

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2010-01

**Application of Groton Wind, LLC, for a Certificate of Site and Facility
for a 48 MW Wind Turbine Facility in Groton, Grafton County,
New Hampshire**

May 6, 2011

**ORDER AND
CERTIFICATE OF SITE AND FACILITY WITH CONDITIONS**

WHEREAS, Groton Wind, LLC, (Applicant) has filed an Application for a Certificate of Site and Facility (Application) to site, construct, and operate a Renewable Energy Facility (Facility or Project) consisting of 24 Gamesa G82 wind turbines each having a nameplate capacity of 2 megawatts (“MW”) for a total nameplate capacity of 48 MW to be located in the Town of Groton, Grafton County, New Hampshire (Site);

Whereas, the Facility does not yet have a formal street address but will be accessible from an access road off of Groton Hollow Road in Rumney, New Hampshire and the proposed Site consists of 4,180 acres and is bounded by Route 25 to the North, Tenney Mountain Ski Resort to the East, the Forest Society’s Cockermouth Forest to the South, and Halls Brook Road to the West;

Whereas, this area consists of two distinct ridgeline features known as Tenney Mountain and Fletcher Mountain, which are separated by a valley known as Groton Hollow and twelve wind turbines will be situated generally in a north-south direction along the Tenney Ridge, six turbines will be oriented on the southern knob of Fletcher Mountain, and six turbines will be oriented on the northwest knob of Fletcher Mountain. In addition to the turbines, the Project will consist of the roads, an electrical collection system, an electrical switchyard, transmission lines, a voltage step-up facility, an operations and maintenance building, a meteorological tower, all as further described in the Application as amended;

Whereas, the individual turbines will be connected to a 34.5 kV collection system. Each turbine will be connected to a 2,350 kV transformer and connection cabinet and several turbines will be loop connected through the collection circuits and junction boxes, which, in turn, will be connected to the Facility’s switchyard. The generated output will be transmitted via 34.5 kV transmission line;

Whereas, the interconnection line will run from the Project to Route 25 and will be comprised of approximately 37 poles, 10 to 12 of which will be located on the existing leased premises and

approximately 25 of which will be located along easements on private property; once the line reaches Route 25, it will travel along Route 25 using poles currently utilized by New Hampshire Cooperative (NH Coop);

Whereas, The interconnection line will eventually leave Route 25 and will connect with the 34.5 kV-115 kV voltage step-up facility located on a 5 acre parcel of privately-owned land in Holderness, Grafton County, New Hampshire;

Whereas, the output will then be transmitted to the Northeast Utilities, Beebe River Substation via a 115 kV line;

Whereas, the Subcommittee has held a number of public meetings and hearings regarding the Application including a Public Information Hearing pursuant to R.S.A. 162-H:10, on June 28, 2010; adjudicatory proceedings on November 1-5, 2010 and on April 22-23, 2011 to hear evidence regarding the Application;

Whereas, the Subcommittee has received and considered both oral and written comments from the public concerning the Application;

Whereas, the Subcommittee has considered available alternatives and fully reviewed the environmental impact of the Site and all other relevant factors bearing on whether the objectives of R.S.A. 162- H would be best served by the issuance of a Certificate of Site and Facility (Certificate);

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

Whereas, the Subcommittee finds that, subject to the conditions herein, the Project will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies;

Whereas, the Subcommittee finds that, subject to the conditions herein, the Project will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety; and,

Whereas, on even date herewith the Subcommittee has issued a Decision Granting Certificate of Site and Facility With Conditions (Decision).

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

Further Ordered that the Site Evaluation Subcommittee's Decision dated May 6, 2011, and any conditions contained therein are hereby made a part of this Order; and it is,

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

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

Further Ordered that the Applicant shall immediately notify the Site Evaluation Committee of any change in ownership or ownership structure of the Applicant or its affiliated entities and shall seek approval of the Subcommittee of such change; and it is,

Further Ordered that all permits and/or certificates recommended by the New Hampshire Department of Environmental Services including the Wetlands Permit, the Site Specific Alteration of Terrain Permit, and the Section 401 Water Quality Certificate shall issue and this Certificate is conditioned upon compliance with all conditions of said permits and/or certificates which are appended hereto as Appendix I; and it is,

Further Ordered that the New Hampshire Department of Environmental Services is authorized to specify the use of any appropriate technique, methodology, practice or procedure associated with the conditions of the Wetlands Permit, the Site Specific Alteration of Terrain Permit, and the Section 401 Water Quality Certificate, including the authority to approve modifications or amendments to said permits and certificates; and it is,

Further Ordered that the Applicant shall continue to cooperate with the requirements of ISO-New England and obtain all ISO approvals necessary to a final interconnection agreement for a gross unit rating up to 48 MW. Said interconnection agreement shall be filed with the Subcommittee prior to the commencement of constructions; and it is,

Further Ordered that the Agreement between the Town of Groton and the Applicant, attached as Appendix II, shall be a part of this Order and the Conditions contained therein shall be conditions of this Certificate. To the extent that any disputes arise under the Agreement with the Town of Groton the parties shall file a motion for declaratory ruling, a motion for enforcement or such other motion as may be procedurally appropriate with the Subcommittee and the Subcommittee shall make such final interpretations or determinations that may be necessary; and it is,

Further Ordered that the Agreement between the Town of Rumney and the Applicant, attached as Appendix III, shall be a part of this Order and the Conditions contained therein shall be conditions of this Certificate. To the extent that any disputes arise under the Agreement with the Town of Rumney the parties shall file a motion for declaratory ruling, a motion for enforcement or such other motion as may be procedurally appropriate with the Subcommittee and the Subcommittee shall make such final interpretations or determinations that may be necessary; and it is,

Further Ordered that the Applicant shall comply with the Town of Holderness' "dark sky" ordinance, as applied to the voltage step-up facility, to the extent it is not contrary to applicable life safety codes, building codes, or fire codes; and it is,

Further Ordered that the Applicant shall continue its consultations with the New Hampshire Division of Historical Resources (NHDHR) and comply with all agreements and memos of understanding with that agency and, in the event that new information or evidence of a historic site, or other archeological resources, are found within the area of potential effect of the Project Site, the Applicant shall immediately report said findings to NHDHR and the Committee; and it is,

Further Ordered that, if during construction or thereafter, any archeological resources or deposits are discovered or affected as a result of project planning or implementation, NHDHR shall be notified immediately and NHDHR shall determine the need for appropriate evaluative studies, determinations of National Register eligibility, and mitigation measures (redesign, resource protection, or data recovery) as required by state or federal law and regulations. If construction plans change, notification to and consultation with the NHDHR shall be required. If any member of the public raises new concerns about the effect on historic resources, notification to and consultation with the NHDHR shall be required. NHDHR is authorized to specify the use of any appropriate technique, methodology, practice or procedure associated with historical resources effected by the Project, including the authority to approve modifications to such practices and procedures as may become necessary; and it is,

Further Ordered that the Applicant shall conduct breeding bird surveys that replicate or improve upon the Stantec pre-construction surveys for the project; spring and fall diurnal raptor surveys that replicate or improve upon the 2009 Stantec survey, except that the fall surveys will extend into November to ensure capturing eagle migration; summer and early fall peregrine falcon surveys that replicate or improve upon the Stantec pre-construction surveys for the project; spring and fall nocturnal migratory bird radar surveys that replicate or improve upon the Stantec pre-construction survey for the project; acoustic surveys of bat activity that replicate or improve upon the Stantec pre-construction survey for the project; bird and bat mortality surveys that replicate or improve upon the West, Inc. 2010 Post-Construction Fatality Survey for the Lempster Wind Project, shall temporally coincide with breeding bird surveys, diurnal raptor surveys, nocturnal migrating bird surveys, and bat surveys. The breeding bird survey, diurnal raptor survey, nocturnal migrating bird survey, bat survey, and bird and bat mortality survey shall have duration of three years, commencing during the first year of operation. New Hampshire Fish & Game (NHF&G), in consultation with U.S. Fish & Wildlife Service (USFW), shall review and approve all study protocols. The Applicant shall commence informal monitoring as described in Iberdrola's Bird and Bat Protection Plan after completion of the aforementioned surveys. Informal monitoring shall continue for the life of the Project. Annual reports shall be submitted to, and discussed with, NHF&G and USFW, and shall serve as the basis for mitigation measures if effects are deemed unreasonably adverse; and it is,

Further Ordered that the Applicant shall develop a plan with the Town of Rumney, in consultation with the residents of Groton Hollow Road, addressing adequate advance notification to the residents of Groton Hollow Road of the movement of oversized loads on Groton Hollow

Road, including the date and time when vehicle traffic will be blocked on Groton Hollow Road; alternative transportation for residents of Groton Hollow Road during times when Groton Hollow Road is blocked to normal vehicular traffic; and a plan to deal with emergencies that may occur on Groton Hollow Road during the times when Groton Hollow Road is blocked to emergency vehicle traffic; and it is,

Further Ordered that the sound levels generated by the Project at the outside facades of homes should not exceed 55 dBA or 5 dBA greater than ambient, whichever is greater, in day time and 45 dBA or 5 dBA greater than ambient, whichever is greater, at night; and it is,

Further Ordered that the sound levels generated by the Project shall not exceed 40 dBA or 5 dBA greater than ambient, whichever is greater as measured within current boundaries of the Baker River Campground presently owned and operated by Ms. Cheryl Lewis; and it is,

Further Ordered that, after commercial operations of the Project commence, the Applicant shall retain an independent qualified acoustics engineer to take sound pressure level measurements in accordance with the most current version of ANSI S12.18. The measurements shall be taken at sensitive receptor locations as identified by the Applicant and Towns of Groton and Rumney. The periods of the noise measurements shall include, at a minimum, daytime, winter and summer seasons, and nighttime after 10 p.m. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter. The Applicant shall provide the final report(s) of the acoustics engineer to the Subcommittee and Towns of Groton and Rumney within 30 days of its receipt by the Applicant; and it is,

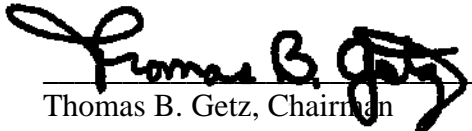
Further Ordered that any landowner may waive the noise restriction set forth by this Certificate by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. The written waiver shall state that the consent is granted for the Project not to comply with the sound limits set forth in the Certificate; and it is,

Further Ordered that, during construction and operation of the Project, and continuing through completion of decommissioning of the project, the Applicant shall identify an individual(s), including phone number, email address, and mailing address, posted at the town offices of the Towns of Rumney, Holderness, Plymouth, Hebron, and Groton, who will be available for the public to contact with inquiries and complaints. The Applicant shall make reasonable efforts to respond to and address the public's inquiries and complaints. This process shall not preclude the local government from acting on a complaint; and it is,

Further Ordered that any complaint made to the Applicant shall be kept by the Applicant in a permanent log setting forth the identity of the complainant, the date of the complaint, the nature of the complaint. The Applicant shall annually file its response(s) to the complaint(s) contained in the log with the Committee.

