

[DELIBERATIONS]

STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

February 6, 2013 - 9:14 a.m.
Concord, New Hampshire

DAY 2
MORNING SESSION ONLY
DELIBERATIONS

In re: SITE EVALUATION COMMITTEE:
DOCKET NO. 2012-01: Application
of Antrim Wind, LLC, for a
Certificate of Site and Facility
for a 30 MW Wind Powered Renewable
Energy Facility to be Located in
Antrim, Hillsborough County,
New Hampshire. (*Deliberations*)

PRESENT:**SITE EVALUATION COMMITTEE:**

Amy Ignatius, Chairman
(*Presiding Officer*)

Public Utilities Commission

Harry T. Stewart, Dir.
Johanna Lyons, Designee
Craig Green, Designee
Brad Simpkins, Dir.
Richard Boisvert, Designee
Brook Dupee, Designee
Ed Robinson, Designee
Kate Bailey, Engineer

DES - Water Division
Dept. of Resources & Econ. Dev.
Dept. of Transportation
DRED - Div. of Forests & Lands
Division of Historic Resources
Dept. of Health & Human Services
N.H. Fish & Game Department
Public Utilities Commission

COUNSEL FOR THE COMMITTEE: Michael J. Iacopino, Esq.

COURT REPORTER: Steven E. Patnaude, LCR No. 52

[DELIBERATIONS]

	I N D E X	PAGE NO.
1		
2		
3	<u>ISSUE: NATURAL ENVIRONMENT</u>	9
4	<i>SUB ISSUE RE: Avian Species</i>	
5	Presentation by Mr. Robinson	10
6	QUESTIONS/STATEMENTS/DISCUSSION BY:	
7	Mr. Green	12
8	Mr. Robinson 12, 13, 14, 18, 20, 22, 23, 24, 26, 31	
9	Chrmn. Ignatius 12, 13, 14, 16, 17, 23, 24, 25, 26, 30	
10	Mr. Iacopino 14, 15, 17, 23	
11	Ms. Bailey 16, 17, 19, 21, 23, 24	
12	Mr. Boisvert 22, 29	
13	Mr. Dupee 25	
14		
15	<i>SUB ISSUE: OTHER WILDLIFE ISSUES</i>	
16	Mr. Robinson	32
17	STATEMENTS/QUESTIONS/DISCUSSION BY:	
18	Ms. Bailey 33, 39	
19	Dir. Stewart 34, 35	
20	Mr. Robinson 34, 35, 36, 38, 39	
21	Chairman Ignatius 35, 40	
22	Dir. Simpkins 37	
23	Ms. Lyons 39	
24		
	<i>SUB ISSUE RE: HABITAT FRAGMENTATION</i>	
	Presentation by Mr. Robinson	40
	STATEMENTS/QUESTIONS/DISCUSSION BY:	
	Chairman Ignatius 41, 42	
	Mr. Robinson 42	

1	I N D E X (continued)	
2		PAGE NO.
3	<i>SUB ISSUE RE: PLANTS & NATURAL COMMUNITIES</i>	
4	Presentation by Mr. Robinson	43
5	STATEMENTS/QUESTIONS/DISCUSSION BY:	
6	Dir. Simpkins	44, 46, 47, 48
7	Chairman Ignatius	45, 46, 47, 48
8	<i>SUB ISSUE RE: CONSERVATION EASEMENTS</i>	
9	Presentation by Mr. Robinson	50
10	STATEMENTS/QUESTIONS/DISCUSSION BY:	
11	Dir. Stewart	51, 55
12	Mr. Dupee	52
13	Ms. Lyons	52, 53
14	Chairman Ignatius	53, 54, 55
15	Mr. Iacopino	53
16	Dir. Simpkins	54, 55, 57
17	Mr. Robinson	56
18	IN LIEU OF STRAW VOTE, STATEMENTS OF	
19	MEMBERS' THOUGHTS REGARDING THE ISSUES	
20	WITHIN "NATURAL ENVIRONMENT" BY:	
21	Dir. Stewart	61
22	Ms. Lyons	62
23	Dir. Simpkins	64
24	Mr. Robinson	66
	Ms. Bailey	67
	Chairman Ignatius	68
	Mr. Dupee	71
	Mr. Green	73
	Mr. Boisvert	75

[DELIBERATIONS]

1	I N D E X (continued)	
2		PAGE NO.
3	OTHER COMMENTS/QUESTIONS BY:	
4	Dir. Simpkins	77, 78, 79
5	Chairman Ignatius	78, 79, 80
6	DISCUSSION REGARDING CONDITIONS BY:	
7	Mr. Iacopino	81
8	Chairman Ignatius	84, 86
9	Ms. Bailey	85
10	Mr. Simpkins	86
11	CONDITION RE: EAGLE TAKE PERMIT BY:	
12	Ms. Lyons	87
13	Chairman Ignatius	87
14	CONDITION RE: AVIAN & BAT PROTECTION PLAN LENGTH OF STUDY BY:	
15	Mr. Robinson	89, 91
16	Ms. Bailey	90, 92
17	Mr. Boisvert	92
18	Mr. Iacopino	93
19	<u>STRAW VOTE</u> RE: 1-YEAR OR 3-YEAR LENGTH OF STUDY	94
20	CONDITION RE: CONSERVATION EASEMENT ACREAGE AND DEGREE OF PROTECTION by:	
21	Chairman Ignatius	95, 96, 97, 99, 105
22	Ms. Lyons	95, 104, 111
23	Mr. Iacopino	98, 99
24	Mr. Boisvert	100, 103
	Ms. Bailey	102, 104, 111
	Dir. Stewart	105, 109
	Dir. Simpkins	108
	Mr. Robinson	109

[DELIBERATIONS]

1	I N D E X (continued)	
2		PAGE NO.
3	<u>STRAW VOTE</u> ON A CONDITION TO REQUIRE	110
4	RENEGOTIATION TO TERMS OF THE EASEMENTS	
5	<i>CONDITION RE: TO EXPAND INVASIVE SPECIES by:</i>	
6	Chairman Ignatius	111
7	<i>CONDITION TO INCLUDE THE WORDS "NEW HAMPSHIRE</i>	
8	<i>LICENSED FORESTER", etc. by:</i>	
9	Chairman Ignatius	112
10	<i>CONDITION RE: N.H. FISH & GAME BE GIVEN</i>	
11	<i>FINAL REVIEW AND APPROVAL OF AVIAN AND</i>	
12	<i>WILDLIFE STUDY RESULTS by:</i>	
13	Chairman Ignatius	112
14	<i>CONDITION RE: WORDS INCLUDED OF</i>	
15	<i>"DRY AND FROZEN GROUND" by:</i>	
16	Chairman Ignatius	112, 115, 117
17	Mr. Simpkins	112, 115, 118
18	Mr. Iacopino	113, 114
19	Ms. Bailey	113
20	Mr. Robinson	117
21	<u>STRAW VOTE</u> ON ADDED LANGUAGE	118
22	"DRY AND FROZEN GROUND" REGARDING LOGGING	
23	<i>CONDITION RE: BALD EAGLE TELEMETRY STUDY by:</i>	
24	Chairman Ignatius	119, 120, 122
	Mr. Robinson	120, 122, 126
	Mr. Iacopino	121, 124
	Ms. Bailey	122, 126
	<u>STRAW VOTE</u> ON CONDITION RE:	127
	BALD EAGLE TELEMETRY STUDY	

[DELIBERATIONS]

1	I N D E X (continued)	
2		PAGE NO.
3	CONDITION RE: ANNUAL MONITORING FOR	
4	THE COMMON NIGHTHAWK by:	
5	Chairman Ignatius	127, 129, 130, 132
6	Ms. Lyons	127, 131
7	Mr. Boisvert	128
8	Mr. Robinson	129, 131
9	Ms. Bailey	130
10	<u>STRAW VOTE</u> REGARDING CERTAIN "REMINDER LANGUAGE"	131
11	TO BE NOTED FOR THE 3-YEAR MONITORING AND THE	
12	ADAPTIVE MANAGEMENT PLAN	
13		
14	CONDITION RE: APPROVED LOGGER FOR	
15	LOGGING OPERATIONS by:	
16	Chairman Ignatius	133, 134
17	Dir. Simpkins	133, 134, 136
18	Mr. Iacopino	136
19		
20	CONDITION RE: BOULDERS by:	
21	Chairman Ignatius	137
22		
23	CONDITION RE: SCIENCE-BASED STUDIES by:	
24	Chairman Ignatius	138
25	Ms. Bailey	138
26	Ms. Lyons	138
27		
28	POSSIBLE CONDITIONS RE: N.H. FISH & GAME	
29	LETTER (Committee Exhibit 16) by:	
30	Mr. Iacopino	139, 140
31	Chairman Ignatius	140
32	Ms. Lyons	140
33	Dir. Stewart	140
34		

[DELIBERATIONS]

P R O C E E D I N G

CHAIRMAN IGNATIUS: Good morning. I would like to reopen the proceedings in Docket 2012-01, Antrim Wind Energy's Application for a Certificate of Site and Facility in Antrim, New Hampshire. We are in the midst of deliberations. We suspended yesterday and are continuing today again on the public record. Again, with a court stenographer recording this and open to the public, and anyone to observe, but not participate in. This is only for Committee members to discuss. As with yesterday, we will be working through remaining issues set forth in statute, summarizing evidence, arguments for and against various findings that are called for under the statute, and then discussion among Committee members of how we assess that evidence and the conclusions that we draw. We haven't deliberated these issues privately, and really are hearing from each other for the first time everyone's opinions on the evidence that we heard through the adjudicative phase.

So, I think we should take membership of the Committee, just identify, and welcome back Mr. Robinson in the process. So, let's start with Mr. Stewart please.

DIR. STEWART: Harry Stewart, Water

[DELIBERATIONS]

1 Division Director, Department of Environmental Services.

2 MS. LYONS: Johanna Lyons, Department of
3 Resources and Economic Development.

4 DIR. SIMPKINS: Brad Simpkins,
5 Department of Resources and Economic Development.

6 MR. ROBINSON: Ed Robinson, New
7 Hampshire Fish & Game Department.

8 MS. BAILEY: Kate Bailey, New Hampshire
9 Public Utilities Commission.

10 CHAIRMAN IGNATIUS: Amy Ignatius,
11 Chairman of the Public Utilities Commission.

12 MR. DUPEE: Brook Dupee, Department of
13 Health and Human Services.

14 MR. GREEN: Craig Green, New Hampshire
15 Department of Transportation.

16 MR. BOISVERT: Richard Boisvert, New
17 Hampshire Division of Historical Resources.

18 CHAIRMAN IGNATIUS: Thank you, everyone.
19 Obviously, we have a quorum. And, with us also is Michael
20 Iacopino, Counsel to the Committee. Unless there is any-
21 thing we need to take up before we move to our next issue?

22 (No verbal response)

23 CHAIRMAN IGNATIUS: I see nothing. And,
24 so, Mr. Robinson is the designated person to lead us

[DELIBERATIONS]

1 through that discussion. The timing is good, because he's
2 back today. So, this is on the topic of the natural
3 environment, which, in turn, has numerous issues within
4 it. And, I'm not sure how you've structured it. But, I
5 think, to the extent we can try to look at the evidence of
6 different issues separately, and then -- and then kind of
7 discuss all of them -- well, I don't know, I'll leave it
8 to you, whether you want to take them one by one. And, we
9 probably, at the close of all of that discussion of those
10 nine or ten issues, take a straw vote on the issues as a
11 whole under the "natural environment" category. But,
12 Mr. Robinson.

13 MR. ROBINSON: Thank you, madam Chair.
14 Being my first time doing this, I hit the general
15 highlights of the topics that I thought were most
16 important. And, I guess I'll just throw those out. And,
17 would you like me to add my thoughts now or after the
18 discussion gets going, because I do have thoughts on
19 certain things as well, or would you like --

20 CHAIRMAN IGNATIUS: I guess I think
21 we've been trying to focus mostly on sort of the facts and
22 counterarguments as a base starting point, before we get
23 into opinions on it. But I think there's no real rules
24 about any of this. So, if that works for you, that's

[DELIBERATIONS]

1 great. If it doesn't, then feel free to go beyond it.
2 But I think we want to be sure we sort of keep which of
3 the two are straight; when is somebody's interpretation
4 and opinion about it and what's what the parties presented
5 to us.

6 MR. ROBINSON: Okay. Well, I'll start
7 with the avian species, and see how that goes. The
8 Applicant, in AWE 1, Tab 9, did present a significant
9 amount of information on the various avian species,
10 including bats as well. They did look at common nighthawk
11 during the nesting period. They did not look at common
12 nighthawk numbers during the migration, which is late May
13 and late August, and we talked about that a little bit at
14 the hearing. For their post construction mortality
15 survey, again, they provided good data on how they're
16 going to structure that survey, and significant amount of
17 information on how that's going to be handled. Their
18 contention was that it should be done for one year.

19 We did have a difference in opinions on
20 the duration of how long the survey should be conducted.
21 Mr. Lloyd-Evans stated that a three year post construction
22 avian and bat mortality study should be conducted, and
23 adaptive management should follow, if necessary.

24 The Audubon Society, on Page 25 of their

[DELIBERATIONS]

1 briefs, I'm just going to turn to that very briefly here,
2 also was of the opinion that three years of post
3 construction survey should also be conducted. Audubon
4 also pointed out that a radio telemetry study of Bald
5 Eagle fledglings from the two nearby nests for at least
6 three years would be helpful to learn. And, they also
7 suggested that annual monitoring for common nighthawk
8 should occur until the facility is decommissioned.

9 The Fish & Game Department, Committee
10 Exhibit 16 did provide comments as well relative to avian
11 issues. They talked about Adaptive Management, talked
12 about the Post Construction Evaluations, and potential
13 impacts to birds, particularly the common nighthawk,
14 should be addressed, which it was.

15 So, those are pretty much the
16 highlights, the synopsis, as I see them, of the primary
17 issue. I know there is some discussion to be had around
18 them. So, I guess I'll stop there and see where we go.

19 CHAIRMAN IGNATIUS: All right. So, I
20 guess, are there any other important facts or issues in
21 contention that other Committee members want to sort of
22 put on the table when we're talking about both birds and
23 bats, and any mitigation measures or changes that were
24 proposed by any of the parties in response to the bird and

[DELIBERATIONS]

1 bat issues? Mr. Green.

2 MR. GREEN: Just a question, maybe this
3 is later on. But, as far as the raptors, one of the
4 things they talked about was that they don't use the
5 thermal lifts, but they use the air currents to go over
6 the ridges. And, I was just curious if that would cause
7 any concern, as far as lifting the birds into the -- into
8 the turbines, as opposed to lifting them up over the
9 turbines, and if that was a concern of anyone?

10 MR. ROBINSON: I can address that. It's
11 fairly widely accepted that pre-construction surveys for
12 birds and wildlife on these sort of projects is good and
13 important information to have. But there's very little
14 correlation between the numbers and animals observed
15 during the pre-construction to actual mortality once the
16 -- once operational. So, I think there's a lot to be
17 learned still on this. But, just because you count a
18 bunch during pre-construction, doesn't mean there's going
19 to be the mortality once operational. And, that's fairly
20 widely accepted.

21 MR. GREEN: Thanks.

22 CHAIRMAN IGNATIUS: As I recall, there
23 was discussion about times that it would be important to
24 curtail construction or hold off on construction, during

[DELIBERATIONS]

1 nesting periods, things that would be -- to be careful
2 about particularly sensitive times, and in order to
3 protect bird nesting. Do you -- and, as I remember it,
4 there was willingness on the part of the Applicant to sort
5 of be responsible about those time periods and hold off on
6 some, I think it was more on road construction than on the
7 actual turbine construction, if I'm remembering right.
8 I'm not sure there was complete agreement among the
9 parties on which months to be holding back, but some
10 sensitivity to that. And, I'm not sure if I'm remembering
11 this right, if you have a more specific recollection of
12 that issue.

13 MR. ROBINSON: Well, the Fish & Game
14 Department suggested that tree-clearing not occur until
15 after August 1st, for those very reasons. Birds are
16 generally done nesting by early July. So, that would be a
17 good thing. I know the Applicant did talk about other
18 conditions, such as mud seasons and things like that. So,
19 there are other times of the year for other reasons that
20 they may and may not want to be working as well.

21 CHAIRMAN IGNATIUS: I also remember a
22 discussion about possible curtailment of turbine operation
23 during particularly sensitive times with the bat
24 population. And, do you recollect the provisions in the

[DELIBERATIONS]

1 Avian and Bat Protection Plan on that issue? And, if you
2 don't have it with you at your fingertips, I'm sure we can
3 pull that back up again.

4 MR. ROBINSON: Yes, I don't have it in
5 front of me. I do know that the Avian and Bat Protection
6 Plan did provide for ratcheting back during certain times.

7 MR. IACOPINO: If you all want to look
8 at it, it is at AWE 6. If you're working off the
9 electronic document, it's Electronic Document Number 6.
10 But it's also Appendix 12F-1, entitled "First Supplement
11 to Revised Avian and Bat Protection Plan". I think that
12 has what you're talking about in it and can look further
13 -- I believe that has what you're referencing in it, but
14 I'm going to see if there's any further supplements after
15 that.

16 CHAIRMAN IGNATIUS: That would be great.
17 While you're looking for it, I'll just remind people of
18 the issue, and we know that we've got a dwindling bat
19 population throughout the region, for reasons that have
20 probably very little to do with wind turbines, because of
21 a sickness within the bat colonies. And, we realize that
22 some of the species in New Hampshire are getting
23 dangerously low in population. And, so, my recollection
24 of the testimony is that, while there is not likely to be

[DELIBERATIONS]

1 an enormous impact from the turbines on the bat
2 population, there is the potential for some impact. And
3 that, in the context of a dwindling population, you know,
4 to put that in that context of you've got to be really
5 careful beyond what you might normally do, because of the
6 vulnerability of the population overall.

7 So that, if there are reasonable
8 mitigation measures that the Applicant has offered to do
9 or things that we might want to do as a condition, it
10 seems to me it's the wise thing to do, that we -- given
11 the stress that that population is under already.

12 Mr. Iacopino, is there more on that?

13 MR. IACOPINO: Yes. There's one other
14 exhibit that I've been able to find so far, dealing with
15 the curtailment mitigation contained in the Avian/Bat
16 Protection Plan. And, that's been marked, at least one
17 place in our record, as IWAG-5. And, it is the
18 Applicant's response to a data request. And, it also --
19 that also talks about the effect on the capacity factor
20 from the curtailment under the ABPP. I think, if you look
21 at those two documents, you'll have a good idea of the
22 extent that the ABPP deals with curtailment, and the
23 curtailment program that is actually contained within the
24 Applicant's Application and Plan, which they offered to do

[DELIBERATIONS]

1 as part of their ABPP. I think that's the best way to
2 explain it.

3 CHAIRMAN IGNATIUS: Thank you.

4 MS. BAILEY: I found the actual
5 information in the ABPP. It's in the exhibit, the first
6 exhibit that Mr. Iacopino referenced, on Page 51. And, it
7 says "New Hampshire Fish & Game suggested that turbine
8 curtailment may be a viable means of avoiding and
9 minimizing bat mortality at the proposed Project. For
10 this reason, AWE will assess the effectiveness of a
11 curtailment strategy to reduce impacts to bats during the
12 evaluation phase. This study effort will help AWE, New
13 Hampshire Fish & Game and U.S. Fish & Wildlife Service
14 better understand the effectiveness of curtailment at an
15 operating wind project in the State of New Hampshire,
16 where documented bat mortality at wind developments has
17 been low." And, it goes on in more detail.

18 CHAIRMAN IGNATIUS: And, so, that would
19 be to study it during actual operations?

20 MS. BAILEY: Yes.

21 CHAIRMAN IGNATIUS: And, then, do you
22 recall, does it say what the next steps would be after
23 some period of observation? Reporting back to us or
24 making certain changes to operations?

