STATE OF VERMONT
PUBLIC SERVICE BOARD

Joint Petition of Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., Vermont Electric Power Company, Inc., and Vermont Transco LLC, for a Certificate of Public Good, pursuant to 30 V.S.A. Section 248, for authority to construct up to a 63 MW wind electric generation facility and associated facilities on Lowell Mountain in Lowell, Vermont, and the installation or upgrade of approximately 16.9 miles of transmission line and associated substations in Lowell, Westfield and Jay, Vermont.	)	April 4, 2011 Docket No. 7628

REPLY BRIEF OF THE TOWNS OF CRAFTSBURY AND ALBANY, VERMONT

NOW COME the Towns of Craftsbury and Albany, Vermont, by and through their attorney, Jared M. Margolis, and hereby provide the following Reply Brief in the above-captioned matter.

1. Introduction.

The Towns of Craftsbury and Albany have provided testimony and arguments indicating that the proposed Project would have an undue adverse impact on aesthetics and public health, and that GMP has not met their burden to provide sufficient information regarding the impacts of this Project. This has been reinforced by the Brief submitted by GMP, which provides no basis for this Board to conclude that the Project, as currently designed, would meet the requirements of 30 V.S.A. § 248 and be in the public good. GMP relies on insubstantial testimony and arguments, and fails to address important issues regarding public health and the environmental impacts of the proposed Project.

The Board must not ignore the clear requirements of 30 V.S.A. § 248, and should be wary of an Applicant that has glossed over some very serious issues in their rush to permit this Project so that they can take advantage of Federal tax credits (the benefits of which would be going to a Canadian energy company), at the expense of Vermont's landscape and the health and well-being of Vermont residents. The aesthetics of this area and the health of the public that would have to live in the shadows of 450+ foot wind turbines are too important to ignore. GMP has failed to provide credible evidence to support their contention that the Project would provide benefits sufficient enough to justify destroying this natural area; fragmenting an important ecological habitat block; reducing the property value of up to 120 homes by as much as 20%; destroying the visual presence of the Lowell Mountains, which provide a backdrop for the tourism in the area; and subjecting those living in the area to noise levels that pose both quality of life and health concerns.

Moreover, the Board must keep in mind that the scale and location of this Project is such that the impacts far exceed almost any construction project ever proposed in Vermont. The number of people whose property will be impacted, and the impacts to aesthetics, habitat and the potential for public health effects are very real concerns that require rigorous and meticulous scrutiny; however, GMP appears to want the Board to simply trust that whatever impacts occur are offset by benefits that remain unspecified and unproven. GMP has failed to convince Craftsbury and Albany that this Project would be in the public good, and the Board must be wary of the apparent lack of reliable and credible testimony that GMP has provided in this matter.

GMP has not met their burden to show that this Project, on this site, meets the requirements of 30 V.S.A. § 248, and therefore a CPG cannot be issued by the Board.

2. Reply to GMP

    a. Regarding Aesthetics

GMP continues to understate and minimize the impacts this Project will have on the aesthetics of the area. They claim that only 5% of the study area would have visibility of the Project, and only 15% of the roadways have views of the ridgeline. As discussed in the Towns' Initial Brief, these claims are not credible, and are based on an incomplete analysis that did not take into account visibility of the entire Project (including the entire turbines themselves) and an unreasonable assumption regarding vegetative screening. This Project is being proposed on a prominent ridgeline, and will project turbines over 400 feet into the air. According to DPS, as much as 25% of the study area will have visibility of the Project. The Board must disregard GMP's attempts to provide a misleading picture of the visibility of this Project.

GMP claims that the Project would not be shocking and offensive because it would be visible from a limited number of "designated public vantage points." GMP PD at 47. The Towns are not clear on exactly what this means. Prior Board decisions on the aesthetics issue have never made a distinction between public areas from which a project would be visible and "designated" public vantage points. In fact, this language does not seem to appear in any case law dealing with the Quechee analysis – from this Board, the Environmental Court or the former Environmental Board.

The Towns submit that this is GMP's way of creating an artificial distinction that allows them to ignore the visibility of the Project from the roads in the vicinity. As discussed in the Towns Initial Brief, it appears that Mr. Raphael is operating under the mistaken and wholly unsupported assumption that roads are not significant public vantage points unless they are

designated scenic roads. This is not only unsupported in case law, it was directly contradicted by both Mrs. Henderson-King and Mr. Kane. It appears that GMP, based on Mr. Raphael's erroneous understanding of the role that roads play in the *Quechee* analysis, has discounted the impacts the views from the road have on the character of the area, and may not have considered these views in their analysis of whether the Project may be shocking and offensive. Both Craftsbury and Albany submit that the Project would be visible from many roads in the Towns, and that these views would be shocking and offensive to the residents of these Towns. *See* the Towns' Initial Brief and accompanying letters.

GMP further claims that the Project would not be shocking and offensive because views are "generally two or more miles away." It is not clear whether GMP is ignoring views from roads in making this claim, as discussed above, though it appears they are since many well-traveled roads in the vicinity of the Project would have visibility of the turbines.[1] Regardless, this does not suggest that views of the Project would not be shocking and offensive. First of all, there are views of the Project within 2 or 3 miles that even Mr. Kane testified would be shocking and offensive. Craftsbury and Albany have further argued that both Towns believe that there would be views from the Towns that would be shocking and offensive to the average person in the Town.

Second, GMP's claim that only views within 2 miles can be considered shocking and offensive is unsupported by any law or evidence in the record, and is in fact belied by the Vermont Commission on Wind Energy Regulatory Policy, which recommends that visual impacts within a 10-mile radius of the Project site be evaluated. *See* Raphael direct at 4. This

[1] Mr. Pion, a selectman from Lowell, testified that the Project would be visible from many of the roads in the area, and that many roads have prominent views and many people would see the Project from the roads in the area. Pion, Feb. 4 at 58-59.

suggests that the Commission believes that there can be impacts up to 10 miles distant. If they agreed with GMP, then they would have limited the recommended area to 5 miles or even 2 miles, however they chose 10 miles for the study area.

Furthermore, Mr. Raphael testified that the turbine blades are distinctly visible within six miles of the Project. GMP-DR-2 at 18. Therefore, not only would the blades be visible, but the turbine towers themselves would be distinctly visible within 6 miles of the Project. This is inconsistent with GMP's assertion that views more than two miles away would be indistinct enough to not shock or offend viewers.

