

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

ROXBURY WIND PROJECT)	ROXWIND LLC's MOTION
ROXBURY)	TO STRIKE PORTIONS OF
OXFORD, COUNTY)	THIRD-PARTY SCENIC
#L-27863-ES-A-N)	REVIEW
#L-27863-NJ-B-N)	
#L-27863-TG-C-N)	

RoxWind LLC (“RoxWind” or “Applicant”) hereby moves to strike the following portions of the Review of the Roxwind LLC Project Scenic Resource Impact Assessment prepared by LandWorks (the “Third-Party Review”): (i) the discussion beginning with the first full paragraph on page 6 and continuing through the second full paragraph on page 7, as well as the conclusion paragraph on page 7 (collectively “engineering conclusions”); and (ii) the last paragraph on page 9 and the second sentence of the second full paragraph on page 11 (collectively “anecdotal references”).

A. Engineering Conclusions

The Third-Party Review includes a lengthy discussion about the limits of clearing and the author’s unsubstantiated concerns that the project drawings do not accurately reflect the limits of clearing, the potential for future erosion, and the need for management practices to address erosion, grading requirements, and steep slopes. Third-Party Review at 6-7. LandWorks was hired by the DEP to conduct a review of the VIA to determine whether it is “reasonable and technically correct according to standard VIA practices.” Third-Party Review at 1. Evaluating the civil drawings, erosion control measures, and limits of clearing was not within the scope of work and is not relevant to

determining whether the VIA is reasonable and technically correct according to standard VIA practices. To the contrary, the VIA must rely on the project drawings and to do otherwise would be contrary to accepted practices. The visual consultant is not tasked with evaluating whether the project is properly engineered, but rather whether the project, as designed, meets the applicable scenic standard.

Importantly, LandWorks lacks the expertise to opine on such matters. The report's principal author, David Raphael, is a Landscape Architect and Planner. There is no evidence that he has training or experience as a civil engineer or other expertise or experience in erosion control management or the design and construction of infrastructure projects. See Raphael CV attached as Exhibit A. Mr. Raphael's lack of engineering expertise is demonstrated by the response to his claims that was prepared by Stantec Consulting. That response is being filed contemporaneously with the Department and is incorporated herein by reference.

Because LandWorks lacks expertise to opine on engineering issues, because such issues are outside the scope of its contract with the DEP on this project, and because the comments are simply wrong, we respectfully move to strike all references in the Third-Party Review to engineering issues.

B. Anecdotal References

LandWorks also includes several references to "anecdotal" information apparently obtained from unidentified hikers, and relies on that anecdotal information to suggest that the impact of the four project turbines may adversely impact the user experience. While intercept surveys can be an effective tool for evaluating user expectations and the potential impact that a project will have on scenic quality and

recreational use, they must be conducted in accordance with established norms for ensuring reliability and statistical significance. Questions must be properly phrased so as to minimize bias and photosimulations that accurately depict the proposed project are typically provided. Indeed, as the DEP is aware, there is substantial effort devoted to designing and implementing intercept surveys to try to maximize their reliability and statistical significance.

Informal comments from recreational users obtained from websites, guidebooks and other public sources can also help inform evaluation of the nature and extent of recreational use and user expectations more generally. For example, in its Response to the Third-Party Review, TJD&A has provided a summary of comments from hikers obtained through public sources. TJD&A's Response to the Third-Party Review is being filed contemporaneously with the Department and is incorporated herein by reference. Importantly, TJD&A did not solicit those comments, but reviewed existing publicly available information developed outside the context of this particular project.