[DELIBERATIONS]

1 MS. BAILEY: I haven't read it, but I
2 think that the testimony that I recall was that they would
3 work with Fish & Game and U.S. Fish & Wildlife to see if
4 their Adaptive Management Plan should be altered or
5 continued.

6 MR. IACOPINO: Madam Chair, I just draw
7 your attention to Page 53 of that same document. There is
8 -- it does say what the results and recommendations will
9 lead to on there, if the Committee would like to take a
10 look at that. I'll read it, if you'd like me to?

11 CHAIRMAN IGNATIUS: Sure.

12 MR. IACOPINO: "The results and
13 recommendations of this study will be subject to the
14 phased consultation process described under the adaptive
15 management strategy (see Section 9). This process will
16 determine if curtailment should be implemented as an
17 operational mitigative measure. This study and adaptive
18 management consultation will guide the ultimate
19 operational curtailment plan, if deemed necessary."

20 CHAIRMAN IGNATIUS: Thank you very much.
21 I mean, it seems to me that it's clear that the Applicant
22 is trying to take responsible steps and still in the
23 context of an operational facility, and a plan for
24 monitoring it and making use of that information after the

[DELIBERATIONS]

1 fact, in consultation with the experts in the field. So,
2 I think that's something that we would want to make note
3 of in any ultimate certificate, to note that with, at
4 least in my view, to note it with positive feeling, I
5 don't know how to say that exactly, that it seems
6 appropriate. Mr. Robinson.

7 MR. ROBINSON: I would agree with that.
8 And, I think, in another project, I think in the Groton
9 Project, there was some language in there that, with any
10 survey or this particular type of thing, that it would be
11 with the review and approval of the Fish & Game Department
12 and/or Fish & Wildlife Service. And, I think that's
13 important language to consider as well, review and
14 approval --

15 CHAIRMAN IGNATIUS: Uh-huh.

16 MR. ROBINSON: -- of any of these sort
17 of things.

18 CHAIRMAN IGNATIUS: On the issue of the
19 -- I'm sorry, Ms. Bailey.

20 MS. BAILEY: Before we get off that
21 subject?

22 CHAIRMAN IGNATIUS: Yes.

23 MS. BAILEY: I just want to point out, I
24 think that's a really important and positive offer by the

[DELIBERATIONS]

1 Applicant. And, I think that their testimony was that,
2 because they had this Adaptive Management Plan, that when
3 they found issues in their one year post construction
4 survey, that they would implement for the life of the
5 Project. That's why they only needed to do a one year
6 post construction survey. And, everybody else who argued
7 that they should do a three year post construction survey,
8 I think they would love it if there were three years, plus
9 this permanent adaptive management strategy, but that's
10 not what the Applicant was offering. And, so, I think
11 that, you know, because of the -- I think it's a generous
12 offer, to put this in place for the life -- to put what
13 the results of what they find in the Adaptive Management
14 Plan, it's only going to be for a year, to put it in place
15 for the life of the operation of the plant is -- I'm
16 having a hard time articulating -- it's a generous offer,
17 and that's why they say they shouldn't have to spend the
18 money to do three years of study.

19 And, the other point that I think they
20 made was that typical three year studies just study and
21 don't implement anything permanent. So, their position is
22 that this proposal is better than just a three year study.

23 CHAIRMAN IGNATIUS: Thank you. That's
24 well put. Mr. Robinson.

[DELIBERATIONS]

1 MR. ROBINSON: Just a couple of comments
2 on wildlife studies. When you study wildlife, you
3 actually don't do an absolute count. You do what they
4 call an "index". You do a survey over a small area, for a
5 period of time, and you hope that you cover enough of the
6 area where you can take that information and extrapolate
7 it out over time with some confidence.

8 Now, the arguments that we've heard
9 between a one year and three year study proposal is
10 important. And, I'll give you an example. One of the
11 best wildlife surveys on Earth is the North American
12 Waterfowl Population Survey done in the prairies and the
13 potholes of the United States and Canada. It's been
14 ongoing since the 1950s. It's done the same time, the
15 same manner every year. So, there's a long-term database
16 that is very, very tight and very, very confident. It
17 gives you an 80 to 85 percent confidence that what you're
18 looking at is actual, and you can extrapolate it over
19 time.

20 Now, if you closed your eyes and you
21 pick any one year out of there, that data has much less
22 meaning, because of factors you can't control, mostly the
23 weather. We think we know what wildlife do, whether
24 they're dead or alive, but they don't always follow the

[DELIBERATIONS]

1 plan. And, weather conditions, just look at the last few
2 years outside, vary greatly from year to year. But, if
3 you take that same waterfowl dataset, and you compare
4 three consecutive years, and you start lumping the data,
5 then you have real meaning. The same would apply to a
6 similar index like this.

7 I think we're all trying to -- all
8 trying to learn cause and effects of these things. And,
9 if you have three consecutive years' worth of data, on a
10 survey that's done the same way, it irons out those
11 weather variables, it irons out the wildlife variables,
12 whether they're alive or dead, because dead ones get
13 carried off by other critters, it would give us an
14 opportunity to learn a lot more.

15 So, I just throw that out there as some
16 background information on wildlife surveys. A survey for
17 one year in time doesn't have a lot of meaning when you're
18 trying to extrapolate it out over time.

19 CHAIRMAN IGNATIUS: Ms. Bailey.

20 MS. BAILEY: I don't disagree that three
21 years is clearly going to give us a much better picture
22 than one year. But do you think that it's -- that, if the
23 offer is "one year study and permanent mitigation" or
24 "three year study, no mitigation", which would you pick?

[DELIBERATIONS]

1 MR. ROBINSON: I'd pick neither. I'd
2 have "three year study with permanent mitigation".

3 MS. BAILEY: Okay. Thank you.

4 CHAIRMAN IGNATIUS: Yes, Dr. Boisvert.

5 MR. BOISVERT: I guess I'd just like to
6 voice my agreement with Mr. Robinson. From my profession,
7 we are very, very concerned about sample size and how
8 small the sample size can you acquire and have meaningful
9 results. And, given the opinions of the experts, one year
10 does not seem to be adequate. It could very well be, in
11 that one year, the Applicant would see a very high
12 mortality of certain avian species, then go into a
13 mitigation plan that might be overreaching, in a sense.
14 It is not guarantied that it's going to decide one way or
15 the other in the opinions of the degree of mortality. It
16 will give you a better idea.

17 And, I agree with the idea that we
18 should not limit ourselves to an either/or choice. I
19 think the idea of long-term mitigation, based upon three
20 years, instead of one, is a far more appropriate
21 condition. And, this is similar to what we did in Groton,
22 not identical, and I believe that that would be an
23 appropriate kind of condition.

24 CHAIRMAN IGNATIUS: Mr. Iacopino, do you

[DELIBERATIONS]

1 recall what the Groton agreement was or condition was
2 regarding length of review?

3 MR. IACOPINO: I can pull it up. I
4 believe it was three years. I can pull it up. There were
5 some studies that were actually required in Groton that
6 were hammered out at the time of deliberations, according
7 to my memory anyway, which yesterday I demonstrated was
8 not that good.

9 MS. BAILEY: While he's looking that up,
10 can I ask Mr. Robinson another question?

11 CHAIRMAN IGNATIUS: Yes. Please do.

12 MS. BAILEY: What studies do you think
13 should be done, whether it's either one year or three
14 years? Breeding? Flyover?

15 MR. ROBINSON: Their post construction
16 mortality study that they outlined in their Application,
17 that would be the study that would be conducted, yes.

18 MS. BAILEY: Okay. And, in Groton, did
19 they have a mitigation plan that went on forever?

20 MR. ROBINSON: I've got it right here,
21 if you're interested?

22 MR. IACOPINO: Okay. Sure.

23 MR. ROBINSON: It did have a three year
24 study plan, and "informal monitoring shall continue for

[DELIBERATIONS]

1 the life of the Project" was the language in there.

2 CHAIRMAN IGNATIUS: And, then, I guess
3 the point that, Ms. Bailey, you were making is, was there
4 a commitment to take any particular action after the
5 initial study period, which in this case was three years,
6 or was it "study it, and then sort of begin again on
7 whatever would be appropriate to do in response to any
8 study, if somebody were to raise that, and I guess come
9 back before the Site Evaluation Committee with a request."
10 Is that kind of the distinction you were drawing, that --

11 MS. BAILEY: Yes. That I think that was
12 the Applicant's testimony. That it's great to study it
13 for three years, and you get a lot of data. But, if you
14 don't use the data for anything, then it's not as good as
15 their offer to study for one year, which I understand you
16 think is very limited, but put something into effect that
17 will actually make a difference.

18 CHAIRMAN IGNATIUS: Mr. Robinson,
19 please.

20 MR. ROBINSON: I think a three year
21 study will give you some much better information, and then
22 put that into effect over the life of the Project. I
23 mean, it's going to allow you to give you a lot more
24 confidence in projecting what the actual mortality is over

[DELIBERATIONS]

1 time, and continue those surveys, perhaps informally or
2 what have you, over the life of the Project.

3 And, in the Groton -- the Groton
4 language, I have it right here, it says: "Annual reports
5 shall be submitted to, and discussed with, New Hampshire
6 Fish & Game and U.S. Fish & Wildlife Service, and shall
7 serve as the basis for mitigation measures".

8 CHAIRMAN IGNATIUS: All right. So, it
9 sounds as though, in Groton, there was an understanding
10 that findings from the three year study would continually,
11 on an annual basis, be brought to Fish & Game to discuss,
12 and maybe some development of mitigation measures in
13 response, without it -- it's not a hard commitment that
14 certain things would happen, but the notion that people
15 would continue to work together and devise appropriate
16 changes, if the study was showing something with each
17 annual report.

18 MR. ROBINSON: Correct.

19 CHAIRMAN IGNATIUS: Mr. Dupee.

20 MR. DUPEE: Thank you, madam Chairman.
21 I just want to point out that I would agree with Ms.
22 Bailey that it's a very handsome offer the Applicant has
23 made to provide longer term implementation, I think that's
24 critical. But, as a former fisheries biologist, I have to

[DELIBERATIONS]

1 agree with my colleague, Mr. Robinson, --

2 (Court reporter interruption.)

3 MR. DUPEE: As a former fisheries
4 biologist, I have to agree with my colleague,
5 Mr. Robinson, that animal populations can vary orders of
6 magnitude over the course of a year. So, I'm worried a
7 one year study gives you the "ready, fire, aim" syndrome,
8 where you're really trying to make a good effort, but
9 sometimes you haven't watched correctly to understand
10 population dynamics, you don't get the results you hope to
11 get.

12 CHAIRMAN IGNATIUS: All right. Anything
13 more on the study periods or commitments?

14 (No verbal response)

15 CHAIRMAN IGNATIUS: All right. On the
16 common nighthawk issue that you mentioned earlier,
17 Mr. Robinson, can you just back up and again and remind us
18 of what was found? What the common nighthawk issue is?

19 MR. ROBINSON: Well, there's two
20 considerations, actually. What most folks have focused on
21 are the breeding population of the common nighthawks,
22 which we have very few in the state. And, so, any
23 mortality on breeding common nighthawks would be very
24 important. So, it's important to assess their status

[DELIBERATIONS]

1 prior to and monitor afterwards. But, if you look at the
2 big picture, here in New Hampshire, we have thousands of
3 common nighthawks that migrate through the state, and they
4 do so in late May and in late August. And, it's perhaps
5 far more likely that migrating common nighthawks could be
6 hit by turbines, rather than breeding birds, just because
7 of the order of magnitude of the population.

8 The Applicants did not survey during the
9 migratory period, they weren't focused on migratory birds,
10 they were focused on breeding birds, which is
11 understandable. But, some folks in Audubon pointed this
12 out, that it's important to understand the migratory
13 population as well.

14 CHAIRMAN IGNATIUS: So, is the common
15 nighthawk population threatened nationally? Its numbers
16 are very low in New Hampshire. But, overall, is it a more
17 robust population?

18 MR. ROBINSON: Yes, much more so north
19 of here. We're on the edge of its breeding range, like we
20 are with a lot of different species. Yes.

21 CHAIRMAN IGNATIUS: And, there was a
22 discovery of a common nighthawk at the Lempster facility,
23 correct?

24 MR. ROBINSON: Correct. There were --

[DELIBERATIONS]

1 CHAIRMAN IGNATIUS: Actual mortality or
2 nesting?

3 MR. ROBINSON: Two mortalities, I
4 believe, during the nesting season.

5 CHAIRMAN IGNATIUS: So those would not
6 have been migratories that were affected, it sounds like?

7 MR. ROBINSON: That's correct.

8 CHAIRMAN IGNATIUS: There has been no
9 finding of common nighthawk nests in the Antrim footprint,
10 correct?

11 MR. ROBINSON: Correct.

12 CHAIRMAN IGNATIUS: And, then, am I
13 right in remembering that Mr. Levesque had said during a
14 -- or, someone walking the property had heard the
15 distinctive call of a nighthawk while they were onsite had
16 heard one there, but --

17 MR. ROBINSON: Yes.

18 CHAIRMAN IGNATIUS: -- and it may not
19 have been Mr. Levesque. He had the little app that played
20 it from his phone. So that someone had observed, just
21 while they were at the site, heard what they were certain
22 was a nighthawk, but that there's been no -- in any of the
23 surveys, there was no identification of any nesting areas?

24 MR. ROBINSON: Yes. Part of the issue

[DELIBERATIONS]

1 is that nighthawks, when they nest, they nest on the
2 ground, on gravel. And, if you don't have that particular
3 habitat at the project site, pre-construction, they're not
4 going to be there. Post construction, if you create this,
5 there is a certain likelihood that they may move in there
6 to nest, because you're creating the habitat. That's what
7 I believe happened at the Lempster site as well.

8 CHAIRMAN IGNATIUS: So, we sort of draw
9 them in when creating that gravel base?

10 MR. ROBINSON: Correct.

11 CHAIRMAN IGNATIUS: Well, in an odd way,
12 is that a benefit? If you want to build up your
13 population, you make a more hospitable kind of gravel base
14 for them to move in?

15 MR. ROBINSON: Many wildlife species are
16 very adaptive. Yes, that's very true.

17 CHAIRMAN IGNATIUS: Other questions?

18 MR. BOISVERT: I was just going to
19 comment that, regarding nighthawk nests, if I recall
20 correctly, they really don't "make a nest", they simply
21 lay their eggs on the bare ground. So that, unless you
22 saw the actual egg, you would not know where they "nest".
23 So, it's not observable until there's an egg. And, then,
24 you know, you see the eggs there or the broken eggshells

[DELIBERATIONS]

1 once they hatched. So, you can't really find a nighthawk
2 nest until it lays its eggs. There's no empty nest out
3 there, unless you want to decide that the entire ledge is
4 the empty nest. So, I think that makes it a little
5 difficult to talk about, finding a nighthawk nest, you
6 would have to actually see the eggs. Am I correct?

7 MR. ROBINSON: That's correct. Yes.

8 MR. BOISVERT: All right. And, then,
9 that raises the issue of, if they're breeding in the
10 gravel circles underneath the moving turbines, you know,
11 is there a net gain or are you simply creating a place
12 where they nest there, as opposed to some other place, and
13 then they're more likely to be killed by the turbines for
14 having nested there, as opposed to having nested in some
15 other place?

16 CHAIRMAN IGNATIUS: Well, I want to be
17 sure we're clear on what the evidence was. Fish & Game
18 did not conclude that this was a risky project from the
19 perspective of common nighthawks, is that correct?

20 MR. ROBINSON: That's correct.

21 CHAIRMAN IGNATIUS: All right. Other
22 avian issues? Yesterday, Mr. Iacopino reminded us that
23 there had been a recommendation from the U.S. Fish &
24 Wildlife Service that the Applicant would be wise to seek

[DELIBERATIONS]

1 an Eagle Take Permit. But, as he read the section from a
2 letter, noted it wasn't a requirement, it's not a permit
3 that must be obtained, it was just, in their view, would
4 be a good idea. Do you have anything more that you
5 recollect from the case on that issue that you want to
6 add?

7 MR. ROBINSON: I don't. Other than, I
8 think it would be a very wise thing to pursue, just in
9 case. Because there are eagles nesting in the area, and
10 we really don't know what's going to happen. So, I think
11 it would be wise for them to do that, if they so choose to
12 do it.

13 CHAIRMAN IGNATIUS: And, as I recall,
14 there were eagle nests in the region, not in the immediate
15 vicinity, but is it Nubanusit Lake area, and certainly an
16 area that has some, both nesting eagles and migratory
17 eagles that have been observed, both Golden Eagles and
18 Bald Eagles?

19 MR. ROBINSON: Uh-huh. Yes. Much more
20 so Bald Eagles. I mean, we have very few Goldens that
21 travel through the state. I would suspect this is part of
22 the reason why Audubon suggested the telemetry study on
23 those eagle chicks that may hatch on that nest at
24 Nubanusit, just so we can learn, we collectively can learn

[DELIBERATIONS]

1 what may or may not happen.

2 CHAIRMAN IGNATIUS: All right. Are
3 there any other issues anyone wants to raise, sort of
4 factual bases or concerns that you had regarding avian and
5 bat issues?

6 (No verbal response)

7 CHAIRMAN IGNATIUS: All right. Then,
8 why don't we move to other wildlife issues.

9 MR. ROBINSON: For this particular one,
10 there wasn't a lot of really hard information that was
11 offered up. There was a lot of opinions on what wildlife
12 may and may not do with a project of this nature. There
13 was some discussion about perhaps community changes that
14 may occur. If you put a road system in, you may see
15 different species of wildlife come and go, which is very
16 typical. You see that with any kind of habitat
17 alteration. But, again, I didn't see a lot of substance
18 either way on the effects of other wildlife, such as deer,
19 moose, and whatnot. There are a lot of opinions, but not
20 a lot of data.

21 Ms. Morse, under NB-4, did raise an
22 important issue, and we did talk about it a little bit.
23 But there really wasn't any substance, and there isn't a
24 lot of substance out in the wind energy community. And,

[DELIBERATIONS]

1 she talked about "cumulative impacts of projects". That
2 is an important issue that is being looked at for offshore
3 wind farms. And, it's probably something that's going to
4 have to be looked at for inshore as well over time. I
5 think that's an important flag that she raised. But,
6 again, there really isn't anything for us much to talk
7 about with substance on that, because the people aren't
8 doing anything about it at this point. But it is
9 something that she raised, and it's an important point to
10 think about, cumulative impacts as we go over time.

11 CHAIRMAN IGNATIUS: Ms. Bailey.

12 MS. BAILEY: I'd just like to point out
13 that Mr. James testified that he thought that the change
14 in sound from, and we're going to talk about this in great
15 detail later, but the change in sound from the background
16 level that exists today, to the level that will exist as a
17 result of the Project, could decrease the area in which
18 mating calls could be heard and predatory signals could be
19 sent and received by animals. And, he didn't give us any
20 data about that, but, and he also didn't identify which
21 animals use those kinds of signals, but he raised it.

22 CHAIRMAN IGNATIUS: Thank you. Other
23 wildlife-related issues that anyone recollects and wants
24 to bring forward? Mr. Stewart.

[DELIBERATIONS]

1 DIR. STEWART: Yes. Ed, I'm in the
2 NB-4, Morse testimony. And, there were some pictures in
3 the back of large boulders in various locations. The ones
4 I'm looking at were actually on our Page 56, "large
5 boulders along proposed road". And, I found it a little
6 ambiguous as to whether these boulders were going to be
7 affected by the road or not, in other words, if some were
8 going to have to be removed by blasting or what have you.