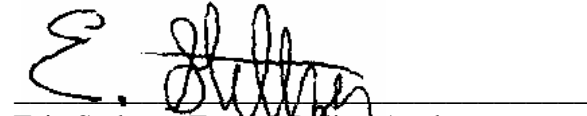
Further Ordered that the Applicant shall construct the voltage step-up facility located in the Town of Holderness, between 6:00 a.m. and 7:00 p.m., Monday – Saturday, unless prior approval is obtained from the Town of Holderness; and it is,


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

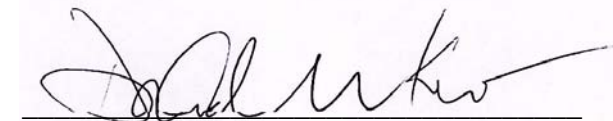

Thomas B. Getz, Chairman
Public Utilities Commission



Stephen Perry, Inland Fisheries Division Chief
Fish and Game Department

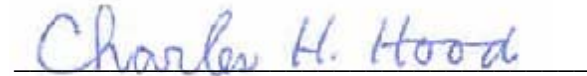

Robert Scott, Director
Department of Environmental Services


Eric Steltzer, Energy Policy Analyst
Office of Energy and Planning


Brook Dupee, Senior Health Policy Analyst
Department of Health and Human Services


Donald Kent, Designee
Dept. of Resources & Econ. Development


Richard Boisvert, State Archeologist
NH Division of Historical Resources


Charles Hood, Administrator
Department of Transportation


Michael Harrington, State Engineer
Public Utilities Commission

APPENDIX I –PERMITS AND CERTIFICATES

WETLANDS BUREAU FINAL DECISION
OCTOBER 8, 2010

RECOMMEND APPROVAL WITH THE FOLLOWING PERMIT CONDITIONS:

PROJECT DESCRIPTION:

Dredge and fill 1.65 acres (71,680 square feet) of wetlands and streams (impacting 4,302 linear feet) and temporarily impact .33 acres (14,130 square feet) of wetlands and 320 square feet within a stream, to construct a power generating wind park that will include the construction of 24 wind turbines (2.0 megawatts each), approximately 12 miles of gravel access drives, a 4,000 square foot operations/maintenance building, stockpile and lay down pad areas, and associated transmission lines. Mitigate impacts by making a in-lieu fee payment of \$150,000 into the DES Aquatic Resources Mitigation (ARM) Fund; by upgrading nine existing stream crossings along Groton Hollow Road to meet the new DES stream rules; and by providing technical assistance to the Society for the Protection of New Hampshire Forests (SPNHF) by donating survey data, title research, and environmental baseline data to assist SPNHF in their efforts to protect 6,578 acres of undeveloped land known as the Green Acre Woodlands Project.

PROJECT SPECIFIC CONDITIONS:

1. All work shall be in accordance with revised plans by Vanasse Hangen Brustlin, Inc. dated July 9, 2010, as received by the NH Department of Environmental Services (DES) on July 26, 2010.
2. Prior to construction, any plan revisions or changes in construction details or sequences shall be submitted to DES for review and approval.
3. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and further permitting by the Bureau.
4. This permit is contingent on approval by the DES Alteration of Terrain Bureau.
5. No construction activities shall occur on the project after expiration of the approval unless the approval has been extended by the New Hampshire Energy Facility Site Evaluation Committee (SEC).
6. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
7. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, in all cases with a minimum of 20 feet of undisturbed vegetated buffer.
8. Dredged material shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
9. Stream work shall be done during low flow conditions.
10. Culvert outlets shall be protected in accordance with the DES Best Management Practices for Urban Stormwater Runoff Manual (January 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August 1992).
11. Proper headwalls shall be constructed within seven days of culvert installation.

12. Within three days of final grading, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.
13. Where construction activities have been temporarily suspended within the growing season, all exposed soil areas shall be stabilized within 14 days by seeding and mulching.
14. Where construction activities have been temporarily suspended outside the growing season, all exposed areas shall be stabilized within 14 days by mulching and tack. Slopes steeper than 3:1 shall be stabilized by matting and pinning.
15. The contractor responsible for completion of the work shall utilize techniques described in the New Hampshire Stormwater Manual, Volume 3, Erosion and Sediment Controls During Construction (December 2008).

Restoration Conditions:

16. This permit is contingent upon the restoration of 14,450 square feet of wetlands and streams that are being temporarily impacted in accordance with the plans received by DES on March 29, 2010.
17. All temporary wetland and stream impact areas shall be properly restored, and shall be monitored to ensure that functioning wetland areas similar to those destroyed by the project are replicated. Remedial measures may be necessary for successful restoration, which can include replanting, relocating plantings, removal of invasive species, changing soil composition and depth, changing the elevation of the wetland surface, and changing the hydrologic regime.
18. The permittee shall designate a qualified professional who will be responsible for monitoring and ensuring that the restoration areas are completed in accordance with the plans. Monitoring shall be accomplished in a timely fashion and remedial measures taken if necessary. The Wetlands Bureau shall be notified in writing of the designated professional prior to the start of work and if there is a change of status during the project.
19. The permittee or a designee shall conduct a follow-up inspection after the first growing season, to review the success of the restoration areas and schedule remedial actions if necessary. A report outlining these follow-up measures and a schedule for completing the remedial work shall be submitted by December 1 of that year. Similar inspections, reports and remedial actions shall be undertaken in at least the second (2nd) year following the completion of each restoration area.
20. Wetland restoration areas shall have at least 75% successful establishment of wetlands vegetation after a full growing season, or shall be replanted and re-established until a functional wetland is replicated in a manner satisfactory to the DES Wetlands Bureau.
21. The permittee shall attempt to control invasive, weedy species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*) by measures agreed upon by the Wetlands Bureau if the species is found in the restoration areas during construction and during the early stages of vegetative establishment.
22. A post-construction report documenting the status of the completed project with photographs shall be submitted to the Wetlands Bureau within 60 days of the completion of construction.

Mitigation Conditions:

23. This approval is contingent on receipt by DES of a one time payment of \$150,000 to the DES Aquatic Resource Mitigation (ARM) Fund. If the project is approved by the New Hampshire Energy Facility Site Evaluation Committee (SEC), then the payment shall be received by DES within 120 days of the date of their approval.
24. This permit is contingent upon the upgrade of nine existing stream crossings along Groton Hollow Road in order to meet the standards of the DES stream rules (Env-Wt 900).

25. This permit is contingent upon Groton Wind, LLC donating to SPNHF the property survey data and mapping, title research, and environmental baseline data to support their efforts in preserving 6,578 acres of undeveloped land known as the Green Acre Woodlands Project.

FINDINGS:

1. This project is classified as a Major Impact Project per NH Administrative Rule Env-Wt 303.02(c), as wetland impacts are greater than 20,000 square feet.
2. The need for the proposed impacts has been demonstrated by the applicant per Rule Env-Wt 302.01.
3. The applicant has provided evidence which demonstrates that this proposal is the alternative with the least adverse impact to areas and environments under the department's jurisdiction per Rule Env-Wt 302.03.
4. The applicant has demonstrated by plan and example that each factor listed in Rule Env-Wt 302.04(a), Requirements for Application Evaluation, has been considered in the design of the project.
5. DES Staff conducted a field inspection of the proposed project on June 29, 2010. Field inspection determined that the majority of the site has been historically and actively logged and that the upgrades to culverts along Groton Hollow Road were necessary in order to meet the stream rules.
6. Public hearing is not required with the finding that the project will not impact wetland areas that are considered to be of special value from a local, regional, or state perspective pursuant to Rule Env-Wt 101.90
7. The applicant has reviewed on-site options for mitigation and the department has determined that this project is acceptable for payment to the Aquatic Resource Mitigation (ARM) Fund.
8. The payment calculated for the proposed wetland loss equals \$150,000.
9. The Department decision is issued in letter form and upon receipt of the ARM fund payment, the Department shall issue a posting permit in accordance with Env-Wt 803.08(f).
10. The payment into the ARM fund shall be deposited in the DES fund for the Pemigewasset River Watershed per RSA 482-A:29.

