greater WELLINGTON
THE REGIONAL COUNCIL

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Committee	**Policy, Finance and Strategy**
Author	**M D Kennedy, Project Manager, Renewable Energy**

Renewable Energy Initiatives and the Wellington Regional Water Board Act 1972

1. Purpose

To obtain Greater Wellington Regional Council (GWRC) agreement to the drafting of a Bill to change the Wellington Regional Water Board Act 1972 for the singular and specific purpose of enabling the possible development of renewable energy generation within GWRC water collection areas.

2. Background

The Policy, Finance and Strategy Committee considered Report 03.11 on renewable energy initiatives in March 2003. Progress is being made on the Belmont Regional Park wind farm feasibility study and discussions are continuing with a number of interest groups. The Landcare Committee has approved the erection of wind recording equipment and quotations have been received for the equipment.

It was mentioned in Report 03.11 that some elevated sites in GWRC's exotic forest areas may be suitable for wind farms and these would be investigated in due course. Investigations have started into land that comes under the Wellington Regional Water Board Act 1972 (WRWB Act) and a land use issue has arisen that does not apply to any potential wind farms in the Council's regional parks.

3. Water Supply and Forest Land Use

GWRC holds nearly 40,000 hectares of land under the auspices of the WRWB Act. This land can be classified for operational purposes into three main groups:

- Existing water catchments
- Future water collection areas, with some parts planted in exotic trees
- Exotic forestry that is not part of any future water collection area.

Recreational activities take place to varying degrees in all three areas.

Exotic forests in the Wairarapa are not included. From a WRWB Act point of view there are just two land classifications - water collection areas and forestry areas.

At present the trees that form the Council's exotic forests (excluding the Wairarapa) are grown on forestry land or future water collection land. There is no exotic forestry in the existing water supply catchment areas.

Under the WRWB Act, different activities are allowed in forest areas compared to water collection areas. Activities in water collection areas are much more restrictive. Section 52 of the WRWB Act allows for the granting of permits for temporary occupation in any water collection or forestry area. While "temporary" is not defined, it would be difficult to construe that a wind turbine erected for an expected life of 20-25 years could be considered temporary. More permanent activities are currently allowed only in forestry areas.

When the WRWB Act was drafted over 30 years ago, there was no water treatment as we know it today - only the addition of chlorine. Hence, effectively precluding commercial or industrial activities in the catchments was very appropriate. Though provision was made in section 30 of the WRWB Act for surplus water to be sold for "motive power", there is no provision for hydro generation other than by the administrator of the WRWB Act. A couple of small sites for hydro generation using a run of river approach exist within the water catchments but are not currently viewed as being economic. At present, an electricity generator would be precluded from constructing these.

A detailed legal analysis of the status of GWRC landholdings that may be suitable for sustainable energy development is contained in **Attachment 1.** It concludes that it is not possible to grant easements over land set aside for water supply purposes. With wind generation costing in the order of $1.6 million a megawatt of installed capacity, a generator is likely to require some security for its resource. One of the usual ways of achieving this on another person's land is by way of an easement.

For GWRC forestry areas an easement can be granted at present but some possible issues under section 40 of the Public Works Act are alluded to in the legal analysis.

An area in the Puketiro forest that adjoins the Battle Hill Regional Park appears to be very promising for wind generation with the order of 25 MW available. The area though is currently classified for water supply purposes. All up, it is expected that Council land which comes under the WRWBA will have the potential for at least 100 MW of wind generation. GWRC needs to protect its position with respect to sustainable energy generation in both water collection and forestry land.

It is concluded that changes should be sought to the WRWB Act to allow for sustainable energy development. Such changes though would not override any of the provisions in the Resource Management Act.

4. Changing the WRWB Act

An initial appraisal by GWRC's solicitors suggests that the best way to proceed is by changing the WRWB Act to contain many of the provisions in the Reserves Act 1977 and the Electricity Act 1992. Specifically this would then allow for electricity generation and directly associated activities. It could preclude activities on water catchment land that are not part of any electricity development. Thermal generation could also be precluded.

Attachment 2 is a set of notes prepared by the Office of the Clerk of the House of Representatives that gives a summary of the procedures for changing an Act of Parliament that is specific to a local issue. The time required to change an Act (or introduce a new Act) can vary considerably but it is unlikely to be less than six months, unless the Government deems the issue to be particularly urgent. A realistic timeframe is possibly 12 months or more.