9 I'm wondering what the Fish & Game
10 perspective is, in terms of the habitat that these
11 boulders represent? You know, what's the significance?
12 And, if some have to be removed, that presents two
13 options; one, we can go around the boulder fields,
14 particular boulder fields, if it's possible, or there may
15 be some need for mitigation, such as replacing the boulder
16 fields, you know, somewhere else. And, I'm not even sure
17 if that's possible. So, anyway, can you respond to my
18 comment?

19 MR. ROBINSON: Absolutely. In my
20 opinion, as a wildlife biologist, the boulder fields or
21 the boulders have minimal significance to wildlife. What
22 will have far more benefit, if you will, and it's kind of
23 a double-edged sword, when you enter into a habitat that's
24 all basically one type of habitat, trees, you put a gravel

[DELIBERATIONS]

1 road in, whether it's for a logging operation, a wind
2 energy operation or what have you, you're creating a
3 different habitat that comes in, in this case it's going
4 to be a gravel road, and you're going to have -- change
5 the habitat at the road and next to the road and next to
6 the forest. So, you're actually going to be creating
7 additional wildlife habitat putting in a gravel road, than
8 you would be saving some boulders. Boulders, unless
9 they're in large, large piles, have very minimal habitat
10 for wildlife. It might be a den site underneath a boulder
11 or two, but there's not a lot there.

12 DIR. STEWART: So, this is where I was
13 going. Is there a need for a condition to address these
14 boulders in a certificate, if we were to approve the
15 Project?

16 MR. ROBINSON: Not from a wildlife point
17 of view. If there's another reason --

18 DIR. STEWART: That's what I'm asking.

19 MR. ROBINSON: Not from a wildlife point
20 of view, no.

21 DIR. STEWART: Okay. Thank you.

22 CHAIRMAN IGNATIUS: Another issue that I
23 remember on the issue of wildlife in general was the
24 difficulties that the moose population have faced in

[DELIBERATIONS]

1 recent years, with tick overruns, their systems being
2 overwhelmed, and the theory that some of that has been
3 caused by a warmer climate that's allowed for greater tick
4 populations to take hold and really sap the strength of
5 the moose. And, that that was described as one thing to
6 be mindful of, that although there may be disturbance to
7 some wildlife from a project like this, there's also
8 benefits, if you're reducing greenhouse gas emissions and
9 in some step towards changing the stresses that are
10 warming the climate. Did I -- does that sound correct
11 from your recollection?

12 MR. ROBINSON: Yes. There's a very
13 direct correlation with climate change here in the
14 Northeast, i.e., warmer winters, and the increase in tick
15 population and their loads on moose. When we have winters
16 where we have snow on the ground from December into April,
17 the ticks can't survive. When we have winters like last
18 year, where we have a lot of bare ground, the ticks fall
19 off the moose, they survive, and then they're able to get
20 back on as a host.

21 So, yes. Climate change, whether it's
22 warmer winters or what have you, is definitely running the
23 engine of the moose decline. Here in the Northeast, and
24 that's what's happened in -- we talked about northern

[DELIBERATIONS]

1 Minnesota and Isle Royale a little bit, it's been going on
2 there for over 30 years. And, that's a fact.

3 CHAIRMAN IGNATIUS: Other comments on
4 wildlife issues that anyone wants to raise? Mr. Simpkins.

5 DIR. SIMPKINS: Yes. This is probably a
6 question for Mr. Robinson. There's been a lot of
7 discussion about the potential impacts to birds and avian
8 species, we just talked about that. And, there's been a
9 whole plan put together for this study of bats and birds,
10 and then there's been quite a bit of discussion about
11 raptors and monitoring them. But, other than -- other
12 than air-based species, there hasn't been a lot of
13 discussion as far as -- well, there's been discussion, but
14 not a lot of evidence one way or the other about impact to
15 ground-based species.

16 And, I guess a question I would have is,
17 and I believe it was Ms. Morse and I believe Mr. Jones,
18 there were several people who talked about what they
19 thought was the potential impact to larger mammal species,
20 such as bobcat and bear and those types of things. So, I
21 guess my question would be, do you feel that there's a
22 need for any type of monitoring or study of ground-based
23 wildlife to see the impacts? Because I kind of see this,
24 each time one of these projects come up, it's going to be

[DELIBERATIONS]

1 kind of the same type of "well, we think there may be
2 potential impacts, but there don't seem to be any studies
3 or anything to say one way or the other. So, I'm not sure
4 when we're actually going to have an answer to say "yes,
5 it does" or "no, it doesn't."

6 So, do you feel that, and I don't know
7 what the structure of that would look like, but do you
8 feel there's a need to monitor other than just bats and
9 birds?

10 MR. ROBINSON: I don't. It's kind of a
11 catch-22. As our state has grown, with people and roads
12 and whatnot, at the same time, we've seen a significant
13 increase in our moose populations, our bear populations,
14 our deer, our bobcat, turkeys, and things of that nature.
15 And, most of this is driven by changes in weather, or a
16 lot of it is, in fact.

17 So, really, these species have such
18 mobility, such large home ranges. Many of them have 10,
19 9, 10, 11 square miles of home ranges. They're on the
20 move all the time. Wildlife that are ground-based have
21 the ability to move, and they adapt very well to people.
22 And, I just don't see the need to treat this Project any
23 differently than we would a large timber sale, because
24 you're doing some of the same things, or large housing

[DELIBERATIONS]

1 developments, it just -- I don't think it warrants it.

2 CHAIRMAN IGNATIUS: Thank you. Ms.
3 Lyons.

4 MS. LYONS: In the Application, none or
5 very little mention of the Wildlife Action Plan. Is there
6 anything in the Wildlife Action Plan that should be
7 included?

8 MR. ROBINSON: Actually, the Wildlife
9 Action Plan was mentioned in the terms of
10 "habitat-related", and there was a lot of discussion about
11 that. And, I think some of the mitigation land is similar
12 wildlife habitat as the Project area as well. So, that
13 was used to identify, I believe, some of the mitigation
14 areas and things of that nature. So, it was. The Action
15 Plan is primarily habitat-based, not animal-based.

16 CHAIRMAN IGNATIUS: Ms. Bailey.

17 MS. BAILEY: Mr. Robinson, are you going
18 to cover habitat fragmentation? Because that topic just
19 occurred to me as a result of some of this discussion, and
20 I think your position is that weather causes more problems
21 for animal mortality than human development. What do you
22 think about habitat fragmentation?

23 MR. ROBINSON: I do have that as a topic
24 to go over, but it --

[DELIBERATIONS]

1 MS. BAILEY: Okay. Okay. You don't
2 have to answer right now, if we're going to get there.

3 CHAIRMAN IGNATIUS: Let me ask one other
4 question. We have a few more things on wildlife in
5 general. Am I correct in recollecting that there was no
6 finding from Fish & Game of any threatened or endangered
7 animal species in the Project footprint?

8 MR. ROBINSON: To my knowledge, there
9 were none. No.

10 CHAIRMAN IGNATIUS: Thank you. Anything
11 else on wildlife issues, before we move onto habitat and
12 the fragmentation questions?

13 (No verbal response)

14 CHAIRMAN IGNATIUS: If not, why don't
15 you go ahead.

16 MR. ROBINSON: Again, similar with the
17 wildlife point of view, there were a lot of opinions on
18 habitat fragmentation and its potential impact or
19 non-impact on wildlife. There was a lot of evidence about
20 the -- with the Wildlife Action Plan, on the importance of
21 the habitat at the Project area, similar habitat that was
22 being protected through conservation easements in the
23 area. But, again, there was a lot of discussion about
24 breaking up habitat, very little hard information on what

[DELIBERATIONS]

1 actually may or may not happen. The habitat, in southern
2 New Hampshire, has, for the most part, been fragmented
3 into different size areas, this is a larger area. But
4 there's very little evidence that putting in a road,
5 whether its gravel, whether its tar, putting in a housing
6 development is going to have a significant impact on
7 animals -- on that habitat being fragmented and animals'
8 use of that habitat.

9 So, really, I didn't see a whole lot of
10 hard evidence either way. There was a lot of opinions
11 talking about habitat fragmentation. But that's about all
12 I had on that.

13 CHAIRMAN IGNATIUS: All right. Other
14 comments on that issue? And, I think we all recalled in
15 the mapping the deep pink color that was some of the
16 highest ranked habitat in the state that was -- portions
17 of the Project footprint had that designation. And, so,
18 clearly, it's an area of value, high value, in terms of
19 its natural habitat, that I think everybody agreed on, and
20 then your comment was that "that being the case, does
21 putting in a road or a facility like this significantly
22 alter that land? Does it somehow diminish its value?"
23 And, that there was a lot of opinion about that, but not
24 really a lot of factual basis to draw any conclusions

[DELIBERATIONS]

1 either way. Is that right?

2 MR. ROBINSON: That's correct. And,
3 just a little bit more on that. The Wildlife Action Plan
4 was actually put together, in part, for communities, and
5 in projects like this, where you identify the most
6 important wildlife habitat there is, and, when you're
7 evaluating projects like this, you can see the different
8 habitat types. But it also gives you habitats that are
9 nearby of similar value, so that mitigation action can be
10 taken or not, or conservation projects can be put in place
11 that target the best wildlife habitat.

12 So, this Action Plan is a tool to give
13 communities, developers, what have you, some hard
14 information to use when evaluating projects, and any
15 mitigation that comes down the road. So that you can
16 protect like habitat, and you have it mapped out, so you
17 can do that.

18 CHAIRMAN IGNATIUS: And, as I recall,
19 there were offers made by the Applicant to design the road
20 in a way that would be less disruptive than it could have
21 been, not as permanently paved for the full width of the
22 road, but ways to try and keep as much of it as possible
23 in a more natural state, and to underground some of the
24 electrical facilities to have less of an aboveground

[DELIBERATIONS]

1 structure that could be disruptive.

2 MR. ROBINSON: That's my take on it,
3 yes.

4 CHAIRMAN IGNATIUS: Any other comments
5 on that issue?

6 (No verbal response)

7 CHAIRMAN IGNATIUS: All right. The
8 issue of plants and the sort of natural communities of the
9 plant life in the area of the Project is another one that
10 we wanted to address.

11 MR. ROBINSON: Again, if you look at
12 some of the facts that were presented, this particular
13 area has been logged over many decades. It probably had
14 significant agricultural, i.e., sheep, farms over the
15 decades as well. The Heritage Bureau did do a study here,
16 and they didn't find anything of significance. The
17 wetland impacts, the Project is minimizing any wetland
18 impacts. So, there weren't any real issues there. And,
19 the Applicant has offered up an invasive plan to deal with
20 invasive species if the Project goes through. So, really,
21 plants and natural communities are going to be, from what
22 I see, primarily intact. And, that's about all.

23 CHAIRMAN IGNATIUS: Thank you. Any else
24 on that issue? Mr. Simpkins.

[DELIBERATIONS]

1 DIR. SIMPKINS: I just wanted to
2 mention, I believe it was in Audubon's brief, they did
3 comment on the plan, as far as invasive species
4 management. And, they did feel that there was a lack of
5 thoroughness in that plan. Specifically, they recommended
6 annual monitoring for invasive species into the future,
7 not just during construction, as well as documenting an
8 operational plan for removal of invasive species, if they
9 are found.

10 I believe, when Mr. Valteau testified
11 regarding that, they had about two things. And, I think
12 it's actually within the Avian and Bat Protection Plan.
13 And, it was about cleaning vehicles when they arrive,
14 cleaning vehicles on the laydown yard as they arrived for
15 the first time.

16 And, the other -- I believe the only
17 other thing in their Best Management Practices was using
18 native seeds for reseeding the roads. But, then, upon
19 questioning, he said "they may not be native seeds,
20 because some seeds are non-native, but they're not
21 invasive. And, so, the Fish & Wildlife Service has
22 determined them to be okay. So, they may or may not be
23 native seeds.

24 But it was basically their BMPs were

[DELIBERATIONS]

1 just washing the construction vehicles. There was nothing
2 long term beyond that. You know, and there's going to be
3 vehicles going in and out of this road for potentially
4 many decades, but there was nothing beyond the
5 construction phase to continue to monitor for invasive
6 species or what they were going to do if they found an
7 invasive species.

8 The other question that arises is, I'm
9 not sure if there's been any survey done of the area now,
10 to determine what, if any, invasive species are presently
11 there. As Mr. Robinson indicated, this area has been
12 logged in the past, and agriculture. So, there may be
13 something there already. But, sometimes when you go in
14 and you alter the habitat, you can expand those
15 populations. So, if you're not aware that they're there
16 in the first place, you have to be careful.

17 So, I just wanted to bring up that's
18 what the Audubon Society mentioned in their brief. And, I
19 would agree that there should be some type of monitoring
20 beyond just the construction phase.

21 CHAIRMAN IGNATIUS: And, I know that one
22 of the two of you, I've forgotten now already, mentioned
23 that Natural Heritage Bureau -- is that the right heading?
24 -- did some site survey. Did they -- do you know, did

[DELIBERATIONS]

1 they look for and did they find invasive species that had
2 already started to take hold that are independent of this
3 Project?

4 DIR. SIMPKINS: Yes. Reading back
5 through the Natural Heritage Bureau letters, there were
6 several. They were working with the consultant from early
7 on, back in 2011, looking at the habitat types and what
8 type of rare, threatened or endangered species they should
9 probably look for in that type of -- in that type of
10 ecosystem. They did not find any rare, threatened or
11 endangered plants. And, I did not find any indication in
12 the letters that they found any invasive plants.

13 Now, again, I don't believe that they
14 were specifically looking for them. They were looking for
15 "rare, threatened, endangered". So, the fact that there's
16 nothing in there about invasive plants, I wouldn't take as
17 concrete evidence that there weren't any, because that was
18 not their intent for that, for that review.

19 CHAIRMAN IGNATIUS: And, do you know,
20 when a large logging operation is to take place, do they
21 do the sorts of washing the vehicles and protocol for what
22 you do if you find invasives that you were talking -- that
23 Audubon was talking about?

24 DIR. SIMPKINS: There's no requirements.

[DELIBERATIONS]

1 However, our agency, Division of Forests and Lands,
2 working with a lot of other agencies, we develop a book
3 called "*Good Forestry in the Granite State*", which is --
4 we actually developed that book under state law. It's
5 required that we develop these basically "Best Management
6 Practices" for forestry, particularly around sensitive
7 areas. We just revised that in 2010. And, we did include
8 a chapter on "invasive species control". And, we do make
9 recommendations about, when you're first entering the
10 site, about cleaning your equipment.

11 We also have other recommendations in
12 there. Such as, if you're harvesting in an area that
13 already has known invasive species, that you harvest the
14 area with the invasive species last. So, you're not going
15 there first, and then spreading it everywhere else. And,
16 so, there are some recommendations and BMPs about invasive
17 species control for timber harvesting in *Good Forestry in*
18 *the Granite State*. And, I would rec -- that's a good
19 recommendation that those recommendations should be
20 followed.

21 CHAIRMAN IGNATIUS: As part of the
22 clearing required for road construction and turbine
23 construction?

24 DIR. SIMPKINS: Yes. During the

[DELIBERATIONS]

1 construction and the tree clearing.

2 CHAIRMAN IGNATIUS: Anything else on the
3 plant communities?

4 (No verbal response)

5 CHAIRMAN IGNATIUS: All right. I think
6 I asked you before if there had been any identification of
7 any rare, endangered or threatened species, animal or
8 plant or otherwise. But just make sure that we have
9 covered that?

10 MR. ROBINSON: Onsite itself, on the
11 ground, no. But there are a number of species that are in
12 the vicinity that have been discussed. And, we've talked
13 about the common nighthawk migrating, we talked about the
14 Bald Eagles. And, the Avian and Bat Protection Plan was
15 put in place to address those issues as well.

16 Audubon, in their briefs, had a number
17 of items relative to threatened/endangered species.
18 Talked about a radio telemetry study of Bald Eagle
19 fledglings from the two nearby nests for at least three
20 years. Annual monitoring for common nighthawks until the
21 facility has been decommissioned. They also state, "if a
22 pair of nighthawks was to be discovered in the immediate
23 vicinity of a turbine pad, that they are to notify the New
24 Hampshire Fish & Game Department and feather off --

[DELIBERATIONS]

1 feather or turn off the turbines from dusk to dawn until
2 the young are disbursed. And, they also suggest
3 curtailing operation of the facility during those
4 identified times when Golden Eagle migration is likely.
5 So, those are the -- those are the topics of engaged and
6 threatened species that may be in the area.

7 The Fish & Game Department also, in
8 their -- in their letter titled "Committee Number 16",
9 talked about "mitigative actions for birds". "Operational
10 mitigation may be necessary and should be evaluated to
11 prevent mortality to common nighthawks, and/or any other
12 threatened and endangered species that may be determined
13 to be impacted following the commission of this facility."

14 So, I think they have been fairly well
15 addressed. The Applicant has also talked about obtaining
16 a Take Permit for Bald Eagles. So, I think we've covered
17 that pretty well.

18 CHAIRMAN IGNATIUS: What were you
19 reading from again on the Fish & Game statement about
20 common nighthawks?

21 MR. ROBINSON: It was under the
22 "Mitigative Actions for Birds".

23 CHAIRMAN IGNATIUS: Was that an exhibit
24 in the --

[DELIBERATIONS]

1 MR. ROBINSON: Exhibit Committee Number
2 16.

3 CHAIRMAN IGNATIUS: Thank you. Anything
4 else on that issue?

5 (No verbal response)

6 CHAIRMAN IGNATIUS: Conservation
7 easements were also addressed in a number of different
8 circumstances. Can you refresh us on that?

9 MR. ROBINSON: There isn't a standard
10 that we have to go by for conservation easements and
11 mitigation for projects. So, we work -- we tend to work
12 with other conservation groups to conserve land. And, you
13 try to conserve land that's a similar type to the land
14 that's being impacted by a project. And, that certainly
15 seems to be the case in this instance.

16 The Harris Center has apparently decided
17 that the Applicant's proposal is adequate for the Project
18 and the area -- and the area. And, I don't believe they
19 would have stepped up to the plate to be the easement
20 holder, if they didn't feel that the conservation easement
21 land was going to mitigate the Project. The Harris Center
22 is a well-known and well-respected conservation
23 organization in the state, as are the Forest Society,
24 Audubon, the Nature Conservancy. So, apparently, they

[DELIBERATIONS]

1 have confidence in these easements, that they're going to
2 mitigate the Project, or I don't believe they would have
3 stepped up to the plate to accept them.

4 And, that's pretty much my comments on
5 that.

6 CHAIRMAN IGNATIUS: All right. Other
7 comments? I think -- Mr. Stewart, yes.

8 DIR. STEWART: My understanding is the
9 easement -- the total easement is about 800 acres. And, I
10 have more of a question than a comment, as to whether
11 that's inadequate? Is it more or is it less or is it
12 adequate, in terms of the amount of easement for a project
13 of this size? I know those easements have been widely --
14 there's been a lot of variety and variability, in terms of
15 other projects. So, I just raise -- you know, that's
16 about 80 acres a turbine. I don't know if that's the
17 right level or not. We talked about more mitigation for
18 aesthetics yesterday. So, I just raise the question for
19 discussion.

20 CHAIRMAN IGNATIUS: And, there is also
21 an issue of how those -- what amount of development those
22 easements would prohibit and what they would allow, and
23 that was an issue that there was quite a lot of discussion
24 about that we could address. Mr. Dupee.

[DELIBERATIONS]

1 MR. DUPEE: Thank you, madam Chair. You
2 raise a good point by Mr. Stewart. The idea of mitigation
3 implies that one can take something of lesser value, swap
4 it for something of higher value, it certainly wouldn't
5 work the other way around. So, when we talk about the
6 Willard Pond area, you have to ask yourself "what else is
7 out there that we could possibly swap for to give a higher
8 value?"

