Applicant  
5 shall develop a plan with the Town of Rumney, and in  
6 consultation with the residents of Groton Hollow Road,  
7 that addresses the following: Adequate advance  
8 notification to the residents of Groton Hollow Road of the  
9 movement of oversized loads on Groton Hollow Road.

10 Notification shall include date and times that vehicle  
11 traffic will be blocked on Groton Hollow Road. (2)

12 Alternative transportation for residents of Groton Hollow  
13 Road during times when Groton Hollow Road is blocked to  
14 normal vehicular traffic. (3) A plan to deal with  
15 emergencies that may occur on Groton Hollow Road during  
16 times when Groton Hollow Road is blocked to emergency  
17 vehicle traffic. And, --

18 CHAIRMAN GETZ: Do we have a second?

19 DR. KENT: Second.

20 CHAIRMAN GETZ: Second by Dr. Kent. Any  
21 discussion?

22 MR. IACOPINO: A question. With regard  
23 to the noise condition, is that meant to include the  
24 mitigation portion of the Lempster docket as well or

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1 simply the noise levels?

2 MR. HARRINGTON: In this case, I would  
3 quote Dr. Kent and say "the simpler the better", and allow  
4 the Applicant to come up with ways to mitigate. If they  
5 don't meet it, they're going to have to mitigate it,  
6 rather than be so -- they're very prescriptive there in  
7 Lempster, maybe too prescriptive.

8 CHAIRMAN GETZ: Yes. I'm looking at the  
9 -- the differential comes in the additional conditions,  
10 correct?

11 MR. IACOPINO: You actually, if I recall  
12 correctly, the Committee in Lempster actually set forth  
13 mitigation requirements, things such as installation of  
14 air conditioners or house fans.

15 CHAIRMAN GETZ: And, my motion was  
16 intended only to set the dBA standards, and not to include  
17 any particular mitigation measures that were peculiar to  
18 the circumstances in Lempster. So, it would just be  
19 setting the standard, the 40 dBA standard for the  
20 Campground, the 55 dBA standard at the edge of the  
21 property line, and then the 45 dBA standard at the outside  
22 at the residence. So, it's the standards from Lempster,  
23 not the actual mitigation measures, that would apply.  
24 Mr. Scott.

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1 DIR. SCOTT: So, does that mean -- would  
2 your intent be that we don't discuss the availability for  
3 mitigation? Or, are you just saying your amendment is  
4 narrower in the scope right now and we'll discuss that  
5 later? Maybe I can flesh that out. My thought would be,  
6 and I think kind of what we discussed before during our  
7 conversation would be, those would be, in my view, for the  
8 Campground, those would be the standards. And, if you did  
9 violate those or the wind farm did exceed those standards,  
10 then I was thinking some language to the effect that  
11 "either you meet those standards or you mitigate to the  
12 satisfaction of the property owner." And, that would  
13 basically allow many things to happen. But, bottom line  
14 is, either, if the property owner can't agree to  
15 mitigation, then you just meet the standard. So, that  
16 would allow Mr. Harrington's thought of "Gee, they rent  
17 the campsite", or etcetera.

18 CHAIRMAN GETZ: Dr. Kent.

19 DR. KENT: Boy, if we go that route,  
20 then we have to address the issue of whether there's a  
21 harm occurring to the Campground owner, as in, i.e.,  
22 people are no longer coming because they have complained  
23 about the noise, as opposed to some other dissatisfaction.  
24 We can't just assume that not meeting the standard is the



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1 reason for the change in business.

2 DIR. SCOTT: Well, I guess, if I could,  
3 Mr. Chair? If we don't put that extra bit in, I think  
4 we're saying "under all circumstances, you have to meet  
5 the standard." So, I think we're being more restrictive  
6 if we don't allow, or you can mitigate to the  
7 satisfaction, I think you're being more restrictive.  
8 Whereas, if you allow that, then, if they come to some  
9 kind of agreement, then it's understood that you can  
10 exceed that, that's the desired outcome.

11 CHAIRMAN GETZ: So, are you saying  
12 something -- well, I thought -- actually, I thought you  
13 were saying something different from what Mr. Harrington  
14 was explaining earlier, but maybe you're saying the same  
15 thing. To the extent that the parties, the Applicant and  
16 the Campground, can come to some mutual agreement, then  
17 they can do that.

18 DIR. SCOTT: Right. But, if we don't  
19 say some kind of language, I think the condition -- if the  
20 condition just says "you must meet this", then it  
21 precludes that from happening. And, I don't think we need  
22 to be that restrictive.

23 CHAIRMAN GETZ: Yes. And, I don't know  
24 if we actually need the -- or, should there be a process

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1 that we should talk about, I mean, because, well, in  
2 Lempster, there's a whole technical committee.

3 DIR. SCOTT: And, if I could, I would  
4 argue I don't really care about the process, meaning, if  
5 they don't agree, then you just meet the standard, and  
6 that would be just that simple.

7 MR. IACOPINO: I think, as a practical  
8 matter, the way this would get to the Committee again, if  
9 you issue a certificate, is that somebody would claim that  
10 they're violating the standard that was set, and therefore  
11 not in compliance. They would file a petition or a motion  
12 of some sort with the Committee. The Committee would then  
13 have to determine, number one, has there been a violation  
14 of the condition. And, number two, if so, what's the  
15 appropriate remedy and sanction?

16 In my experience with this Committee,  
17 when things like that do come up, oftentimes they're  
18 mediated out before there's ever an actual hearing before  
19 the Committee.

20 And, Mr. Chairman, I did want to point  
21 out that my question really only dealt with the motion to  
22 the extent that it says "for residential properties, the  
23 same as Lempster", I had not even -- I wasn't even  
24 thinking about the Campground in that regard. So, --

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1                   CHAIRMAN GETZ: Well, and then the  
2                   Campground is that it's -- the issue is, is there normal  
3                   recourse through the enforcement sections of 162-H or  
4                   should we make sure that, I mean, I don't think,  
5                   generally, the parties are precluded from coming to some  
6                   mutual agreement. But, when we want to add language,  
7                   making it clear that the condition with respect to the  
8                   Campground shall apply, "except to the extent that the  
9                   parties agree to something different from the standard"?

10                   DIR. SCOTT: That's fine, too. Again, I  
11                   was just thinking something, "unless agreed upon by the  
12                   parties" or something like that. I didn't want to be  
13                   overly prescriptive. And, again, my concern would be,  
14                   without that, they may agree. But, if I were the  
15                   Applicant, "well, see, the condition says explicitly I  
16                   can't do this". You know, that's what I was thinking, a  
17                   legal conundrum, I'm not a lawyer. So, I just wanted to  
18                   provide that flexibility.