5. Communication

If GWRC decided to proceed, it would be appropriate to issue a media statement.

6. Consultation

There are extensive consultation provisions in the Act amendment procedure and it would normally be expected that the Select Committee of Parliament considering the Bill would call for submissions.

No consultation has been carried out to date.

7. Recommendations

That the Committee recommend to Council that it.

I. receive *the report.*

2. ***note*** *the contents of the report.*

3. approve *the drafting of a Bill that would allow for sustainable energy development on Greater Wellington Regional Council land that is designated for water catchment or forestry purposes under the Wellington Regional Water Board Act 1972.*

4. direct *that, once a Bill is drafted, it be referred to the Committee for further consideration together with an update on the potential ' WRBA ' land sites.*

Report prepared by:	Report endorsed by:	Report endorsed by:
M D Kennedy Project Manager Renewable Energy	**David Benham** Divisional Manager Utility Services	**Geoff Dick** Acting Divisional Manager Landcare

Report approved by:

Howard Stone
General Manager

Attachment 1: Oakley Moran letter
Attachment 2: Promoting a local Bill, Office of the Clerk of the House of Representatives

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RE 02 04 01

JWT:BJM
Ref:

8 April, 2003

Peter O'Brien
O'Brien Property Consultancy Ltd
Level 4
15 Courtenay Place
WELLINGTON

Dear Peter

WIND TURBINES ON RESERVE LAND

1. I understand this opinion is required because Greater Wellington **(GW)** is considering erecting a series of wind turbines on Belmont Regional Park or on land held by GW under the Wellington Regional Water Board Act 1972 **(WRWBA)** for the purpose of generating electricity to be supplied either to the national grid **or** to an energy supply company. The issue which arises is what powers does GW have to establish wind turbines on either reserves land in Belmont Regional Park or land which GW holds under the WRWBA.

2. Under section 48 of the Reserves Act 1977 (RA), an administering body in whom a reserve is vested may, with the consent of the Minister of Conservation, and subject to such terms as the Minister may impose, grant rights of way or other easements for, inter alia, an electrical installation or work (as defined in section 2 of the Electricity Act 1992). Section 2 of the Electricity Act 1992 **(EA)** defines an electrical installation as:

> *(a) All fittings—*
> *(i) That form part of a system for conveying electricity; and*
> *(ii) That form part of such a system at any point from the point of supply to a consumer to any point from which electricity conveyed through that system may be consumed; and*
> *(b) Includes any fittings that are used, or designed or intended for use, by any person, in or in connection with the generation of electricity for that person's use and not for supply to any other person: but*
> *(c) Does not include any electrical appliance:*

"*Work*" (the singular) is not defined in section 2 of the EA. However, there is a definition of "*electrical works*" in section 2 and it would be reasonable to conclude that it is to that definition that section 48(l)(c) of the RA is intended to refer. These are defined as:

(a) Any fittings that are used, or designed or intendedfor use, in or in connection with the generation, conversion, transformation, or conveyance of electricity; but
(b) Does not include-
(i) Any fittings that are used, or designed or intended for use, by any person, in or in connection with the generation of electricity for that person's use and not for supply to any other person: or
(ii) Any part of any electrical installation.

3. There are some further definitions in section 2 of the EA to which I draw your attention. These are:

"Electricity distributor" means a person who supplies line function services to any other person or persons,.

"'Electricity generator" means any person who owns or operates a generator connected to distribution or transmission lines;

'Line function services" means—
(a) The provision and maintenance of works for the conveyance of electricity.
(b) The operation of such work, including the control of voltage and assumption of responsibility for losses of electricity,.

"Fittings" means everything used, or designed or intended for use, in or in connection with the generation, conversion, transformation, conveyance, or use of electricity.

4. On the basis of these various definitions, it would seem GW has the power, subject to the Minister's consent and following the proper procedure (to which I shall refer shortly), to grant easements or rights of way over such of the land within Belmont Regional Park as comprises reserve land for the purpose of constructing and maintaining windmills and turbines for the generation and conveyance of electricity. The windmills and turbines would be *"electrical works"* and the transmission lines would be *"electrical installations"* within the meaning of the EA.