9 DIR. STEWART: Another question.

10 CHAIRMAN IGNATIUS: Yes, please. Oh,
11 Ms. Lyons.

12 MS. LYONS: And, that's building on both
13 what Harry and Brook are saying, is that this is a -- the
14 wind is a public resource, we're impacting a community.
15 And, the conservation easements are really just in the
16 Project area. They have no -- I mean, they're part of the
17 Rural Conservation District, it is identified, but there
18 is no link to other conserved areas or how this
19 conservation package relates to those other conservation
20 areas. And, I agree with Harry, I think it's minimal. I
21 think that it should be something larger that relates to
22 the larger conservation efforts in the region that we've
23 heard about from the testimony.

24 CHAIRMAN IGNATIUS: So, your concern is

[DELIBERATIONS]

1 both the square footage total, but also where it is or who
2 has access to it? Not just conserving private lands, but
3 something that is more public in nature?

4 MS. LYONS: I would like to see a public
5 component to it. You know, the public is not going to be
6 welcome in the Project area. I'm not really sure how much
7 public access there will be to these areas that are
8 conserved. And, there's a public resource, you know, the
9 natural resources that they're using.

10 CHAIRMAN IGNATIUS: All right. There is
11 also the amount of land to be put into conservation has
12 shifted over the course of the case, expanding from the
13 early days through the course of the hearings, and then --
14 not through the hearings, but through the course of the
15 development of the case being developed here. And, then,
16 since then, there's further -- there's talk of further
17 land being put into protection. Am I right, Mr. Iacopino?

18 MR. IACOPINO: Yes. I believe there was
19 an addendum -- there was an addendum to the Applicant's
20 brief that contained an additional conservation easement.
21 And, I'm looking for the acreage. I thought it was 123
22 additional acres over the original offer that you heard
23 about during the adjudicatory proceeding. And, that is
24 attached to their brief. There is a conservation easement

[DELIBERATIONS]

1 and conservation easement deeds, which are fairly lengthy.
2 But they are attached to the Applicant's brief. And, the
3 conservation easement is from -- I don't know if it's
4 identified, I guess the Whittemore Trust, with the Harris
5 Center being the holder of the conservation easement.

6 CHAIRMAN IGNATIUS: And, when you say
7 it's "from the Whittemore Trust", that's a particular
8 tract of land that is under that -- does it identify the
9 property being offered?

10 MR. IACOPINO: It does, but it does it
11 in deed language. So, I don't know if that's going to be
12 of much help or not right now.

13 DIR. SIMPKINS: I believe there is, if
14 you go to the very end of that addendum, I believe there
15 is two maps.

16 MR. IACOPINO: Yes.

17 DIR. SIMPKINS: One is a black and white
18 map, and then it's followed by a colored map. And, I
19 believe the new one is kind of towards the tail-end of
20 that, closest to Willard Pond. I believe it's out towards
21 Turbines 9 and 10, are the new 123-acre section, if I
22 looked at the map correctly.

23 DIR. STEWART: And, just for clarity, is
24 that 123 on top of the 800 --

[DELIBERATIONS]

1 DIR. SIMPKINS: No. It was 600 --

2 DIR. STEWART: -- or is that adding up
3 to 800?

4 DIR. SIMPKINS: Yes. It's 685 acres, I
5 believe, is, when we closed the evidentiary hearings, it
6 was 685 acres. And, then, there's an additional 123 acres
7 since that time, for a total of 808 acres.

8 DIR. STEWART: Thank you.

9 CHAIRMAN IGNATIUS: Thank you. Another
10 issue that I recall a good bit of discussion about was the
11 ability of the holders -- that the property put under
12 easement within the Project site that would have the
13 ability to build a home on the property, but otherwise not
14 allow for development. And, as I recall, there was two
15 schools of thought there. One was that, "if you're going
16 to allow for development of a house, then you're not
17 really conserving it as is right now. And, so, it's not
18 that great of an offer." And, the contrary argument was,
19 "without this easement, that land currently could be
20 developed, not just for a single house, but for extensive
21 housing or cut up into smaller units, and quite a lot of
22 housing built there. And, so, you're trading off the risk
23 of all of it being developed for the potential that one
24 particular house could be put on the land." Which I found

[DELIBERATIONS]

1 -- which I found meaningful. I mean, I think we recognize
2 that, in New Hampshire, we don't have a lot of -- we tread
3 lightly on telling people what they can do with their
4 land. And, there is, for an awful lot of open land that
5 we revere in the state, there's not much protection over
6 what it could be, how it could be used, and how it could
7 be developed. And, so, personally, I took that as a
8 valuable protection, that that acreage would be at risk of
9 no more than a few individual homesites. And that,
10 currently, it's at risk of far, far more development.

11 But others, obviously, reached different
12 conclusions on that. And, within the Committee, if people
13 have a different view on that, please, please voice it.

14 Mr. Robinson.

15 MR. ROBINSON: I actually agree with
16 what you said. In an ideal world, when you're trying to
17 craft conservation easements for conservation purposes,
18 your goal is not to have any further development. But, in
19 lieu of that, you have to make concessions at times, and
20 then you have to decide if that's good enough or not.

21 So, I think your description of this
22 particular easement area is exactly what you have to deal
23 with. And, I agree. It's -- the alternative would be
24 horrendous, as far as future development. So, you're

[DELIBERATIONS]

1 trading off one house for many more in the future. So,
2 those are the sorts of things that you have to deal with
3 when you're trying to put together conservation easements.
4 And, there's no cookie-cutter approach.

5 CHAIRMAN IGNATIUS: Anything else on
6 that issue? Mr. Simpkins.

7 DIR. SIMPKINS: In looking through the
8 briefs and some of the past testimony, one of the things
9 that came up regarding those reserved rights for building
10 weren't necessarily that -- I believe some people may have
11 said "no further development". But it seemed like the
12 most prevalent argument was "not on the ridge or the near
13 ridge slopes." Not that people would be upset if another
14 house was built farther down, but it was protection of the
15 ridge in particular. And, so, changing that easement
16 language to say that, you know, that the new structures,
17 and I think there was a square footage limit or something
18 also, "13,000" sticks in my head, but I'm not sure if
19 that's correct or not. But basically saying that they
20 couldn't do it on the ridge.

21 A couple other issues, in rereading
22 through the conservation easement things, were the fact
23 that I believe there's three turbines kind of in the
24 middle of the ridge, that land is not protected. So,

[DELIBERATIONS]

1 there's conservation easement kind of towards the Route 9,
2 those first turbines. There's conservation easement
3 towards the tail-end, down the last several turbines.
4 But, the middle of the ridge, there's no easement. So,
5 the concern is long term, that middle of the ridge could
6 still be protected -- or, still be developed, I should
7 say.

8 And, there was also some concern about,
9 after decommissioning, protection of the ridge. I assume
10 that relates to that section in the middle that doesn't
11 have an easement on it, because the other easements would
12 be in perpetuity even after decommissioning.

13 The only other thing I would mention
14 about the easements is, looking through the actual
15 easement language, it does call for a "management plan",
16 but it doesn't say who writes that management plan. And,
17 I think there should be some language in there that "the
18 management plan must be written by a New Hampshire
19 licensed professional forester."

20 They also -- there's some other
21 additional easement language around that section that
22 talks about "by the then current scientifically based
23 forestry principles by UNH Cooperative Extension or other
24 government agencies and RCS", and things like that. So, I

[DELIBERATIONS]

1 mean, that's kind of some standard boilerplate language we
2 use in our easements, *Good Forestry in the Granite State*,
3 because all those various parties they mention come
4 together to help write *Good Forestry in the Granite State*.
5 And, again, that's in law that we have to develop those.
6 And, we try to update them about once every ten years.
7 You know, whether or not they want to use that language or
8 not, I don't know that it will make that big a difference.
9 But I think it is important that it should say that "the
10 management plan be written by a licensed professional
11 forester."

12 CHAIRMAN IGNATIUS: Anything else on the
13 easement issue?

14 (No verbal response)

15 CHAIRMAN IGNATIUS: All right.
16 Mr. Robinson, did you have any other areas to address in
17 the "natural environment" broad category that we haven't
18 gotten to?

19 MR. ROBINSON: I do not. No.

20 CHAIRMAN IGNATIUS: Thank you for going
21 through it. This was an area with an enormous number of
22 witnesses from the Applicant and from many of the
23 intervenors, and a lot of -- a lot of testimony that was
24 sometimes at odds with each other. And, so, I appreciate

[DELIBERATIONS]

1 that.

2 We should now consider the findings that
3 we have to make regarding "natural environment". And, I
4 guess I want to ask people, should we take a break and
5 come back and do that or go through a sort of straw vote
6 on these issues, and then take a break?

7 Looks like we're getting the break
8 signal as more prevalent here. So, why don't we do that.
9 It's now 10:30. So, let's try to make it a 10 to 15
10 minute break, and be ready to go between 10:40 and, say
11 10:45. Thank you.

12 (Recess taken at 10:30 a.m. and the
13 hearing resumed at 10:52 a.m.)

14 CHAIRMAN IGNATIUS: All right. We're
15 back again from a break. And, we are now at the point of
16 taking a straw vote on the "natural environment" issues,
17 and whether the Application would cause an undue adverse
18 effect on the natural environment. Because, as we just
19 went through these, there are numerous issues and
20 far-ranging, and some of more concern to individuals than
21 others probably. I think what makes sense, rather than
22 simply a just sort of show of hands up or down, is to give
23 each person some time to describe, in your own mind, where
24 you come out on the issues of most importance within this

[DELIBERATIONS]

1 category. And, then, sort of overall, you know, what your
2 net result is, whether some that may be up and some that
3 may be down, and how you end up concluding whether, on
4 balance, the Project would or would not have an undue
5 adverse effect.

6 So, I think we'll try and work our way
7 around to everyone's point of view. We probably will go
8 through, you know, may go back again to certain issues,
9 after hearing each other out. And, so, it may take a
10 couple of times back into a few issues before we're
11 through this one. But it really is different than some of
12 the ones we've been dealing with, in terms of the variety
13 of issues that we have to sort through. So, that's how
14 I'd recommend we proceed with this one.

15 And, we can just go in order as people
16 are seated, if that works for people. If you're not
17 certain you want to go in a certain order, please speak up
18 and we can come back to you. But, if that's okay,
19 Mr. Stewart, can we begin with you?

20 DIR. STEWART: Sure. I believe that,
21 collectively, there is not a significant adverse effect on
22 the natural environment. Relying on the experts, the U.S.
23 Fish & Wildlife Service and Fish & Game Department seem to
24 be satisfied that there's no really significant risk to

[DELIBERATIONS]

1 avian species, particularly endangered species.

2 I think the other is just wildlife
3 habitat fragmentation, endangered and threatened species
4 on the ground and in the air, have been reasonably
5 addressed. Conservation easements is a subjective
6 decision, I think, of the Committee, as to whether the
7 800 acres is reasonable. I personally can live with that.
8 I think maybe we need more discussion on that as a
9 condition later. So, I'll conclude with that.

10 CHAIRMAN IGNATIUS: All right. Thank
11 you. Ms. Lyons.

12 MS. LYONS: I also agree that there's no
13 unreasonable adverse effect to the natural environment.
14 And, I would like to see that some science-based studies
15 inform any mitigation that's recommended or --

16 MR. IACOPINO: I'm sorry, what kind of
17 studies?

18 MS. LYONS: "Science-based". And, I
19 think we went through some of that in our discussion about
20 on what would be reasonable amounts of time.

21 CHAIRMAN IGNATIUS: Can you elaborate?
22 I'm not sure I'm getting what you're concluding there.

23 MS. LYONS: For any mitigation that we
24 recommend, that it goes back to something that's

[DELIBERATIONS]

1 science-based. So, we had talked about, "is a one-year
2 versus a three-year study appropriate?" So, it should go
3 back to what's science-based for mitigation.

4 CHAIRMAN IGNATIUS: I don't know what
5 that means.

6 MS. LYONS: Okay.

7 CHAIRMAN IGNATIUS: Sorry. I think it's
8 a term that's --

9 MS. LYONS: Right.

10 CHAIRMAN IGNATIUS: -- meaningful in
11 your field, so help me out.

12 MS. LYONS: Just that there's a -- it
13 goes back to standard protocols. And, as Ed was saying,
14 you know, going back to repeatable studies that can be
15 done over time, and not just things that are picked out
16 one year at a time.

17 CHAIRMAN IGNATIUS: Mr. Dupee, you want
18 to help clarify on that?

19 MR. DUPEE: This is sort of a term of
20 art in some fields, including public health. So, a
21 "science-based" would be analogous to an
22 "objective-based". It's a quantitative method of knowing
23 one step, one step, up or down, just what kind of results
24 you're getting, versus a more random or just a person's

[DELIBERATIONS]

1 arbitrary opinion. So, that's what she's asking for is a
2 "science-based".

3 MS. LYONS: Thank you, Brook.

4 CHAIRMAN IGNATIUS: Thank you. Anything
5 else?

6 (No verbal response)

7 CHAIRMAN IGNATIUS: All right.

8 Mr. Simpkins.

9 DIR. SIMPKINS: Yes. Focusing on the
10 term "unreasonable", I would agree that I don't believe,
11 collectively, that there is an unreasonable impact upon
12 the natural environment. That said, I feel that several
13 of the things we've discussed here this morning, there
14 would be several conditions that I would feel much more
15 comfortable with being in the end to say that. But, I
16 feel, based on some conditions, that it's not unreasonable
17 overall.

18 Things such as, you know, the
19 curtailment plan that we spoke of in the Avian and Bat
20 Protection Plan that Mr. Robinson spoke of; some
21 additional monitoring and planning for invasive species
22 control; and kind of fleshing out those BMPs a little bit
23 better; and making sure, if it's a forest management plan
24 for the easement areas, that it's written by a licensed

[DELIBERATIONS]

1 forester. Those are some of the things I'd like to see to
2 mitigate any impacts.

3 The easement is a very tough subject,
4 because it is subjective, and there's no "this many acres
5 is appropriate". You know, not every acre is the same.
6 Some acres would be much more available than other acres.
7 So, based on that, it's hard to say, you know, that amount
8 of conservation easement is unreasonable for mitigation.
9 Certainly, it would be, you know, nice to see the whole
10 ridgeline protected. But, again, I don't think the fact
11 that it it's not is unreasonable.

12 One thing I am still kind of on the
13 fence about, and I think I have to go back and read the
14 specifics in the easement, but the location of the
15 buildings. It does seem like, again, carving out a
16 building lot I don't think is that out of the ordinary for
17 conservation easements. But, making sure they're in an
18 appropriate area, and not right up on the ridge, if that's
19 what we're trying to protect, I think may be appropriate.
20 But I'd like to look at the easement. I know there were
21 some differences. One was just a hunting camp, versus a
22 home and stuff like that.

23 But, overall, in totality, I don't see
24 that it would be unreasonable impact.

[DELIBERATIONS]

1 CHAIRMAN IGNATIUS: Thank you.

2 Mr. Robinson.

3 MR. ROBINSON: I would agree with my
4 colleagues. I don't believe that, collectively, the
5 Project will have an overall adverse impact on the natural
6 environment.

7 Having said that, there are a number of
8 science-based conditions that we need to discuss that
9 would allow us to learn, if the Project was certificated.
10 And, I don't know if you want me to go over those now or
11 when you come back around or --

12 CHAIRMAN IGNATIUS: Sure. Why don't you
13 go ahead.

14 MR. ROBINSON: Okay. I do have several.
15 The first would be that a three-year post construction
16 avian and bat mortality study should be conducted, and
17 adaptive management should follow, if necessary. The
18 Avian and Bat Protection Plan should be put in place or
19 should be approved by the Fish & Game Department. The
20 Fish & Game Department should review and approve all
21 wildlife and avian surveys that may be conducted. A radio
22 telemetry study of Bald Eagle fledglings from the two
23 nearby nests should be developed, in conjunction with the
24 Fish & Game Department and the Fish & Wildlife Service.

[DELIBERATIONS]

1 This will allow us to learn. And, I believe that annual
2 monitoring for common nighthawks, both migratory and
3 breeding, should take place until the facility has been
4 decommissioned.

5 With these particular conditions, I
6 think it will provide us an opportunity to learn some
7 important wildlife reactions to these types of facilities
8 in the future.

9 CHAIRMAN IGNATIUS: Thank you.

10 Ms. Bailey.

11 MS. BAILEY: I agree that I don't
12 believe that the Project will have an undue adverse effect
13 on the natural environment overall. I think the potential
14 exists for adverse impact to the bats because of
15 white-nose syndrome. I'm sorry to see that the glacial
16 boulders don't have any impact on the animal habitat,
17 because I think that they're pretty, but I also think that
18 that's a -- that's not science-based, according to
19 Mr. Robinson. So, I'll let that go.

20 And, I think that, when we're discussing
21 the conditions that are going to be imposed, so that
22 everybody can find that there won't be an adverse impact
23 with these conditions, we need to keep in mind the cost
24 versus the benefit. And, I'm not suggesting that I've

[DELIBERATIONS]

1 concluded that some of these things are too costly or that
2 the cost outweighs the benefit. But I think we just need
3 to keep in mind that, if the overall finding is that there
4 isn't an undue impact, that we don't use -- I'm sorry. I
5 can't get my thought on that. I'll just leave it at that.

6 CHAIRMAN IGNATIUS: All right. I also
7 do not see the -- can't conclude that there would be an
8 unreasonable adverse impact on the natural environment as
9 a result of the Project. I do think a number of the
10 protective measures that the Applicant has committed to
11 doing are very helpful. In the Avian and Bat Protection
12 Plan, they talk of curtailment at certain times in the
13 plans for road construction to refrain from clearing
14 during nesting periods, that sort of thing, is a big part
15 of why I come to that conclusion that there already have
16 been good, responsible steps taken to protect the natural
17 environment in the way that the Project has been
18 structured. And, so, there's less concern on my part of
19 anything that we would need to do to ensure that it's
20 something that doesn't cause undue effects.

21 I think there are a few conditions that
22 are worthy of discussing that may go even beyond what's
23 already been offered. There is discussion of how to deal
24 with invasives during the clearing and construction --

[DELIBERATIONS]

1 road construction phase. And, it sounds like that could
2 be expanded a bit, with a little more attention to ongoing
3 risk of invasives, not just during the initial
4 construction/laydown period, but beyond that, to build
5 some of those practices into all of the sitework on the
6 Project. And, clear understanding of what to do when
7 invasives are discovered that Mr. Simpkins described.
8 Sounds like there's written materials that have already
9 been developed and used in similar land-clearing projects
10 that could be adapted to this as well. And, I think that
11 would be an appropriate condition, to require that those
12 be -- those be followed by the Applicant here.

13 On what number of years to study and
14 what the consequences of discovering a problem with the
15 avian and bat studies initially, you know, ideally, we
16 would study everything, and commit to everything, but I'm
17 trying to be realistic here about things that have been
18 proposed. And, I found the Applicant's offer of a
19 one-year study, with a clear commitment to make changes
20 for the life of the Project if certain things came
21 forward, to be acceptable in my mind. And, certainly
22 wouldn't be opposed to more years of study, but I think
23 the kind of balance that Ms. Bailey was beginning to talk
24 about, of finding the right level of what we can

[DELIBERATIONS]

1 appropriately impose, to me, falls to doing a one-year
2 study, although I'm sure that more years' data is that
3 much richer. I think it's a fair compromise to accept the
4 Applicant's proposal on that. But recognize that other
5 Committee members have strong views, and that maybe that
6 that's -- I'm more in the minority on that one.