ALTERATION OF TERRAIN (AOT) BUREAU FINAL DECISION
OCTOBER 8, 2010

RECOMMEND APPROVAL WITH THE FOLLOWING PERMIT CONDITIONS:

(Approval includes permit conditions from the Watershed Management Bureau (WMB) to satisfy 401 Water Quality Certification concerns, and from the Drinking Water and Groundwater Bureau (DWGB) to satisfy concerns regarding ledge blasting and monitoring Best Management Practices)

PROJECT DESCRIPTION:

Construct a power generating wind park that will include the construction of 24 wind turbines (2.0 megawatts each), approximately 12 miles of gravel access drives, a 4,000 square foot operations and maintenance building, stockpile and lay down pad areas, and associated transmission lines. The total area of contiguous disturbance has been calculated to be 115.6 acres (5,036,579 square feet).

PROJECT SPECIFIC CONDITIONS:

1. Activities shall not cause or contribute to any violations of the surface water quality standards established in Administrative Rule Env-Wq 1700.
2. Revised plans shall be submitted for an amendment approval prior to any changes in construction details or sequences. The Department must be notified in writing within ten days of a change in ownership.
3. The Department must be notified in writing prior to the start of construction and upon completion of construction. Forms are available at:
<http://des.nh.gov/organization/divisions/water/aot/categories/forms.htm>.
4. The revised plans dated July 9, 2010 and supporting documentation in the file are a part of this approval.
5. No construction activities shall occur on the project after expiration of the approval unless the approval has been extended by the New Hampshire Energy Facility Site Evaluation Committee (SEC).
6. This permit does not relieve the Applicant from the obligation to obtain other local, state or federal permits that may be required (e.g., from US EPA, US Army Corps of Engineers, etc.). Projects disturbing over 1 acre may require a federal stormwater permit from EPA. Information regarding this permitting process can be obtained at:
<http://des.nh.gov/organization/divisions/water/stormwater/construction.htm>.
7. The smallest practical area shall be disturbed during construction activities.
8. The Applicant shall employ the services of an environmental monitor ("Monitor"). The Monitor shall be a Certified Professional in Erosion and Sediment Control or a Professional Engineer licensed in the State of New Hampshire and shall be employed to inspect the site from the start of alteration of terrain activities until the alteration of terrain activities are completed.
9. The Monitor shall provide technical assistance and recommendations to the Contractor on the appropriate Best Management Practices for Erosion and Sediment Controls required to meet the requirements of RSA 485-A:17 and all applicable DES permit conditions.
10. Prior to beginning construction, the contractor's name, address, and phone number shall be submitted to DES via email (to Denise Frappier at denise.frappier@des.nh.gov and to Craig Rennie at: craig.rennie@des.nh.gov).

11. Unless otherwise authorized by DES, the Applicant shall keep a sufficient quantity of erosion control supplies on the site at all times during construction to facilitate an expeditious (i.e., within 24 hour) response to any construction related erosion issues on the site.
12. The Applicant shall develop and submit a Construction BMP Inspection and Maintenance Plan to DES for approval at least 90 days prior to construction. Unless otherwise authorized by DES, the plan shall incorporate all elements described in **Appendix A** (items A through J). The Applicant shall then implement the approved plan.
13. The Applicant shall prepare a turbidity sampling plan as specified in **Appendix A** of this permit. The plan shall be submitted to DES for approval at least 90 days prior to construction. The Applicant shall then implement the approved plan. Unless otherwise authorized by DES, the turbidity sampling results along with station ID, date, time, other field notes, and a description of corrective actions taken when violations of state surface water quality criteria for turbidity are found, shall be submitted to DES via electronic mail within 48 hours of collection.
14. The Applicant shall prepare and submit a Spill Prevention, Control, and Countermeasures plan (SPCC) for the Activity in accordance with federal regulations (40 CFR part 112). The plan shall include a certification by a Professional Engineer licensed in the State of New Hampshire. The Applicant shall submit the plan to DES Watershed Management Bureau for review and approval at least 90 days prior to the installation of the first turbine. The SPCC Plan shall include, but not be limited to, operating procedures to prevent oil spills, control measures installed to prevent oil from entering surface waters, countermeasures to contain, clean-up and mitigate the effects of an oil spill, and facility inspections. The Applicant shall then implement the approved plan and maintain records demonstrating compliance with the plan. Such records shall be made available to DES within 30 days of receiving a written request by DES.
15. The Applicant shall submit a plan to prevent water quality violations due to discharges of concrete wash water during construction. The Applicant shall submit the plan to DES Watershed Management Bureau for review and approval at least 90 days prior to placement of any concrete within the Activity area. The Applicant shall then implement the approved plan.
16. As proposed by the Applicant, unless otherwise authorized by DES, herbicides and pesticides shall not be used on the site for the construction or operation of the Activity.
17. Unless otherwise authorized by DES, fertilizers shall only be applied once on soils disturbed during construction to support the initial establishment of vegetation. Prior to fertilizer application, soils shall be tested to determine the minimum amounts of lime, nitrogen (N), phosphorus (P) and potassium (K) needed to support vegetation. Lime application rates, fertilizer selection (in terms of N, P and K content) and fertilizer application rates shall be consistent with the soil test results. Fertilizers shall not contain any pesticides. Where possible, fertilizer with slow release nitrogen shall be used. Soil test results, the name, brand and nutrient content (N, P and K) of fertilizer and application rates for lime and fertilizer shall be provided to DES within 30 days of receiving a request from DES. As proposed by the Applicant, unless otherwise authorized by DES, no fertilizers shall be used for the Activity following construction.
18. As proposed by the Applicant, unless otherwise authorized by DES, no de-icing agents (including use of sands containing chloride) shall be used on the Activity either during construction or once the Activity is in operation.
19. Unless otherwise authorized by DES, the Applicant shall limit forest clearing within a 50-foot buffer of Clark Brook to 0.2 acres (<1% change from pre-Activity conditions) and within a 50-foot buffer of all perennial streams to 3.6 acres (5% change from pre-Activity conditions).
20. Unless otherwise authorized by DES, the Applicant shall develop and submit a monitoring plan to DES for approval at least 90 days prior to construction. The purpose of the plan is to confirm

that operation of the Activity is not causing or contributing to violations of state surface water quality standards. The plan shall include the parameters to be sampled, the location, timing and frequency of sampling, sampling and laboratory protocols, quality assurance/quality control provisions as well as when data will be submitted to DES. The Applicant shall consult with DES and submit the monitoring data in a format that can be automatically uploaded into the DES Environmental Database. Once approved by DES, the Applicant shall implement the sampling plan.

21. The Applicant shall identify drinking water wells located within 2000 feet of the proposed blasting activities. Develop and implement a groundwater quality sampling program to monitor for nitrate and nitrite either in the drinking water supply wells or in other wells that are representative of the drinking water supply wells in the area. The program must be approved by the DES DWGB.
22. The following Best Management Procedures for blasting shall be complied with:
 - (1) Loading practices. The following blasthole loading practices to minimize environmental effects shall be followed:
 - a) Drilling logs shall be maintained by the driller and communicated directly to the blaster. The logs shall indicate depths and lengths of voids, cavities, and fault zones or other weak zones encountered as well as groundwater conditions.
 - b) Explosive products shall be managed on-site so that they are either used in the borehole, returned to the delivery vehicle, or placed in secure containers for off-site disposal.
 - c) Spillage around the borehole shall either be placed in the borehole or cleaned up and returned to an appropriate vehicle for handling or placement in secured containers for off-site disposal.
 - d) Loaded explosives shall be detonated as soon as possible and shall not be left in the blastholes overnight, unless weather or other safety concerns reasonably dictate that detonation should be postponed.
 - e) Loading equipment shall be cleaned in an area where wastewater can be properly contained and handled in a manner that prevents release of contaminants to the environment.
 - f) Explosives shall be loaded to maintain good continuity in the column load to promote complete detonation. Industry accepted loading practices for priming, stemming, decking and column rise need to be attended to.
 - (2) Explosive Selection. The following BMPs shall be followed to reduce the potential for groundwater contamination when explosives are used:
 - a) Explosive products shall be selected that are appropriate for site conditions and safe blast execution.
 - b) Explosive products shall be selected that have the appropriate water resistance for the site conditions present to minimize the potential for hazardous effect of the product upon groundwater.
 - (3) Prevention of Misfires. Appropriate practices shall be developed and implemented to prevent misfires.
 - (4) Muck Pile Management. Muck piles (the blasted pieces of rock) and rock piles shall be managed in a manner to reduce the potential for contamination by implementing the following measures:
 - a) Remove the muck pile from the blast area as soon as reasonably possible.
 - b) Manage the interaction of blasted rock piles and stormwater to prevent contamination of water supply wells or surface water.

(5) Spill Prevention Measures and Spill Mitigation. Spill prevention and spill mitigation measures shall be implemented to prevent the release of fuel and other related substances to the environment. The measures shall include at a minimum:

- a) The fuel storage requirements shall include:
 - i. Storage of regulated substances on an impervious surface;
 - ii. Secure storage areas against unauthorized entry;
 - iii. Label regulated containers clearly and visibly;
 - iv. Inspect storage areas weekly;
 - v. Cover regulated containers in outside storage areas;
 - vi. Wherever possible, keep regulated containers that are stored outside more than 50 feet from surface water and storm drains, 75 feet from private wells, and 400 feet from public wells; and
 - vii. Secondary containment is required for containers containing regulated substances stored outside, except for on premise use heating fuel tanks, or aboveground or underground storage tanks otherwise regulated.
- b) The fuel handling requirements shall include:
 - i. Except when in use, keep containers containing regulated substances closed and sealed;
 - ii. Place drip pans under spigots, valves, and pumps;
 - iii. Have spill control and containment equipment readily available in all work areas;
 - iv. Use funnels and drip pans when transferring regulated substances; and
 - v. Perform transfers of regulated substances over an impervious surface.
- c) The training of on-site employees and the on-site posting of release response information describing what to do in the event of a spill of regulated substances.
- d) Fueling and maintenance of excavation, earthmoving and other construction related equipment will comply with the regulations of the DES. Note these requirements are summarized in "WD-DWGB-22-6 Best Management Practices for Fueling and Maintenance of Excavation and Earthmoving Equipment" or its successor document (see <http://des.nh.gov/organization/commissioner/pip/factsheets/dwgb/documents/dwgb-22-6.pdf>).

