

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

**APPLICATION OF GROTON WIND, LLC
NO. 2010-01**

**RESPONSE OF COUNSEL TO THE PUBLIC TO INTERVENORS'
REQUEST TO REOPEN THE RECORD**

Counsel for the Public, by his attorneys, the Office of the Attorney General, hereby responds to the January 14, 2013 request of the Buttolph/Lewis/Spring Intervenor Group (the “Intervenors”) to reopen the record in this matter. Counsel for the Public is concerned about the changes to the approved project as alleged in the Intervenors’ request; however, to the extent an unpermitted deviation from the certificate has occurred, the Committee should issue a notice of violation pursuant to RSA 162-H:12 and order Groton Wind, LLC, the certificate holder, to comply with the terms of its certificate. In support hereof, Counsel for the Public respectfully represents as follows:

1. Counsel for the Public was appointed by the Attorney General pursuant to RSA 162-H:9 to represent the public interest and assure that the project presents an appropriate balance between environmental effects and energy production. Counsel for the public has all the rights of an intervenor.
2. On May 6, 2011, the Committee issued its Order and Certificate of Site and Facility With Conditions (the “Order”) and its Decision granting Certificate of Site and Facility With Conditions (the “Decision”).

3. In both documents, the Committee referred to the project's operations and maintenance building (the "O&M Building") as "described in the Application as Amended" as constituting part of the certificated facility. Order at 1; Decision at 4, 6. The Decision referenced the description of the O&M Building as described on page 41 of the Application for the facility, dated March 26, 2010. In assessing the visual impacts of the O&M Building the Committee said simply, "the proposed switchyard and the operation and maintenance facility will be located on a lightly used private road" and concluded that the "turbines will not have an unreasonable adverse effect on the aesthetics of the region." Decision at 48, 49.

4. In the Order, the Committee provided

...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.

Order at 3.¹ The Committee did not pre-authorize changes to transmission line routes or delegate the approval of any such changes to DES.

¹ Under RSA 162-H:4, III-a,

The committee may delegate to an agency or official represented on the committee the authority to specify the use of any technique, methodology, practice, or procedure approved by the committee within a certificate issued under this chapter, or the authority to specify minor changes in the route alignment to the extent that such changes are authorized by the certificate for those portions of a proposed electric transmission line or energy transmission pipeline for which information was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate.

5. In the Decision, the Committee stated that it delegated its “authority to approve amendments” to the wetlands and alteration of terrain permits to DES and incorporated the permits into the Certificate. Decision at 19-20. The Decision further stated,

The Department of Environmental Services is hereby delegated the authority to monitor the project and its compliance with the conditions of the certificate and with all laws and regulations pertaining to the permits that it has issued. The Department of Environmental Services is hereby delegated the authority to specify the use of any technique, methodology, practice, or procedure, as may be necessary to effectuate the provisions of this Certificate, however, any action to enforce the provisions of the Certificate must be brought before the Site Evaluation Committee.

Decision at 61.

6. The 2010 Application described the dimensions of the O&M Building and its yard and specified its location by reference to the Groton Wind Project Map, being figure 3 of the 2010 Application on page 8 thereof. In that figure the O&M Building is shown located on the east side of the access road and appears to be some distance away from the road. In the Site Plans submitted to the Committee with the 2010 Application, the O&M Building and associated structures and excavations are shown east of Groton Hollow Road and east of Clark Brook. Application, vol. II, App. 2, C-3.1, copy attached as Exhibit “A.”

7. According to the Application Supplement, vol. IA, dated October 12, 2010, revised plans were submitted to DES, dated July 9 2010, but the changes in those plans do not appear to have had any relation to the O&M Building. *See* Supplemental Testimony of Rendall & Walker, dated October 12, 2010, at 3-4.

8. On or about November 10, 2011, the Certificate Holder submitted revised plans dated October 28, 2011, to DES showing revisions to the previously permitted plans

dated July 9, 2010. *See* attached Exhibit “B” (cover sheet and sheet C-3.1). The 2011 plans show the O&M Building moved to the west side of Groton Hollow Road and the west side of Clark Brook.