7 On the number of conservation easements
8 and the amount of acreage under easement, I don't find a
9 basis to condition that there be additional acres put
10 under conservation. I think it's already a large number
11 of acres that have been proposed to be set aside to the
12 long-term benefit of the area. And, I think the 600 some
13 acres, plus the additional 100 plus that we just talked
14 about before is significant. And, I wouldn't push for
15 further than that. And, I wouldn't -- personally, I would
16 not push for any effort to rewrite those easements, to
17 change the terms under which the land can be used. I
18 think it's already fairly restrictive, and, to me, a
19 reasonable level of protection. Again, I understand that
20 I may be in the minority on some of those issues, but
21 that's how I come out on that one.

22 On the boulders, I think we all love our
23 boulders, and more so than the wildlife do. Who knew
24 that, to them, it's just another rock? But I think any

[DELIBERATIONS]

1 effort to avoid those boulders in construction, obviously,
2 should be taken very, very seriously. I didn't get a real
3 clear sense in the record that they would or would not be
4 disturbed. I think there was a concern that they might
5 be, but that wasn't absolute. And, if there is a way to
6 avoid disturbing those, that area, to work around them, or
7 to minimize it to the greatest degree possible, I would
8 support that. It's a magical kind of thing for us to be
9 around. And, there's something very powerful about those
10 massive, massive things that dwarf us and make us have to
11 admit that there's been a lot going on on our planet that
12 we can't really -- can't really fathom. So, you know,
13 they're special places. And, if we can avoid them being
14 disturbed, or minimized to the greatest degree, I think we
15 should push for that.

16 And, I don't think I had anything else
17 to address. Mr. Dupee.

18 MR. DUPEE: Thank you, madam Chair. I
19 agree with all the rest of my colleagues. I don't find it
20 at this point an unreasonable adverse impact on the
21 natural environment in the Applicant's Application. I do
22 maintain some concerns about whether mitigation is
23 possible on a site like this, for reasons I articulated
24 yesterday. So, that is what I have to say right now.

[DELIBERATIONS]

1 CHAIRMAN IGNATIUS: Mitigation as to the
2 natural environment?

3 MR. DUPEE: The idea that we would site
4 this facility where its asked to be sited, on this notion
5 that we could have some offsetting benefits someplace else
6 that would mitigate the fact of the site being where it's
7 located. So, we're already saying, by agreeing with that,
8 that there is something to mitigate. There must be an
9 aesthetic or a natural environment concern, because
10 otherwise you wouldn't have the need for mitigation. So,
11 the next question for the Committee members is, "is there
12 something there that actually can be mitigated or can it
13 not?"

14 CHAIRMAN IGNATIUS: All right. Just I'm
15 not sure I'm following, though. As to aesthetic issues, I
16 know that's something we talked about yesterday, and need
17 to go back to discuss whether there's mitigation that can
18 resolve that concern. But, looking only at the "natural
19 environment" questions, are you concluding that there is
20 not an unreasonable adverse impact?

21 MR. DUPEE: Strictly on the basis of the
22 natural impact, yes. But, also, we talked during this
23 discussion about "mitigation", and that's why I made the
24 point I just made.

[DELIBERATIONS]

1 CHAIRMAN IGNATIUS: Okay.

2 MR. DUPEE: So, if the question is
3 solely on the merit of the natural environment, I do not
4 believe there is an unreasonable adverse effect.

5 CHAIRMAN IGNATIUS: Okay. Thank you.
6 Mr. Green.

7 MR. GREEN: Yes. Thank you. I also
8 agree with my colleagues. I feel that there is not a
9 collective unreasonable effect on the natural environment.
10 I thought both sides to this issue brought up good points.
11 They made their issues well known. Out of that, I did
12 feel that the Applicant had tried to put his best foot
13 forward in trying to mitigate the impacts to the natural
14 environment. He proposed the Avian/Bat Plan. The one
15 questions I do have here, and I am concerned about, is the
16 one-year versus the three years. Being an engineer, we
17 like to have as much data as possible, and I would prefer
18 the three years.

19 Some of the additional conditions, and
20 maybe Ed mentioned it and I missed it, I thought that
21 there should be an Eagle Take Permit included in this.
22 And, I just want to make sure that that's considered.

23 I was also sad to see that maybe the
24 boulders didn't have an effect on the wildlife, being the

[DELIBERATIONS]

1 Granite State. But that, be as it may, I think we should
2 try to minimize impacts to them.

3 It also was helpful to hear from Ed
4 about the wildlife and whether or not a roadway, an access
5 roadway would have an effect on that. It didn't appear
6 that that would be the case.

7 One concern that we have, as part of the
8 Department of Transportation, is invasive species. And, I
9 agree with the Audubon Society that there should be some
10 type of continuing monitoring for that within the Project
11 limits.

12 And, I also thought that the Applicant
13 has done a very good job, as trying to put together
14 easements for the 800 acres of conservation. That's a
15 significant amount of acreage. I know that others may not
16 agree with that, but that's a substantial amount of
17 acreage.

18 And, I also would request as part of
19 that, and I think it was Brad who brought this up, that
20 there needed to be some kind of a management plan written
21 by a registered forester professional.

22 So, with those conditions, that's where
23 I'm at.

24 CHAIRMAN IGNATIUS: Thank you.

[DELIBERATIONS]

1 Dr. Boisvert.

2 MR. BOISVERT: Thank you. I come to the
3 same end result as my colleagues here, with a slightly
4 different perspective. I would say there would be no
5 unreasonable adverse effect, if there were certain
6 conditions. Absent those conditions, then I would very
7 seriously consider saying "there was an unreasonable
8 adverse effect."

9 The conditions, I believe, need, in
10 large part, to be things that would be very much
11 necessary. And, to that end, I would view the three-year
12 study, over the one-year study, with the -- grasping for
13 the word -- mitigative, adaptive measures afterwards to be
14 a necessary condition.

15 Regarding invasive species, monitoring
16 is good, steps are good. I think the horse is out of the
17 barn for much of it, because, as we understand it, there's
18 already been timbering, that was portrayed as being just
19 "regular timbering", but it happened to link up all of the
20 turbine locations and didn't go much further. That said,
21 if there's additional roadwork and clearing, then, yes,
22 there should be concern over invasive species, and then
23 monitoring after construction, because some invasive
24 species maybe will be released. I like the term I found

[DELIBERATIONS]

1 from my forestry colleagues about "releasing trees", I had
2 this idea of pine trees running around. But, as you open
3 up an area, it makes it more possible for certain species
4 to flourish, and that could be the situation here.

5 The need for a management plan prepared
6 by a qualified person is, I believe, essential, because it
7 leaves it open. And, a management plan written by someone
8 who does not take a science-based approach or based on
9 science-based data, could then simply become a whitewash
10 or a free pass. So, I think there needs to be that kind
11 of specificity in the permit.

12 So, I agree with the conditions that
13 others have mentioned. I guess the area of potential
14 variation among the Committee is the one- versus
15 three-year study. But I think that needs to be in there,
16 and I would support the three-year.

17 But I see these as, without these
18 conditions, then it would be getting to the level of
19 "unreasonable adverse effect". That's my perspective,
20 that's how I look at it.

21 And, for the boulders, I was hoping that
22 they might become little habitats for archeological sites.
23 In looking at it, I don't think it's going to be the case.
24 I find it refreshing that some of the other people like

[DELIBERATIONS]

1 rocks, too. And, there are certain areas in the state
2 where I could support an argument that they are indeed
3 significant in the environment, but this is not one of
4 them. And, I don't think we ought to overplay our hand,
5 just because we have a non-science-based reason to protect
6 it. That's it.

7 CHAIRMAN IGNATIUS: All right. Thank
8 you. That was very well said. Anything, after hearing
9 each other, anything further that anyone wants to mention?
10 And, then, let's bore in a little bit on some conditions.
11 Mr. Simpkins.

12 DIR. SIMPKINS: Oh. One thing I did
13 forget to mention, and I know we talked about it earlier,
14 was that, during the construction phase, the logging
15 should only be done, I remember talking, I don't know if
16 it was Butler and Martin or who it was, but "dry or frozen
17 ground". I know there was some discussion about timing of
18 permits was going to dictate when they start, and that was
19 concerning, because there are certain times of year,
20 particularly up on top of a slope, where soils are
21 typically thin, you have a slope, so, there's, you know,
22 potential for other erosion issues, you need to be careful
23 when you're doing your logging. And, so, I think there
24 should be -- I know Fish & Game had something in there

[DELIBERATIONS]

1 about nesting, but I think we should definitely make sure
2 that it's done on "dry or frozen ground". Frozen
3 preferably, but, if we have a nice dry summer, that would
4 be fine, too.

5 And, there was nothing in there about,
6 and I know some of that area has already been logged, but,
7 again, you know, using Best Management Practices and good
8 forestry regulations, such as are found in *Good Forestry*
9 *in the Granite State*, I think would be prudent also.

10 CHAIRMAN IGNATIUS: So, a phrase like
11 "dry or frozen ground", that means you're avoiding mud
12 season?

13 DIR. SIMPKINS: Correct. Yes. Or,
14 sometimes, you know, our falls lately, where we get
15 tropical moisture, you know, you don't want to be
16 operating in the woods. If it's a good contractor, they
17 will know when it's appropriate to cut or not. I know one
18 of the questions I had was, they have in there they were
19 going to hire a "qualified logging contractor", I believe
20 is the language they used. And, I asked "well, what is
21 "qualified"?" And, they were not aware that, in New
22 Hampshire, foresters are required to be licensed, but
23 loggers are not required to be licensed or certified or
24 anything. There are some who voluntarily are part of the

[DELIBERATIONS]

1 Professional Loggers Program, but that's a totally
2 voluntary thing.

3 So, I just wanted to make sure, when
4 they said "qualified", they didn't really have any
5 conditions of what they considered "qualified", and they
6 weren't aware that there was no licensing. So, just
7 wanted to make sure, whoever they end up hiring to do the
8 tree clearing, however much more is needed up there, that
9 they do it under appropriate conditions.

10 CHAIRMAN IGNATIUS: So, what would you
11 consider to be "qualified"? If we were to put any sort of
12 requirement, a condition, we need to make sure that it's
13 understandable and enforceable by common terms. What
14 would a "qualified logger" be, in your view?

15 DIR. SIMPKINS: Well, probably the
16 easiest would be someone who is a -- who has completed the
17 Professional Loggers Program. There's quite a few of them
18 out there. It won't be hard to find someone. That's a
19 voluntary program that's run by the Timber Harvesting
20 Council and the Timberland Owners Association. That may
21 be the easiest thing. There are certainly other good
22 contractors, who may not be professional logger qualified,
23 but that kind, you know, as far as determining how they
24 would be qualified, that may be a little bit harder to

[DELIBERATIONS]

1 ascertain. You know, they could check with our agency,
2 for instance, to determine, you know, we regulate logging
3 and we're the enforcement agency for that. So, oftentimes
4 landowners will check with us first, when they are going
5 to hire someone, to see if we have -- what our record is
6 with them. If we've had them in court numerous times and
7 fined them numerous times and things like that, they like
8 to know that before they hire someone. So, that would be
9 another --

10 CHAIRMAN IGNATIUS: So, -- please, go
11 ahead.

12 DIR. SIMPKINS: Well, I was just going
13 to say, that would be another way, checking with us to see
14 if we, you know, what type of record we have on a
15 particular person.

16 CHAIRMAN IGNATIUS: So, there might be
17 contractors you're aware of who may not have all been
18 through that coursework, but you know them for having a
19 reputation for doing logging appropriately?

20 DIR. SIMPKINS: Yes. Or, we know them
21 to not have a reputation the opposite way, where they're
22 constantly getting into trouble, would probably be a
23 better way to say it. And, we would -- obviously, that
24 would be on record. If we have taken legal action against

[DELIBERATIONS]

1 someone, that's all on record.

2 CHAIRMAN IGNATIUS: All right. There
3 were a number of conditions that were alluded to that we
4 should talk through. Mr. Iacopino, I know you were
5 writing furiously. Were you able to sort of keep a list
6 of what was being thrown out there we can go through in a
7 little more thoughtful way?

8 MR. IACOPINO: Yes. I have a list of
9 the conditions that have been discussed by the Committee
10 here during your deliberations. And, as I understand what
11 I'm hearing, these are conditions that are above and
12 beyond those already offered in the Application. And,
13 they're in no particular order, they're just the way I
14 wrote them down. One is whether or not to require the
15 Applicant to obtain an Eagle Take Permit, in compliance
16 with the recommendation of U.S. Fish & Wildlife.

17 The next one I have written down is
18 whether or not a three-year bird study -- or, avian study
19 should be required, rather than one year, followed by
20 adaptive management.

21 The next thing I have written down is
22 that the Applicant should be required to prepare an
23 invasive species plan that goes beyond the construction
24 phase of the Project.

[DELIBERATIONS]

1 Next thing I have written down is that
2 the Applicant should be required to use a licensed
3 forester, who will base the easement management plan on
4 accepted principles, such as those from Best Forestry
5 Practices and New Hampshire Cooperative Extension, I think
6 I got that right.

7 CHAIRMAN IGNATIUS: I think it's even a
8 "New Hampshire licensed", not just "licensed", is that
9 right?

10 MR. IACOPINO: Right, "New Hampshire
11 licensed forester". Correct.

12 DIR. SIMPKINS: And, it's *"Good Forestry*
13 *in the Granite State"*.

14 MR. IACOPINO: *"Good Forestry in the*
15 *Granite State"*, okay. But, based on that, and things like
16 the Co-op Extension.

17 The next one I have written down is
18 whether there should be a condition regarding the
19 placement of the homes within the conservation easement on
20 the ridgeline.

21 Next one I have down is from
22 Mr. Robinson, is that Fish & Game should have final
23 approval of all wildlife and avian studies.

24 I have construction should be limited to

[DELIBERATIONS]

1 times of -- to dry times of year, and that was just
2 discussed between the Chairman and Mr. Simpkins.

3 A Bald Eagle telemetry study, should
4 that be required as a condition?

5 And, as an additional condition, should
6 the Applicant be required to conduct annual monitoring for
7 the species known as the "common nighthawk"?

8 The next condition I have written down
9 is whether there should be science-based studies prepared
10 for -- to determine the appropriate amount of mitigation?

11 And, the next one is the last thing that
12 was discussed by Mr. Simpkins, is the requirement that
13 they use a professional logger or somebody who is either
14 qualified through the Professional Logger or otherwise
15 not, for lack of a better term, "blackballed" by Forests
16 and Lands.

17 Those are the ones I have. I do want to
18 point out one other thing. There is, I think, Committee
19 Exhibit 16, is the October 26, 2012 letter from the New
20 Hampshire Fish & Game Department. And, that had some
21 requests in there. I'm not sure if they are wrapped up in
22 the conditions that I have just gone through, but I think
23 you all should look at that and determine whether or not,
24 because I think, in here, you would want to add to that

[DELIBERATIONS]

1 list of conditions, or, if you think that the conditions
2 that I have just read through adequately include what Fish
3 & Game wants here. Or, if you think that Fish & Game just
4 doesn't, you know, they're unnecessary. So, that's the
5 question I just put out there for you, how do you want to
6 deal with that letter.

7 CHAIRMAN IGNATIUS: I think another one
8 that was talked about, I didn't hear you describe, was to
9 protect, to the extent possible, the boulders --

10 MR. IACOPINO: I'm sorry.

11 CHAIRMAN IGNATIUS: -- in the area of
12 the road.

13 MR. IACOPINO: I have less affinity for
14 boulders than everybody else, I guess. I'm writing it
15 down, "protection of boulders", say that "by avoidance"?

16 CHAIRMAN IGNATIUS: Yes. I was thinking
17 sort of to the extent possible, not a mandate that they
18 can't be touched, but minimize as much as possible.

19 MR. IACOPINO: It's on the list.

20 CHAIRMAN IGNATIUS: And, did anyone
21 recall any other conditions that didn't make it on the
22 list there?

23 MR. BOISVERT: I'm not -- I'm not sure.
24 Did we get the post construction monitoring studies, and

[DELIBERATIONS]

1 the fact of the one versus three-year?

2 MR. IACOPINO: Yes.

3 MR. BOISVERT: I guess I missed that,
4 okay.

5 MR. IACOPINO: Just, Mr. Boisvert, to
6 answer your question, I referenced the three-year versus
7 one-year study, --

8 MR. BOISVERT: Okay.

9 MR. IACOPINO: -- followed by adaptive
10 management; the eagle telemetry study, suggested by
11 Mr. Robinson; the annual monitoring for the common
12 nighthawk --

13 MR. BOISVERT: Right.

14 MR. IACOPINO: -- was the other one, as
15 far as avian studies.

16 MR. BOISVERT: Thank you.

17 MS. BAILEY: I had one more on my list
18 that I had written down. And, that was that "Fish & Game
19 was to review all studies."

20 MR. IACOPINO: Yes, I did.

21 MS. BAILEY: And, that was a shorthand
22 note. Okay, you have that?

23 MR. IACOPINO: I have "Fish & Game
24 approval of all wildlife and avian studies."

[DELIBERATIONS]

1 MS. BAILEY: "Approval", and then I had
2 a separate one that said that they were supposed to "get
3 all the data from those studies and review them."

4 MR. IACOPINO: Oh. Okay.

5 MS. BAILEY: And, that's what I
6 understood.

7 MR. ROBINSON: It was "review and
8 approval".

9 MR. IACOPINO: I'll just put "review" in
10 front of "approval".

11 CHAIRMAN IGNATIUS: And, I had another
12 note that, from Mr. Simpkins, it may have just been my
13 shorthand of what I was writing down, and it's been picked
14 up. But help me with what you were intending. You said
15 something about "Best Management Practices should be
16 fleshed out"? Mr. Simpkins?

17 DIR. SIMPKINS: Yes, I'm looking at my
18 notes. That may be for --

19 MS. BAILEY: I think that had to do with
20 "logging on dry or frozen".

21 DIR. SIMPKINS: Yes. I think I
22 mentioned BMPs in two different. One was "following BMPs
23 during logging", that's BMPs for erosion control and
24 timber harvesting operations. And, then, the other one,

[DELIBERATIONS]

1 they called them "BMPs" as far as invasive species, they
2 referred to them as "BMPs" in their aviation --
3 "aviation"? -- Avian and Bat Protection Plan. So, I
4 mentioned "BMPs" twice.

5 CHAIRMAN IGNATIUS: All right. Sounds
6 like we picked them both up then. All right. That's a
7 good list. I think we should then identify any that -- I
8 think, based on how people describe the issues going
9 around, many people referred to similar thoughts on those.
10 So, my guess is that a number of them there's common views
11 on, but there may be a few that aren't.

12 So, let's take the opposite. Are there
13 any that people would not support of the list that
14 Mr. Iacopino read through? And, we can discuss those and,
15 if need be, we can sort of take a vote on where the
16 majority falls on particular conditions. Ms. Lyons.

17 MS. LYONS: I'm not sure that we need to
18 make it a condition for the Golden Eagle Take Permit.
19 That's something that was recommended, but I'm not sure
20 that should be a condition.

21 CHAIRMAN IGNATIUS: I wondered about
22 that as well. It's U.S. Fish & Wildlife has not required
23 it. I don't know if it's within our authority to require
24 it. And, if I understand it, it's not anything that helps

[DELIBERATIONS]

1 the eagle population, it's something that protects the
2 Applicant if something tremendously bad happens. So, it's
3 more sort of risk insurance policy, risk management type
4 thing, than a protective measure on our part. And, so, I
5 guess I wonder if that's appropriate for us to mandate the
6 Applicant take that step. They're the ones who would bear
7 the risk, if it went wrong. But it doesn't -- doing it or
8 not doing it, it doesn't help the eagles, if I follow what
9 it does correctly.

10 MR. ROBINSON: That's correct. Yes.

11 MR. IACOPINO: I would just point out
12 for the Committee, that typically in these, the decisions,
13 there's usually a section of the decision that says that
14 "there's nothing that this agency does to relieve the
15 applicant or developer of their obligations under the
16 Migratory Bird Act." That's generally in our decisions.