5. Although under section 48(l)(c) of the RA, only the distribution and transmission of gas or petroleum (as distinct from its mining) is contemplated the position appears always to have been otherwise with respect to electricity. Prior to the EA coming into force, section 48(l)(c) of the RA provided:

(1) The Minister, in the case of reserves vested in the Crown, and, in the case of reserves vested in an administering body, the administering body with the approval of the Minister and on such conditions as the Minister approves, may grant rights of way and other easements over any part of the reserve for-
(a)
(b) ...
c) The utilisation of water power or geothermal energy for the ***generation*** *and transmission of electric current for heating, lighting, or power purposes* [emphasis added].

6. The power to grant any such easement or right of way is subject to the provisions of the Resource Management Act 1991 (**RMA**) and to section 48(2) of the RA. The latter provides:

(2) Before granting a right of way or an easement under subsection (I) of this section over any part of a reserve vested in it, the administering body shall give public notice in accordance with section 119 of this Act specifying the right of way or other easement intended to be granted, and shall give full consideration, in accordance with section I20 of this Act, to all objections and submissions received in respect of the proposal under that section.

7. For convenience, I also set out the provisions of sections 119 and 120 of the RA.

19. Notices—

[(I) Where this Act requires anything to be publicly notified or refers to public notification, the subject-matter shall, unless this Act specifically provides otherwise, be published as follows.

(a) Where the notification relates to a National reserve or proposed National reserve, or any part thereof; it shall be published—

(i) Once in the Gazette; and

(ii) Once in a newspaper circulating throughout the area in which the reserve or proposed reserve is situated; and

(iii) Once in each of 2 daily newspapers published in the Cities of Auckland, Wellington, Christchurch, and Dunedin; and

(iv) In such other newspapers (if any) as the Minister directs..

(b) Where the notification relates to any other reserve or proposed reserve, it shall be published—

(i) Once in a newspaper circulating in the area in which the reserve or proposed reserve is situated; and

(ii) In such other newspapers (if any) as the administering body decides:

Provided that any notification under section 16(4) of this Act relating to a nature reserve or scientific reserve or a proposed nature reserve or scientific reserve shall be published in the manner specified in paragraph (a) of this subsection.

Provided aiso that where under this subsection a notification is required to be published in a newspaper circulating in the area in which the reserve or proposed reserve is situated and there is no such newspaper, the notification shall be published once in the Gazette.]

(2) Subject, in relation to Maori land owned in multiple ownership, to section 71 of the Maori Affairs Amendment Act 1974, a notice required by this Act to be given to any person may be sent by registered post to the last-known place of abode or business of that person, and shall be deemed to have been delivered when in the ordinary course of post it would be delivered. If any such person is absent from New Zealand, the notice may be sent to his agent, and, if he has no known agent, the notice may be given to him by publishing it in a newspaper circulating in the district in which the land the subject-matter of the notice is situated.

(3) Every notice by the Minister under this Act shall come into force on the day of the date thereof or on such later date as may be specified in the notice.

120. Rights of objection and of making submissions—

(1) Subject to sections I3 and 47 of this Act, where pursuant to any requirement of this Act [(except sections 24, 24A, and 41)] the Minister or any administering body gives public notice of his or its intention to exercise any power conferred by this Act-

&J Any person or organisation may object to the Minister or administering body, as the case may be, against, or make submissions with respect to, the proposal; and

(b) Every such objection or submission shall be made in writing, and shall be sent to the Minister or administering body at the place specified in the notice and before a date specified in the notice, being not less than [1 month] after the date ofpublication of the notice: and

[Provided that, where the date of publication of the notice falls within the period commencing with the 10th day of December in any year and ending with the 10th day of January in the next succeeding year, the date before which objections and submissions shall be made shall be not earlier than the 10th day of February next following that period:]

(c) Where the objector or person or organisation making the submission so requests in his or its objection or submission, the Minister or administering body, as the case may be, shall give the objector or that person or organisation a reasonable opportunity of appearing before the Commissioner (in the case of a notice given by the Minister) or, as the case may be, before the administering body or a committee thereof or a person nominated by the administering body in support of his or its objection or submission; and

(d) The Minister or the administering body, as the case may be, shall give full consideration to every objection or submission received before deciding to proceed with the proposal: and

(e) Where the action proposed by an administering body requires the consent or approval of the Minister and is recommended to the Minister for his consent or approval under any provision of this Act, the administering body shall send to the Minister with its recommendation a summary of all objections and comments received by it and a statement as to the extent to which they have been allowed or accepted or disallowed or not accepted.

