

July 3, 2012

Susan Hudson, Clerk  
Vermont Public Service Board  
112 State Street, Drawer 20  
Montpelier, VT 05620-2701

Re: Docket #7508

Dear Ms. Hudson,

We, Intervenors, adjoiners, and neighbors of the Georgia Mountain Community Wind (GMCW) project currently being constructed within a mile of our homes are writing to ask for immediate relief from activities that are interfering with the peaceful enjoyment of our properties, and which are putting our property, personal safety and the safety of our livestock at risk.

The Public Service Board (PSB), Public Service Department (PSD) and the developer may review the file for this docket to remind themselves of the ongoing issues that we, the neighbors, have been experiencing for at least two years while this project has been reviewed and permitted.

We have experienced blasting at an unregulated quarry, construction of a road to serve a “sugaring operation” that cleverly (the word of a PSB member at a site visit) followed the route of the transmission line, tree cutting in the buffer of a wetland, tree cutting along the centerline of the proposed access road for “firewood”, and other activities that we believed and still do believe were for the purposes of advancing the wind project, in the guise of other development by the then-developer.

The new developer has shown no sensitivity to the history of our need to understand what is occurring on the mountain. Clearing and construction began with no notification to neighbors or parties to this case, at a time when we believed the applicant had not met all the conditions of the CPG. GMCW has been and continues to be adding an enormous amount of unnecessary and unwelcome stress to our lives.

### **Description of Current Concerns**

Construction has now been ongoing since the first week in May, and we have experienced shocking levels of blasting, with the effects felt well outside of the ½ mile blast zone in which pre-blast surveys and well testing were required by the PSB to occur. FitzGeralds (two properties), McLanes, Cozzys, Berl/Thompsons, Halls, Wimbles, Mongeons, Johnsons, and Parisis are all complaining about blasts shaking doors and windows. They are all outside of the ½ mile blast survey area. No pre-blast surveys or well monitoring has been conducted on their properties.

We have no information about the blasting except that some neighbors receive a phone call, usually around 8 a.m., informing them that blasting will take place “sometime that day”. This vague warning is insufficient to protect neighbors and our animals, and creates an unreasonable burden on our ability to enjoy our property. For example, Tina FitzGerald was training her German Shepherds in her field on the afternoon of May 25<sup>th</sup>, the first day of blasting. The day before there had been a notice that blasting was to begin, but there was no blasting. The FitzGeralds did receive a call on the morning of the 25<sup>th</sup> that there would be blasting that day but

were not given any timeframe, and were under the impression that warning sirens and/or whistles would be audible before the actual blasts occurred. Tina heard no warnings while she was in the field. As a result, she was not prepared for the blast that afternoon, and one of her dogs bolted.

Not all neighbors are on the phone notification list. George Wimble called the GMCW hotline on 6/25/2012 and requested that he be notified of blasting schedules for each day. He was told that the notification process was already set up to be automated and that would not be possible.

In hearings on setbacks for this project, we established the use of our properties for hiking, horseback-riding, and other activities, including next to the property lines. The PSB chose to permit wind turbines to be constructed 155 feet from adjoining property lines, despite the PSD recommendation of the well-documented national norm of 1.1x the total height which in this case would have required setbacks of more than 600 feet. Now, GMCW is blasting right up to the adjoining property line, throwing flyrock onto adjoining property in sizes large enough to seriously injure and even kill people, cows and horses.

As shown in the attached photos and links below to the full photo set with captions, flyrock and stormwater runoff are exiting the permitted site and entering neighboring land. In addition, GMCW has constructed stormwater containment devices at and over the border of their property, onto the FitzGerald property.

Melodie McLane wondered one day why she did not get a notification of blasting call. She debated if it would be safe to go out horseback riding and decided to saddle up. Then she learned that her child forgot to give her the message that they called in the morning to say blasting would occur sometime that day. This mistake would have put her in a very dangerous situation, with a horse reacting violently to a blast over its head while riding up the road. We acknowledge this was the neighbor's error and not GMCW's, but this is the sort of human error that can be expected when neighbors with children are put in the position of having to live with large blasts going off at an unspecified hour. Melodie, Erica Berl, Kim Parisi and her children are no longer able to ride a horse anywhere near the mountain between the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday because of GMCW's blasting.