17 CHAIRMAN IGNATIUS: So, what's the
18 thinking of the group? Do you want to make a requirement
19 that the Applicant obtain an Eagle Take Permit or drop
20 that from our list? Does anyone want to advocate for
21 keeping it as a condition?

22 (No verbal response)

23 CHAIRMAN IGNATIUS: All right. Then,
24 maybe that one will fall off the list. It remains a

[DELIBERATIONS]

1 recommendation of U.S. Fish & Wildlife for the Applicant
2 to consider.

3 I think another question where there may
4 be differences, based on what people had spoken about, is
5 the amount of study period on -- under the Avian and Bat
6 Protection Plan, and should it be a one-year study, with a
7 commitment to take certain corrective actions, if need be,
8 or a three-year study that would then lead to consultation
9 and further development on whether other steps should be
10 taken as a result. Mr. Robinson.

11 MR. ROBINSON: Just a couple of comments
12 on that. I believe that adaptive management should be
13 followed regardless of if it's a one-year or a three-year
14 study. But, again, with wildlife, there are so many
15 variables, and they don't hold still whether they're alive
16 or dead. You don't count the entire population, you're
17 only counting a very small segment. And, if you only do
18 that for one year, the likelihood of you getting an
19 accurate count is much less than if you do it for a
20 three-year period. We're using this one- or three-year
21 study, if you will, to obtain baseline data to be used
22 throughout the life of the Project.

23 So, if you're only going to use a
24 one-year snippet, the odds of you having an accurate count

[DELIBERATIONS]

1 are much less than if you do three consecutive years.
2 That's pretty much an accepted practice in the industry,
3 in the universities, when they're doing research and
4 management studies. So, I feel quite strongly that we
5 should require three years' worth of study to provide that
6 baseline documentation that's going to be used for the
7 entire length of the Project.

8 It will also allow us, I mean, this is a
9 large topic of debate, because we really don't -- we
10 really don't know a lot of this stuff. So, this, I think,
11 would iron out a lot of these issues. If we had three
12 good years of information, then that is used to be
13 extrapolated out over time.

14 CHAIRMAN IGNATIUS: Ms. Bailey.

15 MS. BAILEY: I think you've persuaded me
16 to require the three years. But, my question is, would
17 the mediation be as comprehensive as that which was
18 proposed by the ABPP, as a compromise for only studying
19 one year, or would it be the typical mediation that has
20 been imposed on prior projects?

21 MR. ROBINSON: I'm not exactly sure
22 what --

23 MS. BAILEY: Well, and maybe this is
24 because both you and I haven't done this before, but my

[DELIBERATIONS]

1 impression was that the offer that they made in the ABPP
2 went beyond mitigation efforts that had been proposed
3 before.

4 MR. ROBINSON: Oh, and I believe it
5 does, and I believe it's a good thing. I'm just saying
6 that, in the world of wildlife, you generally don't base
7 future projections off just one year's worth of data
8 regardless. It's typically three or five. But I think
9 three years, in this case, would be a good thing.

10 MS. BAILEY: So, would you study it for
11 three years, and then do the mitigation, then come up with
12 a mitigation plan? Or, would it be ongoing? Like, you
13 know, you learn something this year, so you put something
14 in effect, to see if that makes it better. And, then, you
15 learn something the next year, and you might decide
16 whether what you did last year had any impact. Or, do you
17 just study it for three years, and then decide what to do
18 to mitigate going forward?

19 MR. ROBINSON: I think you run the
20 survey for three years, collect three years' worth of
21 data, and then you base your adaptive management scheme
22 off those results, rather than just running it for one
23 year and then basing your adaptive management scheme off
24 those results.

[DELIBERATIONS]

1 MS. BAILEY: But you're not doing any
2 adaptive management in the interim, while you're doing the
3 three-year study? That's what I -- I just want to clarify
4 that.

5 MR. ROBINSON: Well, I think that needs
6 some further discussion with the folks at Fish & Game,
7 perhaps, that do this sort of thing more than I do. You
8 got me on that one. I don't know.

9 CHAIRMAN IGNATIUS: Ms. Lyons. Oh, I'm
10 sorry. Mr. Boisvert.

11 MR. BOISVERT: If I could comment, I
12 agree with Mr. Robinson's explanation as to why the three
13 years are important. From my perspective, it would need
14 to be three years of study, with no changes in the
15 operation, so that you can compare apples to apples. If
16 you start changing the methodology midstream, then it
17 could undermine any interpretive value, because you're
18 looking -- you've entered it as a new variable.

19 I also look at this as somewhat similar
20 to certain kinds of drug studies, you know, that the FDA
21 does. Where, if they're doing a study, and the results in
22 the first year of the trial are very distinctive, it's the
23 medication is very, very dangerous or very, very helpful,
24 they can stop midstream. If they discover something in

[DELIBERATIONS]

1 the first year that is dramatic, that is off the scale,
2 that is the extreme end of a bell curve, that a certain
3 adaptation would be necessary and would save many bats, I
4 think that any reasonable long-term study has that kind of
5 built-in escape clause, if you will. In the same way that
6 an easement has a way to revoke it -- or, to modify it
7 under certain circumstances, I think that that would
8 apply.

9 But, in order to be scientifically
10 valid, from what I see, it would need to be three years
11 without modification, unless there's something truly
12 extreme. And, I don't know if that clarifies it. But is
13 that a reasonable perspective?

14 MR. ROBINSON: That's perfect. Much
15 better than what I did.

16 MR. BOISVERT: Thank you.

17 CHAIRMAN IGNATIUS: Mr. Iacopino, a
18 question?

19 MR. IACOPINO: Mr. Robinson, I just want
20 to ask a question to be clear, so that, if this gets to an
21 order, I know what to write if you guys tell me. When
22 would the three years of study begin?

23 MR. ROBINSON: Once, in my mind, once
24 the facility becomes operational.

[DELIBERATIONS]

1 MR. IACOPINO: Okay. So, after -- three
2 years, so, starting at commercial operation day?

3 MR. ROBINSON: Uh-huh.

4 MR. IACOPINO: Okay.

5 MR. ROBINSON: Yes.

6 MR. IACOPINO: Thank you.

7 CHAIRMAN IGNATIUS: Other opinions on
8 the length of period of -- length of time of the study?

9 (No verbal response)

10 CHAIRMAN IGNATIUS: Then, are we ready
11 to, I think we ought to take a straw vote on where people
12 are coming out on that one term, on three years versus one
13 year as a study methodology. And, you know, the
14 Applicant's proposal was one year, with a commitment to
15 take steps immediately, if, at the end of the one year,
16 reveals need for adaptation. The three years, I think as
17 it's been described, would be to pretty much study without
18 change, unless something, as you said, catastrophic occurs
19 that's really very severe. And, in that case, there would
20 be an understanding that they would immediately develop
21 some sort of adaptation.

22 So, those who are in favor of the
23 three-year approach described by Mr. Robinson and
24 Dr. Boisvert, raise your hands?

[DELIBERATIONS]

1 (Show of hands.)

2 CHAIRMAN IGNATIUS: And, those
3 supporting the one-year approach?

4 (Show of hand.)

5 CHAIRMAN IGNATIUS: Me. All right.
6 Thank you. Another issue that I think we have a multitude
7 of positions on, and ought to discuss a little more, is
8 the amount of acreage that's been proposed to be set into
9 conservation protection, and the degree of protection
10 that's called for in those conservation easements. And,
11 we can probably combine those two into the discussion.

12 I think it's fair to say everyone
13 recognizes the value of the 800 acres to be set aside and
14 protected. And, the only question is, should there be
15 additional acreage beyond that? And, if so, do people
16 have a proposal on how much it would be or what type of
17 land it would be? Or, is it just a total acreage question
18 that people may have? Ms. Lyons.

19 MS. LYONS: I've given this a little bit
20 of thought, but I haven't really gotten very deep in.
21 And, I'm not saying that the conservation effort has to be
22 done right now. It could be done over time, over the life
23 of the Project. It could be based on some sort of
24 generation of that, of the electric resource. And, I

[DELIBERATIONS]

1 think it should be linked to the community or communities.
2 So, it could go through the conservation commissions. So,
3 it could be a public way to identify the resources to be
4 conserved.

5 I know this is kind of breaking new
6 ground or ice, but I think it has -- it has kind of that
7 "community aspect" to it, that it is a resource that's
8 being generated in the community, and that it gets
9 reinvested in the community.

10 CHAIRMAN IGNATIUS: So, what might a
11 condition along those lines look like? Would it be to
12 require or encourage, those are two different things, the
13 Applicant to, or some other entity, to spearhead an effort
14 to discuss further conservation within the community, with
15 community input, over the next number of years? That
16 would, you know, there's the "encourage" people to talk
17 about it, that's the -- that's at one extreme. The other
18 extreme would be mandate that, within the next ten years,
19 a certain number of acres would be placed into
20 conservation, and let the community figure out what those
21 would be. And, there's all kinds of things in between
22 those two. So, I guess, and I know you're probably
23 thinking this through out loud at the same time that I am,
24 so it may be that nobody has a fixed view of this. But

[DELIBERATIONS]

1 are we wanting to be in a position of "mandating"
2 additional acreage or wanting to be "encouraging"
3 additional acreage, as sort of a threshold question, I
4 think?

5 MS. LYONS: Well, I wouldn't say it's
6 "acreage", only because, over time, you know value of one
7 acre here versus value of one acre there are different
8 dollar amounts. So, I'm not sure that that's a fair
9 saying -- a fair goal, saying you need, you know, "10,000
10 acres", just making up a number. Because it may be, you
11 know, it may not be realistic in future markets to say
12 it's "X acres".

13 But, if it's based upon what the
14 generation is, and so there's -- there's some dollars are
15 made, and it gets applied -- it gets sense to the
16 Conservation Commission to also receive things like Change
17 of Use Tax. So, you know, it's based on a dollar amount,
18 and then they take those dollar amounts and invest it
19 where they think they should be investing in their
20 community.

21 CHAIRMAN IGNATIUS: So, the thought
22 would be a, you know, per megawatt --

23 MS. LYONS: Yes, 15 cents a megawatt, I
24 have no idea.

[DELIBERATIONS]

1 CHAIRMAN IGNATIUS: Yes. But some sort
2 of multiplier, to take a megawatt-hour of generation to
3 translate into some sort of donation, really, towards a
4 conservation commission or entity or something, that would
5 then be a fund built up over time to purchase additional
6 lands?

7 MS. LYONS: What the community
8 identifies as important to their community. So, we're
9 taking something from a community, it should be reinvested
10 back into a community.

11 CHAIRMAN IGNATIUS: Mr. Iacopino, is
12 there any instance you can think of where that kind of a
13 mechanism has been developed in the past?

14 MR. IACOPINO: Not on the Site
15 Evaluation Committee. Not that I am aware of. I do know,
16 and the only thing that's similar to that that I can
17 reference is, when the gas plant in Londonderry was
18 created, by agreement, there was a buyout provision for
19 some of the local homeowners. That particular Applicant,
20 for that 700-megawatt plant, agreed to that from the
21 outset. And, the Committee did bless the condition, I
22 believe, as part of the decision in that case, but it was
23 -- it came to them in the form of a stipulation.

24 So, I don't know sort of the fund that

[DELIBERATIONS]

1 Ms. Lyons is discussing. I'm unaware that this Committee
2 has ever created anything like that in the past. And, I
3 really don't think that the Londonderry thing is really on
4 all fours with what she's proposing either.

5 CHAIRMAN IGNATIUS: In the Berlin
6 BioPower case, the biomass plant, there was money set
7 aside with the community to develop some community
8 facilities, a River Walk and something else I'm
9 forgetting, landscaping for use of people in the
10 community, I think. That it wasn't targeted on a
11 generation basis, but it was just kind of an outright
12 grant that would be in the Town's hands to develop, and
13 for the benefit of the community over time. That's the
14 closest thing I can think of.

15 MR. IACOPINO: Yes. What happened in
16 that case was the Laidlaw/Berlin BioPower, part of the
17 plan was for the Applicant to pay the City to develop the
18 River Walk, which was on the site. And, ultimately, what
19 happened there, just recently, is the City determined
20 that, although they had originally agreed to that, and
21 they probably negotiated for it, they had determined that,
22 from a liability standpoint, the River Walk was not such a
23 great deal for them. And, so, there was a stipulation,
24 that was approved by the full Committee, full Site

[DELIBERATIONS]

1 Evaluation Committee, to allow a cash payment in lieu of
2 the River Walk.

3 The landscape part of that was really
4 just an amendment for the land. There was a landscape
5 plan that was submitted as part of the Application in that
6 case. And, when they got on site to do the construction,
7 they needed to amend that plan. So, that really wasn't
8 anything to do with paying the City money, that was part
9 of the overall footprint of the project on the site. So,
10 that really didn't have anything to do with the money --
11 with the payment to the City. The payment to the City was
12 in lieu of payment for the development of the River Walk.

13 I guess that is close, if you think
14 about it. I just don't -- it wasn't based upon the
15 production of energy, though.

16 CHAIRMAN IGNATIUS: All right. Thank
17 you. Dr. Boisvert.

18 MR. BOISVERT: A couple things. When
19 Johanna mentioned this funds to be set aside, I first
20 thought that was a very good, creative solution to the
21 problem. Then, I put my town meeting hat on. And, I can
22 just hear the selectmen in my town saying, "Well,
23 Conservation Commission, you're already getting this money
24 from this other source. We don't need to give you this

[DELIBERATIONS]

1 other money on top of it." And, that it might be
2 substituted one for the other; it would be a wash. There
3 would need to be some way to guarantee that this would be
4 not used as a substitute for money coming in from the
5 Current Use Tax, you know, when you take the property out
6 of current use and so forth. I think it's a great idea.
7 I think it may need some fine-tuning, to make sure it
8 doesn't have some unintended consequences.

9 The other thing, the conservation
10 easements are, you know, 80 acres of other land per
11 turbine or per other acre of ridgetop, however you like to
12 look at it. It has sort of an inherent recognition that
13 not all acres of land are equally valuable in an
14 environmental sense, not just in a real estate sense, but
15 in an environmental sense. If there was a proposal to
16 conserve another ridgetop in the immediate vicinity, so
17 that it would not have a wind farm or similar facility
18 built upon it, that kind of mitigation. In the same way
19 that one mitigates the loss of one wetland by preservation
20 or creation of another, is closer to a one-for-one kind of
21 thing, and not perfectly, but closer.

22 I believe having the land put in
23 conservation is good. I think it does mitigate some of
24 the loss. It's not a one-for-one, in terms of acreage.

[DELIBERATIONS]

1 But, presumably, we're getting some equivalent value for
2 the environment. So, I believe that the easements were
3 already offered, and they don't need to be part of the --
4 a condition of the permit. And, I like the idea that
5 there could be some way to acquire other equivalent
6 environmental acreage. I'd just like to make sure that
7 there's not an unintended consequence of it eroding other
8 sources of funds to the Conservation Commission. Maybe it
9 goes to a different organization. Maybe it doesn't go to
10 the Conservation Commission, but to some other entity. I
11 think that might -- we might need to craft it in that way.

12 But I do like the concept of, in effect,
13 a royalty, a cutting fee, like there is for forestry. It
14 would need to be very modest. The economics of this are
15 closely budgeted. And, I don't think that we should or
16 could come up with an additional expenditure that's going
17 to be so onerous as to make the whole Project, from our
18 actions, financially untenable.

19 CHAIRMAN IGNATIUS: Ms. Bailey.

20 MS. BAILEY: And, how would we know what
21 the breaking point is for "making the whole Project
22 untenable"?

23 MR. BOISVERT: Right. I think we just
24 have to do our best estimate, and say that, if it amounted

[DELIBERATIONS]

1 to \$10,000 per year, in the cost of the scheme of things,
2 that's not going to a breaker. But, if it were \$300,000
3 per year, that might. And, I'm just picking these numbers
4 out the air.

5 MS. BAILEY: Yes. It seems kind of
6 arbitrary.

7 MR. BOISVERT: Yes. Yes.

8 MS. BAILEY: Oh.

9 MR. BOISVERT: But I would expect it to
10 be modest.

11 MS. BAILEY: Well, here's what I'm
12 thinking. We've concluded that the overall impact of the
13 Project isn't going to have -- isn't going to be an
14 unreasonable adverse impact on the natural environment.
15 So, to add a condition like this, seems like we're just
16 trying to extract more because we can. That's how it
17 seems to me. It may be great for the communities, but I'm
18 not really sure that adding a condition like this isn't an
19 ongoing tax burden almost, or equivalent to an ongoing tax
20 burden.

21 So, if you could help me out there. You
22 know, I think it's okay to talk about the conservation
23 easements that are in place, and whether they should be
24 more restrictive. But I'm not sure that everybody agrees

[DELIBERATIONS]

1 that we need -- that there's evidence in the record to
2 show that we need additional ongoing conservation efforts
3 to make this finding, otherwise there would be a finding
4 of adverse impact on the natural environment.

5 CHAIRMAN IGNATIUS: Ms. Lyons.

6 MS. LYONS: Because this idea of
7 "conservation easements" and -- is tied up in not just the
8 "natural environment" section here, but "aesthetics",
9 maybe something down the road, I'm just putting it out
10 there as an umbrella proposal. So, it's not specifically
11 for this section, --

12 MS. BAILEY: Okay. All right.

13 MS. LYONS: -- but because we keep
14 coming back to it, and it's been touched on in other
15 sections.

16 MS. BAILEY: Okay. So, this may be a
17 condition that could mitigate our finding that it does
18 have an adverse impact on aesthetics?

19 MS. LYONS: Or something else in the
20 discussion.

21 MS. BAILEY: That makes more sense.

22 MS. LYONS: Yes.

23 MS. BAILEY: Okay. Thank you.

24 CHAIRMAN IGNATIUS: Mr. Stewart.

[DELIBERATIONS]

1 DIR. STEWART: Ms. Lyons beat me to the
2 punch, in that, absent any other guidance and rules of
3 thumbs and so forth, I think, in terms of the natural
4 resource impact, and, again, I think of things
5 quantitatively, an 80-to-1 ratio on per -- 80 acres per
6 windmill, seems reasonable from a "natural resource"
7 perspective for compensation. The other question is,
8 whether there's a way to enhance the compensatory
9 mitigation to deal with the aesthetics issues?

10 So, I agree with Johanna. And,
11 actually, I was going to suggest -- I was going to float
12 that for discussion later.

13 CHAIRMAN IGNATIUS: All right. We can
14 come back to it in the context of other conditions. I can
15 tell you, my reaction is it's really an interesting idea.
16 It's the kind of thing that I think would make more sense
17 in the statute. I'm a little concerned that it may be too
18 good an idea, too creative an idea for what our current
19 authority is, although that may not be true.

20 I think some of the concerns about
21 "Could it have unintended consequences within a
22 municipality, and they would allocate fewer dollars,
23 because something might be coming in", is a genuine
24 concern from how we've seen municipal and state government

[DELIBERATIONS]

1 deal with funding issues. But I don't know if we have the
2 ability to make that mandate, that it not be -- that it
3 must be in addition to whatever else a community does.
4 That, I think, is moving way beyond our ability.

5 The community will do what it chooses to
6 do from year to year in its budgeting. I suppose you
7 could set aside some money in a way that could only be
8 used for one purpose, but that doesn't really affect what
9 else a community wants to do for that purpose.

10 And, I think the question of where --
11 "what's the right breaking point?" We don't have any
12 evidence in the record of what that might be. And, so,
13 I'm a little worried about the soundness of the decision,
14 whether it would hold up, if we were to just declare that
15 it's, you know, X cents per some measure.