GMP also claims that the adverse aesthetic impacts would not rise to the level of undue, because there is "substantial community support for the Project," and that public support for wind farms is growing in Vermont. GMP PD at 49. Craftsbury and Albany must reiterate here that these Towns, which are adjacent to Lowell and will have even more direct views and impacts from the Project, were not asked by GMP for their support, and after reviewing GMP's inadequate testimony and seeing what the actual impacts of this Project would be on the community, are not in support of the Project.

While public support may be growing for wind power in general as a source of alternative energy, this Project is of a scale that the Towns feel is inconsistent with the character and natural beauty that makes the area around the Lowell Mountains so special. There is little to no indication that the majority of those living in this area support the placement of 20-21 450+ foot tall turbines on a prominent ridgeline that will fragment an important habitat block and drastically alter the character of this area. The generalized and vague claims made by GMP regarding public opinion provide no support for their arguments.

Furthermore, the vote in Lowell is not dispositive of public support for this Project. The vote was not merely on whether to allow industrial turbines on the ridgeline of the Lowell Mountains – it was whether to allow turbines in this location in exchange for several hundred thousand dollars a year. It is also not clear whether the residents of Lowell were aware of the impacts the Project would have on habitat fragmentation and public health, since GMP originally argued that fragmentation was not a concern (a claim strongly contradicted by Mr. Sorenson)[2] and GMP's website makes no mention of the potential health impacts associated with turbine noise. It is therefore clear that while the benefits of the Project were fully explained (if not exaggerated) in GMP's "outreach" efforts, the costs of the Project were either ignored or left unspecified. Therefore the vote does not indicate there truly is public support for the Project and its many impacts.

Regardless, while the residents of Lowell may have had a price at which they were willing to allow the destruction of the Lowell Mountains, they are not the only Town affected by the Project, and Albany and Craftsbury are not in agreement. Based on the arguments made by GMP, the Board should not even consider the vote in Lowell, since "the Quechee test must be based on the average viewer, rather than the opinions of a limited number of persons." GMP at 4. Craftsbury and Albany submit that the visual impacts of the Project fall mostly on them, and both Towns believe that the Project would indeed be shocking and offensive to the residents of these Towns. Pursuant to 30 V.S.A. § 248(b)(5), the Board must find that the Project would have an undue adverse effect on aesthetics, and the CPG must be denied.

[2] *See* Sorenson, Jan. 10 pf. at 6 ("Frankly, I am very surprised by the level of disagreement from these respected professionals on the adverse effects of habitat fragmentation from this large project.").

GMP also claims that the Board should only be concerned with the impacts of the Project on public areas, and ignore the impacts to private landowners.[3] GMP at 4-5. It must be noted, however, that the identified impacts of this Project do not affect only a few neighboring landowners. Mr. Kane found that the Project would be shocking and offensive to those living and recreating in an area that contains 120 homes and the historic Bayley Hazen Road. These impacts would include frequent views of the Project while residents go about their daily lives in public places, such as roads. Kane, Jan. 10 pf. at 5. Further, Mr. Kane testified that "areas of high visibility are highly correlated to large stretches of major roadways (Route 100 and 14) and areas of recreational use (Tilliston Camp and Belvidere Fire Tower on the Long Trail VAST trails and the Catamount Nordic Trail). Kane, Oct. 22 Pf. at 8. Therefore, the aesthetic impacts do not fall merely on neighboring private landowners – who are in fact members of the public and deserve protection from undue adverse impacts – but also concern areas used by the public as part of their daily lives.

Moreover, GMP cited *Re: Rinkers, Inc.*, Docket No. 302-12-08 Vtec (Vt. Envtl. Ct. May 17, 2010), for the proposition that the Board should ignore the impacts to private landowners, however they conveniently left out important language from the Environmental Court's decision. GMP at 4-5. The full quote reads: "The aesthetic effect of a project may fall more heavily on some neighboring property owners than on the general public, for example, as experienced by the four neighbors primarily affected by the ski bridge denied under this standard in Okemo

[3] It is interesting to note that GMP states that on the one hand the focus must be on public areas, rather than private homes, but GMP also attempts to argue that areas used by the public, such as roads, should only be considered if they are designated scenic vantage points. GMP's arguments are inconsistent, unsupported, and the Board must see that they are clearly attempting to do everything they can to eviscerate the important role that the *Quechee* analysis has played in maintaining the aesthetic beauty of Vermont. This is unwarranted, and presents a slippery slope that could erode the protections that this State has employed to control the aesthetic impacts of growth that have ruined so many other places.

Mountain, Permit No. 2S0351-8-EB, at 9." *Id*. at 17-18 (emphasis added).[4] What GMP fails to understand is that in both *Rinkers* and *Okemo*, the proposed projects were only visible from a few private homes (4-5 in both cases), and the Act 250 permit was only being challenged by those neighboring landowners, whose particularized concerns were for their own property values. In contrast, this Docket presents much more widespread and public impacts, which have been claimed by DPS as well as two neighboring municipalities to be shocking and offensive to the public.[5]

It should also be noted that in the *Okemo* case referenced by the Environmental Court in *Rinkers*, the initial decision of the Environmental Board was that a ski bridge visible from neighboring homes would have had an undue adverse impact on aesthetics because "there would have been a large structure looming at least 26 feet above the existing grade of Sachum trail which would have had an undue adverse effect on the area when viewed from the trailside residences." *Okemo Mountain, Inc.*, No. 2S0351-8-EB, Findings of Fact, Conclusions of Law and Order (reconsideration) (Vt. Envtl. Bd. April 24, 1987) (emphasis added). Only when the bridge was converted into a below-grade tunnel did the Environmental Board find that the proposed development would not have an undue adverse impact when seen from these private residences. *Id*. If the Environmental Board found that a ski bridge extending only 26 feet above ground could be considered shocking and offensive when viewed from neighboring homes, then

[4] GMP left out the entire second half of this sentence. GMP at 4-5.
[5] Even if the aesthetics arguments were based only on impacts to private land, the sheer number of people impacted by a Project this large renders the impacts a public concern.

certainly the proposed Project, with 21 450+ foot tall turbines visible from 25% of the surrounding area must also be considered shocking and offensive. [6]

In fact, contrary to GMP's claims, in *Okemo* the Environmental Board specifically stated that "Criterion 8 was intended to ensure that as development does occur, reasonable consideration will be given to the visual impacts on neighboring landowners, the local community and on the special scenic resources of Vermont." *Okemo Mountain Inc.*, No. 2S0351-8-EB, Findings of Fact, Conclusions of Law and Order at 9 (Vt. Envtl. Bd. Dec. 18, 1986) (emphasis added). This Project would therefore have the types of impacts that the Environmental Board made clear were within the purview of Criterion 8, and which exemplify the type of development that the Environmental Board found to violate the *Quechee* analysis by destroying beloved views through excessive development.

