

A. High Elevation Habitat Mitigation Settlement Agreement

Subsequent to the submission of Mr. Staats' and Ms. Kelly's pre-filed direct testimony, Fish and Game, along with the Appalachian Mountain Club, entered into a High-Elevation Mitigation Settlement Agreement with GRP. This Agreement has been entered into the record as Petitioner's Exhibit 48. The New Hampshire Department of Fish and Game requests that GRP's commitments, as described in Exhibit 48, be included as conditions on any site and facility permit that this Sub-committee may eventually issue

With the inclusion of these commitments of GRP, the project's adverse impacts to the natural environment, and specifically its adverse impacts to the species of conservation concern on which Fish and Game's biologists focused, will be adequately mitigated. These commitments are necessary for the SEC to find that the project will not have an unreasonable adverse effect on the natural environment.

B. Possible Governor and Council Disapproval of Fish and Game's Acceptance of Land

At the hearings, questions were raised regarding the effect of the New Hampshire Governor and Executive Council's possible disapproval of the acceptance of the mitigation parcels by Fish and Game. Fish and Game proposes a certificate condition by which a conservation organization would be selected to hold the land and funds that will be transferred by GRP, if the Governor and Council do not approve acceptance of the parcels and funds.

2. Other Certificate Conditions

Pursuant to Part B, paragraph 4 of the Agreement, Fish and Game reserved the right to suggest additional conditions to be included in any certificate issued by the SEC.

A. High Elevation Re-vegetation

Throughout the hearings, the Sub-committee heard testimony regarding GRP's commitment to re-vegetate the new high-elevation roadways so that the road surface will be limited to twelve feet in width. See Agreement, Part A, ¶ 5. Mr. Staats and Ms. Kelly testified that it would be important to encourage native tree growth on the road shoulders and edges at high elevations in order to better facilitate wildlife use of the disturbed area. See Tr. 3/13/09 at 130-32. GRP's witnesses, Mr. Pelletier and Mr. Gravel, testified as well that the ridgeline access road will be "re-vegetated with endemic tree species in order to maintain only a 12-foot wide road width." See Pet. Ex 50 at 19-20. At the hearing, Mr. Pelletier acknowledged that Balsam Fir would be the best species to use for re-vegetation and that it would be appropriate for the project's designers to consult with experts to determine how to best reach the stated goal of re-vegetation with endemic species to a twelve foot width. See Tr. 3/13/09 at 22, 37-38. In order to allow for efficient and appropriate re-vegetation of the high elevation roadsides, Fish and Game proposes a condition requiring GRP implement a re-vegetation plan developed by Stantec in consultation with Fish and Game.

B. Post Construction Bird and Bat Mortality Study

Fish and Game recommends that GRP be required to implement a post-construction bird and bat mortality study designed by Stantec and reviewed and approved by Fish and Game. The study should be conducted for three consecutive years, and a full report with analysis should be produced after each complete year.

C. Decommissioning

Because the High-Elevation Mitigation Settlement Agreement will result in Fish and Game owning land surrounding the portion of the Windpark on Mt. Kelsey, Fish and Game has an interest in the SEC requiring an adequate Decommissioning Plan. To this end, Fish and

Game joins in and adopts the Appalachian Mountain Club's proposed Decommissioning Conditions.

WHEREFORE, in view of the foregoing the New Hampshire Fish and Game Department respectfully requests that any site and facility permit issued by the Sub-committee include the above terms and conditions as described in this brief and listed in the attached document titled "Fish and Game's Proposed Conditions."

NEW HAMPSHIRE
FISH AND GAME DEPARTMENT

By its attorneys

KELLY A. AYOTTE
ATTORNEY GENERAL

Dated: April 6, 2009



Evan J. Mulholland
Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
Tel. (603) 271-3679

Certificate of Service

I, Evan J. Mulholland, do hereby certify that I caused the foregoing to be served by electronic mail or first class mail postage prepaid upon each of the parties on the Service List in this docket.