9. In addition, the Certificate Holder has made a number of other modifications to the construction of the facility that were neither reviewed and approved by the Committee nor reported to it by the Certificate Holder. Those changes are all shown on the attached Exhibit “C” (aerial illustrated to depict Project Revisions, Groton Wind LLC, dated October 2011) which was submitted by the Certificate Holder to DES.

10. DES approved the changes with respect to the alteration of terrain and wetlands permits on December 5, 2011. The Alteration of Terrain Bureau Permit Amendment, dated December 5, 2011, expressly provided that the AoT permit “does not relieve the Applicant from the obligation to obtain other local, state or federal permits that may be required” AoT Amendment, dated Dec. 5, 2011, atch. A. to Letter from Susan Geiger to the Committee, dated Jan. 16, 2013 (Project Specific Conditions no. 6).

11. Without seeking an amendment to its Certificate or notifying the Committee, the Certificate Holder constructed a major component of its project not in accordance with the terms of its Certificate. The relocation of the O&M Building brought it significantly closer to several Groton Hollow Road residences.

12. This violates RSA 162-H:5, I, which provides,

No person shall commence to construct any energy facility within the state unless it has obtained a certificate pursuant to this chapter. *Such facilities shall be constructed, operated and maintained in accordance with the terms of*

the certificate. Such certificates are required for sizeable changes or additions to existing facilities.

13. The Certificate Holder argues that the relocation of the O&M Building was authorized by the Committee through its delegation to DES.

14. However, the delegation to DES was with respect to “technique, methodology, practice, or procedure” and “to approve modifications or amendments to said permits and certificates.” DES’ authority was expressly limited to those matters associated with the three permits. The Committee cannot delegate the decision of where to site a facility to DES. *See* RSA 162-H:4, III (“it may not delegate authority to hold hearings, issue certificates, determine the terms and conditions of a certificate, or enforce a certificate.”)

15. Significantly, DES permits are limited to addressing whether construction of a particular facility impacts wetlands, affects water quality, or alters natural terrain. They do not serve as site approval and do not evaluate the full suite of impacts addressed by the Committee. As the DES AoT permit unequivocally says, the permits do “not relieve the Applicant from the obligation to obtain other local, state or federal permits that may be required.”

16. The Certificate Holder also attempts to minimize the violation by characterizing the relocation of the O&M Building as not “significant” and “minor.” There does not appear to be any exception in chapter 162-H for minor or insignificant revisions to the adherence to the terms of the Certificate. Instead, the law requires that construction “shall be” “in accordance with” the terms of the Certificate. RSA 162-H:5; *see also Hudson v. Baker*, 133 N.H. 750, 752 (1990) (“The word ‘shall’ is ‘a command, which requires

mandatory enforcement.”); 162-H:7, IX (applicant shall immediately inform the committee of any substantive changes to its application). While “in accordance with” may not require strict conformity, the conformity should be at least substantial. *See State ex rel. Pinzone v. City of Cleveland*, 295 N.E.2d 408, 411 (Ohio 1973) (in accordance with means more than general conformity, it means substantial conformity); Black’s Law Dictionary (5th ed.1979) at 16 (“Accordance” means “agreement; harmony; concord; conformity.”) Even on a liberal interpretation of the expression, however, it cannot be said that a complete relocation of a major structure can be in substantial conformity with the Certificated plans.

17. Unmistakably, the relocation of the largest building associated with the project from one side of a river and a road to another, is a major substantive change, not a minor or insignificant change. The findings of the Committee on the visual impact of the project, for example, were predicated on the O&M Building being located where it was proposed, on a lightly used private road away from residences. Now, however, the O&M Building is imposed like a ziggurat in the midst of a number of residences that previously had been buffered from the building, its clearing, and its immense leveled terrace by the road, the river and forested distances. The significance of this is manifest owing to the likely impacts on aesthetics the relocation has had.

18. Counsel for the Public recommends that, in its order to terminate the violation pursuant to RSA 162-H:12, the Committee should require the Certificate Holder to move the O&M Building to its originally certificated location, to vacate it and not use it until such time as the violation is corrected, or suspend its Certificate. Further, the site where the O&M

Building is presently situated must be restored as much as possible to its pre-existing condition.