16 And, I guess the final thing that I
17 wonder about, because it hasn't been put to the normal
18 evidentiary analysis, discovery, and cross-examination,
19 and a real chance to work it through, is "would this
20 create a financial risk to the Project in a way that would
21 exacerbate the financial concerns that we've already
22 discussed?" It adds on another obligation that diminishes
23 the revenues of the Project. And, that may be the right
24 thing to do, but, if we've already expressed a concern

[DELIBERATIONS]

1 about the financial viability of the Project because of
2 some other issues, are we only making that worse with this
3 sort of a condition?

4 So, I think I'm, obviously, sort of
5 stewing over all this. I don't know how I come out
6 ultimately, but I'm cautious about it, that it may be --
7 it may not be workable under statute and under the current
8 status of where we are, from an evidentiary perspective
9 and appeals. But I find it fascinating. You know, and I
10 think, if not in this case, in some case down the road, or
11 in a statutory discussion, it would be really interesting
12 to see some, that sort of a mechanism that might be
13 developed. But, put all that away, we'll come back to it
14 when we talk about other conditions.

15 The other question on easements is, do
16 we have any authority, and should we go into a requirement
17 that the easements be amended to allow for different uses,
18 restrict the use, mandate where housing could or could not
19 be built, that sort of thing? That a few people have
20 mentioned concerns about the language in those easements.

21 Does anyone's concern rise to the level
22 of thinking that there should actually be a condition that
23 the easements be renegotiated with different terms along
24 those lines? Mr. Simpkins.

[DELIBERATIONS]

1 DIR. SIMPKINS: I did go back -- a
2 couple comments. One, I did go back and look at the
3 easements. I believe there's five easements, at least
4 they're the ones I found, five properties. And, there
5 were reserved rights on three of them to build a single
6 family home, in varying sizes, anywhere from like 2,500
7 square feet, up to I believe a 4,500 square foot
8 residence. And, then, there was a fourth one, that was to
9 construct a hunting camp. And, the most recent easement,
10 I just went through that quickly, but I did not see any
11 reserved rights to build a structure. So, under the
12 current status, there could be up to three single family
13 homes and a hunting cabin built on these. I did not, and,
14 again, I went through the easements fairly quickly just
15 recently, but I didn't see where it prevented them from
16 being built on the ridgetop.

17 In looking at the map, I mean, it would
18 probably -- that probably would be the most likely place,
19 because that's where the road is going to go. In looking
20 at some of the properties, actually having a property off
21 the ridgetop may create a lot of additional roadwork to
22 get into those areas, since there's not already existing
23 roads.

24 The other comment I wanted to make was,

[DELIBERATIONS]

1 when we talk about "mitigation" and "offsets", you know,
2 I've heard the ratio 80-to-1, 800 acres, you know, 10
3 turbines. But that's not really accurate, because it's
4 really more what's the area that's being disturbed. And,
5 you know, one turbine is a turbine, but that's not an area
6 figure, that's a structure. So, the ratio is actually
7 much less than 80-to-one, because I -- I forget, you know,
8 originally, there's going to be a certain amount of land
9 disturbed, building the road, miles of road in there, and
10 disturbance, several dozens of acres, and then permanently
11 to maintain the road. There will be a certain amount of
12 acres to serve. So, that's really the ratio. You know,
13 the disturbed area, versus the acres protected, not
14 turbine per protected acres. And, I don't know what that
15 ratio is, but I just wanted to make that point.

16 CHAIRMAN IGNATIUS: Mr. Stewart.

17 DIR. STEWART: That's a fair comment.
18 I'm just doing my simplistic math.

19 CHAIRMAN IGNATIUS: Mr. Robinson.

20 MR. ROBINSON: I think it would be a
21 real slippery slope for us to require the Applicant to go
22 back and renegotiate a conservation easement. Are they
23 perfect? Perhaps not. But we do have a conservation
24 organization that did step up to the plate, and basically

[DELIBERATIONS]

1 indicated they're good enough, and they're willing to
2 accept them. So, for me, that's good enough for me.

3 CHAIRMAN IGNATIUS: All right. Anyone
4 else on this issue?

5 (No verbal response)

6 CHAIRMAN IGNATIUS: Then, should we do a
7 kind of show of hands on whether people would support a
8 condition that requires renegotiation or a change to the
9 terms of the easements? Anyone who's supportive of that
10 sort of a condition?

11 (No indication given.)

12 CHAIRMAN IGNATIUS: Those opposed to
13 taking that further step?

14 (Show of hands.)

15 CHAIRMAN IGNATIUS: All right. It looks
16 like everyone. Okay. Is it fair then that, on the
17 question of easements, we're not looking at a condition
18 directly related to the "natural environment" issue? We
19 still have an open question about easements as it relates
20 to other aspects of the Project. But, on "natural
21 environment", is that -- have we dispensed with that issue
22 for now? Ms. Lyons.

23 MS. LYONS: I know we're talking about
24 it as in conservation easements as a mitigation tool.

[DELIBERATIONS]

1 And, just maybe we're kind of broadening that as
2 mitigation with conservation easements as being part of
3 that mix. Because it could be -- conservation easements
4 could be a cash amount or, you know, one lump-sum, could
5 be something over time. So, I don't want to just limit it
6 to conservation easements.

7 CHAIRMAN IGNATIUS: I'm sorry, I don't
8 follow.

9 MS. BAILEY: Are you talking about for
10 -- to mitigate the aesthetic impacts?

11 MS. LYONS: Anything else in the future.

12 MS. BAILEY: Okay. But not for natural
13 resources?

14 MS. LYONS: Not for natural resources.

15 CHAIRMAN IGNATIUS: All right. Of the
16 other possible conditions, I haven't heard people voice
17 differences of opinion, but I don't want to assume that.
18 Let me read through the list that we haven't discussed.
19 And, each time, as I mention one, if anyone's got reasons
20 to think we should not go there, just put your hand up
21 real quick.

22 Develop -- expand the invasive species
23 plan, to be post construction, as well as construction,
24 and to flesh it out a bit more than it is currently? Any

[DELIBERATIONS]

1 opposed to a condition along those lines?

2 (No verbal response)

3 CHAIRMAN IGNATIUS: All right. On the
4 use of a New Hampshire licensed forester and applying *Good*
5 *Forestry in the Granite State* practices, any opposition to
6 a condition that requires that?

7 (No verbal response)

8 CHAIRMAN IGNATIUS: On the requirement
9 that Fish & Game be given final approval on review of
10 avian and wildlife study results?

11 (No verbal response)

12 CHAIRMAN IGNATIUS: Nothing there. No
13 opposition there. A condition that construction be
14 limited to dry and frozen periods of time. Mr. Simpkins,
15 was your proposal that that be an absolute limit or that
16 it be to the -- you know, "to the greatest extent
17 possible" kind of language?

18 DIR. SIMPKINS: Well, yes, that's kind
19 of a tough one to answer. You know, absolute, in the fact
20 that there's going to be a certain time where, if it's not
21 dry or frozen enough, they will be violating state laws.
22 So, in that respect, it would be absolute, or we'll be
23 paying them a visit.

24 So, you know, again, I think a lot of

[DELIBERATIONS]

1 that will be modified with a good contractor. They're
2 going to know when the ground is appropriate to cut. But,
3 you know, certainly during spring mud season and things
4 like that, they should not be up on those slopes.

5 CHAIRMAN IGNATIUS: Mr. Iacopino.

6 MR. IACOPINO: Thank you. Mr. Simpkins,
7 if I understand your condition correctly, it's limited to
8 the logging part of the construction, is that correct?

9 DIR. SIMPKINS: Correct.

10 MR. IACOPINO: Okay. So, you're not
11 saying that, for instance, the towers couldn't be
12 constructed in the middle of the mud season, as long as
13 the road's already in and --

14 DIR. SIMPKINS: No, no. Yes, the
15 discussion that we had, and, again, I think it was Butler
16 and Martin, but I'm not positive, they were talking about
17 actual construction of the site, you know, clearing the
18 trees, going up and logging and site work, that's what I'm
19 referring to.

20 CHAIRMAN IGNATIUS: Ms. Bailey.

21 MS. BAILEY: Can we also go back to a
22 point that somebody made that "construction should be
23 avoided during nesting season"? And, there was some
24 testimony that somebody, and I can't remember if it was

[DELIBERATIONS]

1 Fish & Game, maybe there was a condition that Fish & Game
2 wanted, that said "they should" -- "they should avoid
3 construction until after August", and the Applicant said
4 "Well, we'll do that to the best extent that we can, but
5 we may need to get going on this." Does anybody remember
6 that?

7 MR. ROBINSON: Yes.

8 MR. IACOPINO: I have the condition, if
9 you would like me to read it. In Committee Exhibit Number
10 16, with respect to tree clearing, the Fish & Game
11 Department asked or stated "The Department would like to
12 avoid tree clearing until after August 1, in order to
13 effectively avoid mortality of nesting birds and their
14 young. However, the Department's preference for tree
15 clearing would be during frozen ground conditions as
16 suggested in the ABPP."

17 MR. ROBINSON: That's my understanding
18 as well.

19 MS. BAILEY: So, does this cover -- are
20 we covered there?

21 MR. IACOPINO: I don't think where
22 you're at right now we've addressed this as a condition.
23 So, if it's a condition that the Committee is desirous of
24 discussing, you should probably discuss it, if that's the

[DELIBERATIONS]

1 Chairman's --

2 CHAIRMAN IGNATIUS: Yes. I think we
3 need some clarity on what it is that we're doing. Again,
4 we're either encouraging, to the best extent possible, or
5 we're making a mandate that is -- then must be absolutely
6 clear what it is that we're mandating, and not leave it
7 for people to try and interpret down the road.

8 I guess one factual question that would
9 help me, Mr. Simpkins, is what is the law? You said, "if
10 it's too far beyond the frozen period, you would be in
11 violation of the law." So, what are the standards that,
12 separate from anything we may ever condition, what are the
13 standards that a logging operation must follow?

14 DIR. SIMPKINS: Well, there are several.
15 I won't get into all of them. I'll just get into the ones
16 that pertain to the question you're asking. They actually
17 pertained mostly to wetlands and alteration of terrain
18 laws and rules by DES, but we enforce them as they pertain
19 to timber harvesting. So, for instance, if there is
20 extremely excessive rutting, and you're creating unnatural
21 run-off or altering the flow of a natural run-off, that's
22 a violation of alteration of terrain. So, it would
23 actually not only be an issue with us, it would be an
24 issue with DES. The same way, if they're operating in

[DELIBERATIONS]

1 wetlands, you know, that could certainly be an issue.

2 So, the "dry and frozen ground", I mean,
3 that's pretty standard. So, I mean, I feel that could be
4 a mandate, that it's "dry or frozen ground". That can
5 occur, you know, whenever. If we go a period during the
6 summer without a lot of rain, they may have lots of time
7 during the summer to operate. And, then, of course,
8 frozen ground, most of the winter to operate. And, so, I
9 don't -- I mean, that's not onerous. Most "good loggers"
10 only operate on dry or frozen ground. So, that's not like
11 out of the ordinary by any stretch.

12 As far as the "after August 1st", you
13 know, we, and I'm speaking for Division of Forests and
14 Lands, we don't put a stipulation that it has to be after
15 any certain date. You know, it's "dry or frozen ground".
16 So, if we have a very dry July or something, that the
17 ground conditions may be very good to get in there and
18 operate. There's, depending on what prescription we're
19 trying to deal with, we may want to get in there and
20 purposely do it on bare ground, versus frozen ground, so
21 we can scarify the soils for a incoming seed crop. So,
22 you know, there's lots of things that go into managing a
23 particular portion of land. But, as far as the simple,
24 you know, not making a mess of the place, "dry or frozen

[DELIBERATIONS]

1 ground" I think is pretty simple. And, I think that could
2 be a mandate. I mean, a contractor is not going to want
3 to be in there when it's all wet and muddy and all that
4 anyways.

5 CHAIRMAN IGNATIUS: Mr. Stewart, do you
6 know if the conditions that are generally imposed in the
7 Alteration of Terrain Permits out of DES get into period
8 of time of the year that things are allowed or prohibited
9 or use of the phrases, things like "dry and frozen
10 ground"?

11 DIR. STEWART: I'm pretty sure they
12 don't. So, that would be something beyond the normal
13 conditions.

14 CHAIRMAN IGNATIUS: Mr. Robinson.

15 MR. ROBINSON: Yes, just a comment.
16 This is a little bit over the top, as far as the
17 "August 1st" deadline here. The Fish & Game Department
18 owns and manages over 50,000 acres of timberland around
19 the state, and we actively harvest them, and we do so on
20 frozen ground and dry conditions.

21 The only time we would curtail
22 harvesting on dry conditions is if we found rare and
23 endangered bird species nesting in the area. We don't
24 have any here. So, I would agree with Mr. Simpkins that

[DELIBERATIONS]

1 dry ground and frozen ground would be appropriate for tree
2 clearing. That's how we operate at the Department.

3 CHAIRMAN IGNATIUS: All right. Yes,
4 Mr. Simpkins.

5 DIR. SIMPKINS: If I may just follow up
6 on the Alteration of Terrain question, too. Forestry
7 activities are not required to obtain an actual Alteration
8 of Terrain Permit. It's considered a "permit by rule".
9 And, as long as you're following Best Management Practices
10 for erosion control on timber harvesting operations, which
11 is developed by our agency, then you're considered in
12 compliance with the Alteration of Terrain.

13 So, that would be why Mr. Stewart said
14 "we don't put those conditions", because the Alteration of
15 Terrain Permit that they're issuing is more for the
16 construction, not the timber harvesting. The timber
17 harvesting is a permit by rule, and they must follow BMPs
18 that deal with erosion control, run-off, those types of
19 things. If they don't follow the BMPs and they violate
20 that, then they are in violation of Alteration of Terrain.

21 CHAIRMAN IGNATIUS: All right. So, I
22 guess one question is, are people supportive of a
23 condition that prohibits the use -- that prohibits any
24 logging activity, we're only talking about logging here,

[DELIBERATIONS]

1 right?

2 MS. BAILEY: And "logging" is the same
3 as "tree clearing"?

4 CHAIRMAN IGNATIUS: I think so.

5 DIR. SIMPKINS: Yes.

6 MS. BAILEY: Okay.

7 CHAIRMAN IGNATIUS: I hope so.

8 MS. BAILEY: I just want to make sure
9 we're all talking about the same thing. Thank you.

10 CHAIRMAN IGNATIUS: So, it would
11 prohibit -- it would allow -- let me try to state it in
12 the positive. It would allow for clearing only during dry
13 and frozen ground periods, to allow it only during those
14 times. Is everyone supportive of a condition that would
15 say that?

16 (Multiple members giving concurrence.)

17 CHAIRMAN IGNATIUS: That sounds like
18 "yeses". Do we need hands? Or, is there anyone who would
19 not be supportive of taking that step?

20 (No indication given.)

21 CHAIRMAN IGNATIUS: Okay. All right,
22 seeing nothing, then that would be another condition to
23 impose. Still trying to work through to see if there is
24 anything that we have disagreement over or need to further

[DELIBERATIONS]

1 flesh out. The Bald Eagle telemetry study, this was --
2 I'm losing it here. Can somebody remind me how long that
3 would take place? Any parameters on that, Mr. Robinson?

4 MR. ROBINSON: It was a three-year
5 suggested study by Audubon.

6 CHAIRMAN IGNATIUS: I was thinking it
7 was two, or maybe because of two nests?

8 MR. ROBINSON: Yes.

9 CHAIRMAN IGNATIUS: Okay. And, a
10 telemetry study means what?

11 MR. ROBINSON: Means you would mark the
12 chicks with either a satellite telemetry or a VHF sled --
13 telemetry harness, and you would monitor their movements
14 and their reactions to the wind tower or no reactions to
15 the wind tower. And, I guess, in my mind, that would --
16 this is, you know, we're talking about a rare and
17 endangered species, this would give us some real good data
18 on how these species react to a facility.

19 CHAIRMAN IGNATIUS: Do you have any
20 ballpark sense of the cost of doing a study like that?

21 MR. ROBINSON: I couldn't begin to tell
22 you.

23 CHAIRMAN IGNATIUS: And, did we have any
24 evidence brought forth in the record on that? I'm not

[DELIBERATIONS]

1 remembering it, but I might have spaced it out. Does
2 anyone recall?

3 MS. BAILEY: I don't think it was -- I
4 don't even recall it being discussed in the record. Was
5 it?

6 MR. ROBINSON: I don't think it was.

7 CHAIRMAN IGNATIUS: Yes, I think it --

8 MR. ROBINSON: It was in the briefs.

9 CHAIRMAN IGNATIUS: Yes. It's come up
10 as a post hearing recommendation, which presents
11 challenges to us, in terms of having a good factual
12 understanding of what it is that's being proposed.

13 MS. BAILEY: And, how much it will cost.

14 CHAIRMAN IGNATIUS: Yes. Mr. Iacopino,
15 have we ever seen a requirement for that type of study in
16 any other cases that you've participated in for the Site
17 Evaluation Committee?

18 MR. IACOPINO: Not that I recall. I
19 think that the case that we had the most comprehensive
20 studies with respect to avian species is in Groton. And,
21 there was actually a list of nine or ten various required
22 studies that were required in Groton. I don't recall a
23 telemetry study being one of them. So, no, I don't. I'm
24 unaware of this Committee on any prior occasion requiring

[DELIBERATIONS]

1 telemetry.

2 CHAIRMAN IGNATIUS: All right. Any
3 other discussion? Mr. Robinson.

4 MR. ROBINSON: Just a question. On the
5 Granite Reliable Project, the above 2,700 feet, there was
6 a marten study that was conducted, and that was a
7 telemetry study. Now, I don't know if that was a
8 negotiated item, --

9 MR. IACOPINO: I'll check.

10 MR. ROBINSON: -- but there was a
11 telemetry study that's still ongoing from that project.

12 MS. BAILEY: And, again, is the
13 suggestion here to require this study, because eagles are
14 an endangered species, and we don't have enough
15 information to be sure that there wouldn't be an adverse
16 impact on this endangered species?

17 MR. ROBINSON: That would be my take on
18 it, yes.

19 CHAIRMAN IGNATIUS: I can tell you one
20 of the tensions in all of this is, and this harkens back
21 to something that Ms. Bailey was saying earlier, is you
22 have conditions and studies growing out of things that you
23 believe you have at risk, an identified species, you know,
24 a known risk, and you want to study it. And, then,

[DELIBERATIONS]

1 there's things that feel to me a bit more "while we're in
2 there, it would be a good thing to learn some more
3 information, and here we've got an applicant that we could
4 tie that need and interest in getting more data to their
5 interest in having something certificated, so let's ask
6 for a study on some other things", that would certainly be
7 a good thing to study, but it feels a little attenuated
8 from the Application itself.

9 I mean, the evidence, as I recall, was
10 that there was no eagle population in the immediate
11 vicinity. There are certainly eagles in the general
12 region, and they have a wide range. So, it's not that
13 they have to -- that they only, you know, don't stray from
14 the very spot that they're in. But that, as I recall the
15 testimony, they stay primarily around water and large
16 bodies of the water, and that the Nubanusit Lake made
17 sense to be finding them there because of that. And,
18 they're not -- I didn't get the sense that there was
19 tremendous risk growing out of this Project to the eagle
20 population, or at least not the resident nesting eagle
21 population. Maybe somewhat in the migratory population,
22 which this study wouldn't have any impact on.

23 So, I want to be careful that we're not
24 seeing the Applicant as a convenient funding source for

[DELIBERATIONS]

1 good scientific studies that we would like to see, and
2 that any requirement we make is really tied to risks that
3 we perceive from this Project. And, I guess, I think you
4 could interpret it either way. I guess I'm coming out
5 that I don't see the risk as directly tied, but I am
6 certain that there are people that could interpret that,
7 as to say that there is some risk of this Project that
8 ties it to it.