Additionally, since so many homes may be negatively impacted, the aesthetic effects of the Project may have far reaching impacts on the tax base of Albany, which is an issue affecting the entire Town, and not merely those living in the shadows of the Project. GMP claims that there will be no impacts to property values; however, the Towns have shown in their Initial Brief that the general conclusions reached by the authors of the Lawrence Berkeley study (on which GMP relies) regarding the impacts of wind projects on property values are flawed. Regardless,

[6] The Environmental Board in fact stated that the ski bridge would be shocking and offensive when viewed from neighboring lots because it would "significantly change the immediate area in which it is located. Instead of a pleasant view of a ski trail, the woods beyond and views over the valley, the views from these adjoining lots would be completely transformed… the quality of the views would be significantly diminished." *Okemo Mountain Inc.*, No. 2S0351-8-EB, Findings of Fact, Conclusions of Law and Order at 9 (Vt. Envtl. Bd. Dec. 18, 1986). This is precisely what Albany and Craftsbury have claimed regarding this Project and its impacts on the surrounding area, which will significantly diminish the quality of the views that the Towns currently enjoy, and on which the tourism in the area is based.

the study did find that some homes in the vicinity of wind projects may very well be negatively impacted, which Mr. Kavet agreed with. *See* PET-TEK-2 at 6.

According to the McCann review of the Lawrence Berkeley study (provided by DPS), in the experience of this professional appraisal group "the sale price per square foot of residential living area was discernibly different for those homes nearest the wind farm, with an average price about 20% lower than the unit price of the more distant homes." DPS-JB-6 at 5. Since Mr. Kane has testified that as many as 120 homes are in the area that he feels would suffer an undue adverse impact, it is entirely consistent with the Lawrence Berkeley study and the McCann review to assume that these 120 homes could suffer a significant reduction in their value. As GMP notes, "Criterion 8 serves as a mechanism for protecting members of the public from exposure to aesthetic degradation." GMP at 5. This Project would therefore impact significant members of the public to such a degree that it must be considered shocking and offensive.

Lastly, GMP claims that the aesthetics analysis is "significantly informed by the overall societal benefits of the Project," and therefore even if the Board were to find the Project to be shocking and offensive (as did DPS), a permit should be issued anyway. GMP at 5 (citations omitted). As the Towns have argued, this balancing act is not provided for in the Board's statutory mandate. Even Mr. Raphael testified that the social benefits should <u>not</u> be weighed against the aesthetic impacts. Feb. 8 at 194. Regardless, even if this balancing act were applicable, this Project is of such a scale that it would take enormous benefits to outweigh the aesthetic and associated economic impacts to property values and tourism. GMP has not met their burden to provide sufficient information for the Board to conclude that the societal benefits to be realized from the 25 year life of the Project would come even close to outweighing the

permanent alteration of the Lowell Mountains' topography and the extensive impacts the Project would have on the aesthetic character of the area.

b. Regarding Noise

In the Towns' Initial Brief, it was shown: 1) why the noise standard the Board has used in prior cases is not protective of public health; 2) that the noise produced by the Project would have an undue adverse impact on aesthetics; 3) that the noise modeling conducted by GMP was inadequate; 4) that GMP has not shown that the Project would meet even the noise standard previously used by this Board; and 5) that GMP has failed to provide an adequate monitoring plan for the Project. The Towns believe that GMP has provided no credible argument to counter these claims. The Towns provide the following additional comments in response to GMP's Brief.

i. The Appropriate Noise Standard

The claim made by the Petitioner that the 45dBA (1hr) standard is more stringent that the WHO 40dBA (annual) standard is misleading and ignores important aspects of wind turbine noise that must be considered in setting a standard that will be protective of the public's health for this Project. First of all, a 45dBA (1 hr) standard still allows noise levels to exceed 45dBA throughout the night, thereby potentially exceeding the levels that WHO and many other experts agree have been shown to pose a risk to public health. Sleep disturbance can be caused by short term noises, and even Dr. McCunney agreed that noises below 45dBA can cause indirect health impacts through stress and sleep disturbance. Allowing noise to exceed 45dBA is inconsistent

with any literature on this subject, and would pose an undue adverse risk for public health impacts.

Moreover, the WHO standard is based on transportation noise, which does not have the amplitude modulation associated with turbine noise that has been shown to cause annoyance and sleep disturbance at lower noise levels. Additionally, transportation noise is usually not as common or consistent at night. Wind turbines, however, are more likely to operate at night when wind conditions are more favorable for energy production, and are more likely to cause annoyance and sleep disturbance from amplitude modulation due to higher wind shear conditions. It is absolutely unreasonable for the Board to use a standard that puts neighboring residents at risk for the many health impacts that are associated with annoyance and sleep disturbance.

GMP claims that "opposing witnesses attempt to dismiss the WHO guidelines because they were based on transportation noise, rather than wind turbine noise which, they claim produce significant amplitude modulation by means of a 'swish' noise." GMP at 9. GMP then claims that the report cited by Mr. James does not conclusively support this proposition. GMP, however, is ignoring the fact that this claim (that the swish noise from wind turbines causes disturbance at lower levels than transportation noise) was something that their own witness agreed with. Dr. McCunney specifically stated that annoyance from wind turbines noise may be reported at levels of 40 dBA and less, whereas other sources such as road traffic have not generally generated complaints at such levels, due to the swish-swish sound (amplitude modulation), which the literature suggests causes disturbance from turbines at lower levels than the transportation sources on which the WHO guidelines are based. ALB-Cross-7 at 57.

GMP has therefore conveniently ignored their own witness' testimony, which supports the fact that the WHO reports do not take into account the amplitude modulation from wind turbines that has been shown to cause disturbance at lower levels than transportation noise. In fact, the Towns are not at all dismissing the WHO guidelines, as GMP claims. The 40dBA standard for general/transportation noise used by WHO is an excellent starting point for determining what noise levels for this Project would be protective of public health. The Board, however, must consider the fact that even WHO states that levels of 40dBA and higher are clearly harmful, with the range between 30 and 40 considered to be potentially harmful, and that their 40dBA standard must be reevaluated for noises that have this amplitude modulation, since they can cause disturbance and adverse health impacts at lower levels than consistent noises. Lovko, Nov. 22 pf. at 3. Therefore, the Towns do not dismiss the WHO guidelines, but rather suggest that for wind turbine projects, especially those located in such a quiet rural area, the standard needs to be adjusted to take into account the "swish-swish" effect that even Dr. McCunney testified causes problems at lower levels than transportation noise.