19                   CHAIRMAN GETZ: All right. Well, let me  
20                   add these two provisos to my motion. One was that the  
21                   motion was only intended with respect to residential, to  
22                   residences to set the standard, not to import the  
23                   mitigation measures from the Lempster situation. With  
24                   respect to the Baker River Campground, it's not intended

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1 to preclude an agreement between the Applicant and the  
2 Campground on some mitigation, in the event that the  
3 standard is exceeded.

4 Are folks understanding that those  
5 provisos would apply to the motion?

6 (No verbal response)

7 CHAIRMAN GETZ: So, any -- did we have a  
8 second? We do have a second. So, is there any further  
9 discussion about the motion and the conditions?

10 (No verbal response)

11 CHAIRMAN GETZ: Okay. Hearing nothing,  
12 then all those in favor of the motion signify --

13 MR. HARRINGTON: To all three. All  
14 three would be --

15 CHAIRMAN GETZ: All three, the whole  
16 package. Signify their agreement by raising their hand?

17 (Subcommittee members indicating by show  
18 of hands.)

19 CHAIRMAN GETZ: I'll note that the  
20 motion passes unanimously.

21 Okay. I think we need to return to the  
22 issue of the alternatives analysis. And, we had --  
23 Mr. Harrington had done a description of that issue to  
24 provide some context for some of the other issues that we

1 had to discuss. There are -- ultimately, I think we need  
2 to have a motion about the reasonableness of the  
3 alternatives analysis. But I think Mr. Harrington had  
4 some other issues. There were some other issues raised in  
5 the context, especially by the intervenors, maybe somewhat  
6 by Counsel for the Public, that didn't really come under  
7 the heading of some of the unreasonable adverse effects.  
8 And, I think maybe fairly come under the heading of the  
9 "alternatives analysis". I think it may be not exactly  
10 clear where some of these issues reside, but I think it's  
11 fair to discuss them under the "alternatives analysis".  
12 So, Mr. Harrington.

13 MR. HARRINGTON: Yes, Mr. Chairman.

14 We're referring to in the Buttolph/Lewis/Spring, the first  
15 section of their -- well, I guess in their final brief.  
16 They talk about a bunch of various issues having to do  
17 with capacity factor, power production, consistency with  
18 public policy, environmental benefits, etcetera. And, to  
19 tell you the truth, given the length of these things, and  
20 the fact that I think we should address them carefully,  
21 I'm going to request that we push that off until first  
22 thing Monday morning, where I can have a more organized  
23 presentation to give to the Committee on this, because  
24 right now it will be a little disjointed. And, it is

1 correct that it was also brought up in the Public  
2 Attorney's final brief as well.

3 Getting to the more traditional part of  
4 consideration of alternatives, under the statute, the  
5 Subcommittee should consider available alternatives in  
6 deciding whether the objectives of the statute would be  
7 best served by the issuance of the certificate. And, the  
8 Applicant has considered the following alternatives:  
9 Different site locations; different sizes of the Project;  
10 as we're well aware, different interconnection  
11 alternatives; different turbine types; different road  
12 configurations.

13 The Applicants went through the process  
14 of trying to identify a site that would exhibit the best  
15 qualities for wind. The Applicant also asserts that, when  
16 selecting it, it considered factors such as the  
17 environment appropriateness, community acceptance,  
18 distance to grid-interconnection, transmission access, and  
19 a lot of other factors.

20 In undertaking its site choice, the  
21 Applicant asserts it considered a construction of an 80  
22 megawatt project with more turbines along Fletcher  
23 Mountain and additional land parcels. They ruled this  
24 alternative out when it was determined it would require

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1 very different engineering for access roads, a much  
2 greater length of road, and a more expensive  
3 interconnection. The Applicant also indicates that this  
4 alternative became unavailable when the landowner became  
5 disinterested in the Project.

6 I think, as we're well aware, there were  
7 multiple considerations on the interconnection points.  
8 The first one was interconnection to the 230 kV line that  
9 transit Groton west of the Site, interconnection with the  
10 Rumney Substation, interconnection with the Beebe River  
11 Substation at 34.5 kV level. After we went through all  
12 this, the Applicant ruled out the alternative  
13 interconnection with Rumney, determined that Rumney  
14 Station did not have the adequate capacity for  
15 interconnection. The Applicant further determined the  
16 small size of the Project would not economically support  
17 construction of a new substation to the 230 level. So,  
18 they have decided to interconnect with Beebe Substation.  
19 And, then, as we're aware, this went through the process  
20 with Public Service. And, consequently, the Applicant  
21 changed its original interconnection and decided to  
22 connect at the 115 volt level with the Northern Utilities  
23 connection.

24 Then, in addition to that, the Applicant

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1 considered an interconnection route, they -- various  
2 routes, I'm not going to read all the different things,  
3 but they did go through the process of looking at  
4 alternatives. There were no objections, either by Public  
5 Counsel or by the intervenors, as to whether the -- this,  
6 looking at this idea of where their Project looked at  
7 alternatives to the Project, which is historically the  
8 sense that this Committee has looked at that term  
9 considering the available alternatives.

10 So, in regard to that, I would say that  
11 the -- getting the words here correctly -- the Site  
12 Evaluation Committee, after considering the available  
13 alternatives, I'd say that, given what was presented by  
14 the Applicant, we have considered the available  
15 alternatives. But, again, given the other portion of the  
16 discussion that I prefer to have on Monday, I would just  
17 not -- would request we don't vote on this right now.  
18 But, given, like I say, the historical look at what the  
19 Committee has considered in considering available  
20 alternatives, I think the Applicant has met that  
21 requirement. But I would like to go over that other part  
22 about the energy, environmental issues, and so forth that  
23 I just discussed earlier.

24 CHAIRMAN GETZ: Okay.



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1 MR. HARRINGTON: I just would like to  
2 have a more organized presentation, which I'll have on  
3 Monday.

4 CHAIRMAN GETZ: Does anybody have any  
5 concerns, comments, or generally about that issue,  
6 prepared to wait till Monday to delve into it further?

7 (No verbal response)

8 CHAIRMAN GETZ: Okay. Well, let me,  
9 since we have some time, let me raise a couple of issues.  
10 One, let's take a look at the -- I think we've had, of  
11 course, we're going to have to do this at some point, is  
12 look at the Town of Rumney Agreement and the Town of  
13 Groton Agreement. We've had a lot of discussion of those  
14 already in various parts. And, they're very similar.  
15 And, I guess, if we could today, it would be good to be  
16 able to take a vote on whether we want to adopt the  
17 agreements as conditions under the certificate. It  
18 doesn't preclude us to adding other things onto them.  
19 And, I think we're going to have to go through on Monday,  
20 make sure we go through all of the other proposed  
21 conditions to make sure we haven't forgotten anything.  
22 But does anybody have any issues? Concerns?

23 (Short Pause.)

24 CHAIRMAN GETZ: Okay. Does anyone have

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1 anything they would like to raise about either of the  
2 agreements? Mr. Steltzer.