Appendix A:

Details of construction BMP inspection, reporting requirements, and turbidity monitoring

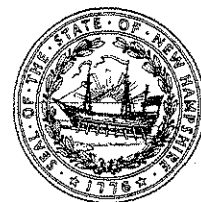
(In light of the sensitive resources within the project area and scale of the proposed activity, the following additional construction BMP inspection and reporting requirements and turbidity monitoring are considered necessary to prevent construction related surface water quality violations)

- A. Weekly Erosion Control Meeting: The Applicant's prime Contractor for the Activity (prime Contractor) shall hold weekly erosion control meetings with the Monitor. Minutes of the meeting shall be kept on file and made available to DES upon request.
- B. Inspection Frequency: Regular inspections shall be conducted as specified below for the purposes of determining compliance with the permit.
 - (1) Daily Inspections: The prime Contractor shall inspect all erosion control measures every day that work is conducted from the time construction commences and earth is disturbed until construction is complete.
 - (2) Weekly Inspections: After construction has commenced and earth has been disturbed, the Monitor shall conduct weekly erosion control site inspections to verify all erosion control measures are maintained properly to protect surface waters and wetlands. The Monitor shall document and report its findings, including recommendations for maintenance of BMPs or the addition of new control measures to the prime Contractor.
 - (3) Pre-storm inspections: The Monitor shall print the 5-day forecast once daily (7-9 am) for the duration of the project. All forecasts shall be clearly marked with the date and time, kept on file, provided to the prime Contractor. In addition, the 5-day forecast on the day of the weekly meeting shall be attached to the weekly meeting minutes distributed by the Monitor. Inspection shall occur within 24 hours prior to the start of any rain event of 0.5 inches or more in a 24-hour period that is predicted to occur during the workweek. A normal workweek is Monday through Friday. Holidays and weekends are included as part of the normal workweek when work is anticipated to occur on those days. If the predicted event occurs outside of the normal workweek, the inspection shall occur on the normal workday just before any scheduled days off, such as holidays and weekends. Unless otherwise approved by DES, the Accuweather website (<http://home.accuweather.com/index.asp?partner=accuweather>) shall be used for the purpose of predicting future precipitation amounts. Future precipitation amounts on the Accuweather web site may be determined by typing in the location of the project (city, state and/or zip code), clicking on the link for Days 1-5 forecasts and then clicking on the day(s) of interest.
- C. Emergency Inspections During Storm Events: Inspections shall occur during the daylight hours (Monday through Sunday, including holidays) during storm events whenever plumes are visible or if turbidity sampling indicates water quality standards are exceeded due to turbid stormwater from the construction site. Inspections and corrective action shall be implemented during the daylight hours (Monday through Sunday, including holidays) until turbidity water quality standards are met.
- D. Post Storm Inspections: Inspections shall occur on the first workday following storms of greater than 0.5 inches in a 24-hour period. Precipitation amounts shall be based on precipitation recorded at a rain gauge installed at the construction site or other approved method. Inspections and corrective action shall be implemented during the daylight hours (Monday through Sunday, including holidays) until turbidity water quality standards are met.

- E. Winter Shutdown Inspections: Inspections during winter shut down shall occur as specified in the NPDES General Permit for Stormwater Discharges from Construction Activities (commonly known as the Construction General Permit)]
- F. Provisions for Handling Emergencies: Contact information shall be provided to DES for at least two people that DES can contact at any time regarding construction related stormwater concerns. The Applicant shall prepare an Emergency Procedures Plan describing procedures to address and correct emergency, construction related stormwater issues in an expeditious manner. The plan shall include the responsibilities of key individuals, the availability of equipment, and the availability of erosion control and BMP supplies. All emergency erosion control and BMP supplies must be kept on-site.
- G. Inspection and Maintenance Plans and Reports: Written inspection and maintenance reports shall include the items stipulated in the EPA NPDES General Permit for Stormwater Discharges from Construction Activities, as well as the predicted 24-hour rainfall for pre-storm inspection reports, measured rainfall amounts for post-inspection reports. The reports shall also indicate if erosion control measures "pass" or "fail", if the project is being constructed in accordance with the approved sequence, identify any deviation from the conditions of this permit and the approved plans, and identify any other noted deficiencies and include photographic documentation. Unless otherwise authorized by DES, within 24 hours of each inspection, the Monitor shall submit a report with photographic documentation to DES via email (to Denise Frappier at denise.frappier@des.nh.gov and to Craig Rennie at: craig.rennie@des.nh.gov).
- H. Weather Station Specifications: Unless otherwise authorized by DES, the Applicant shall be responsible for maintaining a weather station that can measure rainfall to an accuracy of 0.01 inches, monitor temperature to an accuracy of 1 degree Fahrenheit or Celsius, and has hourly data storage and download capabilities.
- I. Precipitation Notification Plan: The Applicant shall specify how the Monitor, and others, will be notified when precipitation has occurred that will trigger the need for inspections and/or turbidity sampling. Automatic notification is preferred. If considered necessary and feasible by DES, the weather station shall be equipped to send automatic email notifications to notify the Monitor when construction BMP inspections and/or turbidity sampling is necessary. Should automated email notification be considered necessary, it shall be capable of the following: Start of rain event: Once 0.25 inches of rain or rain-mix precipitation has been measured an automated email notification will be sent to the prime Contractor, the Monitor, and any other interested parties. The email shall provide hourly rainfall, and time of rainfall for the previous 24 hours. End of rain event: Once six hours without rain or rain-mix precipitation has passed an automated email notification will be sent to the prime Contractor, the Monitor and DES. The email shall provide hourly rainfall and time of rainfall from the start of the rain event to the end of the rain event, including the six hour "dry" period.
- J. Turbidity Monitoring: To confirm that construction best management practices (BMPs) for controlling erosion are performing as intended, turbidity monitoring is needed. Unless otherwise authorized by DES, the Applicant shall submit a Turbidity Sampling Plan that includes the turbidity monitoring elements specified in the February 2, 2009 DES Inter-Department Communication entitled "Amendment of the November 16, 2006 Guidance for BMP Inspection and Maintenance and Turbidity Sampling and Analysis Plans for I-93 Expansion Project Water Quality Certification". This document includes guidance regarding sampling station number and locations, sampling frequency, sampling duration, size of storms that need to be sampled, how soon after the start of precipitation sampling should begin, quality assurance quality control provisions, and turbidity meter specifications.



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Greg Penta
Regulatory Division
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

WATER QUALITY CERTIFICATION

In Fulfillment of

Section 401 of the United States Clean Water Act (33 U.S.C 1341)

WQC # 2007-003

| | |
|--|--|
| Activity Name | New Hampshire State Programmatic General Permit |
| Activity Location | State of New Hampshire |
| Owner/Applicant | Regulatory Division U.S. Army Corps of Engineers 696 Virginia Road Concord, MA 01742-2751 |
| DATE OF APPROVAL (subject to Conditions below) | May 30, 2007 |

A. INTRODUCTION

The U.S. Army Corps of Engineers New England District (Applicant) seeks a Clean Water Act (CWA) Section 401 Water Quality Certification (Certification) from the New Hampshire Department of Environmental Services (DES) for the New Hampshire Programmatic General Permit (PGP). The PGP is a statewide permit, which will be issued by the Applicant pursuant to 33 CFR 325.5(c)(3), for minimal-impact activities within the State of New Hampshire. The intent of the PGP is to simplify the permit application review processes of the Applicant and DES Wetlands Bureau, as the permit review processes are nearly parallel relative to federal and state statutory authority. The new PGP will become effective June 2, 2007 and will subsequently expire on June 2, 2012. The current PGP expires June 2, 2007.

This 401 Certification documents laws, regulations, determinations and conditions related to the PGP for the attainment and maintenance of NH surface water quality standards, including the provisions of NH RSA 485-A:8 and NH Code of Administrative Rules Env-Ws 1700, for the support of designated uses identified in the standards.

B. WATER QUALITY CERTIFICATION APPROVAL

Based on the findings and conditions noted below, the New Hampshire Department of Environmental Services (DES) has determined that any discharge associated with the Activity will not violate surface water quality standards, or cause additional degradation in surface waters not presently meeting water quality standards. DES hereby issues this 401 Certification subject to the conditions defined in Section E of this 401 Certification, in accordance with Section 401 of the United States Clean Water Act (33 U.S.C. 1341).

C. STATEMENT OF FACTS AND LAW

- C-1. Section 401 of the United States Clean Water Act (CWA, 33 U.S.C. 1341) states, in part: "Any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate...that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this title.....No license or permit shall be granted until the certification required by this section has been obtained or has been waived...No license or permit shall be granted if certification has been denied by the State..."
- C-2. Section 401 further states, in part "Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations...and shall become a condition on any Federal license or permit subject to the provisions of this section."
- C-3. RSA 485-A:8 and Env-Ws 1700 (Surface Water Quality Regulations, effective December 3, 1999) together fulfill the requirements of Section 303 of the Clean Water Act that the State of New Hampshire adopt water quality standards consistent with the provisions of CWA. Further, RSA 485-A:8 establishes two classes or grades of surface waters in New Hampshire for the purposes of classification: Class A and Class B.
- C-4. Env-Ws 1700 provides narrative water quality standards and numeric water quality criteria. Among other purposes, Env-Ws 1700 is used by DES for evaluating applications for 401 Water Quality Certification.
- C-5. Env-Ws 1701.02, entitled "Applicability", states that:
 - a. These rules shall apply to all surface waters.
 - b. These rules shall apply to any person who causes point or nonpoint source discharge(s) of pollutants to surface waters, or who undertakes hydrologic modifications, such as dam construction or water withdrawals, or who

undertakes any other activity that affects the beneficial uses or the level of water quality of surface waters."