Incredibly, the Petitioner continues to rely on Dr. McCunney's statement that there are no direct health impacts at levels below 45dBA. This ignores Dr. McCunney's admission "that indirect health effects from wind turbine noise (such as sleep disturbance, annoyance, stress) can occur below 45dBA." ALB-Cross-6. The Petitioner attempts to downplay annoyance as an "inappropriate basis for establishing a nose (sic) standard." GMP at 10. This ignores the World Health Organization, which considers annoyance a critical health effect. (*See* DPS at 28).[7] GMP further claims that Dr. McCunney's testimony that "annoyance is not a recognized clinical

[7] GMP refers to WHO as a "consensus view of international expert opinion," but seem to want to ignore WHO on this point, even though it was pointed out in cross-examination.

diagnosis" was not contradicted; however, this is erroneous. Dr. Lovko testified that Dr. McCunney ignores the many health issues associated with annoyance, and that annoyance is a health issue in its own right. Lovko, Nov. 22 pf. at 4. Furthermore, in his discovery responses Dr. McCunney admits that annoyance is a symptom, which is why it is "not a pathological condition" and "not a recognized diagnosis," ALB-Cross-6; however, it clearly is a public health issue that this Board cannot ignore.

Moreover, GMP provides insufficient support for their argument that annoyance is not an issue at 45dBA. They claim that "at 45dBA (exterior)(night), only .5% of the population complains at least annually." GMP at 11. For this claim, GMP cites only one page of the WHO report, which contains a graph that GMP appears to rely on; however, that graph depicts complaints from airplane noise around an airport in Amsterdam, and the percentage of complaints is based on the number of people in the postal code. *See* ALB-RJ-5 at 59. This provides no information as to how close the average residents are to the airport, or what percentage of people are actually experiencing noise at these levels. Furthermore, this airport is in an urban area, where people have different expectations regarding noise levels, and a quick internet search found that the site has been used as an airport since 1916.[8] Therefore, the residents of that area have either grown up or moved to the area with the understanding and expectation of aircraft noise, whereas the residents of the quiet, rural area around the Lowell Mountains moved to this area with very different expectations.

Regardless, GMP ignores the abundant evidence in the record that contradicts their claim, including the report co-authored by their own witness, Dr. McCunney (Colby et al – conducted

[8] *See* wikipedia.org/wiki/Amsterdam_Airport_Schiphol.

on behalf of the wind industry), which specifically refers to a study showing that 18% of people are annoyed by turbine noise at levels below 45dBA. DPS-Cross-3 at 3-16. They further ignore a more recent study by Pedersen et al (2009), which showed that 18% of people are annoyed at 35-40dBA and evidence of sleep disturbance at those noise levels. Lovko, Nov. 22 pf. at 4. Therefore, not only is annoyance a critical health effect, it could impact a significant portion of the population at the noise levels that this Project will generate.

GMP also claims that "most importantly, there is no means of distinguishing annoyance caused by noise from annoyance caused by other factors." GMP at 10. It is unclear, however, why GMP believes that this is necessary. Whether a neighboring resident is annoyed from a combination of the visual and noise impacts of a wind turbine does not take away from the fact that they are annoyed, and may be suffering adverse health impacts. Even if it is a combination of factors, that provides no reason to allow noise levels to a point where annoyance can be a concern. Similarly, the fact that annoyance can be correlated to whether a neighbor is getting an economic benefit from the project may only indicate that those receiving a benefit may be more apt not to report noise and annoyance, since they are being compensated for it. Regardless, the peer reviewed papers on wind turbines and annoyance discussed by Dr. Lovko clearly show that annoyance increases with sound levels,[9] and therefore annoyance is not simply a complaint made by people who do not like wind turbines. If noise levels were not important, you would not see the correlation of increasing annoyance with increasing noise levels so consistently and at such similar sound levels in all three major studies (the Pederson studies) on wind turbines.

[9] Dr. McCunney agrees, stating "that's a feature that you'll see that comes out a lot of the studies, that as the noise levels increase there's a greater percentage of people who report being annoyed by those noise levels." Feb. 10 at 51. He also added that "Certainly there's a phenomenon that's been recognized for many years that noise can cause annoyance." *Id*. at 73.

As GMP points out, the critical noise-related issue for the Board to resolve is to establish a standard that would be protective of public health – and the Towns believe that everyone would agree with that. The overwhelming evidence presented to this Board suggests that the 45dBA standard used in prior cases is inadequate. Based on the scientific literature on this topic, and the importance of protecting the public from adverse health impacts, a more stringent standard is needed. The Towns suggest that a 35dBA (exterior) (1 hr) standard is necessary to be protective of public health.[10] As much as GMP attempts to ignore the results of these studies and rely on the unsupported testimony of their expert, they cannot escape the simple fact that when their own witness, Dr. McCunney, was asked what he would want the standard to be for his home, he responded "keep it below 35 decibels." ALB-Cross-7 at 37-38.

This Board must choose who to believe: Dr. McCunney, the GMP witness who claims that there are no direct impacts below 45 dBA when being paid to provide that testimony, but when speaking for himself stated that he would like noise kept below 35dBA if it were his home; or the unbiased testimony of Dr. Lovko, who provided a comprehensive literature review on behalf of a municipality that is concerned only for the welfare of its residents, and whose findings suggest that a 35dBA standard is needed to protect public health – which is exactly what Dr. McCunney stated in his seminar. The Board must ensure that the Project does not harm the public, and it is readily apparent that a 35dBA noise standard is required to protect neighboring residents from harm.