9 But I just ask, as you think about each
10 of these things, run that through in your own minds, what
11 is it that this Project gives rise to, and why a condition
12 for that reason would be appropriate? As opposed to, what
13 would we like to learn more about, which, you know, all of
14 us would have a long list, but we can't -- we can't just
15 simply start requiring things for that reason.

16 MR. IACOPINO: I can answer
17 Mr. Robinson's question. In the Granite Reliable
18 decision, there is reference to the "High Elevation
19 Mitigation Settlement Agreement", which was an agreement
20 between the Applicant, Fish & Game, and Appalachian
21 Mountain Club, dealing with the areas above 2,700 feet.
22 And, as part of that Agreement, the Applicant agreed to
23 make a one-time payment of \$200,000 to the Fish & Game
24 Department, to be used in conducting studies on the impact

[DELIBERATIONS]

1 of the development on the area of certain animal species,
2 including the American marten and Bicknell's thrush. So,
3 the money was -- it wasn't technically a telemetry study.
4 It was -- the money was provided to Fish & Game for the
5 purpose of developing a study. I assume they have
6 developed a telemetry study, and that's what you're
7 discussing.

8 MR. ROBINSON: Yes.

9 MR. IACOPINO: One other relevant
10 portion of this that I will just point out, because it was
11 mentioned before with respect to Ms. Lyons's concern, is
12 that in that case there was also, and I'll just read from
13 the decision, under the "Mitigation Settlement", "The
14 Applicant will also make a one-time payment of \$750,000 to
15 New Hampshire Fish & Game to secure or assist with the
16 permanent conservation of comparable habitat elsewhere.
17 The money is to held by New Hampshire Fish & Game and to
18 be spent by it, in consultation with the AMC, to conserve
19 habitats important to species of conservation concern."

20 So, that was another condition in that
21 particular docket, which is the Granite Reliable. It's
22 Docket Number 2008-04. Again, but to answer your
23 question, that was by agreement at the time.

24 MS. BAILEY: Madam Chairman?

[DELIBERATIONS]

1 CHAIRMAN IGNATIUS: Yes.

2 MS. BAILEY: Maybe we could, a more
3 appropriate condition would be, if after the three-year
4 mortality study on -- that we are going to impose by the
5 condition that we talked about, where they're going to
6 study what happens as a result of the Project, if, as a
7 result of that, a conclusion can be made that the Project
8 had a direct impact on eagles, then maybe the Applicant
9 could be required to do a further telemetry study. But,
10 if there's no impact from this Project on eagles, I don't
11 think we should require them to do -- to expend the money
12 to do a telemetry study.

13 CHAIRMAN IGNATIUS: Mr. Robinson.

14 MR. ROBINSON: Yes, I understand that.
15 I mean, we have come to the conclusion that eagles are
16 going to be low impact. But eagles keep coming up in the
17 conversation time and time again. And, this is more of an
18 opportunity to learn something, not only for us, but for
19 future applicants and things like that. So, I do agree
20 with your explanation that eagles -- eagles are not --
21 this isn't going to have an impact on eagles, but this is
22 an opportunity to learn. So, whether it should be in the
23 form of a -- part of the certificate or not is -- I agree.

24 CHAIRMAN IGNATIUS: All right. Then, do

[DELIBERATIONS]

1 people want to, by show of hands, who would be supportive
2 of a requirement that a three-year telemetry study on Bald
3 Eagles be made a condition of the Application -- a
4 condition of the certificate?

5 (No indication given.)

6 CHAIRMAN IGNATIUS: All right. Seeing
7 no hands, then that will not be a condition.

8 Another avian-related condition we
9 discussed was annual monitoring for the common nighthawk.
10 And, I think the recommendation was monitoring to continue
11 through not just construction or for a number of years
12 post-construction, but to continue for the life of the
13 Project through to decommissioning, is that correct?

14 (Atty. Iacopino nodding in the
15 affirmative.)

16 CHAIRMAN IGNATIUS: Anything anybody
17 wants to raise on that one? Ms. Lyons.

18 MS. LYONS: I think it will be captured
19 in the Adaptive Management Plan. It's kind of redundant.

20 CHAIRMAN IGNATIUS: And, does that
21 continue post -- does that plan run beyond the study
22 period post construction?

23 MS. LYONS: I believe the Adaptive
24 Management Plan is the life of the Project.

[DELIBERATIONS]

1 CHAIRMAN IGNATIUS: All right. So,
2 that's a very good point then. Is there anything that
3 this condition would bring you that hasn't already been
4 picked up in the plan? And, if that's the case, we don't
5 need to have it. All right. Is that -- Dr. Boisvert.

6 MR. BOISVERT: My first thought was that
7 it should continue until such time as the species is no
8 longer defined as "threatened". That it is a species of
9 concern. It might or might not get picked up in the
10 three-year study and the Adaptive Management Plan. But,
11 because it is specifically identified as "threatened", is
12 that the correct terminology? That, for that reason,
13 because it's there, because it's threatened, because of
14 its unusual nesting pattern on bare ground, which will be
15 presumably abundant at the towers, I think that's
16 sufficient to make it for indefinitely, the only
17 termination being that it's no longer threatened. If it
18 comes off the "threatened" list, if that's my reasoning,
19 then, if it's not threatened, if it's taken off the list,
20 then you don't have to do it. I think that, you know, I'd
21 like to hear other comments.

22 CHAIRMAN IGNATIUS: Mr. Robinson.

23 MR. ROBINSON: I guess I would agree
24 with Ms. Lyons that, you know, with the three-year study

[DELIBERATIONS]

1 and the adaptive management, this will be picked up. And,
2 I don't think we need to now require that as a separate
3 item.

4 CHAIRMAN IGNATIUS: By not calling the
5 common nighthawk out specifically in a condition, is there
6 any chance that the other study and the Adaptive
7 Management Plan would not take note of the common
8 nighthawk? I probably had too many negatives in that
9 sentence. Do we need to say it in order for them to look
10 at those common nighthawk issues?

11 MR. ROBINSON: I think "common
12 nighthawk" should be specifically stated, yes, in the
13 Adaptive Plan and the Avian and Bat Plan.

14 CHAIRMAN IGNATIUS: Okay. And, I guess
15 that's a different question. Do we know whether or not
16 it's currently identified?

17 MR. ROBINSON: It is. As far I know it
18 is.

19 CHAIRMAN IGNATIUS: All right.

20 MR. ROBINSON: But, if these plans are
21 reviewed and approved by the Fish & Game Department, it's
22 pretty well assured they will be in there.

23 CHAIRMAN IGNATIUS: So, following on
24 Dr. Boisvert's comment that would it be appropriate to

[DELIBERATIONS]

1 say, for as long as the common nighthawk remains, and we
2 have to get the right terminology, whether it's under the
3 "threatened" category right now or "endangered", but, as
4 long as it remains in a "risk" category, that it be
5 included in the Adaptive Management Plan, and that, during
6 the three-year study, it be one of the species being
7 particularly looked at?

8 MR. ROBINSON: Absolutely.

9 CHAIRMAN IGNATIUS: Is everyone okay
10 with that?

11 MS. BAILEY: So, that's sort of an
12 addition to the condition that we have about the
13 three-year post construction survey? Just want to make
14 sure you don't -- make sure you pay particular attention
15 to the common nighthawk when you're doing that three-year
16 post construction survey?

17 CHAIRMAN IGNATIUS: I think that's the
18 sense I was getting, to just call it out as "don't forget
19 our friend, the common nighthawk."

20 MR. ROBINSON: That's correct.

21 CHAIRMAN IGNATIUS: All right. Ms.
22 Lyons.

23 MS. LYONS: I'm just concerned that it
24 would be limiting, if any other threatened or endangered

[DELIBERATIONS]

1 species, in survey or during the Adaptive Management Plan
2 section, it becomes limiting to them. I think the common
3 nighthawk is going to come, you know, is already included
4 anyway. So, I just don't want the common nighthawk to be
5 the restriction to any other threatened or endangered
6 animals that are found out during that study or throughout
7 the life of the Project.

8 CHAIRMAN IGNATIUS: I think that's fair.
9 So, I guess, do we need to call it out specifically or
10 not? I can go either way on this one.

11 MS. LYONS: I don't believe. That's my
12 -- because I think it's already included, and it could set
13 a limitation.

14 MR. ROBINSON: You could say "common
15 nighthawks and/or any other threatened and endangered
16 species."

17 CHAIRMAN IGNATIUS: Sure. Everybody
18 okay with that? All right. So, that would be just sort
19 of "reminder language", really, more than anything, not
20 that it wouldn't be looked at absent the condition.

21 MR. IACOPINO: So, it's not a condition.
22 I'm just trying to get -- Can the Chair repeat for me what
23 we just did, so I can write it down?

24 CHAIRMAN IGNATIUS: I think it would be

[DELIBERATIONS]

1 probably located in two places. One is in the discussion
2 of the three-year monitoring, that a sentence saying that
3 "the common nighthawk and any other threatened or
4 endangered species be included in the study" or
5 "particular focus on them", or something like that. And,
6 then, in a reference to the Adaptive Management Plan, to
7 note that "any threatened or endangered species
8 particularly be included in the consideration of the plan"
9 -- or, that's not even very good language, but --

10 MR. IACOPINO: I'll figure it out.

11 Thank you.

12 MS. BAILEY: And, that sort of advice,
13 when they get -- after they get through the three-year
14 post construction survey, to Fish & Game?

15 MR. IACOPINO: Yeah. One of the
16 conditions we were going to go over was Fish & Game review
17 and approval --

18 (Court reporter interruption.)

19 MR. IACOPINO: I'm sorry. I don't know
20 if we got to that yet. One of the conditions that we had
21 listed was "Fish & Game review and approval of all
22 wildlife and avian studies."

23 CHAIRMAN IGNATIUS: And, I think we had
24 a nod of heads on that one. Everybody agreed that that

[DELIBERATIONS]

1 was appropriate.

2 MR. IACOPINO: I'm sorry, we did. It's
3 even in my notes.

4 CHAIRMAN IGNATIUS: I have three more on
5 my list. One that I think is fairly straightforward, the
6 professional or otherwise approved logger being used
7 during logging operations. And, Mr. Simpkins, I need to
8 find a better way to phrase that. I don't think anyone
9 disagreed with the notion, but a requirement that you
10 "graduate from a particular course" sounded like it might
11 be a little bit too restrictive. There's other ways to
12 get there. I don't know if you would propose it be, you
13 know, use of loggers that have been, after consultation
14 with Forests & Lands, or what would you recommend?

15 DIR. SIMPKINS: Well, we don't make
16 recommendations on who you should hire. But what we do
17 tell people is, you know, if we've taken some type of
18 enforcement action against someone, after the case is
19 closed, you know, that's public, that's available
20 publicly. And, so, we encourage people to check with us
21 on the person they're going to hire or the business
22 they're going to hire, to make their own determination
23 whether that's someone they want operating on their
24 property or not. So, I mean, they can certainly do that.

[DELIBERATIONS]

1 It may be simpler, for matters of a condition, they -- it
2 was put in the -- I think it was testimony, they're the
3 ones who used the term "qualified". And, so, I had asked
4 the question, you know, "they used the term "qualified",
5 so what did they mean by "qualified"?" And, they couldn't
6 answer it. And, that's when I said, "are you aware that,
7 you know, loggers are not licensed and such?"

8 So, it may be something where they need
9 to come back to us with what they consider "qualified".
10 Because the way it's left right now, they didn't have
11 anything. So, it may or may not be qualified. So, that
12 was more my concern. I mean, there's lots of good
13 contractors they could choose from. But it would be not
14 in their best interest to choose one that, you know, has a
15 history of not doing things by the law.

16 CHAIRMAN IGNATIUS: So, that's an
17 interesting approach. To leave it as a obligation for the
18 Applicant to develop its criteria for the logging
19 contractors they would select, and have them do that in
20 consultation with the Bureau of Forests & Lands?

21 DIR. SIMPKINS: They certainly could. I
22 mean, they could let us know their list of qualifications.
23 Again, we don't get into, you know, "hire this person",
24 "don't hire that person". But, certainly, if they come

[DELIBERATIONS]

1 back and say "these are, you know, these are some
2 qualifications we're looking at in a logging contractor,
3 are these appropriate?" You know, without having specific
4 names or something, we could say "yeah, these
5 qualifications would be appropriate." And, probably one
6 is, you know, they're going to want to check their
7 background and history, and maybe do some reference
8 checks.

9 You know, at the end of day, if they
10 hire a bad one, you know, it's going to be on them.
11 Because, if they run into legal issues and fines and
12 shutting down operations and cease-and-desist orders,
13 that's, you know, that's only going to be their issue.
14 So, it behooves them to figure out who's qualified up
15 front.

16 CHAIRMAN IGNATIUS: Is everyone okay
17 with that sort of a condition? So, instead of us trying
18 to define here what that qualification list would be, it's
19 to instruct the Applicant to develop qualifications. And,
20 it can consult with Forests & Lands, but that's not
21 suggesting that you're giving an approved hire list or
22 not. It's really something different, to talk about
23 qualifications.

24 MR. IACOPINO: Can I ask a question?

[DELIBERATIONS]

1 CHAIRMAN IGNATIUS: Yes, Mr. Iacopino.

2 MR. IACOPINO: Is there something in
3 your -- under New Hampshire law or in regulations in your
4 department of somebody called a "Master Logger"?

5 DIR. SIMPKINS: That's that Professional
6 Logger Program I was getting to earlier. That's a
7 voluntary program that's administered by Timber Harvesting
8 Council, Timberland Owners Association, UNH Cooperative
9 Extension is involved in that. We teach some of the
10 courses. And, there are a lot of them. And, that's, I
11 mean, that's certainly a good thing. But it is voluntary.
12 There's nothing mandatory about it.

13 MR. IACOPINO: I only ask, and I'll just
14 throw this out for the Committee. I'm looking through the
15 Laidlaw/Berlin BioPower docket right now. And, in that
16 docket, obviously, there was substantial concern with the
17 sustainability of the northern forest, because of the
18 amount of biomass that would be taken by them. In other
19 words, there were sustainability conditions -- there's a
20 sustainability stipulation amongst the parties that did
21 reference qualifications for the individuals who would be
22 permitted to deliver -- to deliver biomass to the project.
23 And, I'm looking for what the -- I recall that there was
24 some way to designate who was qualified to do that or not.

[DELIBERATIONS]

1 And, if I can have a minute, or over lunch, I can try to
2 find that language and see if that helps you all in your
3 determination of what this condition you're talking about
4 should actually say.

5 DIR. SIMPKINS: And, I did not -- I was
6 not on that panel, but I do remember having discussions
7 with some of the parties during that. And, I think that
8 may have been they came up with some suggestions, and then
9 had it reviewed. But I'm not positive on that. I know we
10 were approached, and they asked, you know, some
11 suggestions, which we gave them some suggestions. But
12 they, you know, they had already started to come up with
13 some draft things for the sustainability.

14 MR. IACOPINO: I'm just curious for the
15 actual specific language that we might want to use in
16 this, in this condition that you're discussing. But I'll
17 try to find the language that they used.

18 CHAIRMAN IGNATIUS: That's fine. The
19 one that I don't think is going to be complicated is the
20 "boulders" discussion, that we were thinking of some sort
21 of a condition that would be to minimize the disturbance
22 of those boulders to the extent possible, not an outright
23 prohibition, but sort of make effort to, if it can be, to
24 not disturb those. Everybody okay with that? Looks like

[DELIBERATIONS]

1 that that's a "yes".

2 And, the last one that I had, other than
3 we're setting aside some of the conservation question, but
4 the other, last one, I'm not sure quite what to make of.
5 And, that was the "science-based studies to determine the
6 appropriate amount of mitigation", is what I wrote down.
7 And, again, some of that --

8 MS. BAILEY: I think we already covered
9 that one, by adopting the three-year post construction
10 survey.

11 CHAIRMAN IGNATIUS: Is that right? If
12 those are one in the same, then we have --

13 MS. LYONS: I don't think I said
14 "determine the amount", I said "to inform".

15 MS. BAILEY: Inform how long the study
16 should be.

17 MS. LYONS: Right. So, use science to
18 inform.

19 MS. BAILEY: Which we've done?

20 MS. LYONS: Yes.

21 CHAIRMAN IGNATIUS: All right. So, is
22 that off the list, it's been dealt with? Good. Any other
23 that look like we've missed?

24 MR. IACOPINO: Only other thing is the

[DELIBERATIONS]

1 balance of that Fish & Game letter, is the -- I'm just
2 getting to it. Yes, it's Committee Exhibit 16. And,
3 there were some other suggestions from Fish & Game in
4 there. We may have already resolved it by subjecting the
5 studies to review and approval by Fish & Game, but there
6 were --

7 CHAIRMAN IGNATIUS: Let's hear the
8 recommendations again, and we can see if we've picked them
9 up or not.

10 MR. IACOPINO: Well, tree clearing, I
11 think you've already dealt with. Then, they talk about
12 "natural revegetation" on Page 46 of the ABPP. And, their
13 request says: "The Department would like to receive a copy
14 of the plan or a description of what steps are intended to
15 accomplish a revegetation of the roadways and site after
16 commissioning the project. Periodic updates evaluating
17 the success of the project's revegetation status would
18 also be helpful."

19 CHAIRMAN IGNATIUS: Before you go on,
20 and we think that goes beyond the provisions of the ABPP
21 itself? Looks like maybe that's -- yes, that's a little
22 further than what's already written.

23 MR. IACOPINO: And, they ask for a "copy
24 of the plan", "description of the steps intended to

[DELIBERATIONS]

1 accomplish", and then a "periodic" -- "periodic updates
2 evaluating the success". I'm not sure if that -- if that,
3 or something similar, is included in the ABPP.

4 CHAIRMAN IGNATIUS: Well, to the extent
5 that those are not already provided for, is anyone -- are
6 you supportive of making that an explicit recommendation
7 as requested by Fish & Game? Ms. Lyons.

8 MS. LYONS: Harry and I were just
9 talking, because it may be something that's already
10 included in Alteration of Terrain. There is usually
11 revegetation, we're kind of scrambling over here, I'm not
12 sure that's something --

13 MR. IACOPINO: Right. But the
14 Alteration of Terrain wouldn't. This is a request of Fish
15 & Game to be provided with the plan and to be provided
16 with periodic updates. That normally, I don't think,
17 would be part of the Alteration of Terrain, right?

18 DIR. STEWART: I agree, and I think that
19 would be fine. And, it complements the Alteration of
20 Terrain conditions.

21 CHAIRMAN IGNATIUS: Are people
22 supportive of the Fish & Game recommendation? Ms. Bailey.

23 MS. BAILEY: I'm at the point where we
24 need to take a break. I can't even figure this out

[DELIBERATIONS]

1 anymore, I think.

2 MR. BOISVERT: I agree.

3 CHAIRMAN IGNATIUS: Okay. Then, let's
4 pick that up as the first thing we do after a lunch break.
5 It should be just a matter of a couple of minutes, and
6 then we'll start up in the "public health and safety"
7 discussion, which has a number of significant issues. So,
8 everybody get a good lunch, be fortified. It's ten of
9 1:00. If we can be back to begin at ten of 2:00, that
10 would be great.

11 And, I don't intend to run late today.
12 We hopefully will finish all of this. If not, we will
13 commence again in the morning, at 9:00. So, people
14 needing to make plans, you should know that. So, let's be
15 back here, if you can get back around 1:45, to begin at
16 1:50, that would be perfect. Thank you.

17 (Whereupon the lunch recess was taken
18 and this ***Deliberations Day 2 Morning***
19 ***Session ONLY*** ended at 12:52 p.m. The
20 deliberations to resume in a transcript
21 to be filed under separate cover so
22 designated as "***Deliberations Day 1***
23 ***Afternoon Session ONLY***".)
24