C-6. Env-Ws 1702.18 defines a discharge as:

a. The addition, introduction, leaking, spilling, or emitting of a pollutant to surface waters, either directly or indirectly through the groundwater, whether done intentionally, unintentionally, negligently, or otherwise; or

b. The placing of a pollutant in a location where the pollutant is likely to enter surface waters."

C-7. Env-Ws 1702.39 defines a pollutant as: "pollutant" as defined in 40 CFR 122.2. This means "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water."

C-8. Env-Ws 1702.46 defines surface waters as "perennial and seasonal streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial," and waters of the United States as defined in 40 CFR 122.2."

C-9. Surface waters are navigable waters for the purposes of certification under Section 401 of the Clean Water Act. Surface waters are jurisdictional wetlands for the purposes of wetlands permitting under RSA 482-A.

C-10. The named and unnamed surface waters, including rivers and streams, lakes and ponds, and wetlands, in New Hampshire, potentially affected by activities permitted under the PGP, are surface waters under Env-Ws 1702.46.

C-11. Env-Ws 1703.01 (c) states that "All surface waters shall provide, wherever attainable, for the protection and propagation of fish, shellfish and wildlife, and for recreation in and on the surface waters."

C-12. Env-Ws 1703.19, entitled "Biological and Aquatic Community Integrity", states that

a. The surface waters shall support and maintain a balanced, integrated and adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of a region; and

b. Differences from naturally occurring conditions shall be limited to non-detrimental differences in community structure and function."

- C-13. Env-Ws 1703.21 (a)(1) states that "Unless naturally occurring or allowed under part Env-Ws 1707, all surface waters shall be free from toxic substances or chemical constituents in concentrations or combinations that injure or are inimical to plants, animals, humans or aquatic life."
- C-14. The PGP is a federal wetlands permit under the federal Clean Water Act Section 404.
- C-15. The Applicant provided public notice for the PGP on March 12, 2007 and subsequently on April 3, 2007. The public notice included a draft PGP and a request for public comments. DES Watershed Management Bureau provided written comments by letter dated April 23, 2007.
- C-16. The Applicant is responsible for the development and implementation of the PGP, including any amendments.

D. FINDINGS

- D-1. The PGP reviewed for this 401 Certification is the draft PGP developed by the Applicant, as described in the public notice dated April 3, 2007 and in subsequent correspondence with the Applicant
- D-2. The PGP is a federal permit, which requires water quality certification under Section 401 of the federal Clean Water Act.
- D-3. Activities permitted under the PGP may result in a discharge and may cause permanent or temporary impacts to surface waters in New Hampshire.
- D-4. The Applicant consulted private and public entities, including the DES Wetlands Bureau during the development of the PGP.
- D-5. The PGP will be issued for projects that include dredge and fill of wetlands. DES Wetlands Bureau permitting process addresses dredge and fill impacts to jurisdictional wetlands. The 401 Certification decision relies, in part, on an approved permit from the DES Wetlands Bureau for the potential construction and post construction-related impacts to jurisdictional wetlands and other affected surface waters.
- D-6. Projects that include dredge and fill of wetlands under the PGP may also include temporary or permanent impacts to surface hydrologic conditions, such as peak runoff. DES Alteration of Terrain permitting process addresses impacts to surface hydrological conditions. The 401 Certification decision relies, in part, on an approved permit from the DES Alteration of Terrain Program for the potential construction and operation-related impacts to surface hydrology.
- D-7. DES periodically reviews wetlands permit applications for projects included under the PGP to determine whether additional conditions or an individual 401 Certification application is necessary.

- D-8. Most projects included under the PGP, if conducted in accordance with the conditions of the PGP, DES Wetlands Permit, and DES Alteration of Terrain Permit are not expected to cause or contribute to violations of water quality standards.

E. WATER QUALITY CERTIFICATION CONDITIONS

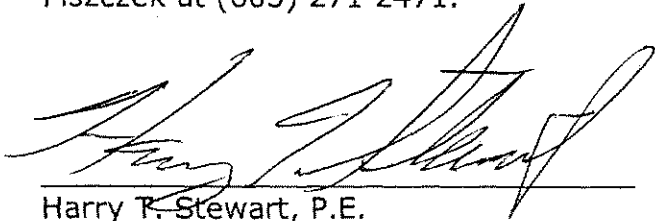
- E-1. Construction or operation of all projects included under the PGP shall meet NH surface water quality standards.
- E-2. Applications for projects included under the PGP shall be subject to DES review to determine whether additional conditions or an individual 401 Certification application is necessary to ensure compliance with surface water quality standards.
- E-3. If DES determines that surface water quality standards are being violated by the specific project or there is reasonable potential to expect that water quality standards will be violated if more project specific conditions are not included in the 401 Certification, DES may modify this 401 Certification for the specific project to include additional conditions to ensure compliance with surface water quality standards, when authorized by law, and after notice and opportunity for hearing.
- E-4. Construction on any specific project permitted under the PGP shall not commence until all other applicable permits and approvals have been granted, including those permits issued through DES Wetlands Bureau and, if necessary, DES Alteration of Terrain Program.
- E-5. All applicable conditions in the NH PGP shall be followed.
- E-6. DES reserves the right to inspect any project permitted under the PGP and the effects of the project on affected surface waters at any time to monitor compliance with the NH surface water quality standards.

F. APPEAL

If you are aggrieved by this decision, you may appeal the decision to the Water Council. Any appeal must be filed within 30 days of the date of this decision, and must conform to the requirements of Env-WC 200. Inquiries regarding appeal procedures should be directed to Michael Sclafani, DES Council Appeals Clerk, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095; telephone 603-271-6072.

401 Certification 2007-003
May 30, 2007
Page 6 of 6

If you have questions regarding this 401 Certification, please contact Paul Piszczek at (603) 271-2471.

A handwritten signature in black ink, appearing to read "Harry R. Stewart", written over a horizontal line.

Harry R. Stewart, P.E.
Director, Water Division

cc: Frank Delguidice, U.S. Army Corps of Engineers
Collis Adams, DES Wetlands Bureau
Paul Piszczek, DES Watershed Management Bureau
Chris Williams, DES Watershed Management Bureau (Coastal Consistency Program)
Dan Lynch, NH Fish and Game Department
Ralph Abele, U.S. Environmental Protection Agency
Michael Bartlett, U.S. Fish and Wildlife Service

APPENDIX II – TOWN OF GROTON AGREEMENT

**AGREEMENT BETWEEN TOWN OF GROTON
AND GROTON WIND, LLC, DEVELOPER/OWNER OF THE
GROTON WIND POWER PROJECT**

1. Definitions

- 1.1. "Agreement" - This agreement between the Town of Groton, New Hampshire and Groton Wind LLC, and its successors and assigns, which shall apply for the life of the Groton Wind Farm.
- 1.2. "Ambient Sound Pressure" - The sound pressure level excluded from that contributed by the operation of the Wind Farm.
- 1.3. "Decommissioning Funding Assurance" - An assurance provided by the Owner in a form acceptable to the Town that guarantees completion of decommissioning, as provided in this Agreement.
- 1.4. "End of Useful Life" - The Wind Farm or individual Wind Turbines will be presumed to be at the End of Useful Life if no electricity is generated for a continuous period of twenty-four months for reasons other than the wind regime, maintenance or some technical failure or repair, or for wind farm repowering or facility upgrades or equipment replacements.
- 1.5. "Non-Participating Landowner" - Any landowner in the Town of Groton, other than a Participating Landowner.
- 1.6. "Owner" - The entity or entities having equity interest in the Wind Farm, including their respective successors and assigns.
- 1.7. "Occupied Building" - A permanent structure used as a year-round or seasonal residence, school, hospital, church, public library or other building used for gathering that is occupied or in use as of the time that the permit application was submitted to the New Hampshire Site Evaluation Committee.
- 1.8. "Participating Landowner" - Any landowner having entered into an agreement with the Owner for hosting Wind Farm facilities, providing easements for access, entry or conveyance of other rights related to the Wind Farm, or any other agreement related to the construction or operation of the Wind Farm.
- 1.9. "Project Site" - Property with rights as conveyed to Owner by lease, easement or other agreement with a Participating Landowner that includes all Wind Turbines, access roads, and other facilities required for construction and operation of the Wind Farm.
- 1.10. "Town" - Town of Groton, New Hampshire.
- 1.11. "Turbine Height" - The distance from the surface of the tower foundation to the tip of the uppermost blade when in a vertical position. For the Groton Wind Power Project, this height is approximately 399 feet.

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

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

2. General Provisions

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

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

2.3. Recording.

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

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

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

2.5. **Limitation on Turbines.** This Agreement is for the installation and operation of a Wind Farm of up to twenty-four turbines, consistent with the size and configuration approved by the New Hampshire Site Evaluation Committee (NHSEC). Communications or other equipment attached to the Wind Turbines shall be limited to that incidental and necessary for the safe and efficient operation, maintenance, and interconnection of the Wind Farm.

2.6. **On-site Burning.** The Owner will obtain a permit from the Town of Grafton, and the Town of Rumney Fire Department if necessary, and comply with all State requirements before Owner or its agents perform any on-site burning.