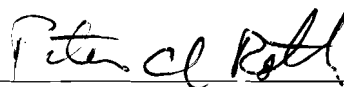
19. These remedies are typical for this type of violation. *See, e.g., Town of Atkinson v. Malborn Realty Tr.*, 164 N.H. 62, 68 (2012) (upholding order to vacate building constructed outside of terms of permit); *Taber v. Town of Westmoreland*, 140 N.H. 613, 617-18 (1996) (upholding order to demolish construction outside of permitted footprint); *Devaney v. Town of Windham*, 132 N.H. 302, 304-305 (1989) (upholding order to remove completed second story); *Town of Hampstead v. Capano*, 122 N.H. 144, 145-46 (1982) (tear down deck). As the Supreme Court said in *Alexander*, “A property owner cannot benefit from his knowing violation or disregard of law by making an illegal alteration to his property and then claiming it would be an unfair hardship to deprive him of his improvement.” 129 N.H. at 285.

Wherefore, Counsel for the Public prays that the Committee order the Certificate Holder to immediately cease its violation and require it to remove the O&M Building to its originally certificated location, or suspend the Certificate. The Committee may then seek other penalties available under RSA 162-H:19 if necessary.

Respectfully submitted,

COUNSEL FOR THE PUBLIC

MICHAEL A. DELANEY
ATTORNEY GENERAL



Peter C.L. Roth
Senior Assistant Attorney General
33 Capitol Street
Concord, New Hampshire 03301