Dated: April 6, 2009



Evan J. Mulholland

- d. To the extent necessary, NHFG staff shall be permitted to cross adjoining lands to access the conserved areas
4. Lands above 2700 feet in the approximately 620-acre conservation parcel on Phillips Brook intended as mitigation for wetland impacts as proposed by GRP shall be governed by the same provisions as those areas listed above and be transferred through fee title to NHFG or other appropriate state agency approved by NHFG.
5. Within the Retained Land on Mount Kelsey, only those trees necessary for project construction will be cut. Once construction is completed, there shall be no commercial timber harvesting in this area. After project construction the roadway shall be re-vegetated so that the roadbed is limited to 12 feet in width
6. If and when the Retained Land is permanently abandoned by the landowner for wind energy production, it will be conveyed to the owner of the adjoining high-elevation lands for the purpose of perpetual conservation.
7. GRP shall provide recordable surveys of the lands to be transferred, as well as marked boundaries. Note that the 2700 foot elevation will be referenced as the boundary of the target areas. However, the actual boundaries may follow straight lines centered on the 2700' elevation to facilitate survey and boundary line marking, provided that the area encompassed by these lines shall not be less than the area encompassed by the 2700 foot elevational contour.
8. GRP shall make a one time payment of \$200,000 (Two Hundred Thousand Dollars) to NHFG to be used to conduct studies of the impacts of the development on use of the area by American marten, Bicknell's thrush, and/or other wildlife species of concern, with the studies to be designed by NHFG and conducted by NHFG or other party or parties designated by NHFG.

This is not intended to substitute for the need on the part of GRP to conduct any bird or bat post-construction monitoring studies that might be required through this or any other permitting process.

9. GRP shall take commercially reasonable efforts to restrict motorized public access on all gated turbine access roads above 2700 foot elevation that are constructed for the Windpark.
10. GRP shall make a one time payment of \$750,000 (Seven Hundred and Fifty Thousand Dollars) to NHFG to secure or assist with the permanent conservation of comparable habitat outside of the project area. These funds shall be held in escrow by NHFG or its designee until expended. Funds shall be expended on one or more projects approved by NHFG after consultation with AMC. The priority for expenditure of the funds shall be for projects that secure conservation of habitat for American marten or other species of conservation concern, with a focus on high elevation spruce-fir habitat in Coos County.

11. GRP agrees that it will not construct wind turbines or associated infrastructure on Whitcomb Mountain or permit any other party to utilize its electric collection lines for wind energy facilities on Whitcomb Mountain.
12. GRP shall complete all obligations specified under Conditions 1 through 11 above prior to conducting any construction activities (including clearing of vegetation) above 2700 feet in elevation on Mount Kelsey or Dixville Peak, however GRP shall have no obligations hereunder if it does not commence such construction activities. GRP shall have construction financing in place sufficient to fund its obligations hereunder prior to commencing such construction activities.

B. High Elevation Re-Vegetation Condition

For the ridge line roads above 2700 feet in elevation, GRP shall develop an active re-vegetation plan in consultation with Stantec (or other wildlife consulting company) and Fish and Game that will result in endemic spruce and fir species recolonization of the road shoulders and outer road surfaces as soon as possible. This plan shall include planting seedling where appropriate and applying organic matter to best support natural spruce and fir reseedling.

C. Migratory Bird and Bat Post-construction Mortality Study

GRP shall conduct a migratory bird and bat post-construction mortality study. This study shall last three consecutive years following commercial operation of the turbines. A full report with analysis shall be submitted after each year of study. The study's protocols shall be subject to review and approval by Fish and Game, and shall include searches of individual turbines at the entire project site, searcher efficiency trials and scavenging rate trials.

D. Contingency for Governor and Executive Council Disapproval of the Fish and Game Acceptance of the Mitigation Parcels.

If the Governor and Executive Council do not approve the Fish and Game's acceptance of the mitigation parcels and payments as contemplated in the High-Elevation Mitigation Settlement

Agreement, GRP shall transfer such mitigation parcels and payments to a conservation organization chosen by consultation with Fish and Game.