

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Georgia Mountain Community)
Wind, LLC for a Certificate of Public)
Good, pursuant to 30 V.S.A. Section 248,)
authorizing the construction and operation)
of a 5-wind turbine electric generation)
facility, with associated electric collection)
and interconnection facilities, on Georgia)
Mountain in the Towns of Milton and)
Georgia, Vermont, to be known as the)
“Georgia Mountain Community Wind)
Project”)

Case No. _____

**PREFILED TESTIMONY OF
JAMES HARRISON
ON BEHALF OF
GEORGIA MOUNTAIN COMMUNITY WIND, LLC**

August 20, 2018

Mr. Harrison’s testimony describes certain changes to the conservation easement deed and map approved in connection with the Georgia Mountain Community Wind Project, and the basis for the non-substantial change determination request.

TABLE OF CONTENTS

1. Introduction	1
2. Background Re: Conservation Order	3
3. Recorded Conservation Deed and Survey	5
4. Elements of Final Grant and Differences from Conservation Order Deed.....	6
5. Delays in Finalizing Conservation Easement Since 2011	11
6. Status of Conservation Property	14
7. Conclusion	15

EXHIBITS

Exhibit GMCW-JH-1	Final Grant of Development Rights to ANR
Exhibit GMCW-JH-2	Survey of Protected Property
Exhibit GMCW-JH-3	Orthomap Depicting Easement Boundaries
Exhibit GMCW-JH-4	Redline Comparing Grant to Draft Easement Deed
Exhibit GMCW-JH-5	Parcel Photographs
Exhibit GMCW-JH-6	ANR Recommendation Letter

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1. Introduction

Q1. Please state your name, occupation, and address.

A1. My name is James Harrison. I am the sole member/manager of H.W. Ventures, L.C., a Vermont limited liability company (“H.W. Ventures”). H.W. Ventures is a Milton-based real estate development and forestry management company that has been in business for over 20 years. My business address is: James Harrison, c/o Harrison Concrete, P.O. Box 2098, Milton, Vermont 05468-2098.

Q2. Please state the nature of your personal involvement in the above-referenced docket.

A2. I am the same James Harrison that provided testimony in this proceeding on March 26, 2009, in support of the Georgia Mountain Community Wind Project (the “Project”). I also provided affidavits to the Vermont Public Utility Commission (“Commission”) in

1 2011 relating to maple sugaring operations and forestry management in the area of
2 Georgia Mountain surrounding the Project. Up until recently, my wife and I were partial
3 owners of Georgia Mountain Community Wind, LLC (“GMCW”) along with the David
4 Blittersdorf Revocable Trust. On December 21, 2017, Greenbacker Wind, LLC
5 (“Greenbacker”) purchased 100% of the membership interests in GMCW, subject to
6 resolution of certain items including the conservation easement and survey that is the
7 subject of this request.

8
9 **Q3. What role if any does H.W. Ventures have with respect to this docket?**

10 A3. While H.W. Ventures was never a formal party to this proceeding, the company is the
11 lessor under the ground lease for the Project, and still owns the land on Georgia
12 Mountain, as well as hundreds of adjacent acres. As explained further below, in 2011,
13 H.W. Ventures, as the underlying landowner, had agreed to the terms and conditions of
14 the conservation easement presented by GMCW to the Commission for approval, per
15 Condition 26 of GMCW’s Certificate of Public Good dated June 11, 2010 (the “CPG”).
16 More importantly for present purposes, H.W. Ventures is the grantor of the conservation
17 easement referenced in Condition 26.

18
19 **Q4. What is the purpose of your testimony?**

20 A4. I offer this testimony on behalf of GMCW to explain certain changes to the conservation
21 easement deed and map approved in the Commission’s Order of May 11, 2011 pursuant
22 to Condition 26 of the CPG (the “Conservation Order”). In short, I submit that the final

1 deed and plan are consistent with the Conservation Order, notwithstanding certain
2 changes that took a much-longer-than-expected amount of time to resolve.

3
4 **2. Background Re: Conservation Order**

5 **Q5. Before discussing the proposed changes, would you please summarize the basis for**
6 **the Conservation Order?**

7 A5. Yes. On June 11, 2010, the Commission issued the Order and CPG approving
8 construction of the Project. Condition 26 stated that “GMCW shall file a proposal, for
9 [Commission] approval, for conserving the Project area as required in the section of th[e]
10 Order addressing rare and irreplaceable natural areas.” This condition was included at
11 the request of the Agency of Natural Resources (“ANR”) to mitigate the Project’s
12 impacts on Georgia Mountain’s natural communities, wetlands, and habitat.

13
14 Following issuance of the CPG, GMCW and ANR worked with H.W. Ventures’ attorney
15 to develop a conservation easement that would protect the natural communities on
16 Georgia Mountain while allowing some of the existing activities occurring in Project area
17 to continue, such as forestry, maple sugaring, outdoor recreation, and limited use of all-
18 terrain vehicles. The parties intended all along that the easement would ultimately be
19 granted not to ANR, but rather to (as stated in the approved deed) “[a nonprofit or
20 governmental entity qualified to hold conservation easements designated by the Agency
21 of Natural Resources].” At that time, ANR’s attorney surmised that the designee would
22 likely be the Vermont Land Trust (“VLT”), or a similar Vermont-based conservation

1 organization. VLT was a logical choice given the organization's role in long-term
2 management of large conservation parcels throughout the State.