[10] Both Mr. James and Dr. Lovko have advocated for a 35dBA exterior standard. GMP has claimed that Mr. James proposed a 30dBA standard; however, this is a misstatement of the record. Mr. James testified that based on the health-related materials cited by Dr. Irwin, a 30dBA standard would be necessary to ensure that no neighboring residents were subject to health impacts, but made it clear that in his opinion, a 35dBA standard would provide an appropriate balance. *See* Feb. 23 at 12.

ii. Aesthetic Impacts of Noise

GMP's discussion of the potential aesthetic impacts of the turbine noise is entirely inadequate, and reflects their reluctance or inability to fully address the issues relevant to this permit application. GMP provides no discussion about the current background noise, and how the turbine noise would "fit" the context in which the Project would be located. They fail entirely to discuss the fact that noise levels from the Project will be at least 15dBA above background in many areas for a significant portion of the year, which even Mr. Kaliski has stated would make the noise clearly audible, dominate over background noise, and be out of character with surrounding rural residential land uses. ALB-Cross-9 at 7; Kaliski, Feb. 22 at 43-45.

Based on the background noise levels that even Mr. Kaliski found, if the Board uses the same standard it has used in previous cases the wind turbine noise will be well more than twice as loud as current background noise levels in the area – even reaching 30dBA over background for as much as 10% of the time in some locations. Such noise would therefore be completely out of character with the surrounding quiet rural residential area, and clearly shocking and offensive.

Additionally, GMP has not taken all generally available mitigating steps to reduce noise impacts, as they assert. As discussed in the Towns' Initial Brief, GMP has failed to take mitigating steps that the Board discussed in prior wind cases, such as "using turbines designed to minimize noise impacts" and "conducting pre-construction turbulence modeling to ensure additional noise due to excessive turbulence is avoided." *Georgia Mountain*, Docket No. 7508, Order of 6/11/2010 at 57. Instead, they have chosen to use the loudest turbines possible, and which necessitate use of an unproven noise reduction mode to even meet the standard this Board has used in prior cases, and they admitted to not designing the turbine layout to reduce

turbulence. They have also failed to provide adequate setbacks to protect neighboring residents from undue noise levels. GMP has therefore failed to take all reasonable mitigating steps to reduce noise impacts, and the Project would thus have an undue adverse impact pursuant to the Quchee analysis.

iii. GMP's Noise Modeling

GMP's noise modeling does not indicate that even the 45dBA (exterior) 30dBA (interior) standard used by this Board in prior wind cases would in fact be met. GMP did not bother to address in their Brief the obvious oversights made by their noise expert, who did not incorporate the applicable confidence intervals into his modeling. As set forth in the Towns' Initial Brief, it is not credible for GMP to claim that the modeling was conservative when the confidence intervals set forth by the creators of the models (and contained right in the documents that Mr. Kaliski provided in discovery) have not been factored in to the results. Since the results of Mr. Kaliski's models suggest that noise levels, without these adjustments, would be very close to the 45dBA standard, the Board cannot find that the Project would comply with that standard once the relevant and applicable confidence intervals are included in the results.

GMP has also failed entirely to address the 30dBA interior noise standard used by the Board, and is assuming a 15dBA attenuation; however, as the Towns point out in their Initial Brief, this is based on windows being "slightly open" and may not be the actual attenuation for older homes, or homes with less insulation. The Board is left with two options: either err on the side of caution and assume only 10dBA of attenuation (at the most – Mr. Blomberg actually suggests 7dBA of attenuation), or require GMP to perform the necessary inside outside level

reduction testing to show that the interior noise standard would be met. At this time, GMP has provided no indication that the 30dBA interior standard would be met by this Project, and therefore the Board has no assurance that the Project would not cause undue adverse health impacts due to sleep disturbance. Whereas GMP has failed to address this important issue, they have not met their burden and a CPG cannot be issued for this Project.

GMP's failure to even discuss these matters confirms that they are seeking to avoid the reality of what they propose, but rather have chosen to provide the Board with simple and baseless arguments that ignore the impacts this Project would have on the area. This matter is too important for the Board to base their decision on the clearly inadequate and biased testimony provided by GMP. Albany has no stake in this matter other than the protection of the best interests of the residents of the Town and their health and well-being. GMP is focused only on the bottom line, and is ready and willing to ignore potential public health impacts because they can only profit from this Project by putting others at risk.

iv. Noise Monitoring

Lastly, GMP appears to have felt it unnecessary to deviate from the ridiculously inadequate outline of a noise monitoring plan that Mr. Kaliski proposed in his testimony, even after DPS pointed out during cross examination that it is not as comprehensive as the plan this Board approved in the Sheffield case. GMP's failure to provide an actual monitoring plan is astonishing; however, their inability to respond to the obvious deficiencies in the outline they provided is egregious.

GMP has apparently taken the position that they will not deviate at all from what they proposed in their testimony, even when it was readily apparent that what they propose is entirely inadequate. Even the Board appeared to question their outline, which did not provide for monitoring during the summer (when windows would more likely be open), and limited complaints to five years.[11] Their stubborn refusal to provide a reasonable noise monitoring plan is indicative of GMP's failure to even attempt to adequately address this important issue. The Board cannot approve this Project without an adequate noise monitoring plan, and the Towns respectfully request the opportunity to conduct discovery, recall Mr. Kaliski and provide supplemental arguments regarding the noise monitoring plan if and when one is submitted.

c. Other Issues

GMP has failed to address many of the issues and applicable statutory criteria in their Brief, relying on their Proposal for Decision for these matters. The Towns' provide the following comments on GMP's Proposal for Decision (PD):

- For Orderly Development of the Region [30 V.S.A. § 248(b)(1)]: Petitioners rely, in part, on the vote that took place in Lowell to show conformance with this provision. GMP PD at 14. The Board should note that Albany and Craftsbury, which will arguably suffer the most from the visual and noise related impacts of the Project,[12] did not vote to approve the Project, and in fact have now made it very clear that both Towns do not support the Project. GMP extols their outreach and the public participation in this matter; however, they ignore the fact that they never reached out to Albany and Craftsbury, and that the public participation has shown that many neighboring residents have concerns that GMP has not adequately addressed.

[11] *See* 2/22 transcript at 19-20, 207-208
[12] Albany notes that the Project is actually closer to Albany Village than to Lowell, and the open landscape on the east side of the Lowell Mountains provides more open and direct views of the Project from Albany and Craftsbury than from Lowell to the west of the Project site.