3 MR. STELTZER: There were two components  
4 of the Groton Agreement, which I didn't find in the Rumney  
5 Agreement, which I thought might be helpful for the  
6 Committee to consider. One is, it's on the Groton  
7 Agreement, it's Section 5.1, regarding public inquiries  
8 and complaints. And, it lays out a structure for  
9 residents of Groton to go to Town Hall, find some sort of  
10 a number to make a complaint or inquiry to the Applicant  
11 itself. And, I feel that that, with the interest that the  
12 Town has had, as well as the intervenors from the Town of  
13 Rumney, and because the site is so close to the Town of  
14 Rumney, it might be a good option to include that  
15 complaint information at the Town Offices in Rumney as  
16 well.

17 CHAIRMAN GETZ: Go ahead.

18 MR. STELTZER: The second area, if we  
19 want to go into that, too, is Section 11.2 of the Groton  
20 Agreement, which discusses "Post Construction Noise  
21 Measurements". And, I think that's part of one of Public  
22 Counsel's suggested conditions as well. But, basically,  
23 to have some sort of post construction noise monitoring  
24 that would also include areas within Rumney, and to have

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1 those reports filed with Rumney then.

2 MR. HARRINGTON: A question, maybe for  
3 counsel?

4 MR. IACOPINO: Yes.

5 MR. HARRINGTON: In the noise thing that  
6 we just voted on, we specifically talked about the  
7 45 decibels at outside of residence, and then at the  
8 Campground. I don't think we specifically addressed the  
9 55 dBA as measured at 300 feet, because that was part of  
10 the Rumney Agreement -- oh, no, the Groton Agreement,  
11 which we would just pick up by endorsement. But I think  
12 he's got a very good point that, if it's not in the Rumney  
13 Agreement as well, then that 55 dB, as measured 300 feet  
14 from any existing occupied building, wouldn't apply to the  
15 Town of Rumney.

16 MR. IACOPINO: Actually, the motion that  
17 you approved was the Lempster Agreement.

18 MR. HARRINGTON: So, it covered all of  
19 it.

20 MR. IACOPINO: That was from Lempster.  
21 In the motion, we didn't actually say what area it would  
22 apply to. But I assume it would apply to Rumney, as well  
23 as Groton, as well as any other residence where the noise  
24 from the Project might exceed the standard that you set.

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1 MR. HARRINGTON: Okay. But we talked --  
2 the standard that we did was the 45 at the exterior of a  
3 building and the 55 measured 300 feet away from existing  
4 buildings?

5 CHAIRMAN GETZ: Right. That's both of  
6 those things.

7 MR. HARRINGTON: Both were in.

8 CHAIRMAN GETZ: Both were in Lempster.  
9 So, this is part of what was in Lempster.

10 MR. HARRINGTON: Right.

11 CHAIRMAN GETZ: So, it already applies  
12 there. I guess what's really is lacking, because I don't  
13 think, in the Rumney Agreement, either of the noise  
14 restriction sections are there.

15 MR. STELTZER: That's correct.

16 CHAIRMAN GETZ: What we don't have --  
17 so, the standard applies in both towns.

18 MR. HARRINGTON: Okay.

19 CHAIRMAN GETZ: The one agreement only  
20 has one part of it. What I think would make some sense  
21 is, the post construction noise measurements subsection  
22 that Mr. Steltzer is talking about is in the Groton  
23 Agreement. I don't see any reason why we wouldn't approve  
24 that. And, I don't see any reason why we wouldn't approve

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1 it or make it a requirement for both towns.

2 MR. HARRINGTON: Okay. I just wanted to  
3 make sure I was clear on that.

4 CHAIRMAN GETZ: And, that's basically  
5 where you were headed, Mr. Steltzer?

6 MR. STELTZER: Yes. That's the essence  
7 of what I was interested in, is to not limit the sound  
8 receptor sites to just the Town of Groton, but to include  
9 some of the sites that even Mr. Tocci has identified, such  
10 as the Campground.

11 MR. IACOPINO: And, that's 11.2, is that  
12 the section?

13 CHAIRMAN GETZ: Yes.

14 MR. STELTZER: Correct.

15 MR. IACOPINO: Thank you.

16 CHAIRMAN GETZ: Dr. Boisvert.

17 DR. BOISVERT: Just to clarify. So,  
18 you're assuming that the Baker River Campground will be  
19 included as one of the sites, the monitoring sites?

20 MR. STELTZER: My understanding of how  
21 it's worded here in Groton's agreement is that those  
22 locations would be identified by the owner and the Town.  
23 And, so, it would be up to the Town of Groton to do it. I  
24 think, if this verbiage is added into and applied to

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1 Rumney, that conversation would also occur between the  
2 owner, as well as the Town of Rumney, to identify it.  
3 And, they could, therefore, possibly choose the  
4 Campground; they might not choose the Campground.

5 CHAIRMAN GETZ: Mr. Scott.

6 DIR. SCOTT: I would argue, since we  
7 declared a condition and explicitly only for the  
8 Campground, if they didn't measure the Campground, they're  
9 not doing their due diligence, because I don't know how  
10 else you show compliance. If we need to explicitly say  
11 that in a statement, I don't think we need to.

12 CHAIRMAN GETZ: Anything else? Mr.  
13 Harrington.

14 MR. HARRINGTON: Yes. Maybe, again, a  
15 question for counsel. On Section 13 of the -- I think  
16 it's the Groton Agreement, the Groton Agreement, it talks  
17 about "Waiver of Noise Restrictions". Now, in (1), it  
18 says "A Participating Landowner or Non-Participating  
19 Landowner may waive the noise provisions of Section 11 of  
20 this Agreement by signing a waiver of their rights, or  
21 signing an agreement that contains", so forth and so on.  
22 That will allow them to come up with a waiver of  
23 Section 11, which is "Residential Noise Restrictions", "55  
24 dBA as measured 300 feet from any existing building."

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1 Would they -- there's no provision here that allows a  
2 waiver from what we imposed. So, I would take this that,  
3 even if you sign this waiver, since we impose the "45 at  
4 the outside of a building" and "55 at the 300-foot", this  
5 waiver would become -- this provision is meaningless,  
6 because it would still, even though it waived the  
7 provisions under Section 11.1 of this agreement, it was  
8 re-imposed by the Site Evaluation Committee of what we  
9 just passed.

10 So, I guess we should either strike this  
11 waiver proposal from the Groton Agreement, because it  
12 can't -- it won't work. Or, we should add a similar thing  
13 to ours.

14 MR. IACOPINO: Or, you could, with the  
15 condition that you're discussing, say "notwithstanding  
16 anything contained in the agreements with the Town, the  
17 following noise restrictions shall be adhered to." And,  
18 that would --

19 MR. HARRINGTON: That would allow --

20 MR. IACOPINO: Language such as that  
21 would counteract the waiver language that's contained in  
22 the agreements. But it would be up to you all to decide  
23 whether you want to leave the ability for a participating  
24 or non-participating landowner to waive the standard that

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1 you've settled on.