In contrast, the ad hoc solicitation of information from unidentified hikers, such as is referenced by LandWorks in its report, is neither a reliable nor objective means for evaluating the impact of project visibility on scenic character and recreational use. That is particularly the case where, as here, there is no information on the number of persons interviewed, the questions asked, or the answers provided, and there are no other details that could be used to assess the relevance of the information provided. To gather and then rely on discussions with hikers goes beyond the scope of LandWorks' contract with the DEP. More importantly, it is not helpful to the decision maker and, because of how it is apparently being used and the lack of any supporting details, the anecdotal evidence is

prejudicial to the Applicant. Accordingly, RoxWind respectfully requests that the references to anecdotal information and conclusions based on conversations with unidentified persons be stricken.

For the foregoing reasons, RoxWind moves to strike the engineering conclusions and anecdotal references included in the Third-Party Review.

Dated: November 30, 2018

Respectfully submitted,



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EXHIBIT A

David Raphael, B.A., M.L.A.

Principal/Landscape Architect & Planner

EDUCATION

M.L.A., Harvard
University Graduate
School of Design,
1977 Cambridge,
Massachusetts

B.A. in English, Tufts
University, Cum Laude,
Minor in Ecology,
1972 Medford,
Massachusetts

School of the Museum
of Fine Arts, 1971,
Boston, Massachusetts

Diploma, Dartmouth
College Outward
Bound Program,
1970, Hanover, New
Hampshire

PROFESSIONAL REGISTRATIONS

Registered/Licensed
Landscape Architect -
State of Rhode Island,
Vermont

Passed Uniform
National Examination:
eligible for registration
in other states

Certified with the
Professional Ski
Instructors of America

David Raphael founded LandWorks in 1986 after ten years of professional work as a Landscape Architect and Planner for the public and private sector. He is a graduate, with honors, of Tufts University and the School of the Museum of Fine Arts in Boston, where he studied English, ecology and graphic design. He attended Harvard University Graduate School of Design with a Crocker Scholarship and graduated with a Masters in Landscape Architecture. He also attended the Dartmouth College Outward Bound program.

Mr. Raphael has been an Associate Professor in the Graduate Program in Urban and Environmental Policy at Tufts University, on the faculty of Middlebury College, and is currently a Lecturer in the University of Vermont Rubenstein School of Environment and Natural Resources, where he has been teaching courses in aesthetics, environmental design, and landscape architecture since 1982. Additionally, David has been Chairman of his local Planning Commission and Development Review Board for 25 years and was a founding member of the Middlebury Design Advisory Committee. Mr. Raphael is also a member of the Vermont Urban and Community Forestry Council and the American Society of Landscape Architects.

MEMBERSHIPS/COMMUNITY SERVICE

- Chair, Vermont Urban and Community Forestry Council (VTUCFC)
- Member, American Society of Landscape Architects (ASLA)
- Member, American Planning Association (APA)
- Member, Society of Environmental Graphic Designers (SEGD)
- Member, Board of Trustees, Lake Champlain Land Trust
- Fellow in Sustainability, University of Vermont
- Former Member, Board of Directors, Vermont State Craft Center at Frog Hollow
- Chairman, Town of Panton Planning Commission & Development Review Board 1985 - present
- Delegate, Addison County Regional Planning Commission (ACRPC)
- Member, Agency of Natural Resources, Design Issues Study Committee
- Former Member, Town of Middlebury, Design Advisory Committee

PARTIAL LISTING OF RESEARCH & PUBLICATIONS

- "Wayfinding Principles & Practice, 2nd Edition", Landscape Architecture Technical Information Series (LATIS). American Society of Landscape Architects. 2013
- "I Believe: Green is the Infrastructure of the 21st Century, Let's Begin the Blueprint" Burlington Free Press, Dec. 6, 2009
- "Land-Working: David Raphael", SEGD Magazine on Sustainability in Moses Brown School Cupola. Spring 2008
- "Wayfinding Principles & Practice", Landscape Architecture Technical Information Series (LATIS) Number 2. American Society of Landscape Architects. 2006
- "BGO (Big Graphics on Campus) Signs and Environmental Graphics that Impact Collegiate Environments" Signs of the Times, Oct. 2003
- "A New Vision for Vermont," Landscape Architecture Magazine, December 1999
- Special Correspondent, Burlington Free Press, Burlington, Vermont, 1994 to 1998



