

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

**In the matter of the
Application for Certification**

**Pursuant to RSA 162-H of
ANTRIM WIND ENERGY, LLC**

Docket No. 2012-01

**MEMORANDUM OF LAW OF COUNSEL FOR THE PUBLIC ON PREEMPTION
OF ANTRIM SUBDIVISION REGULATIONS**

Counsel for the Public, by his attorneys, the Office of the Attorney General, hereby submits this memorandum of law pursuant to the Order of September 13, 2012. In support hereof, Counsel for the Public respectfully represents as follows:

This memorandum is submitted to assist the Sub-Committee in evaluating the Antrim Subdivision & Site Plan Review Regulations, last amended June 19, 2008 (the “Antrim Regs.”). This memorandum is made without prejudice to Counsel for the Public’s arguments presented in his memorandum to the Committee dated July 24, 2012 and made on the record at the hearing on September 6, 2012.

This memorandum approaches the topic from several assumptions. First, it appears that the subdivision proposed would constitute a minor subdivision under the Antrim Regs. because it does not create more than two lots and does not involve the construction of a road or other improvements. Second, it appears that the proposal would comply with the Town’s zoning of the area since a substation appears to qualify as a “public utility.” Third, ministerial and administrative requirements of the Antrim Regs. are neutral and apply to all applications and applicants and therefore do not appear to warrant preemption. Similarly, certain articles and sections are by their terms not applicable and therefore do not warrant

preemption. Finally, preemption seems appropriate, if at all, in areas involving environmental impacts of the facility that will be considered in the Committee's proceedings, as opposed to the subdivision, and site plan and construction rules which are not integral to the act of subdivision of land, and may in some cases conflict with the Committee's jurisdiction. Questions of local concern and within the police powers of the Town should, under the proper analysis and as shown in *Stablex* and *North Country Environmental*, be reserved for the Town and its governance and enforcement.

Counsel for the Public suggests, without prejudice, that the following of the Antrim Regs. should not be preempted:

Section IV: Procedure

- A. Pre-application Review (optional)
- B. Subdivision or Site Plan Application
- C. Board Action on Completed Application, ***1-4 only***.

Section V: Submission Requirements for the Subivision of Land

- A. Application
- B. Lot Line Adjustment, Annexation or Minor Subdivision
- C. Major Subdivision --Not applicable and not evaluated

Section VII: Performance Guarantee

- A. (no title)

Section IX: General Standards and Requirements

- A. Lots
- B. Bounds
- D. Sanitary Systems

- 1. (no title)
 - 3. (no title)
- F. Driveway Permits
- G. Roadways (not applicable)
- H. Road Construction (not applicable)
- I. Storm Water Drainage for Roadways (not applicable)
- J. Preparation of Public Roadways (not applicable)
- K. Erosion and Sediment Control (not applicable)
- L. Storm Water Drainage Plan
- N. Community Facilities Impact Analysis
- O. High Intensity Soils Maps (not applicable)
- P. Ground Control
 - 1. (no title)
- Q. Special Flood Hazard Areas (not applicable)
- Section X: Recording of Plat
- Section XI: Waivers
- Section XII: Enforcement
- Appendix A: Antrim Road Acceptance, Reopening and Reclassification Policy
(not applicable)

Respectfully submitted this 28th day of September, 2012,

PETER C.L. ROTH
COUNSEL TO THE PUBLIC

By his attorneys

MICHAEL A. DELANEY
ATTORNEY GENERAL



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Certificate of Service

I, Peter C.L. Roth, do hereby certify that I caused the foregoing to be served upon each of the parties named in the Service List of this Docket.



Dated: September 28, 2012

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Peter C.L. Roth