2 CHAIRMAN GETZ: And, what's your  
3 concern, I guess, about that?

4 MR. HARRINGTON: Well, here's my  
5 concern. What was negotiated with the Town of Groton and  
6 the Applicant says that somebody can waive the noise  
7 provisions from Section 11, which are the "55", "not to  
8 exceed 55 dBA as measured 300 feet away from any existing  
9 building", and then there's some other, about how long it  
10 can be violated in an hour and so forth. So, that was  
11 what the Town of Groton wanted to allow their citizens to  
12 say, basically, "if you pay me enough money, I can listen  
13 to a little louder noise." But I'm assuming people aren't  
14 going to waive this just because they happen to love  
15 windmills, maybe they would, but I think that's kind of  
16 probably not likely. So, under what we've done, we've  
17 imposed that same 55 dB limit at 300 feet, as well as a 45  
18 limit at the outside of a building. And, there's no  
19 provision to waive that. So, we have to make a decision,  
20 "do we want to honor the Town of Groton's agreement that  
21 says "we're going to allow our residents the ability to  
22 waive"?" I mean, this could be someone who has unoccupied  
23 land, for example, and waives the provision. Or, it could  
24 be someone that only shows up, you know, it's a hunting



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1 camp or something and they don't care. But, I think the  
2 way it's worded right now, we have made this, the waiver  
3 provision, moot. It wouldn't apply. You could sign one,  
4 but it has no meaning. Because, what the Site Evaluation  
5 Committee has imposed, would reestablish those noise  
6 standards.

7 CHAIRMAN GETZ: Well, I guess I'm not  
8 sure that that's the case. I mean, it depends on -- I  
9 guess it goes to your other issue of what -- if we set a  
10 standard, if the standard is violated, then, really, it  
11 becomes up to the landowner to decide whether they want to  
12 seek to have that standard enforced. Whether that means  
13 they are just electing not to seek enforcement or waiving  
14 their right to seek enforcement, I'm not sure that we, you  
15 know, that the fact that we haven't expressly set out a  
16 waiver provision in the -- in the certificate means that  
17 it's -- there is essentially a situation of, you know,  
18 strict liability or strict enforcement, that somebody goes  
19 out, I don't know if it's going to be one of us, to go out  
20 and make sure that they're complying, and that we would  
21 enforce it over the wishes of a landowner.

22 MR. HARRINGTON: Well, let me give you,  
23 for example, of what I was thinking of then. Someone owns  
24 some property out there, and maybe they have a seasonal

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1 camp or whatever, they're hard of hearing. They don't,  
2 for whatever reason, they don't care about the provision.  
3 They sign a waiver. They're paid X thousands of dollars  
4 for the waiver. And, they sit there for three or four or  
5 five years, happily ever after, and then they die.  
6 Someone inherits the property or the property gets sold,  
7 and new owner comes up, and they say "Wait a minute.  
8 There's a waiver, but the Site Evaluation Committee's  
9 things trump that. I'm saying, you've --

10 CHAIRMAN GETZ: Well, that's a whole  
11 different issue of whether the waiver is personal or  
12 whether it's a covenant that runs with the land. I don't  
13 know if we're going to get into those.

14 MR. HARRINGTON: But, even if the  
15 original waiver ran with the land, and they collected the  
16 money off of it, that's all true. But, now, someone has  
17 -- someone else owns it. And, they say that, under --  
18 that's fine under this waiver. But, I'm telling the  
19 Applicant now, under the Site Evaluation Committee's  
20 condition, which is separate from this waiver, I want the  
21 level dropped, not only 55 dBB [dBA?] at the 300 foot  
22 mark, I want it no more than 45 at the side of my building  
23 here. Go fix something. I just think we've got a hole  
24 here. Either we want it, unless we want to --

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1 CHAIRMAN GETZ: I'm not sure that we do.

2 But --

3 MR. IACOPINO: Well, there is a  
4 potential inconsistency. If you approve the -- what you  
5 haven't done yet, but, if you were to approve the Town of  
6 Groton Agreement, it does provide for a waiver. And, yet,  
7 you've set forth the standard that doesn't provide for a  
8 waiver. There is ambiguity there, as to whether that  
9 standard can be waived. I understand what the Chair is  
10 saying. Somebody, as a practical matter, somebody would  
11 have to take an enforcement -- seek enforcement from the  
12 Committee. But it probably is best to indicate one way or  
13 another whether the waiver required -- waiver provision of  
14 the Town of Groton Agreement does supersede the standard  
15 that you've set or not.

16 As far as whether such a waiver would  
17 run with the land or not is something I have not yet  
18 researched. And, my guess is, there's probably not a lot  
19 to research out there. I don't know what the answer to  
20 that would be. There would have to be some kind of deed,  
21 I believe, in order for that to occur.

22 But, I think it would be cleaner, if you  
23 did, either way. It doesn't make a difference to me what  
24 you do. But, for writing a clean order, it would make

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1 sense if you address that there is a waiver provision in  
2 the Town of Groton Agreement, or, on a more global scale,  
3 if you want to permit an individual landowner to waive  
4 your requirement, so that you can then do it.

5 CHAIRMAN GETZ: Mr. Scott.

6 DIR. SCOTT: I suggest we put a general  
7 waiver condition for the whole Project, and that would  
8 eliminate the need for my mitigation comments regarding  
9 the Campground. And, again, I'll let the attorneys think  
10 this through. But my other concern would be, if I'm the  
11 Applicant, and even if I have an agreement independent of  
12 this, and I think what I heard the Chair say is, "nobody  
13 would trigger the enforcement side of that, because  
14 everybody is in agreement." Initially, let's say, there's  
15 an anti-wind group that is aware of the violation in the  
16 certificate, they could come forward, even though the  
17 parties are -- I don't see a need to do that. I think, if  
18 somebody wishes to grant -- waive, I'm fine with that. So  
19 I think that would be a better way to do it.

20 CHAIRMAN GETZ: Well, that's an  
21 interesting issue of third party enforcement, rather than  
22 landowner enforcement.

23 DR. KENT: I think this is already -- I  
24 think there's already a mechanism on the table for us.

[DELIBERATIONS]

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1 MR. IACOPINO: In Lempster?

2 DR. KENT: For participating and  
3 non-participating landowners. It creates a mechanism for  
4 dealing with people who say "well I don't care if they met  
5 this particular criteria, because I agreed that they don't  
6 have to." Which solves the problem that Bob brought up  
7 earlier, it's a condition that we're now addressing here.