- Need for Present and Future Demand [30 V.S.A. § 248(b)(2)]: While GMP noted that this provision requires GMP to show that the Project is required to meet the present and future demand for services which could not be otherwise provided in a more cost-effective manner through energy conservation programs and measures and energy efficiency and load management measures, they provide no findings that address the second part of this requirement. GMP has not provided or discussed any information on energy conservation programs or efficiency measures, and how they might be able to provide services in a more cost-effective manner. They talk about "stable pricing," but fail to address whether the actual rates would be higher (i.e. above market) than the costs of energy conservation or other measures that would affect the need for this Project. It does not appear that GMP has met their burden to provide sufficient information for the Board to rule that this criteria has been met.
- The Towns do not believe that GMP has accurately or adequately expressed the true costs and benefits of this Project, making it impossible for the Board to conclude that it would actually be in the public good. The Towns join with LMG, and concur with the arguments they have made regarding the economic provisions of 30 V.S.A. § 248, and GMP's failure to meet their burden on these matters.

The Towns believe that GMP is attempting to force through the CPG process, without adequate scrutiny, a Project that will have far reaching and long lasting impacts that they would have this Board ignore. GMP's Brief, as well as their testimony, is inadequate and provides no basis for this Board to issue a CPG for this Project.

3. Reply to DPS

a. Regarding Aesthetics

DPS readily admits that the Project will have an undue adverse aesthetic impact on a significant number of people. DPS at 17.[13] The only way that they can then justify this Project, is by claiming that the overall societal benefits of the Project outweigh those impact. *Id.* This balancing act, which DPS claims to have been established in a footnote in the *East Haven* case, is not appropriate, nor is it consistent with the statutory mandate that governs the issuance of Certificates of Public Good. 30 V.S.A. §248(b)(5) specifically states that "before the public service board issues a certificate of public good… it shall find that the purchase, investment or construction… will not have an undue adverse effect on aesthetics. (emphasis added). There is no provision that allows for this balancing act that DPS and GMP rely on to overcome the unambiguous testimony of Mr. Kane that the Project would have an undue adverse impact on aesthetics.

DPS argues that the Board should reach the same conclusion in this matter as in the *East Haven* case, wherein the Board found that the project would have an undue adverse impact, however when the overall benefits and impacts were considered, the project was found to be acceptable. DPS at 25. DPS notes, however, that the impacts of this Project are greater than in *East Haven,* yet they argue that the benefits are greater as well. As is set forth in the Towns'

[13] Besides Mr. Kane's testimony that the Project would be shocking and offensive to an area that would impact up to 120 homes, he also testified that the OCAS system was a mitigating measure that the Applicant should take to improve the harmony of the Project with its surroundings. Others, including GMC, have testified that absent the use of an OCAS system, the Project would have an undue adverse impact on aesthetics. While GMP has stated that they are pursuing this option, DPS notes that as of February 3, GMP had not applied for a permit from the FAA. DPS at 21. The Towns join GMC's arguments that the Board should require OCAS in order to avoid an undue adverse impact on the aesthetics of the area.

Initial Brief, the comparison to *East Haven* is entirely inappropriate, and the costs and benefits cannot be compared. While no residences were directly impacted in *East Haven*, up to 120 homes may be devalued by this Project – by as much as 20% - and most of these would be in Albany, which is receiving very little financial benefit from this Project.[14] This would have far reaching impacts on other homeowners, whose taxes may increase to compensate the reduction in the assessed value of homes in the vicinity of the Project. No such economic impacts were at issue in *East Haven*.

Moreover, while DPS claims that the benefits of this Project are greater, they have not provided any basis for comparison. Mr. Lamont has even admitted that this was a wholly subjective analysis, without any attempt to scrutinize the actual costs of the Project to property values and tourism, or the loss of habitat and intact forest (which provides carbon sequestration).

DPS further states that "the Department has not previously recommended approval of a wind project that it believes will have an undue adverse aesthetic impact." DPS at 26. They then quote from the Searsburg decision, which states that "we must [] be willing to allow some intrusion into the visual landscape to be able to reap the benefits of this type of renewable resource." *Id*. (citation omitted). This Project, however, goes well beyond "some intrusion," but rather would place larger turbines than any others proposed in Vermont on what DPS has stated to be a prominent ridgeline, visible from up to 25% of the surrounding area, and which will have an undue adverse impact on an area that will impact 120 homes. No other wind project ever proposed has had impacts anywhere near the scope of what is being planned here. This balance is therefore inappropriate, inapposite, and entirely fails to take into account the fact that a

[14] Unbelievably, DPS claims that the lease agreements secured by GMP are an economic benefit to the recipients, yet they fail to quantify and take into account the loss of property values on adjacent, non-participating land in their "balance." DPS at 14.

Megawatt to Megawatt comparison does not provide an adequate basis to balance the costs and benefits of this Project in comparison to others proposed in Vermont.

The Towns reiterate here that the balancing act used by DPS is not provided for in the applicable statute, and even if the Board follows this course there is not enough information to provide an accurate balancing of the costs and benefits of this Project. The comparison to other cases, such as *East Haven* or *Searsburg*, where much smaller turbines impacted much smaller areas and few, if any, homes, is untenable, and provides no basis for the wholly political balancing act that DPS is attempting to impose. The fact is that nothing has changed with regards to this Project since Mr. Lamont provided his initial testimony. Mr. Kane, on behalf of the Department has stated that this Project will have an undue adverse impact on aesthetics, and therefore 30 V.S.A. § 248(b)(5) is not met, and this has not changed. The impacts remain the same, as do the benefits. Albany and Craftsbury submit that the initial testimony of Mr. Lamont provided his true, unbiased opinions regarding this Project. The Project was not in the general good of the state then, and it remains so today.

Lastly, the Towns agree with DPS on a few important points. The Towns agree that the area east of the Lowell Mountains within portions of Lowell and Albany along and adjacent to the Bayley Hazen Road would be directly and significantly impacted, causing an undue adverse impact on aesthetics. While Lowell may be willing to accept these impacts for certain compensation, Albany is not. As set forth in the letter provided to the Board from the Albany Selectboard accompanying the Towns' Initial Brief, Albany believes that the aesthetic impacts of the Project are shocking and offensive to the Town, and therefore the Project does not meet the requirements of the *Quechee* analysis.