2.7. Warnings.

- 2.7.1. A clearly visible warning sign concerning voltage must be placed at the base of all above-ground electrical collection facilities, switching or interconnection facilities, and substations.
- 2.7.2. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on all anchor points of guy wires, if any, and along the guy wires up to a height of ten feet from the ground.
- 2.7.3. A clearly visible warning sign concerning safety risks related to winter or storm conditions shall be placed no less than 500 feet from each Wind Turbine tower base on access roads

2.8. Access. The Town shall have access to all gated entrances to the Project Site for the purpose of emergency response. The Owner shall provide to the Town keys, combination codes, and/or remote control devices for opening project gates. Such keys or access devices may not be provided by the Town to anyone other than members of the Board of Selectmen, Police Department, Groton Fire Chief or Highway Department while engaged in official duties. The Owner shall provide access to the Project Site, Wind Turbines or other facilities upon reasonable request of the Town for the purpose of building or safety inspections under Town ordinances. The Owner shall provide access for emergency response purposes pursuant to the protocols provided under Section 7 of this Agreement. The Owner shall coordinate agreements with responding town emergency services (Town of Rumney Police Department and Fire Department) and ensure access for those responder departments.

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

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

- 2.10.1. Loss of or damage to any property of the Town or any third party or, to the extent that loss of or damage to property of Owner, results in a third party claim against the Town, loss of or damage to any property of Owner;
- 2.10.2. Bodily or personal injury to, or death of any person(s), including without limitation employees of the Town, or of the Owner or its subcontractors of any tier.

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

2.11. **Reopener Clause.** Upon agreement of both parties to this agreement, this agreement or portions thereof may be revised or amended.

3. Wind Turbine Equipment and Facilities

3.1. **Visual Appearance.**

3.1.1. Wind Turbines shall be painted and lighted in accordance with Federal Aviation Administration (FAA) regulations. Wind Turbines shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or any other applicable authority that regulates air safety.

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

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

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

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

4. Project Site Security

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

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

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

5. Public Information, Communications and Complaints

5.1. **Public Inquiries and Complaints.** During construction and operation of the Wind Farm, and continuing through completion of decommissioning of the Wind Farm, the Owner shall identify an individual(s), including phone number, email address, and mailing address, posted at the Town House, who will be available for the public to contact with inquiries and complaints. The Owner shall make

reasonable efforts to respond to and address the public's inquiries and complaints. This process shall not preclude the local government from acting on a complaint.

5.2. **Signs.** Signs shall be reasonably sized and limited to those necessary to identify the Project Site and provide warnings or liability information, construction information, or identification of private property. There will be no signs placed in the public right of way without the prior approval of the Town. After the completion of construction, signs visible from public roads shall be unlit and be no larger than twelve square feet, unless otherwise approved by the Town.

6. Reports to the Town of Groton

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

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

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

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

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

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

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

6.2.5 Summary of any complaints received from Town of Groton residents, and the current status or resolution of such complaints or issues.

7. Emergency Response

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

an alarm or other request for emergency response, and provisions that provide the Town with contact information of personnel available at every hour of the day. The Owner shall coordinate with the Town of Rumney or other jurisdictions as necessary on emergency response provisions.

- 7.2. The Owner shall cooperate with the Town's emergency services to determine the need for the purchase of any equipment required to provide an adequate response to an emergency at the Wind Farm that would not otherwise need to be purchased by the Town. If agreed between the Town and Owner, Owner shall purchase any specialized equipment for storage at the Project Site. The Town and Owner shall review together on an annual basis the equipment requirements for emergency response at the Wind Farm.
- 7.3. The Owner shall maintain fire alarm systems, sensor systems and fire suppression equipment that is installed in all Wind Turbines and facilities.
- 7.4. In the event of an emergency response event that creates an extraordinary expense (expenses beyond what the Town would otherwise incur in responding to an emergency response event for a resident of the Town) for the Town based on obligations under a mutual aid agreement, Owner shall reimburse the Town for actual expenses incurred by the Town.
- 7.5. In the event that the Town of Groton establishes a Fire Department, the Owner and Town will work to determine whether direct reimbursement for emergency response by the Town is appropriate and will negotiate an addendum to this agreement to address Town of Groton fire response.

8. Roads

8.1. Public Roads

- 8.1.1. In the event that the Owner wishes to utilize Town of Groton roads for construction or operation of the Wind Farm (use for oversize or overweight vehicles, and/or use during posted weight limit time periods), then the Owner shall follow the below procedures:
 - 8.1.2. Identify all local public roads to be used within the Town to transport equipment and parts for construction, operation or maintenance of the facility.
 - 8.1.3. The Owner shall hire a qualified professional engineer, as mutually agreed with the Town, to document local road conditions prior to construction and again thirty days after construction is completed or as weather permits.
 - 8.1.4. Any local road damage caused directly by the Owner or its contractors at any time shall be promptly repaired at the Owner's expense.
 - 8.1.5. The Owner will reimburse the Town for costs associated with special police details, when contracted by Owner or their representatives if required to direct or monitor traffic within the Town limits during construction.

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

8.2. Wind Farm Access Roads

8.2.1. The Owner shall construct and maintain roads at the Wind Farm that allow for year-round access to each Wind Turbine at a level that permits passage and turnaround of emergency response vehicles.

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

9. Construction Period Requirements

9.1. **Site Plan.** Prior to the commencement of construction, the Owner shall provide the Town with a copy of the final Soil Erosion and Sediment Control site plans, as approved by the New Hampshire SEC and Department of Environmental Services (DES) showing the construction layout of the Wind Farm.

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

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

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

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

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

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

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

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

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

9.7. Construction Vehicles

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

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

9.7.3. Construction will only be conducted between 6:00 am and 7:00 pm, Monday - Saturday, unless prior approval is obtained from the Town. Construction will not be conducted on Sundays, unless prior approval is obtained from the Town.

9.7.4. The start-up and idling of trucks and equipment will conform to all applicable Department of Transportation regulations. In addition, the start-up and idling of trucks and equipment will only be conducted between 5:30 am and 7:00 pm, Monday through Saturday.

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

am and on Sundays in order to minimize potential disruptions to area roads.

10. Operating Period Requirements

- 10.1. **Spill Protection.** The Owner shall take reasonable and prudent steps to prevent spills of hazardous substances used during the construction and operation of the Wind Farm. This includes, without limitation, oil and oil-based products, gasoline, and other hazardous substances from construction related vehicles and machinery, permanently stored oil, and oil used for operation of permanent equipment. Owner shall provide the Town with a copy of the Spill Prevention, Control and Countermeasure (SPCC) for the Wind Farm as required by state or federal agencies.
- 10.2. **Pesticides and Herbicides.** The Owner shall not use herbicides or pesticides for maintaining clearances around the Wind Turbines or for any other maintenance at the Wind Farm.
- 10.3. **Signal Interference.** The Owner shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television, or similar signals, and shall take commercially reasonable measures to mitigate any harm caused by the Wind Farm.

11. Noise Restrictions

- 11.1. **Residential Noise Restrictions.** Audible sound from the Wind Farm during Operations shall not exceed 55 dB(A) as measured at 300 feet from any existing Occupied Building on a Non-Participating Landowner's property, or at the property line if it is less than 300 feet from an existing Occupied Building. This sound pressure level shall not be exceeded for more than a total of three minutes during any sixty minute period of the day. If the Ambient Sound Pressure Level exceeds 55 dB(A), the standard shall be ambient dB(A) level plus 5 dB(A).
- 11.2. **Post-Construction Noise Measurements.** After commercial operations of the Wind Farm commence, the Owner shall retain an independent qualified acoustics engineer to take sound pressure level measurements in accordance with the most current version of ANSI S12.18. The measurements shall be taken at sensitive receptor locations as identified by the Owner and Town. The periods of the noise measurements shall include, as a minimum, daytime, winter and summer seasons, and nighttime after 10 pm. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter. The Owner shall provide the final report of the acoustics engineer to the Town within 30 days of its receipt by the Owner.

12. Setbacks

- 12.1. **Setback From Occupied Buildings.** The setback distance between a Wind Turbine tower and a Non-Participating Landowner's existing Occupied Building shall be not less than three times the Turbine Height. The setback distance shall

be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.

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

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

13. Waiver of Restrictions

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

13.2. Waiver of Setback Requirements. A Participating Landowner or Non-Participating Landowner may waive the setback provisions of Section twelve of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. Such a waiver shall include a statement that consent is granted for the Owner to not be in compliance with the requirements set forth in this Agreement. Upon application, the Town may waive the setback requirement for public roads for good cause.

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

14. Decommissioning

14.1. Scope of Decommissioning Activities

14.1.1. The Owner shall submit a detailed site-specific decommissioning estimate of costs associated with decommissioning activities to the Town before construction of the Wind Farm commences. This estimate shall be updated and submitted to the Town every five years thereafter. The plan and estimate shall include the cost of removing the facilities down to eighteen (18) inches below grade.

14.1.2. The Owner shall, at its expense, complete decommissioning of the Wind Farm or individual Wind Turbines, pursuant to Section 14.1.3 of this Agreement, within twenty-four months after the End of Useful Life of the Wind Farm or individual Wind Turbines, as defined in Section 1.4.

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

14.2. Decommissioning Funding Assurance

14.2.1. The Owner shall provide a Decommissioning Funding Assurance for the complete decommissioning of the Wind Farm, or individual Wind Turbines in a form acceptable to the Town. The Wind Farm or individual Wind Turbines will be presumed to be at the End of Useful Life if no electricity is generated from the Wind Farm or any individual Wind Turbine for a continuous period of twenty-four months, and as defined in Section 1.4.