8 MR. HARRINGTON: We just incorporated  
9 the waiver from being in our condition.

10 CHAIRMAN GETZ: Yes. That the waiver  
11 restrictions that's in, is it "13.1", is that in both of  
12 these?

13 MR. HARRINGTON: No. It's not in the --

14 CHAIRMAN GETZ: It's just in the Groton.

15 MR. HARRINGTON: Just in the Groton.

16 CHAIRMAN GETZ: So, apply it generally  
17 as a condition to the certificate, and so that it would  
18 apply to both the towns and anyplace else.

19 MR. HARRINGTON: Yes. And, it's not in  
20 the Rumney Agreement, so -- but does the Rumney Agreement  
21 have the wind -- have the noise thing?

22 MR. IACOPINO: Well, we just discussed  
23 applying post construction monitoring to Rumney, as well  
24 as Groton. Section 11.2, which is not in the Rumney

[DELIBERATIONS]

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1 Agreement, you all just discussed applying that section to  
2 Rumney as a condition as well. You also discussed the  
3 "Public Complaints and Inquiries", Section 5.1, also as a  
4 condition, including that for Rumley -- for Rumney, excuse  
5 me.

6 MR. HARRINGTON: Yes. Again, and also  
7 as we were discussing earlier, because it's not in the  
8 Rumney Agreement, you know, the possibility of, let's use  
9 the Campground as an example, not allowing the waiver may  
10 restrict the ability to do financial negotiations in lieu  
11 of reducing the noise at the Campground. Of course, this  
12 way, if there was a waiver provision, I just think it  
13 would make it cleaner and give it more flexibility. No  
14 one has to sign a waiver, if they don't want to. So, --

15 DR. KENT: My only suggestion is we use  
16 some existing language that's been built into -- I think  
17 it's in the Application as well. I've seen it other  
18 places as well. The "participating landowners",  
19 "non-participating landowners", to distinguish, instead of  
20 "waiver", we're going to have to introduce that term.

21 MR. HARRINGTON: Well, it says, I don't  
22 know, maybe you don't have the thing, but what this says  
23 is "Waiver of Noise Restrictions: A Participating  
24 Landowner or a Non-Participating Landowner may waive the

[DELIBERATIONS]

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1 noise provisions of Section 11 of this Agreement by  
2 signing a waiver of their rights", so forth and so on.

3 DR. KENT: You're in Section 11?

4 MR. HARRINGTON: Eleven -- I'm sorry,  
5 13.1, I was wrong. That's where the waiver is.

6 DR. KENT: Oh, I see. I'm sorry.  
7 "Waiver", of course. Yes, and then it talks about  
8 "participating" and "non-participating".

9 CHAIRMAN GETZ: Which is defined in  
10 Section 1.

11 DR. KENT: Right.

12 MR. HARRINGTON: Yes.

13 CHAIRMAN GETZ: Okay. So, we have --  
14 Mr. Dupee.

15 MR. DUPEE: Mr. Chairman, this is a  
16 question for this Committee or a question for future  
17 litigants, and that is whether or not one executes a  
18 waiver with one generation, does that waiver mean that  
19 waiver's in force forever, runs with the land? Or, does  
20 that mean that the next generation of owners could, as  
21 suggested earlier, perhaps go back and say "I'd like to  
22 exercise or not exercise waivers"? Or, how does that play  
23 out here?

24 MR. IACOPINO: Just from general real

[DELIBERATIONS]

1 estate law, if you engage in the covenants that run with  
2 the land, generally that's required to be done in a  
3 document that gets recorded, either as covenants or by  
4 deed, just as if you had a right-of-way on your property,  
5 you would have to sign a document providing that  
6 right-of-way to the grantee for it to run with the land.  
7 Whereas, if you just give somebody a license, you like  
8 your neighbor, so you let him walk his dog up your  
9 driveway or something, that's not something that runs with  
10 the land, unless it does it for 21 years and it obtains  
11 adverse possession. But that's a different issue. But,  
12 if it's something that's granted by deed or by covenants  
13 that are recorded at the Registry of Deeds, then,  
14 generally, it runs to subsequent owners, because they will  
15 be on notice before they purchase that these covenants  
16 apply or that there is some kind of restriction on the  
17 property.

18 MR. DUPEE: So, in that case, the  
19 Applicant and the owner could sort of reach their own  
20 conclusion. If they wish to have it run with the land,  
21 they could file something.

22 MR. IACOPINO: If the individual  
23 landowner, in dealing with the Applicant, wanted to burden  
24 his property, I presume he could. I mean, and just so



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1 you're clear, there are also other rules that deal with  
2 covenants that run with the land and equitable servitudes  
3 and things like that. But, generally, if a landowner  
4 wants to burden his property, he can, in fact, do that.  
5 But he has to do it correctly, otherwise somebody will be  
6 in court a couple generations down the road with a  
7 petition to quiet title and to determine what the title  
8 status of that is.

9 CHAIRMAN GETZ: But, I guess, Mr. Dupee  
10 is, as is the answer to a lot of legal question is, "it  
11 depends." It depends on what the agreement between the  
12 parties, --

13 MR. IACOPINO: Right.

14 CHAIRMAN GETZ: -- and some of it may go  
15 to the differentiation between a "participating landowner"  
16 and "non-participating landowner". And, a "participating  
17 landowner" is someone who is hosting some of the  
18 facilities and providing easements for access. So, it's  
19 something that looks like it's more long-term in  
20 relationship to the facility. Where a "non-participating  
21 landowner" would be somebody who doesn't have that  
22 relationship to the actual facility, and may just be a  
23 neighbor. So, that may drive what the agreement is  
24 between the parties.

[DELIBERATIONS]

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1 MR. DUPEE: So, essentially, there's an  
2 answer available already in law. So, this Committee  
3 needn't worry about the permanency of waivers. There is a  
4 process that can be executed or put in play by other  
5 parties to do --

6 MR. IACOPINO: Yes. And, even beyond  
7 that, I'm not sure this Committee could, as a practical  
8 matter, say "these must be waivers that run with the land  
9 or not". I mean, we wouldn't have the authority to do  
10 that.

11 MR. DUPEE: Thank you.

12 CHAIRMAN GETZ: Mr. Scott.

13 DIR. SCOTT: Again, I'm comfortable with  
14 waiver provisions being in the general certificate. And,  
15 again, as the discussion just happened, I think that's --  
16 that's not, not to be callous, but whether it continues on  
17 in future generations is not our problem. And, I have to  
18 assume the Applicant would be smart enough and weigh the  
19 benefit of a waiver that didn't have those legal things  
20 taken care of.

21 So, anyways, I just -- I'd like to move  
22 that we include that waiver as part of our general  
23 certificate as a condition.

24 CHAIRMAN GETZ: Okay. That being --

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1 MR. HARRINGTON: I'm sorry, could you  
2 repeat that. I didn't quite hear all of it. Remove the  
3 waiver section only?