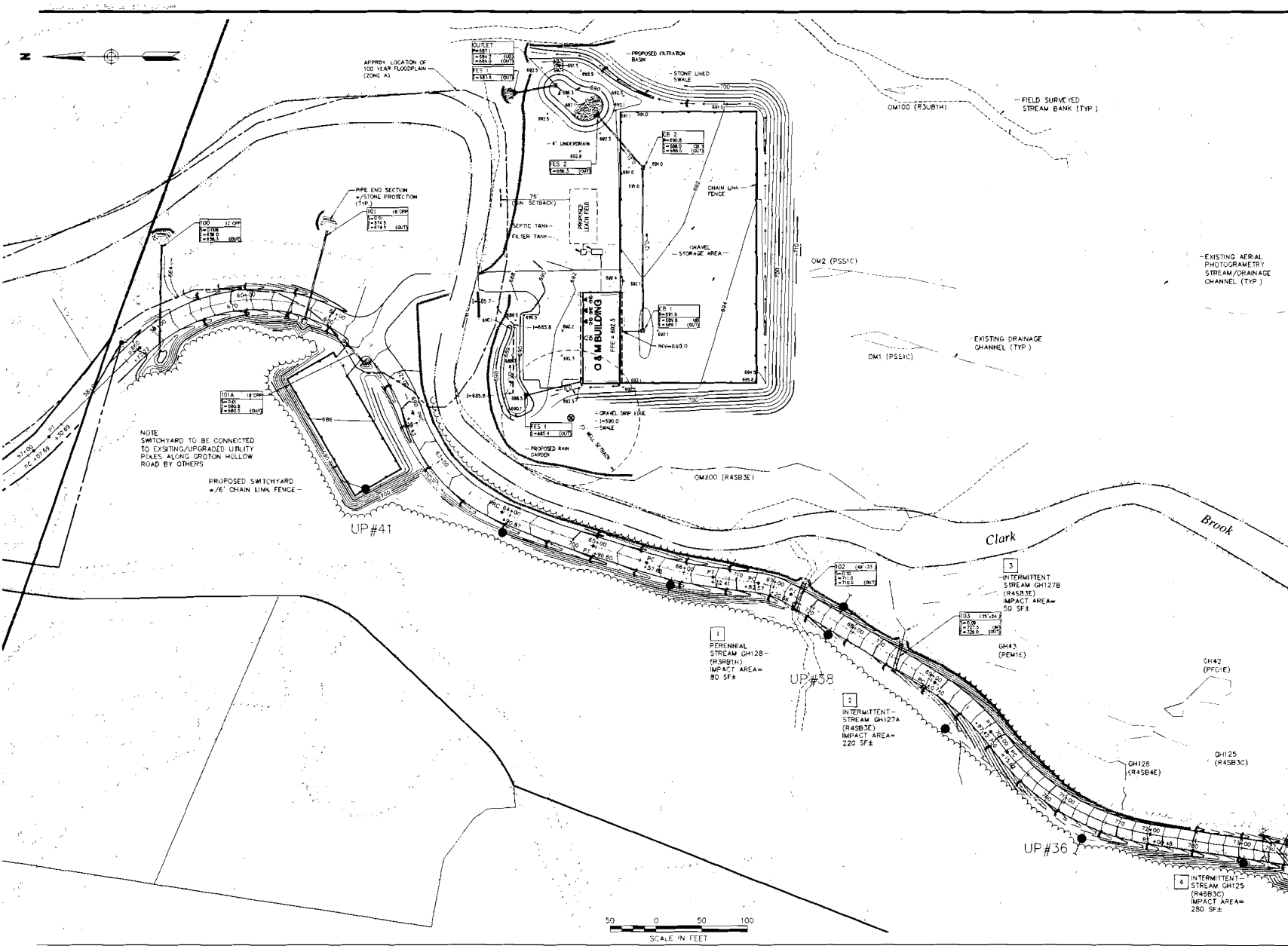
CERTIFICATE OF SERVICE

I, Peter C.L. Roth, do hereby certify that I served the foregoing upon the parties by email.

February 13, 2013



Peter C.L. Roth



Vanasse Hangen Brustlin, Inc.
 Transportation
 Land Development
 Environmental Services
 Six Bedford Farms Drive, Suite 407
 Bedford, New Hampshire 03110
 603.644.0888 • FAX 603.644.1385



EXISTING AERIAL PHOTOGRAMTRY
 STREAM/DRAINAGE CHANNEL (TYP.)