14.2.2. Before commencement of construction of the Wind Farm, the Owner shall provide Decommissioning Funding Assurance in an amount equal to the site-specific decommissioning estimate or \$600,000, whichever is greater. The Owner shall adjust the amount of the Decommissioning Funding Assurance to reflect the updated decommissioning costs after each update of the decommissioning estimate, in accordance with Section 14.1.1.

14.2.3. Decommissioning Funding Assurance in the amount described in Section 14.2.2 shall be provided by a parental guarantee from the Owner's parent or affiliates, in a form reasonably acceptable to the Town. The Town shall accept a parental guarantee from the Owner's parent or an affiliate with a minimum corporate credit rating of A- from S&P or the equivalent from another reputable rating agency. If the corporate credit rating of the Owner's parent or affiliate issuing the parental guarantee declines below A-, then Owner shall, within 60 days, provide a Letter of Credit in the amount indicated in Section 14.2.2 (as adjusted per Section 14.1.1). The Letter of Credit shall be in a form acceptable to the Board of Selectmen of the Town of Groton. If Owner does not provide such financial guarantee, the Town may require another form of decommissioning assurance such as prepayment, external sinking funds, insurance, performance bond, surety bond, letters of credit, form of surety, or other method, or combination of methods as may be acceptable to the Board of Selectmen of the Town of Groton. When the corporate credit rating of the parent entity issuing the parental guarantee rises to A- or above, and remains at that level for 60 days, the Letter of Credit shall be released and not required.

14.2.4. Funds expended from the Decommissioning Funding Assurance shall only be used for expenses associated with the cost of decommissioning the Wind Farm.

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

14.3. Transfer of Decommissioning Responsibility

14.3.1. Consistent with Section 2.1 of this Agreement, the provisions of Section 14 of this Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Farm or any Wind Turbines after the End of Useful Life, as defined in Section 1.4.


14.3.2. Owner shall not enter into any agreement with any party, including a Participating Land Owner and successor in ownership, which waives the responsibilities of the Owner for decommissioning or the requirement to maintain decommissioning assurance without first receiving the written agreement of the Town. The Owner shall ensure that any successors or assigns of the Wind Farm shall agree to be bound by this Agreement and shall provide the Town with written confirmation from any successors or assigns stating that they agree to be bound to this Agreement upon the acquisition of the Wind Farm.

The parties agree the terms of this Agreement are final, enforceable and no longer subject to change as of November 30, 2010, regardless of the date of execution by either party.

Town of Groton


Groton Wind, LLC


Chairman, Board of Selectmen


Print Name: Larry Raviv
Title: Authorized Representative

LEGAL
JW


Selectman


Print Name: Scott Jacobson
Title: Authorized Representative


Selectman

IBERDROLA RENEWABLES, INC.
Secretary's Certificate

I, W. BENJAMIN LACKEY, the duly elected and qualified Secretary of IBERDROLA RENEWABLES, INC., an Oregon corporation (the "Company"), hereby certify the following:

1. Groton Wind, LLC, a Delaware limited liability company ("Groton Wind"), is solely owned and member managed by the Company.

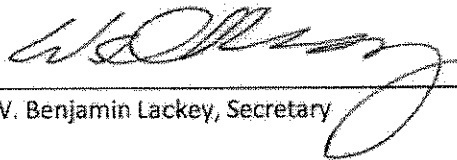
2. On 25-July-2008, the Company's Board of Directors adopted resolutions amending the bylaws of the Company, an excerpt of which is:

RESOLVED, that Section 4.1 of the Bylaws be and hereby is replaced in its entirety with the following:

4.1 all officers shall be subject to a separate "Signature Authorization Policy" document established and approved by the Board of Directors. . . .

3. Under the Signature Authorization Policy adopted and approved by the Board of Directors of the Company and presently in full force and effect, RANY RAVIV and SCOTT JACOBSON are authorized by the Board to execute on behalf of Groton Wind any documents required to effectuate any transactions contemplated by an agreement entitled Groton – Town of Rumney Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand the ____ day of October, 2010.



W. Benjamin Lackey, Secretary

IBERDROLA RENEWABLES, INC.
Secretary's Certificate

I, W. BENJAMIN LACKEY, the duly elected and qualified Secretary of IBERDROLA RENEWABLES, INC., an Oregon corporation (the "Company"), hereby certify the following:

1. Groton Wind, LLC, a Delaware limited liability company ("Groton Wind"), is solely owned and member managed by the Company.

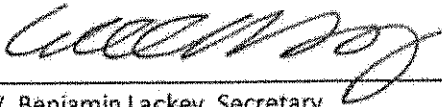
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IN WITNESS WHEREOF, I have hereunto set my hand the ____ day of October, 2010.



W. Benjamin Lackey, Secretary

APPENDIX III – TOWN OF RUMNEY AGREEMENT



**AGREEMENT BETWEEN TOWN OF RUMNEY
AND GROTON WIND, LLC, DEVELOPER/OWNER OF THE
GROTON WIND POWER PROJECT**

1. Definitions

- 1.1. "Agreement" - This agreement between the Town of Rumney, New Hampshire and Groton Wind LLC, and its successors and assigns.
- 1.2. "Owner" - Groton Wind, LLC and its respective successors and assigns.
- 1.3. "Project Site" - Property with rights as conveyed to Owner by lease, easement or other agreement with a Participating Landowner that includes all Wind Turbines, access roads, and other facilities required for construction and operation of the Wind Farm, which is located entirely in the Town of Groton, New Hampshire.
- 1.4. "Town" - Town of Rumney, New Hampshire.
- 1.5. "Wind Turbine" - A wind energy conversion system that converts wind energy for the generation of electricity, including a tower, a nacelle housing the generator and transformer, and a 3-blade rotor.
- 1.6. "Wind Farm" - The totality of the Wind Turbines, cables, accessory buildings and structures including substations, meteorological towers, electric infrastructure and cables and other appurtenant structures and facilities that comprise the Groton Wind Power Project under development by Owner, as reviewed by the N.H. Site Evaluation Committee in Docket No. 2010-01.

2. General Provisions

- 2.1. **Purpose.** Groton Wind, LLC and the Town of Rumney, NH enter this agreement to provide for applicable provisions to govern the Groton Wind Farm, in terms of the use of Town of Rumney roads and emergency services response, in recognition of the fact that under existing contracts between the Towns of Rumney and Groton, Town provides both Fire Protection and Emergency Medical Services within the Town of Groton.
- 2.2. **Enforceability.** This Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, or any other party that assumes control of the Wind Farm or any Wind Turbines. The Owner assumes responsibility for compliance with this agreement by all of its employees, agents, contractors and subcontractors.
- 2.3. **Applicability to Owner.** This Agreement shall apply to the Owner only to the extent of Owner's rights and responsibilities related to the Wind Farm and Project Site as conferred to Owner by Participating Landowner agreements.
- 2.4. **Recording.**
 - 2.4.1. This Agreement shall be recorded at the Grafton County Registry of Deeds.
- 2.5. **Survivability.** The invalidity, in whole or in part, of any of this Agreement will not affect any other paragraph in this Agreement.
- 2.6. **On-site Burning.** In recognition of the existing Fire Protection Contract between the Towns of Rumney and Groton, the Owner will obtain a permit from the Groton Fire Chief, notify the Rumney Fire Department that a permit has been issued, and comply with all State requirements before Owner, or any of its agents, performs any on-site burning, notwithstanding the fact that the Project Site is in Groton.
- 2.7. **Access.** The Town shall have access to all gated entrances to the Project Site for the purpose of emergency response. The Owner shall provide to the Town keys.

combination numbers, and/or remote control devices for opening project gates. Such keys or access devices shall not be provided by the Town to anyone other than persons employed by the Town of Rumney Fire Department, EMS, or Police department, while such persons are engaged in their official duties. The Owner shall provide access to the Project Site, Wind Turbines or other facilities upon reasonable request of the Town for the purpose of safety inspections. The Owner shall provide access for emergency response purposes pursuant to the terms provided under Section 6 of this Agreement.

2.8. **Liability Insurance.** Upon issuance of a certificate by the N.H. Site Evaluation Committee for the Wind Farm, the Owner shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$10 million, per occurrence, in the aggregate. Certificates shall be provided to the Town upon purchase and annually upon renewal. The Town of Rumney shall be named as an additional insured, to the extent of the indemnification obligation below.

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

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

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

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

~~2.10. **Route of Distribution Power Line.** With respect to the power line connecting the Wind Farm to the power grid, particularly that portion located within the Town of Rumney, the Owner shall use every effort to ensure that the line is installed from Groton Hollow Road along N.H. Route 25 east to the Plymouth town line, unless the New Hampshire Electric Cooperative determines that the Route 25 route is not technically feasible.~~

3. Wind Turbine Equipment and Facilities Safety

3.1 The Owner shall establish an Emergency 9-1-1 address during project construction, and revise such address, if necessary, when operations at the Wind Farm commence.

3.2 The Owner shall provide to the Town copies of Construction site safety plans, blast plans, and spill protection plans prior to the commencement of construction, as well as copies of any work plans and specifications as the public safety officials of the Town believe are reasonably necessary to enable emergency preparedness. The Owner shall also provide the Town with Material Safety Data Sheets for all chemicals to be used on site or to be transported on any access roads within Rumney.

3.3 The Owner shall provide to the Town copies of Operations safety and spill prevention plans.

3.4 The Owner shall allow access to Town fire, EMS, or police department employees, at any time upon request, for the purposes of site review and emergency access conditions review.

3.5 **Project Point of Contact.** During construction and operation of the Wind Farm, the Owner shall identify an individual(s), including phone number, email address, and mailing address who will be the primary point of contact for the Town for all inquiries.

4. Project Site Security

- 4.1 Wind Turbine exteriors shall not be climbable up to fifteen (15) feet above ground surface.
- 4.2 All access doors to Wind Turbines and electrical or any other electrical or high-voltage equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.
- 4.3 Entrances to the Project Site shall be gated and locked during non-working hours. If problems with unauthorized access are identified, the Owner shall implement additional security measures.