4 DIR. SCOTT: I was just moving that we  
5 include waiver provisions as part of our general  
6 certificate conditions.

7 MR. HARRINGTON: Oh. Okay. Not  
8 "remove".

9 CHAIRMAN GETZ: Yes. So, the motion  
10 would be to include Section 13, you know, the substance of  
11 Section 13.1 of the Groton Agreement between the Town of  
12 Groton and the Applicant, that that Section 13.1 be made a  
13 general condition of the certificate.

14 MR. HARRINGTON: And, just to -- excuse  
15 me, go ahead.

16 DR. KENT: "General" in the sense that  
17 it's not specific to noise, but any other rights that they  
18 choose to convey?

19 CHAIRMAN GETZ: Well, it's a waiver of  
20 noise restriction.

21 MR. HARRINGTON: Right after that  
22 there's a waiver of setback requirements. So, that was my  
23 next question. Is that anything we have to deal with? I  
24 don't think we're imposing any specific setback

[DELIBERATIONS]

1 requirements.

2 MR. IACOPINO: Are there setback  
3 requirements in that agreement? There may be.

4 MR. HARRINGTON: Section 12 of the  
5 agreement, yes. "Setback from Property Lines", "Setback  
6 from Public Roads", "Setback from Occupied Buildings".

7 MR. IACOPINO: To answer that question  
8 from a legal standpoint, as far as I know, we don't have,  
9 unless you're going to require some general setback  
10 requirement, I don't know why you would have a waiver of a  
11 setback as a general condition. And, I haven't heard  
12 anybody discuss any setbacks as a general condition.  
13 There are a certain of them included in the Town of  
14 Groton's agreement, and there may be in Rumney, too, but I  
15 don't think so.

16 MR. HARRINGTON: Rumney doesn't have it.

17 MR. IACOPINO: You wouldn't need that  
18 waiver if you're not going to have general setback  
19 conditions.

20 DR. KENT: And, my point was more to, is  
21 there anything else we are prepared to condition that we  
22 need to think about that there needs to be a waiver  
23 process for or is noise the only issue?

24 MR. IACOPINO: Well, presumably,

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1 whatever comes up with your emergency response plan, I  
2 suppose a resident of Groton Hollow Road might say "I want  
3 to waive out of this." But I don't, you know, but that  
4 would be --

5 MR. HARRINGTON: I don't think that  
6 would apply. You wouldn't have to waive out of --

7 MR. IACOPINO: And, it's not very  
8 practical anyway, so --

9 CHAIRMAN GETZ: I think the waiver issue  
10 came up by Mr. Harrington in the context of "we have set a  
11 standard." And, concern that there is a lack of clarity  
12 or an ambiguity about whether or how that standard could  
13 be walked away from or waived. And that, therefore,  
14 because of that, to have a specific waiver of provision,  
15 I'm not sure if there are other standards that we've set  
16 --

17 MR. IACOPINO: Just logistically --

18 CHAIRMAN GETZ: -- that would raise that  
19 issue.

20 MR. IACOPINO: Logistically, it may just  
21 be something, after we've gotten the body of conditions  
22 that you're going to put on the certificate, we may want  
23 to go back and look and see, are any of these conditions  
24 that we have now adopted ones that we may want to provide

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1 a waiver for. And, that way we'll know what the  
2 conditions are. We haven't gone through all of the  
3 requests yet. And, as a deliberating body, you may want  
4 to do that before you start talking about providing for  
5 waivers.

6 MR. HARRINGTON: But, in this case, what  
7 we're saying, I think, is that we take the waiver  
8 provisions, the noise waiver provisions of Section 13.1  
9 and apply them to our noise provisions as well.

10 CHAIRMAN GETZ: Correct.

11 MR. IACOPINO: What I would envision  
12 doing, in putting together the actual certificate and the  
13 decisions, is that that waiver provision would follow  
14 directly behind the noise condition.

15 MR. HARRINGTON: Okay.

16 CHAIRMAN GETZ: Second?

17 DIR. SCOTT: Second.

18 CHAIRMAN GETZ: Second. We're voting on  
19 a motion to apply Section 13.1, "Waiver of Noise  
20 Restrictions".

21 MR. IACOPINO: He can't second.

22 DIR. SCOTT: I made the motion.

23 MR. IACOPINO: It was his motion. He  
24 can't second.

[DELIBERATIONS]

1 CHAIRMAN GETZ: Okay. Second by  
2 Mr. Perry. Any discussion?

3 (No verbal response)

4 CHAIRMAN GETZ: All those in favor,  
5 signify their agreement by raising their hand?

6 (Subcommittee members indicating by a  
7 show of hands.)

8 CHAIRMAN GETZ: And, it's unanimously  
9 approved. Now, we're back to -- we have these two other  
10 issues that Mr. Steltzer has raised about that are in  
11 Groton, but not in Rumney. And, I think we should, before  
12 we do a motion about whether to also make them part of  
13 Rumney, I think we've got to get to the point of, are we  
14 satisfied with the Groton Agreement itself as something  
15 that we think should be approved and made a condition?

16 MR. HARRINGTON: One more question.

17 And, this, I only bring this up for consistency, because I  
18 brought it up at the Granite Reliable project, having to  
19 do with project security, on Page 4 of the Groton one.  
20 "Wind Turbine exteriors shall not be climbable up to  
21 15 feet above ground surface." That may be more  
22 appropriate the further north you go, but 15 feet, if you  
23 put 6 feet of snow on the ground, and a snowmobile on top  
24 of it. If you sit -- if you stand on the top of a

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1 snowmobile, you can reach 15 feet. So, I mean, is it a  
2 concern? I believe, in the, pretty sure, in the Granite  
3 Reliable one, we raised that to 20 feet. But, of course,  
4 there's more snow up there. Just go ahead and say it.

5 DIR. SCOTT: Mr. Chairman, I remember my  
6 question, unless I'm remembering wrong, I asked that  
7 question of the Applicant, and I thought they said "the  
8 ladder was going to be internal to the tower", not  
9 external.

10 MR. HARRINGTON: Yes, I think it was.  
11 That's -- you're right. We brought it up.

12 MR. IACOPINO: No external ladder.

13 MR. HARRINGTON: There was no external  
14 ladder. So, but this one just says "not climbable to  
15 15 feet." If there's no ladder, I suppose making it  
16 20 feet won't make any difference.

17 MR. STELTZER: Yes. Mr. Chair, I  
18 remember in the discussions and research on the aesthetics  
19 component of it, that that was one idea that was brought  
20 up that there would be no exterior catwalks or ladders of  
21 any sort. So, I think, in the Application, it's pretty  
22 clear. I'm not sure how else they could manage to make it  
23 climbable on the outside, but --

24 MR. IACOPINO: I would also point out, I



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1 think Granite Reliable used a different type, a different  
2 manufacturer of turbine. So, I don't know what those --

3 MR. HARRINGTON: Wasn't -- you're right.  
4 Wasn't there some other provision about no catwalks or  
5 external something in here somewhere?