DPS has provided a finding that is very important to the Board's determination regarding whether this Project, as designed, meets the requirements of 30 V.S.A. § 248(b)(5). They state that "other potential means of mitigating the visual impacts of the Project would be through reducing the height, moving turbines to the west, additional setbacks or a combination thereof." DPS at 21. DPS (and GMP) has not adequately explained why all of these options are not generally available and reasonable means of improving the harmony of the proposed Project with its surroundings. They claim that moving the turbines West is not possible (though this has not been proven with any actual engineering testimony) and that reducing the height of the towers would not substantially reduce the aesthetic impacts of the Project; however they fail to address why it would not be reasonable to provide additional setbacks, and they have ignored the most obvious option for mitigation, which is to reduce the number of turbines, and remove those that would be closest to, and most visible from, the areas that would be more highly impacted (such as Bayley Hazen Road). Since failure to take such mitigating steps renders the adverse impacts of the Project undue, this further establishes that the Project does not meet the requirements of the Quechee test, and a permit may not be issued pursuant to 30 V.S.A. § 248(b)(5).

b. Regarding Noise

As with GMP, DPS has claimed that the Petitioner's modeling shows that the standard that has been used in prior wind cases, as well as the WHO standard, would be met for this Project. This, however, is simply not the case. As was discussed in the Towns' Initial Brief, GMP failed entirely to discuss the interior noise standard used by this Board in past cases, which

would require compliance with a 30dBA interior standard.[15] Moreover, GMP's expert did not include the applicable confidence intervals in his modeling, and therefore the results do not indicate that the Project would in fact meet the 45dBA exterior standard.

Most importantly, DPS states that "provided appropriate standards are imposed on the Project, the noise generated by the turbines will not create an undue, adverse impact on the public health and safety." DPS at 29. The Towns could not agree more – an appropriate standard must be used to protect the public health and safety, and as is set forth in the Towns' Initial Brief, the standard used by this Board in prior dockets would not be appropriate. A 35dBA exterior (1 hr), 32dBA (interior instantaneous) standard is needed to protect the public health.

The Towns are unclear as to why, after hearing the testimony of Dr. McCunney, DPS could possibly remain supportive of the noise standard used in prior cases by this Board, since even he stated that if it were his home, he would want noise kept below 35dBA, and he further admitted that there can be indirect adverse health impacts at noise levels below 45dBA, and that wind turbine noise has been shown to cause disturbance at lower levels than transportation noise, on which the WHO guidelines are based. DPS appears to rely on the testimony of Dr. Irwin; however they completely ignore the much more thorough literature review conducted by Dr. Lovko, and the overwhelming evidence that annoyance and sleep disturbance are experienced at levels below 45dBA (exterior). The 45dBA standard is rendered unjustifiable when GMP's own

[15] As discussed in the Town's Initial Brief, reliance on the WHO 15 dBA attenuation when windows are "slightly open" does not provide any assurance that the 30dBA interior standard would be met, and since the age and construction of a residence may impact its ability to attenuate noise, attenuation of 7-10dBA should be assumed (especially for windows fully open) absent actual testing. The results of GMP's noise modeling do not indicate that the 30dBA interior standard could be met as the Project is currently proposed.

witness has stated that if it were his home, he would want noise kept "below 35 decibels." Dr. McCunney, ALB-Cross-7 at 37-38.

Dr. Irwin and DPS' reliance on the WHO standard is misplaced. WHO based its findings on traffic noise, and did not even consider wind turbines in their recommendations, which have been shown to cause health related problems at lower levels for transportation noise, which even Dr. McCunney agreed with. ALB-Cross-7 at 57. The amplitude modulation and low frequency sound associated with turbines requires (even according to WHO) a lower standard than the 40dBA (1 yr average) for transportation noise sources. This is especially true given the low background levels found in this area. Dr. Irwin and DPS ignore the overwhelming evidence that shows annoyance and sleep disturbance from wind turbine noise begin at levels as low as 35dBA.

Whereas DPS confirms in their findings that "the World Health Organization considers annoyance a critical health effect," (DPS at 28) and whereas Dr. McCunney admitted that "indirect health effects from wind turbine noise (such as sleep disturbance, annoyance and stress) can occur below 45dBA,"[16] and further admitted these may cause an adverse effect on people's health and well being,[17] and given that Dr. Irwin, on page 5 of his report, in fact confirmed that "sleep disturbance may occur at sound levels from wind turbine facilities as low as 35 to 40 dB,"[18] it is readily apparent that the 45dBA standard is insufficient to be protective of public health.

Finally, the Towns share DPS' concerns regarding turbines operating in NRO mode, and the impact it will have on the Project, especially given that GMP testified it may be employed for

[16] ALB-Cross-6 (emphasis added).
[17] McCunney, Feb. 10 at 40-41.
[18] DPS-WI-2 at 5

thousands of hours per year to maintain noise levels at the 45dBA standard. DPS has requested that the Petitioners report on usage of NRO mode to assess the impacts on production. DPS at 29. This issue must be dealt with prior to issuance of a CPG. Both GMP and DPS argue that this Project, despite its many environmental and aesthetic impacts, would be in the public good when the benefits of the Project are weighed against the costs. While the Towns do not believe that this balancing act is proper or permissible pursuant to the applicable statutory provisions of 30 V.S.A. § 248, if the Board is to accept this balancing act it needs to be fully aware of what all of the costs and benefits are.

As DPS points out, the use of NRO mode for possibly thousands of hours each year has the potential to impact the efficient operation of the Project. The Towns would add that depending on what percentage of time the Project is actually operating (which is not clear from GMP's testimony), the NRO mode may be required for a large portion of the time the turbines are producing energy. This would presumably impact the output and overall benefits of the Project, potentially to a very large degree – especially given that wind turbines operate more often at night, when higher wind shear conditions produce more noise, thereby requiring NRO during the most productive time period in order to meet the requisite standard. With these anticipated operating conditions and the Project's low capacity factor (27% or less), it is even more challenging for this Project to achieve the public benefits GMP claims. As DPS noted, "the principle benefit associated with this Project is its production of carbon free renewable electricity for GMP customers." DPS at 22. The impacts to this claimed benefit from the use of NRO mode remain uncertain.

GMP has failed to provide any information on this matter, and therefore the Board does not have sufficient information to even subjectively compare the costs and benefits of this Project. The Towns argue that GMP is avoiding a discussion of this matter because when it is made clear to the Board how insignificant the benefits of the Project will actually be when the real production and output of the plant are compared to the actual costs of this Project, it will be clear that this Project is not in the public good. GMP must provide sufficient information regarding the costs and impacts to efficient operation that NRO mode will impose, and the parties must be provided the opportunity to promulgate discovery and recall witnesses regarding the economic impacts of NRO mode on the overall benefits of this Project.