- "Brave New Vermont," Vermont Magazine, June 1995, Contributor.
- Sign Management: Aesthetics, Economics, Environment - The Vermont Experience, 1992 ("Best of the Conference" award at national conference on sign management, 1992)
- "Prospect," Landscape Architecture Magazine, September/October 1985.
- "Grounds for Playful Renaissance," Landscape Architecture Magazine, July 1975.
- Richard P. White Award, Horticultural Research Institute, Washington, D.C., 1983-1984 Windbreaks and Shelterbelts for the Northeast
- Rivers Downtown: Riverfront Revitalization in Vermont, for the Winooski Valley Park District, October 1981; funded with a Housing and Urban Development and Research Grant
- "Evolutionary Trends and Essential Themes of Wilderness Preservation" in Public Space, Peter Trowbridge, Ed. and with an Introduction by J.B. Jackson; Harvard University, Cambridge 1975.

LANDWORKS AWARDS

- **2016 Vermont Public Places Honor Award** *Dumont Park* | Vermont Chapter American Society of Landscape Architects, Vermont Urban and Community Forestry Council, AIA VT, American Society of Civil Engineers, and Vermont Planners Association
- **2015 Certificate of Merit** *Complete Streets & Smart Growth for the Killington Road Commercial District, Killington, VT* | Vermont Planners Association
- **2015 Certificate of Merit** *Rockingham Design Review Supplement, Rockingham, VT* | Vermont Planners Association
- **2014 Vermont Public Places Honor Award** *Middlebury Riverfront Park* | Vermont Chapter American Society of Landscape Architects, Vermont Urban and Community Forestry Council, AIA VT, American Society of Civil Engineers, and Vermont Planners Association
- **2013 Award of Excellence** *Scenic Resources in the Shawangunk Mountains Region: A Guide for Planning Boards* | Vermont Chapter American Society of Landscape Architects
- **2012 Honorable Mention, Vermont Public Space** *Shelburne Built Environment Landscapes & Views Maps* | Vermont Chapter American Society of Landscape Architects
- **2010 Plan of the Year** *Vergennes Municipal Development Plan* | Vermont Planners Association
- **2007 Award of Excellence** *Lake George Upland Protection Program* | Vermont Chapter American Society of Landscape Architects
- **2007 Certificate of Merit for Outstanding Planning Project** *Guiding Growth in Burke* | Vermont Planners Association
- **2005 Public Space Award** *View From the Road* | Vermont Chapter American Society of Landscape Architects
- **2005 Award of Excellence** *Island Line Sign & Amenities Plan* | Vermont Chapter American Society of Landscape Architects
- **2005 Merit Award** *Lake Morey Resource Conservation Project* | Vermont Chapter American Society of Landscape Architects Public Space
- **2005 Public Space Award Honorable Mention** *Danville Transportation Enhancement Project* | Vermont Chapter American Society of Landscape Architects
- **2005 Second Place, Soft Signs, Banners & Inflatables** *UVM Commencement* | Signs of the Times, International Sign Association (ISA)
- **2004 Honor Award** *Manchester Design Guidelines* Vermont Chapter American Society of Landscape Architects
- **2003 Certificate of Merit for Outstanding Planning Project** *The Pownal Municipal Plan & Land Use Regulations* | Vermont Planners Association
- **2002 Certificate of Merit for Engineering Excellence** *Danville Route 2, Danville, Vermont* | American Council of Engineering Companies
- **2001 Merit Award** *Stowe Ridgeline Ordinance: Ridgeline & Hillside Overlay District* | Vermont Chapter American Society of Landscape Architects
- **2001 Certificate of Merit for Outstanding Planning Project** *The University of Vermont Wayfinding System & Design Standards* | Vermont Planners Association