Many of us have springs and wells which are at risk because of the large blasts, and we have had no pre-construction evaluations for yield or quality conducted. Our homes are shaking and if our foundations, walls or windows crack, we have no basis for making any claim that the blasting caused it, because no pre-blast surveys were required.

By July 5th, weather permitting, the Wimbles will need to hay their upper meadow and subsequently graze their cattle in it. This area is between 500 and 1000 feet of where blasting will occur. We have come to understand that GMCW anticipates continuing to blast at the levels currently taking place, and without regard to throwing flyrock or risking the safety of adjoining property and their property. Absent an Order from the PSB that protects the Wimbles' rights to use their property, and without compensation, it appears that the Wimbles and their cows will be at serious risk of startle or injury when they are on their summer pasture. The Wimbles' dairy farming business depends on the use of their upper meadow. Tacit approval by the PSB of active blasting nearby by GMCW will result in an economic hardship for the Wimbles.

### **Need for Independent Experts**

The FitzGerals have been offered a seismograph by the developer. However, they have requested one by an independent consultant, not one chosen by GMCW. This is because of the added time, money, and worry imposed on the FitzGerals by GMCW's chosen consultant for water testing.

The FitzGerals own a property with a spring that is within the ½ mile area where water testing was offered. They requested water testing be performed, to which the developer agreed. On May 8, a subcontractor of GMCW, Patty Billings of Blast Consulting, was observed by Dan FitzGerald putting the cap of the water sampling bottle in her mouth when she was collecting the sample for the test. Test results from Endyne came back with unsafe levels for e-coli and coliform bacteria. Dan FitzGerald then had the VT Dept. of Health (VDH) perform water testing on a sample he collected on May 16 and results showed no bacteria. GMCW hired Manosh to collect water that was to be tested by both Endyne and VDH, and on May 23 water samples were sent to both. Endyne found coliform while the state found no bacteria.

For reference, as noted above, blasting began on May 25<sup>th</sup>.

The two VDH tests both showed the water to be suitable for drinking, which would seem to indicate that pre-blasting the water was clean. The contaminated sample and disparity of results means that there may never be agreement on the pre-blast condition of the water. While not suggesting that the contamination was intentional or that there was actual contamination, we note it is in the interest of the developer to find contamination in the water pre-blasting.

### **Request that PSB Adhere to Established Permitting Standards**

We sought assistance in understanding what is normally required for permitting blasting operations. The District Coordinator for Act 250 District Environmental Commission 1 offered a description of what is typically required by permitted quarrying operations in Rutland County, which is home to the largest number of quarries in the state. As the attached letter states, a typical Act 250 permit would have been substantially more detailed than the CPG for GMCW, requiring disclosure of the proposed maximum explosive weight-per-delay, detailed (and publicly available) record-keeping, two hour windows, and extensive notification to neighbors. In fact, very few of the typical Act 250 permit requirements are present in the GMCW CPG.

Act 250 uses a 1500 foot blast zone for pre-blast surveys and well yields. That distance is determined by knowing the total weight and weight-per-delay of each blast. Rutland County quarry blasts are a maximum of 6500 pounds, with weights-per-delay between 250 and 1200 pounds. The PSB has determined there should be a one-half mile blast zone for pre-blast surveys and well yields, without any information about total weights or weights-per-delay.

ANR is in the process of drafting protocols for permit review of proposed blasting projects. Current drafts would likely result in more permit limitations than are contained in the GMCW CPG for ANR permits as well. We encourage you to contact Matt Chapman, ANR legal division, who is copied on this letter, for more details about the draft protocols.

Act 250's standards are reasonable and comprehensive, and accepted by all parties to the permitting process as standard in Vermont. They are protective of the rights, property, and

health of those who through no fault of their own live next to a project that involves blasting. As neighbors of GMCW, we have received none of the protections afforded to neighbors of projects permitted by Act 250.