SEE SHEET C-3.2



Groton Wind Farm

Groton Hollow Road
 Groton, New Hampshire
 Permitting

Not Approved for Construction
 Site Plan
 Groton Hollow Road



C-3.1
 11.68
 52016.00

Exhibit A

Site Plans

Exhibit B

Issued for: **Construction**

Date Issued: October 28, 2011

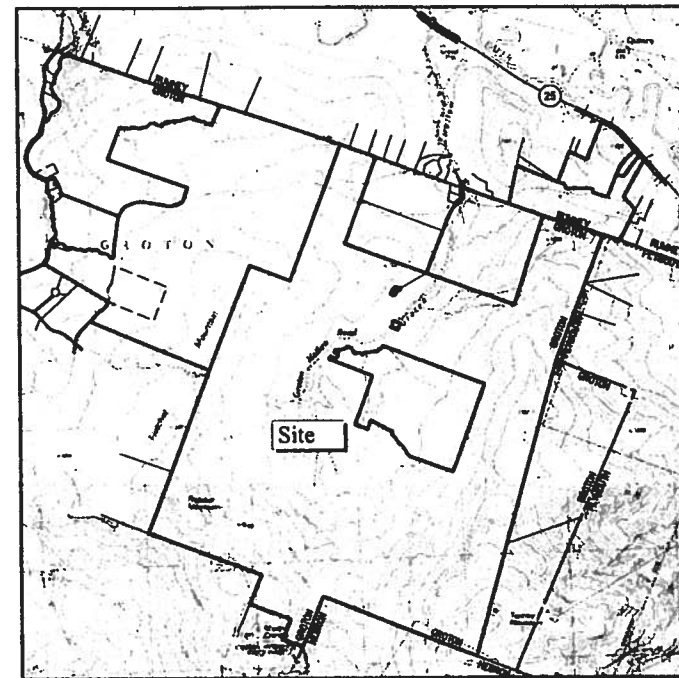
Latest Issue: October 28, 2011

Sheet Index

Number	Drawing Title	Latest Issue
C-1.0	Legend and General Notes	10/28/11
C-1.1	Overview Plan (Aerial)	10/28/11
C-2.0	Overall Site Plan	10/28/11
C-2.1 thru 2.10	Master Site Plans	10/28/11
C-3.1 thru C-3.9	Site Plans - Groton Hollow Road	10/28/11
C-4.1 thru C-4.7	Site Plans - East Access Road	10/28/11
C-5.1 thru C-5.4	Site Plans - Northeast Turbines	10/28/11
C-6.1 thru C-6.4	Site Plans - Southeast Turbines	10/28/11
C-7.1 thru C-7.7	Site Plans - West Access Road & Turbines	10/28/11
C-8.1 thru C-8.4	Site Plans - North Access Road	10/28/11
C-9.1 thru C-9.7	Site Plans - North Turbines	10/28/11
C-10.1 thru C-10.4	Site Details	10/28/11
C-10.5	Site Details and Erosion Control Notes	10/28/11
PF-3.1 thru PF-3.2	Roadway Profiles - Groton Hollow Road	10/28/11
PF-4.1 thru PF-4.2	Roadway Profiles - East Access Road	10/28/11
PF-5	Roadway Profiles - Northeast Crane Road	10/28/11
PF-6	Roadway Profiles - Southeast Crane Road	10/28/11
PF-7.1 thru PF-7.3	Roadway Profiles - West Access & Crane Roads	10/28/11
PF-8	Roadway Profiles - North Access Road	10/28/11
PF-9	Roadway Profiles - North Crane Road	10/28/11

Groton Wind Farm

Groton Hollow Road
Groton, New Hampshire



Site Location Map

Property Owners

Owners:

Green Acre Woodlands, Inc.
P.O. Box 334
Rumney, NH 03266

Yankee Forest, LLC
150 Orford Lane
P.O. Box 160
Lyme, NH 03768

Daniel Smith Revocable Trust
17 Orchard Drive
Durham, NH 03824

Applicant:

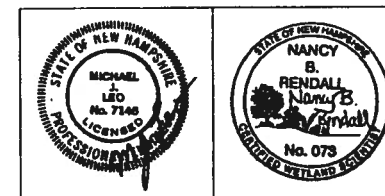
Groton Wind, LLC
P.O. Box 326
Concord, NH 03302

Assessor's Plat: 9 & 10
Lots: 1, 2, 8, 10 & 31



Vanasse Hangen Brustlin, Inc.
Transportation
Land Development
Environmental Services

Six Bedford Farms Drive, Suite 607
Bedford, New Hampshire 03110
603.644.0888 • FAX 603.644.2385





Vanasse Hangen Brustlin, Inc

Transportation
Land Development
Environmental Services

Six Bedford Farms Drive, Suite 607
Bedford, New Hampshire 03110
603.644.0888 • FAX 603.644.2385

Prepared For:



Notes:

1. REFER TO SHEET PF-3.1 FOR PROFILE INFORMATION
2. O&M BUILDING: FINAL SITE GRADES, BUILDING ELEVATIONS, CULVERTS, AND LAYOUT FOR O&M BUILDING AND ADJACENT MAINTENANCE YARD, GRAVEL LOT AND STORAGE AREAS ARE SUBJECT TO CHANGE PENDING FINAL DESIGN AND APPROVAL. SEPTIC SYSTEM TO SERVICE O&M BUILDING, EARTHWORK AND GRADING FOR OPERATIONS AND MAINTENANCE AREA SHOULD NOT COMMENCE UNTIL AFTER NHDES APPROVAL IS RECEIVED FOR SEPTIC SYSTEM AND GRADES ARE ADJUSTED AS MAY BE REQUIRED. CULVERTS #100, #100A, #100B, #100C AND #101 AND FILTRATION BASIN ARE SUBJECT TO CHANGE BASED ON FINAL LAYOUT/DESIGN OF OPERATIONS AND MAINTENANCE AREA.



SEE SHEET C-3.2

No.	Revision	Date	Appr.

Designed by	Drawn by	Checked by
CAD checked by	Approved by	
Scale 1"=50'	Date October 28, 2011	

Groton Wind Farm

Groton Hollow Road
Groton, New Hampshire
Construction

Site Plan
Groton Hollow Road



C-3.1

Sheet 14 of 71

Project Number 52036.00

52036-SP-GHR.DWG