(2) Every public notice to which subsection (I) of this section applies shall specify the right to object or make submissions conferred by this section and the place to which and the date by which any objections or submissions are to be sent.

(3) The person or administering body or committee before whom or which any person appears at any hearing in support of any objection or submission shall determine his or its own procedure at the hearing.

8. The procedure set out in section 48(2) of the RA is not required if the provisions of section 48(3) can be satisfied. They provide:

(3) Subsection (2) of this section shall not apply in any case where-

(a) The reserve is vested in an administering body and is not likely to be materially altered orpermanently damaged: and

(b) The rights of the public in respect of the reserve are not likely to be permanently affected—

by the establishment and lawful exercise of the right of way or other easement.

9. Whilst I consider it is likely that the creation of any such easement or right of way would not be likely to permanently affect the rights of the public in respect of the reserve or that it would permanently damage the reserve, if is possible that the visual effects could be such that the reserve might be materially affected by the creation of such an easement. Moreover, it is likely that the erection of windmills for the generation of electricity is not a permitted activity under the Hutt City Council's district plan and publication notification would therefore be required in any event. Any further consideration of the project should therefore allow for public notification and consultation under both the RA and the RMA.

I0. The position is less satisfactory under the WRWBA. Under section 43 of the WRWBA, GW (or its predecessors) may, by notice in the Gazette, set apart any land vested in it or under its control as a water collection area or a forestry area. Existing land is therefore likely to have been set apart as either a water collection area or a forestry area, though it is possible some land may have been acquired under the WRWBA or for the purposes of the WRWBA without having been set apart as either.

11. The powers with respect to water collection areas and forestry areas differ. Under section 52 of the WRWBA, GW may grant permits for the temporary occupation of any water collection area or forestry area provided that is not prejudicial to forestry or the supply of water. Clearly a permit for temporary occupation would not provide any basis for the construction and operation of wind turbines. Under section 53 of the WRWBA, GW has power to grant a licence, in respect of a forestry area (but not a water collection area), a licence not exceeding 21 years (with one right of renewal not exceeding 21 years) for, inter alia, any industrial purpose. In my opinion, the construction and operation of a wind turbine would be an industrial purpose within the meaning of the WRWBA. The word "*industrial*" is not defined in the WRWBA but it is likely to be construed having regard to the use to which it was commonly put when the WRWBA was enacted. At that time, *the* word "*industrial*" was commonly use in district schemes under the Town and Country Planning Act 1953 to describe activities which were to be contrasted with residential, commercial or rural activities. The construction and operation of a plant to generate electricity would have been seen as an industrial activity. Similarly, such an activity would have been seen *as* "*industrial*" for health and safety purposes. The fact that any venture to instal a wind turbine would be a commercial operation does not detract from the description of that activity as "industrial". In that regard it is no different from a factory, the paradigm example of an industrial purpose. The turbine "manufactures" electricity for consumption in the same way as a factory manufactures a product for consumption.

12. There are some further features about section 53 of the WRWBA which might make its use unattractive to any power generating company. Under subsection (4), no compensation is payable on the termination or expiry of the licence for any improvements erected on the land, though the licensee would be entitled to remove them. Under subsection (5), at any time within the last year of the licence, GW has the right to purchase any buildings, plant and machinery at a price to be fixed by arbitration (in default of agreement). GW would not be competent to contract out of these rights or

waive them at this stage.

13. For the sake of completeness, I should note that there would be no impediment to the grant by GW to a power generating company of an easement over or lease of land not set apart as either a water collection or forestry area.

14. A residual question would arise in respect of any land held under the WRWBA. That is simply whether the purposes for which the land was acquired and is being held could be said to be advanced by the grant of any easement or lease for power generating purposes. Such a purpose would have nothing to do with the purposes of and the duties of GW under the WRWBA. If any such land had been acquired under the Public Works Act 1981 (or its predecessors) an issue may arise about the rights of former owners or their successors in title to have the land offered hack to them {as it would be difficult to justify the erection of wind turbines on land taken for forestry purposes).