6 MR. PERRY: Yes. I think that was on  
7 the aesthetics aspect, where we talk about there's going  
8 to be no external ladders, no external catwalks.

9 MR. HARRINGTON: That makes this point  
10 moot then. I like those.

11 CHAIRMAN GETZ: All right. Any other  
12 issues or further discussion about the Groton Agreement?

13 (No verbal response)

14 CHAIRMAN GETZ: Anybody prepared to make  
15 a motion that we adopt the agreement as a condition of the  
16 certificate?

17 DIR. SCOTT: So moved.

18 CHAIRMAN GETZ: Do we have a second?

19 MR. STELTZER: Second.

20 CHAIRMAN GETZ: Second by Mr. Steltzer.

21 Any discussion?

22 (No verbal response)

23 CHAIRMAN GETZ: All those in favor,  
24 please signify their approval by raising their hands?

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1 (Subcommittee members indicating by a  
2 show of hands.)

3 CHAIRMAN GETZ: Appears that we have  
4 unanimous approval.

5 Now, with respect to Rumney, I would  
6 take it, Mr. Steltzer, you would move that we add to the  
7 Rumney Agreement Sections 5.1 of the Groton agreement and  
8 Section 11.2 of the Agreement, is that correct?

9 MR. STELTZER: Correct.

10 MR. IACOPINO: Mr. Chair, I think you  
11 would just --

12 CHAIRMAN GETZ: Did I read the wrong  
13 ones?

14 MR. IACOPINO: -- I think you would just  
15 make those as conditions. I don't think we can add to the  
16 Agreement.

17 DR. KENT: Thank you.

18 MR. IACOPINO: They have signed an  
19 agreement between the two of them. So, I think what you  
20 would be doing is just further conditioning the  
21 certificate --

22 CHAIRMAN GETZ: Yes.

23 MR. IACOPINO: -- with these two.

24 CHAIRMAN GETZ: Correct. Well, then

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1 let's hear, are there any concerns about anything in the  
2 Rumney Agreement that need to be discussed?

3 (No verbal response)

4 CHAIRMAN GETZ: Can we get a motion?

5 MR. STELTZER: Well, I'll move to have  
6 the Committee accept the Agreement between the Town of  
7 Rumney and the Applicant with the following conditions  
8 that the Agreement includes Section 5.1 from the Groton  
9 Agreement, regarding public inquiries and complaints.

10 CHAIRMAN GETZ: Well, let me just -- I  
11 think what -- the point that counsel was making is we can  
12 approve the Agreement, we can also require additional  
13 conditions that would be in addition to the Agreement. Is  
14 that the correct formulation?

15 MR. IACOPINO: Yes. So, we would need  
16 three motions; one to approve the Agreement, one to  
17 approve applying the same public complaints and inquiry  
18 from Groton Agreement Section 5.1 to Rumney, and a third  
19 motion to apply Section 11.2 of the Groton Agreement  
20 regarding post construction noise monitoring to Rumney as  
21 well, to the Town of Rumney.

22 MR. HARRINGTON: Mr. Chairman, just a  
23 question on an issue. Both of the Agreements contain this  
24 statement, and I'll leave it to the lawyers to tell me

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1 that -- to determine if it's a problem. "The Owner shall  
2 maintain [the] fire alarm systems, sensor systems and fire  
3 suppression equipment that is installed in all Wind  
4 Turbines and facilities." Now, we've gone over this fire  
5 suppression thing. Does this mean, if there is fire  
6 suppression systems, this is in Section 6.3 of the Rumney  
7 Agreement and 7.3 of the Groton Agreement, does this just  
8 simply state that, if this, to the extent this equipment  
9 is installed, it will be maintained? Or, does it imply  
10 that the fire suppression equipment is going to be  
11 installed?

12 MR. IACOPINO: My recollection is you  
13 all are the decision-makers, so you can take your own  
14 recollection or look at the transcript. But I believe  
15 that question was asked of Mr. Cherian at one point, and  
16 he said that references the "fire extinguishers that are  
17 contained within the turbines."

18 MR. HARRINGTON: I just want to make  
19 sure we're not --

20 MR. IACOPINO: That's my recollection of  
21 what his testimony is. But I'm not the person who should  
22 be recalling the testimony, you all do. But that's my  
23 recollection when he was asked about that agreement. And,  
24 I will -- I'm not going to be able to find it real fast,

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1 but I'm sure that I can find the testimony in the  
2 transcript of Mr. Cherian. He was asked about that in my  
3 recollection.

4 CHAIRMAN GETZ: Well, certainly, that  
5 would be my interpretation of reading that language.

6 MR. HARRINGTON: I just wanted to make  
7 sure.

8 CHAIRMAN GETZ: It doesn't require, in  
9 the first instance, that such equipment be installed.  
10 But, to the extent it is installed, it shall be  
11 maintained.

12 MR. HARRINGTON: That answered my  
13 question then. Thank you.

14 MR. STELTZER: So, should I try this  
15 again?

16 CHAIRMAN GETZ: Please.

17 MR. STELTZER: That I move that the Site  
18 Evaluation Subcommittee approve the agreement between the  
19 Town of Rumney and Groton Wind, LLC.

20 DIR. SCOTT: Second.

21 CHAIRMAN GETZ: Any discussion?

22 (No verbal response)

23 CHAIRMAN GETZ: All those in favor,  
24 signify their concurrence by raising their hands?

[DELIBERATIONS]

1 (Subcommittee members indicating by a  
2 show of hands.)

3 CHAIRMAN GETZ: And, the motion passes  
4 unanimately.

5 MR. STELTZER: So, then, I would move  
6 that the Site Certificate be conditioned upon the  
7 inclusion of Section 5.1 from the Groton Agreement  
8 regarding public inquiries and complaints.

9 MR. IACOPINO: To the Town of Rumney?

10 MR. STELTZER: To the Town of Rumney.

11 CHAIRMAN GETZ: Mr. Perry.

12 MR. PERRY: Mr. Chairman, just a  
13 question or are you looking for a second first now?

14 CHAIRMAN GETZ: Either way.

15 MR. PERRY: All right. Well, I'll  
16 second the motion and then ask the question.

17 CHAIRMAN GETZ: Okay.

18 MR. PERRY: Does there need to be an  
19 agreement between the towns in order for this to be  
20 effective, because we have the Town of Plymouth and we  
21 have the Town of Holderness that are intervenors in this  
22 case. And, I know that there's a Night Sky Ordinance  
23 issue, and the Town of Plymouth talked about their "high  
24 ridge property value" issue. So, we have two other towns

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1 that have expressed some sort of concern about impact to  
2 their residents based on this Project. And, so, are we  
3 excluding those folks from having a similar mechanism for  
4 registering complaints?