5. Reports to the Town of Rumney

- 5.1 **Incident Reports.** The Owner shall provide the following to the Chairman of the Board of Selectmen or his designee concurrently with their submission to any other governmental agency:
 - 5.1.1 Copies of all reporting of environmental incidents or industrial accidents that require a report to U.S. EPA, New Hampshire Department of Environmental Services, OSHA or another appropriate federal or state government agency.
- 5.2 **Periodic Reports.** The Owner shall submit, on an annual basis starting one year from commencement of construction of the Wind Farm, a report to the Board of Selectmen of the Town of Rumney, providing, at a minimum, the following information to the extent known by Owner:
 - 5.2.1 If applicable, status of any additional construction activities, including schedule for completion;
 - 5.2.2 Details on any calls for emergency police, fire, and EMS assistance;
 - 5.2.3 Location of all on-site fire suppression equipment; and
 - 5.2.4 Identity of hazardous materials, including volumes and locations, as reported to state or federal agencies.

6. Emergency Response

- 6.1. Upon request, the Owner shall cooperate with the Town's emergency services and any emergency services that may be called upon to deal with a fire or other emergency at the Wind Farm through a mutual aid agreement, to develop and coordinate implementation of an emergency response plan for the Wind Farm. The Owner shall provide and maintain protocols for direct notification of emergency response personnel designated by the Town, including provisions for access to the Project Site, Wind Turbines or other facilities in response to an alarm or other request for emergency response, and provisions that provide the Town with contact information of personnel available at every hour of the day.
- 6.2. Prior to commencement of operations at the Wind Farm, the Owner shall provide 3 hours of classroom training at the Rumney Fire Department at no charge. Prior to commencement of operations at the Wind Farm, The Owner shall provide training to Town of Rumney Fire, EMS, and Police departments jointly, without charge to the town, consisting of a total of 8 hours training at the Groton Wind Farm site, to include review of site safety plans, fire safety and fire suppression equipment, site access, and Groton Wind employee certifications. Thereafter Owner will provide annual training of a total of 8 hours of training at the Wind Farm. Groton Wind shall work to accommodate reasonable requests by the Rumney Fire, EMS, or Police Department for responders from other mutual aid towns to also attend the annual training at the same time with the Rumney responders.
- 6.3. The Owner shall maintain fire alarm systems, sensor systems and fire suppression equipment that is installed in all Wind Turbines and facilities.

- 6.4. In the event of an emergency response event that creates an extraordinary expense for the Town based on obligations under a mutual aid agreement, Owner shall reimburse the Town for actual expenses incurred by the Town.
- 6.5. Nothing in this agreement shall be construed as a promise, by the Town, to provide any particular level or type of fire, emergency, or highway services to the Wind Farm, or to give the Wind Farm any particular priority vis-à-vis its services to other citizens, nor does the Town waive any immunities or liability protections available to the Town under state law, including but not limited to RSA 154:1-d, RSA 153-A:17 and :18, or RSA 231:90 - :92-a.

7. Public Roads

- 7.1 The Owner shall identify all local public roads to be used within the Town to transport equipment and parts for construction, operation or maintenance of the facility.
- 7.2 The Owner shall, at its own expense, hire a qualified New Hampshire professional engineer to prepare two reports to the Town. The first will document and photograph road conditions prior to construction, and shall be submitted to the Town prior to the start of construction. The second will document and photograph conditions subsequent to construction, and will be submitted thirty days after construction is completed or as weather permits. The Owner shall obtain the approval of the Town in the selection of the engineer to perform this work, which approval shall not be unreasonably withheld, delayed or conditioned. The second report shall also detail all work required, if any, to restore Groton Hollow Road to its prior condition as detailed in the first report, as well as an estimate of the amount of money required for such work, and the Owner shall be responsible for the cost of such work. Prior to commencing Wind Farm construction, the Owner shall post a letter of credit in a form acceptable to the Town in the amount of \$200,000, for the purpose of guaranteeing to the Town all road obligations described in this Section 7 'Public Roads'. The security may be reduced with the approval of the Town following the engineer's second report and cost estimates. The security shall remain in effect 12 months after the completion of the restoration work, to provide against latent defects. If no restoration work is required, then the letter of credit shall be released within 60 days of the provision of the second report to the Town.
- 7.3 Any road damage caused directly by the Owner or its contractors at any time shall be promptly repaired at the Owner's expense, and, in addition during the construction period, shall perform such periodic maintenance on roads used by the Owner for its construction activities as the Town may reasonably require in order to mitigate on an ongoing basis the impact of construction vehicles; provided, however, that in accord with RSA 236:9 - :12, the Owner must seek prior approval of the Town for the performance of any such work, including any work affecting the travel surface, drainage, or any other aspect of the public road, and shall produce such plans as the Town may reasonably require detailing the work to be approved.
- 7.4 The Owner will reimburse the Town for reasonable costs associated with special details, if required by the Town, to direct or monitor traffic within the Town limits during construction, including but not limited to, speed monitoring and enforcement on public roads within Rumney being used for the construction. All reimbursement payments shall be due 45 days from the date of invoice.
- 7.5 Construction and repair work on Groton Hollow Road shall not result in the widening of the existing traveled way of said road; provided, however, that the Town may authorize such temporary measures as may be reasonably necessary to enable the passage of wide loads, so long as the existing condition of the road is restored subsequent to the construction period.
- 7.6 Employees, contractors and other involved in the construction of the Wind Farm shall not park, or stage, along the sides of Groton Hollow Road in Rumney.

8. Construction Period Requirements

- 8.1 **Site Plan.** Prior to the commencement of construction, the Owner shall provide the Town with a copy of the final site plans showing the construction layout of the Wind Farm.

8.2 Construction Schedule. Prior to the commencement of construction activities at the Wind Farm, the Owner shall provide the Town with a schedule for construction activities, including anticipated use of public roads for the transport of oversized and overweight vehicles. The Owner shall provide updated information and schedules regarding construction activities to the Town upon request of the Town.

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

8.3.1 At least ten days before blasting commences, the Owner shall provide a copy of the Blasting Plan and evidence of approval by the New Hampshire Department of Safety to the extent such approvals are required by the New Hampshire Department of Safety.

8.3.2 In accordance with the rules of the State of New Hampshire, the Owner shall notify the Rumney police and fire chiefs before blasting commences.

8.4 Construction Vehicles

8.4.1 Construction vehicles, except for worker passenger and light truck vehicles being used for worker transportation to the site, will not travel on Town roads before 6:00 am or after 7:00 pm, Monday through Saturday, and will not travel on Town roads on Sunday. Permission to use construction vehicles on Town roads during the times otherwise prohibited above may be granted by the Town if requested in advance. The Selectmen shall delegate to one individual (e.g. a Selectman or the Road Agent) the authority to grant such permission. The Owner shall communicate and cooperate with the Town's representative to prevent dangerous volumes of worker traffic on Groton Hollow Road, including instituting worker carpooling if deemed necessary by the Town.

8.4.2 Construction will only be conducted between 6:00 am and 7:00 pm, Monday – Saturday. Construction will not be conducted on Sundays. Exceptions to these times and days are permitted if prior approval is obtained from the Town.

8.4.3 Oversized vehicles requiring escort vehicles shall not travel on Groton Hollow Road in Rumney during school bus route hours, specifically between 7:30 – 8:00 AM and between 2:30 – 3:00 PM on days in which school is in session. Owner is not responsible for altered bus routes or times, and is not required to adjust the hours of prohibition on oversized vehicles on Groton Hollow Road in Rumney, as a result of inclement weather, delayed start school days, or any other alterations in the bus or school schedules.

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

8.4.5 For purposes of this section, construction period shall be deemed to include any construction, reconstruction, or decommissioning activities.

9. Operating Period Requirements

9.1 Spill Protection. The Owner shall take reasonable and prudent steps to prevent spills of hazardous substances used during the construction and operation of the Wind Farm. This includes, without limitation, oil and oil-based products, gasoline, and other hazardous substances from construction-related vehicles and machinery, permanently stored oil, and oil used for operation of permanent equipment. Owner shall provide the Town with copies of the Spill Prevention, Control and Countermeasure (SPCC) for the Wind Farm, and any other spill-related documentation as may be required by state or federal agencies, including MSDS sheets.

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

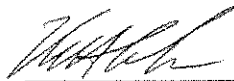
10. Miscellaneous

10.1 **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, neither party shall be entitled to, and each of Owner and Town hereby waives any and all rights to recover, special, punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement.

10.2 **Default and Cure.** This Agreement shall not be revocable by Town, except that Town may terminate this Agreement if a material default in the performance of Owner's obligations under this Agreement occurs and such default is not remedied within sixty (60) days after Owner receives written notice from Town of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure. The Owner may make an advance request to extend the remediation period, and so long as the Owner demonstrates diligence in curing the default, the Town shall grant the extension, except for good and sufficient cause explained in writing. This paragraph shall not be construed as withdrawing from the Town any legal authority it has under state law to regulate and control its public highways but shall be binding upon Town and Owner as its relates to Owner's conduct with regards to the Wind Farm.

The parties agree the terms of this Agreement are final, enforceable and no longer subject to change as of October 18, 2010, regardless of the date of execution by either party.

Town of Rumney



Mark H. Andrew, Chairman BOS



W. John Fucci, Selectman



Janice Mulherin, Selectman

Groton Wind, LLC

LEFT
ALL



Name: Gary Davis
Title: Authorized Representative



Name: Scott Peterson
Title: Authorized Representative

Appeals Process

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

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

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

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

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

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