We are also aware that GMCW is claiming that the quantity of blasting compounds is proprietary. We strongly disagree, and are aware of no precedent in which that is true. Blasting compounds are highly regulated by federal regulators, are required to be disclosed, and their quantities are strictly regulated by Act 250. There is no reason why the PSB should not do the same.

### **Requests for CPG Amendment and PSB Action**

To bring the GMCW CPG up to a protective standard in keeping with those established by Act 250 and other permitting entities, we request that the CPG for the GMCW be amended to:

1. Require pre-blast surveys and well testing for residents within one mile who request it. The surveys and well testing should be done by a third party, independent of GMCW.
2. Require disclosure of maximum explosive weight-per-delay, and maximum total explosive weight per blast event.
3. Provide immediate public access to blasting logs at a location convenient to neighbors where the blast weights and delays and conditions can be viewed in the instance of an unexpectedly strong blast.
4. Provide all parties copies of all blast logs to date, so we understand the blasting levels that have occurred and can compare them to current blast levels.
5. Require notification of blasting much closer to the time of blasting. At a minimum, we request a two hour notice of a blast, rather than the sometimes-eight hour notice that has been the case in recent months.
6. Limit the blasting window to two hours in the morning and afternoon.
7. Place seismographs at homes west and east of the blasting site, placed by a third party hired by PSD or ANR, paid for by GMCW, and provide immediate public access to seismograph records after blasts.
8. Prohibit GMCW from blasting right up to the property line, effective immediately. GMCW should be required to maintain a buffer zone from the neighboring property and use blasting mats to keep flyrock from trespassing onto the neighboring properties. If the PSB is going to allow blasting to the property line, please provide case precedent for zero buffer at a blasting site.
9. Require monthly water testing of springs and surface water in the area where blasting is occurring for chemical contamination and changes in water flows and well yields.

Further, we request that the PSB:

1. Require the disclosure of all blasts and blasting levels used in the Sheffield and Lowell wind projects.

This information is necessary to help us understand the context of the blasting we are being forced to endure and what neighbors are expected to live with. We have no understanding of whether we are being exposed to “normal” blasting levels. We have heard that blasts from the Lowell wind project have shaken homes in the village of Albany more than 1½ miles from the ridgeline. We believe we have the right to know what we are being exposed to and whether it is typical.

2. Enjoin GMCW from further trespassing (in the form of flyrock, stormwater runoff, and stormwater containment device construction) onto the FitzGerald property.

In support of our request for immediate relief, we offer photographs taken June 24 of the site and along the FitzGerald border. Selected photos are attached. The full photo set with captions may be viewed here:

<https://picasaweb.google.com/112246232055800335101/June242012GeorgiaMountain?authkey=Gv1sRgCPWomrT8tqCSmAE>

Resolution will require removal of the offending devices and a review and enforcement of the stormwater permit and EPSC plan by ANR and of the PSB's CPG

3. Require GMCW add George Wimble (802-893-7998) and Reginald Johnson (802-893-2601) to the blasting notification call list.
4. Prohibit GMCW from blasting during the hours when the Wimbles need to cut hay and pasture animals in their upper meadow.

For all the above-mentioned reasons, we request the PSB immediately order blasting to cease at the GMCW site until our requests have been considered and adjustments to the CPG are made.

### **CPG Violations, Enforcement**

Recently, we have reported violations of the CPG for blasting, and for the commencement of operation at 6:15 a.m. on a Saturday morning. We believe that the PSB has so far shown that GMCW can do whatever they want on the project site, and neighbors are to be ignored. If this were an Act 250 or ANR proceeding, there would be enforcement occurring.

5. We request that the PSB fine GMCW for violating its CPG, and demonstrate to this community that the PSB will enforce its CPG.

We also note that based on the photos taken July 1, we will be filing a formal complaint with ANR for failure to comply with stormwater permits. The developer has not put in place required silt fencing and other measures, stormwater is running off onto neighboring properties, and a pond has been dug on the border with and extending onto the FitzGerald property without their permission. Selected photos are attached. The full photo set with captions may be viewed here: <https://picasaweb.google.com/112246232055800335101/July12012GeorgiaMountain?authkey=Gv1sRgCMahkIe2y9DgSQ>

### **Taking of Private Property, Compensation, Property Rights**

Because of all that has occurred, we are essentially enjoined from using our property as we have been accustomed to for outdoor activities such as horseback riding, dog training, hiking, cutting hay or pasturing cows. We have received no compensation for this taking of our rights.