5 CHAIRMAN GETZ: Well, I'm not sure that  
6 we're excluding it. We haven't got to the -- and what  
7 we're doing now is including what would be in Groton and  
8 Rumney. We certainly could require the Applicant to take,  
9 you know, similar steps with respect to Holderness or  
10 elsewhere, in Plymouth.

11 MR. PERRY: Okay.

12 CHAIRMAN GETZ: So, I don't know, are  
13 you suggesting a motion?

14 MR. PERRY: Well, I just, I mean, yes --  
15 no, not at this point. I'm just making sure that a vote  
16 in the positive on this one would not exclude the Town of  
17 Plymouth and the Town of Holderness having a similar  
18 mechanism imposed as part of the Certificate. Whether  
19 that's a separate motion or not, I --

20 CHAIRMAN GETZ: Mr. Steltzer, --

21 DIR. SCOTT: Wouldn't taking 5.1 and  
22 putting it as a condition for the whole Site Certificate,  
23 wouldn't that actually include everybody? I mean, by  
24 definition, unless we call out something, it means

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1 everybody.

2 MR. PERRY: Right. The original motion  
3 said that, but then it was pointed toward just the Town of  
4 Rumney at the very end. So, that's where I just -- the  
5 question came up.

6 MR. IACOPINO: Well, I think that the  
7 condition itself requires that "the Owner identify an  
8 individual, [and] include a phone number, e-mail address  
9 and mailing address, posted at the Town", it says "Town  
10 House" in this Agreement, I'm sure that means the "Town  
11 Hall", "who will be available for the public to contact  
12 with inquiries and complaints." I guess you could apply  
13 it to whatever towns the Committee found.

14 DIR. SCOTT: Could I ask for a friendly  
15 amendment? To replace "posted at the Town House", to  
16 "posted at all adjacent towns to the Project", or some  
17 kind of language, something like that?

18 MR. HARRINGTON: That was my concern.  
19 We can't leave it open, because then someone will say "I  
20 want it posted in Errol." So, I mean, we have to say  
21 which towns, and maybe adding Plymouth and whatever the  
22 next --

23 MR. IACOPINO: Plymouth, Holderness, and  
24 probably Hebron I believe is also in the Project Affected



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1 Area.

2 DR. BOISVERT: If I could suggest that  
3 you use whatever is defined under the Area of Potential  
4 Effect", use that as the yardstick.

5 MR. IACOPINO: That's the three-mile  
6 circum -- radius?

7 DR. BOISVERT: That's the 3-mile visual.

8 CHAIRMAN GETZ: I guess I would feel  
9 better about let's identify the towns.

10 DR. BOISVERT: Okay.

11 CHAIRMAN GETZ: And, we know which ones  
12 they are. And, maybe we could just -- is it something  
13 more than Rumney, Groton, Holderness, and Hebron?

14 MR. HARRINGTON: Plymouth.

15 CHAIRMAN GETZ: And Plymouth.

16 MR. STELTZER: Mr. Chairman, maybe what  
17 we can do for that friendly amendment is to specifically  
18 list the Towns of Plymouth, Groton, Rumney, and  
19 Holderness, or any other interested municipalities. So,  
20 it does broaden it out, but it would require that that  
21 individual municipality would have to inquire to have that  
22 be posted, as opposed to it being a blanket statement that  
23 "the Applicant would have to provide it to everybody."

24 MR. IACOPINO: The only thing that I

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1 would say, I'm looking at the map right now, and Hebron is  
2 very close to at least the footprint of the Project. In  
3 fact, it's just a little bit less close to the southern  
4 corner than Rumney is to the north.

5 CHAIRMAN GETZ: Yes. I would propose  
6 that we make, you know, the Groton Agreement, Section 5.1,  
7 with respect to public inquiries and complaints, be  
8 applicable as well to Plymouth, Rumney, Holderness, and  
9 Hebron, and then everybody knows who it applies to. And,  
10 by looking at the map, it seems to be fairly reflective of  
11 any town that should have a concern during construction  
12 and operation.

13 MR. HARRINGTON: And doesn't prevent  
14 anybody from another town going to that town hall and  
15 getting the phone number and calling up.

16 MR. STELTZER: That's fine.

17 CHAIRMAN GETZ: Okay. So, --

18 MR. STELTZER: So, I propose to make an  
19 amendment to the motion to strike "Town House" and instead  
20 insert "Plymouth, Groton, Rumney, Holderness, and Hebron".

21 DR. BOISVERT: Might I suggest "the town  
22 offices of"? Or, is Plymouth a city?

23 MR. STELTZER: It's a town.

24 DR. BOISVERT: It is a town? Okay.

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1 MR. STELTZER: It is.

2 DR. BOISVERT: "The town offices", at  
3 lower case then, that gives a particular place, official  
4 place to have it posted in just "the town offices".

5 MR. STELTZER: I agree.

6 CHAIRMAN GETZ: Mr. Perry, do you renew  
7 your second?

8 MR. PERRY: Yes.

9 CHAIRMAN GETZ: Okay. All those in  
10 favor, please signify by raising their hand that they're  
11 in favor?

12 (Subcommittee members indicating by a  
13 show of hands.)

14 CHAIRMAN GETZ: Okay. It appears that  
15 it's unanimous. Do you have one more?

16 MR. STELTZER: I have one more. It  
17 seems like my motions take a long time, but we'll see  
18 about it. I move that the Site Certificate be conditioned  
19 upon inclusion of 11.2 from the Town of Groton Agreement  
20 regarding post construction noise measurements and have  
21 those apply to the Town of Rumney.

22 MR. HARRINGTON: Second.

23 CHAIRMAN GETZ: Any discussion?

24 (No verbal response)

[DELIBERATIONS]

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1                   CHAIRMAN GETZ: Hearing no discussion,  
2 all those in favor signify by raising your hand?

3                   (Subcommittee members indicated by a  
4 show of hands.)

5                   CHAIRMAN GETZ: I'll note for the record  
6 that the motion is approved unanimously.

7                   So, I think that completes those two  
8 agreements. I guess, at this point, unless there's  
9 anything else, I would say we're meeting at 9:00 Monday  
10 morning. The intention is to start with Mr. Harrington  
11 describing some of the issues relative to the alternatives  
12 that have not been otherwise covered or make -- be fairly  
13 related to that topic. And, then, we go on to make sure  
14 we've covered all of the conditions, and either rule one  
15 way or another on all those conditions. And, hopeful  
16 we'll complete this in the morning, and then we'll be  
17 sending counsel off to draft an order memorializing the  
18 decision. So, is there anything else before we recess?

19                   (No verbal response)

20                   CHAIRMAN GETZ: Hearing nothing, thank  
21 you, everyone. We're recessed.

22                   (Whereupon deliberations were adjourned  
23 at 4:46 p.m., and to resume on April 11,  
24 2011, commencing at 9:00 a.m.)