15. In the light of all of the above, I suspect the problems in establishing a wind farm on land held under the WRWBA is likely to be more problematic than in doing so on reserve land.

16. In summary:

16.1 The grant of an easement over reserve land for the purposes electric power generation is authorised under section 48 of the RA (subject to compliance with the statutory requirements which include the consent of the Minister of Conservation).

16.2 The grant of an easement for such purpose over land set apart as a water collection area under the WRWBA is not authorised.

16.3 The grant of an easement for such purpose over land set apart as a forestry area under the WRWBA is authorised under section 53 of the WRWBA (subject to the limitations described in paragraph 12 above) but may create the difficulties referred to in paragraph 14 above.

17. If there are any further matters, please do not hesitate to contact me.

Yours sincerely
OAKLEY MORAN

J.W. Tizard

Office of the Clerk of the House of Representatives

Parliament House Wellington 1 New Zealand

Promoting a local bill

These notes are designed for the guidance and information of local authorities promoting local bills and their legal advisers. The notes should be read in association with the Standing Orders of the House of Representatives relating to local bills. Copies of the Standing Orders can be obtained from bookshops operated by Bennetts Books.

Definition and scope of local bill

A local bill is a public bill promoted by a local authority which affects a particular locality only. A local bill may not deal with several matters in different districts.

A local bill cannot amend a public Act except purely consequentially

Preliminary procedures

The **bill**

The local authority is responsible for drawing up the bill. Normally the local authority's legal adviser prepares the draft.

Standing Orders changes made in 1999 in relation to the format of legislation mean that

- all bills must now have an explanatory note (previously the practice was for Government and Members' bills to have them) (SO 253)
- the enacting formula is more directly expressed (SO 250)
- the Title is stated in the first clause of the bill (and there is **no** Long Title) (SO 251)
- a separate commencement clause is required (SO 252)
- the temporary law clause has been restated (SO 255).

Other changes have also been made to the style and layout of bills.

The Office of the Clerk recommends that legal advisers, either directly or through the Office of the Clerk, ask the Parliamentary Counsel Office to scrutinise the draft bill. The Parliamentary Counsel Office look at the draft for conformity to parliamentary drafting style and will also ensure that matters of form or substance that arise are dealt with in the preparation stage. It is important that this step is taken before the bill is advertised and formal procedures are embarked upon.

Having decided to proceed, the local authority should ask a member of Parliament to have charge of the bill in the House. It has been a convention that the promoter, in the first instance, approach the electorate member for the local authority district.

Once the text of the bill is finalised, the promoter arranges for a copy of the bill to be deposited in the District Court and gives notice in the locality of the intention to introduce the bill in terms of Appendix C.

Public notice

After the text of the bill is finalised, the next step is for the local authority to *give* public notice of the bill in accordance with the Standing Orders of the House.

Notice of the bill, summarising its objects and stating where copies have been deposited for public inspection, must be published not less than once in each of two successive calendar weeks in a daily newspaper circulating in the locality to which the bill relates. On the first date that the notice is published in the newspaper, a copy of the bill must be deposited for public inspection in the District Court and another in the local authority's office (clause 4, Appendix C of the Standing Orders).

A copy of each published notice, showing the name of the newspaper: date of publication and page number must be obtained to send to the Clerk of the House once the preliminary procedures have been carried out.

Separate notice to appropriate members of Parliament is also required (clause 9, Appendix C of the Standing Orders (see page 3)).

Deposit of bill for public inspection in the District Court and local authority's office

Copies of the bill must be deposited in —

- the District Court nearest the centre of the locality, and
- the local authority's public office

for 15 working days for public inspection without charge during office hours. If the bill is deposited or uplifted during public office hours, the day concerned does not count towards meeting the prescribed 15 working days.

Depending on the size and population distribution of the local authority district and the subject-matter of the bill, it may be desirable for the local authority to also make copies of the bill available for inspection at, for instance, other District Courts in the local authority district, at local authority service centres or sub-offices, or at public libraries.