Article 2 of the Vermont Constitution firmly establishes eminent domain for the state, but requires fair payment, in money, for any takings. It states that,

Article 2nd. Private property subject to public use; owner to be paid. That ...private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money.

The PSB has a process developers may use to compensate landowners for the use of their property for a public good. The PSB has determined that the GMCW project is in the public good. Therefore, where the use of our property is necessary, the law requires that “the owner ought to receive an equivalent in money.”

The CPG issued for the GMCW project seems to give all property rights to GMCW. If we had the money to pay lawyers, we would provide a discussion of property rights law, showing which rights we believe to be ours and which rights have been granted to GMCW. Since this is a worthy exercise for a law clerk, we request that someone at the PSB, PSD or the developer will provide us with a clear explanation of the various rights involved.

We believe we have the right to advise GMCW when we wish to use our properties for activities where blasting is contra-indicated, and that GMCW should cease its activities during those times.

We believe that there is a right of primacy and that we were here first and our rights are pre-established and, without any compensation or effort to compensate us, our rights must be protected. We are fully aware that the PSB has full jurisdiction over the GMCW site and operation, and we plead with you to explain to us what you see are our rights, and act to protect those rights.

6. We ask the PSB to please explain to us what our rights are regarding the use of our property.

We do not believe it would be appropriate for the PSB to advise us at this point that if we wish to protect our property rights from trespass or nuisance resulting from GMCW's activities, it is up to us to bring a civil suit in Superior Court. The PSB had full jurisdiction over this project and therefore, we believe this is the proper venue in which to plead our case.

7. Absent a PSB Order that protects the Wimbles' rights to use their property, by this letter, GMCW, the PSB and the parties are formally notified that on Thursday, July 5 and for several weeks thereafter, the Wimbles will be cutting hay and pasturing cows on the upper meadow of their property less than 1000 feet from the GMCW wind project site.

**Conclusion**

We understand that ordinary construction can include inconveniences for surrounding property owners but the abuses by this developer go far beyond what is reasonable. We fear for our lives and properties now with the blasting, and we fear for our health in the future when the wind project begins operating and producing noise.

We beseech you now and in the future to utilize your sole authority as the PSB to enforce the CPG, improve its conditions where they are insufficient to protect public health and safety, and protect the neighbors' rights from nuisance, trespass, and the taking of our properties without compensation.

Sincerely,



On behalf of the following neighbors of GMCW:

Jane FitzGerald  
Heidi FitzGerald  
450 North Road  
Milton, Vermont 05468  
893-2340

Dan and Tina FitzGerald  
40 FitzGerald Place  
Milton, Vermont  
893-7956

George and Kenneth Wimble  
Wimble Bros. Organic Dairy  
1495 Georgia Mountain Road  
Fairfax, Vermont 05454  
893-7998

Matthew Parisi  
1627 Georgia Mountain Road  
Fairfax, Vermont 05454  
893-1084

Tom and Doris Cozzy  
911 Georgia Mountain Road  
Fairfax, Vermont 05454  
782-8498

Melodie and Scott McLane  
1179 Georgia Mountain Road  
Fairfax, Vermont 05454  
893-2170

Reggie Johnson  
1198 Georgia Mountain Road  
Fairfax, Vermont 05454  
893-2601

Erica Berl and Andy  
Thompson  
1091 Georgia Mountain Road  
Fairfax, Vermont 05454  
309-0414

Tom Hall  
25 Ted Road  
Milton, Vermont 05468  
735-7231

Kenneth and Ginny Mongeon  
20 Ted Road  
Milton, Vermont 05468  
893-4425

Attachments

CC: Service List  
DEC Commissioner David Mears  
Padraic Monks, DEC Stormwater Program Manager  
Matt Chapman, ANR legal division