The Towns further believe that since GMP is relying so much on NRO mode, and according to their testimony it is necessary to ensure that nighttime noise levels are kept below levels that will disturb sleep, that GMP must provide documentation that NRO could in fact reduce noise levels to the extent they claim, using real world data from an operating plant. The only testimony provided in this matter regarding whether NRO mode can actually reduce noise from an operating plant was provided by Mr. James, whose experience with NRO mode in Maine suggests that it does not reduce the noise levels experienced by neighboring residents. GMP provided no testimony indicating that the Board can and should rely on this unproven method of meeting a noise standard, which is necessary to protect public health, and which the Towns contend must be met without NRO mode through the use of appropriate setbacks.

4. Reply to ANR

There is no doubt that this Project will have adverse impacts on the habitat and natural communities of the Lowell Mountains through fragmentation and deforestation. This includes the loss of many acres of state-significant natural communities – Montane Spruce-Fir Forest and Montane Yellow Birch-Red Spruce Forest.

ANR is, however, not completely straightforward in their representation of Mr. Sorenson's testimony. While they admit that "The proposed construction and clearing for the Project will degrade the Montane Spruce-Fir Forest to the degree that it will no longer be considered state-significant, they conclude that "the degradation of that natural community indicates a significant adverse effect on the natural environment. ANR at 22 (emphasis added) (Citing Sorenson direct pf. at 14). Mr. Sorenson, however, went further than claiming this degradation to be a "significant adverse impact"; he specifically stated that the loss of these areas as state significant habitat would be an undue adverse impact. Sorenson direct pf. at 14 ("More detail on these undue adverse effects to the state-significant natural communities … is presented later in my testimony.").[19]

As is set forth in the Town's Initial Brief, this issue has not been addressed by the MOU (GMP-ANR-1). It is Mr. Sorenson's testimony that the loss of these areas as state-significant natural communities is an undue adverse impact on the environment, and he agreed that preserving more land in the area through the MOU does not at all change this impact. Feb. 24 at 122, 194, 200, 207, 219. Whereas, regardless of the MOU, the Project would still degrade these

[19] Mr. Sorenson further stated "I believe the KCW Project will result in an undue adverse effect on the natural environment because of substantial degradation of the two state-significant natural communities and because of significant and permanent fragmentation of the currently unfragmented habitat block associated with the Lowell Mountains." Oct. 22 pf. at 19 (emphasis added).

state-significant areas and thereby have an undue adverse impact on the natural communities, the Board may not issue a CPG pursuant to 30 V.S.A. § 248 (b)(5).

The Towns have further concerns regarding the ANR-GMP MOU, which have been discussed in their Initial Brief, and which are not resolved by the Brief submitted by ANR. ANR has acknowledged that absent the proposed mitigation outlined in the MOU, the proposed Project will have undue adverse effects on the natural environment. ANR at 5. The Towns are concerned, however, that the MOU does not provide adequate assurances that the mitigation necessary to offset the impacts of the Project on habitat fragmentation will in fact take place. Moreover, the Board cannot accept the MOU's terms that would allow construction (and therefore fragmentation of the landscape) to occur prior to the establishment of appropriate easements being relied on as mitigation measures.

Fragmentation of the Lowell Mountains habitat is no small matter. ANR notes that "the adverse effects of the Project result from the substantial and permanent habitat fragmentation associated with construction of access roads, ridgeline crane roads, turbine pads, construction staging areas, stormwater management structures, collector lines, and the associated forest clearing." ANR at 22 (emphasis added). They add that "fragmentation of important large habitat blocks such as the Lowell ridgeline is not beneficial for wildlife," and that "there will be significant and profound fragmentation effects from a Project of this scale in nature, in an unfragmented forested environment like Lowell Mountain." ANR at 23, 25.

This is precisely why the Board cannot let this Project be constructed prior to the fragmentation connectivity easements being in place. While ANR has stated that "there is much uncertainty as to what mitigation steps will actually reduce the adverse impacts from this Project

to the level that they are not undue," ANR at 28, they are relying on unspecified easements that will allow for habitat connectivity between large habitat blocks to mitigate what has been declared to be "one of the major issues we have affecting the environment in Vermont." ANR at 27. It is not yet clear where these easements will be, or even if GMP will be able to secure any such connectivity, or in any amount and placement that would in fact mitigate the fragmentation that this Project will create.

Allowing construction to proceed prior to ensuring that the fragmentation can and will be sufficiently mitigated is akin to playing Russian roulette with this important habitat block. As ANR notes, not only are the impacts of this Project significant, they are permanent. These permanent impacts begin as soon as the first trees are cut, and the roads and turbine pads are constructed. Pursuant to the MOU, the fragmentation-connectivity easements would not need to be in place until after this permanent fragmentation has already taken place. While GMP would no doubt have a strong motivation to secure easements, so that the Project would actually operate, that does not mean that "prudent" land of "adequate size" will be available.

The MOU does not provide adequate assurances that the Project will not result in an undue adverse impact to the natural resources in the area. Therefore, the risk of the impacts occurring without any mitigation is very possible. In order to ensure that the Project will not have an undue adverse impact on habitat fragmentation, the Board must require that these easements be in place prior to construction. The parties must also have the opportunity to recall Mr. Sorenson to cross examine him as to how and whether any easements that are procured address the fragmentation caused by this Project, and how they will mitigate what otherwise Mr. Sorenson testified would be an undue adverse impact.

Lastly, the Towns agree with ANR that to ensure that the Project complies with the Vermont Water Quality Standards, the Board should include a specific condition requiring that Petitioner obtain the 401 water quality certification and state and federal wetland permits before it commences construction. ANR at 7. The Towns further agree that the Board should include a requirement in the CPG for the Project that the Petitioner obtain a NPDES Individual Stormwater Discharge Permit prior to construction of the Project. ANR at 15. The Towns also agree that "The Board should include a requirement in the CPG for the Project that the Petitioner obtain an Operational Stormwater Permit prior to operation of the Project." ANR at 15. This is necessary because "The operational stormwater permit will require proper design and construction of stormwater treatment and control practices in order to minimize the impacts of stormwater runoff from impervious surfaces to receiving waters." *Id*. Furthermore, all appeals of these permits should be final to ensure the applicable criteria are met, prior to the issuance of a CPG.

5. Conclusion

For the foregoing reasons, and those set forth in the Towns' Initial Brief, this Project does not meet the requirements of 30 V.S.A. § 248; the applicant has failed to provide sufficient information for the Board to determine that the Project is in the public good; and the Project, as designed, would have undue adverse impacts on the aesthetics and public health. Therefore the application must be denied.

Dated at Jericho, VT this 4th day of April, 2011.

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