On uplifting the bill, the local authority must ensure that the District Court Judge's or Registrar's certificate that the 15 day deposit requirement has been complied with is inscribed on the copy of the bill that has been deposited (clause 6, Appendix C of the Standing Orders). (By virtue of the District Courts Act 1947, a Registrar includes a Deputy Registrar.) This certificate may *not* be a separate document but must be inscribed on the bill itself. Note the stamping requirements.

A certificate in the following form is suitable:

> PURSUANT to the Standing Orders of the House of Representatives, I [insert name], certify that this bill was deposited in the District Court at [place] and remained open to public inspection during office hours, without fee, for a period of not less than 15 working days, from . . . . . 20.. . to . . . . . 20. . . .
>
> [signature]
>
> [designation, ie. District Court Judge or Registrar]
>
> Dated at . . . . . , this . . . . . day of . . . . . 20. . . .

Where land is not comprised in any certificate of title, is not described in legislation or is not shown on a deposited plan, a true copy of the plan of the land **certified correct** by the Chief Surveyor of the relevant land district must also accompany each copy of the bill deposited in the district court and the public office of the local authority (clause 7, Appendix C of the Standing Orders).

The plans must be certified in the same manner as the deposited copy of the bill.

Notice to affected members of Parliament

Who should be served?

The local authority must serve notice on members of Parliament for the General and Māori electoral district whose constituents may be affected by the provisions of the bill (clause 9, Appendix C of the Standing Orders). Notice must be served on all members for General and Māori electoral districts covering areas of the local authority district concerned. Notice may be served by

- personal delivery, or
- posting, or
- delivery by courier, or
- delivery to a document exchange, or
- sending by fax.

Prior consultation with any member, including the member who is to have charge of the bill in the House, does not obviate the obligation to serve notice on that member.

In terms of section 54 of the Electoral Act 1993 there is no member of Parliament for any electoral district from the close of polling day at a general election until the return of the writ for that electoral district. Therefore, any service to **persons** in the intervening period is ineffective.

Certification of notice to members

Prepare a certificate that notice has been served on affected members (clause 9 (3) of Appendix C of the Standing Orders). This certificate should be forwarded to the Clerk of the House at the same time as the deposited bills.

The certificate must state that notice was served **on** named members at least three days before the date of the certificate.

The principal administrative officer should sign the certificate .

After the bill has been forwarded to the Clerk

Once the preliminary procedures have been completed, the local authority forwards the relevant papers to the Office of the Clerk.

Fee

The papers which are forwarded to the Office of the Clerk should be accompanied by the prescribed fee of $2,000 (which includes GST) (clause 10(2), Appendix C of the Standing Orders). The cheque should be made out to the "Office of the Clerk of the House of Representatives".

4

Procedure following lodgement of documents

When the documents have been lodged with the Office of the Clerk, provided that Standing Orders have been complied with, we will advise the member who is to have charge of the bill.

Once the bill has been printed, the member may initiate the bill into the House on a suitable sitting day. The introduction of the bill is announced by the Clerk soon after 2 p.m. on a sitting day. After its introduction the bill is set down for first reading.

The first reading debate on a local bill takes place on a members' day, which is generally on alternate Wednesdays on which the House sits. The bill is then normally referred to the Local Government and Environment Committee for consideration and report to the House.

Relevant Government departments are usually called on to make reports on the bill to the committee. The local authority hears from the clerk of the committee at the appropriate time, and *is* normally given the opportunity to make a submission to the committee.

The subsequent stages at which a bill may be debated and through which it must pass to become an Act are:

- Second reading, when the report of the select committee on the bill is considered;
- Committee of the whole House; and
- Third reading.

If Standing Orders have been complied with local bills can be introduced while the House is adjourned and is not due to meet again within the next 14 days. (SO 275). Where a bill is introduced during an adjournment, there is no first reading. The bill is deemed read a first time and is referred to the Local Government and Environment Committee.

The consideration of local bills at each stage in the House has precedence over Government business on alternate Wednesdays on which the House sits, except when the House *is* debating the Address in Reply, the Prime Minister's statement, the Budget, or the Estimates, in which case Government orders of the day are taken first, and private and local orders of the day and Member's orders of the day are taken first on the following Wednesday.

Having been read a third time, the bill is prepared for the Royal assent. Once signed by the Governor-General, the bill becomes an Act of Parliament and it is printed for sale as a statute.

Office of the Clerk of the House of Representatives
March 2000