3
4 The negotiated easement and map were submitted to the Commission for review and
5 approval consistent with CPG Condition 26 on March 24, 2011. Of importance, the deed
6 as submitted was marked "GMCW / ANR Draft 3/24/11" and contained several blanks to
7 be filled in at an unspecified date: notably, the easement designee, as well as a full survey
8 to replace what was essentially a bare bones property description attached as Schedule A.
9 The map that was referenced in the Schedule A to the draft deed consisted of a satellite
10 photograph with colored lines depicting the approximate location of the easement area,
11 but nowhere indicating the location of the Project in relation to the conserved area. The
12 draft deed limited future uses on the protected parcel to, among others, maple-sugaring
13 operations, forestry, and outdoor recreation. ATV and other mechanical vehicle usage
14 was specifically allowed on the conservation easement without restriction, except within
15 a Class 3 vernal pool that the Commission had referenced in its natural communities
16 discussion in the CPG. No party filed comments on the proposed conservation easement.

17
18 In the Conservation Order, the Commission approved the proposal so long as it was
19 clarified to state that portions of the Project may be abandoned in place only in
20 accordance with the Project's decommissioning plan. The approved deed and map
21 provided perpetual conservation restrictions for 108 acres of land—including the
22 approximately 26.6 acres occupied by the Project and related infrastructure, roads, and

1 ancillary equipment (the “Wind Farm Area”)—implicitly acknowledging that the turbines
2 would be situated within a portion of the conserved area. This acknowledgment is
3 reflected in Section III of the draft deed, which granted the right to construct the Project
4 on the conserved property, save for within the limits of the vernal pool.

5
6 **3. Recorded Conservation Deed and Survey**

7 **Q6. Please explain the current status of the conservation easement deed and survey**
8 **referenced in the Conservation Order.**

9 A6. On June 13, 2018, H.W. Ventures granted to ANR (as opposed to a third party designee)
10 the conservation easement in substantially the form set forth in GMCW’s March 24, 2011
11 submission approved in the Conservation Order. A copy is enclosed as **Exhibit GMCW-**
12 **JH-1**. The grant was recorded June 15, 2018, in the Milton Land Records, and cross-
13 references a final survey plan of the easement prepared by Cross Consulting Engineers,
14 P.C. and recorded in the Milton Land Records June 1, 2018 (**Exhibit GMCW-JH-2**).
15 For perspective, the survey of the protected area and the Project area superimposed over
16 an orthophotograph is provided as **Exhibit GMCW-JH-3**.

17
18 **Q7. Have the grant and survey received the requisite approvals in order for ANR to own**
19 **and manage the protected property?**

20 A7. Yes: it’s my understanding that ANR secures approval from the local municipality where
21 a conservation property is located, as well as the governor, before it can accept property.
22 ANR informed our attorney that the deed and survey were approved by the Town of

1 Milton on or about May 8, 2018, and that Governor Phil Scott signed off on the
2 conveyance on or about June 4, 2018. We awaited word on these approvals before
3 executing, delivering, and recording the instruments to ANR. ANR acknowledged
4 receipt of the grant, as well as a check for ten thousand dollars that H.W. Ventures
5 supplied as a stewardship fee, by letter dated June 27, 2018, and included with **Exhibit**
6 **GMCW-JH-1**.

7
8 **4. Elements of Final Grant and Differences from Conservation Order Deed**

9 **Q8. In what respects does the final grant differ from the draft deed dated 3/24/11**
10 **approved in the Conservation Order?**

11 A8. For the convenience of the Commission and the parties, I am enclosing as **Exhibit**
12 **GMCW-JH-4** a redlined version of the 3/24/2011 deed against the final grant to show all
13 changes to the documents. The main changes are as listed below:

- 14 • The grant is to State of Vermont, Department of Fish and Wildlife, rather than a
15 designated non-profit organization; however, the grant still includes a provision to
16 assign rights to a third-party conservation organization or another agency. **Exh.**
17 **HWV-JH-4, p.1.**
- 18 • When read in its totality, the instrument includes a grant of a perpetual conservation
19 easement over 87.19 acres of forestland that is currently undeveloped and
20 surrounding the Project, as well as an executory interest in the 26.6 acres where the
21 Project is located in order to place said area under conservation once the Project has
22 been fully decommissioned in accordance with the approved decommissioning plan,

1 and at ANR's option. **Exh. HWV-JH-4**, pp.1, 6 (¶ VI), 11-13 (Sched. A); *see also*
2 **Exhs. HWV-JH-2** and **HWV-JH-3** showing the location of the executory interest
3 and the protected property.

- 4 • The grant eliminates two stranded references to a termination clause from the draft
5 version. **Exh. HWV-JH-4**, pp.1, 8.
- 6 • The grant restricts recreational uses to “wildlife-based recreation ... consistent with
7 the purposes of this grant as determined by [ANR]” along with certain specified
8 activities, and prohibits charging of admission fees for use of the conserved property.
9 **Exh. HWV-JH-4**, p.2, (¶II(1))
- 10 • The grant clarifies that the right to use motorized vehicles / ATVs on existing trails /
11 roads on the protected property is limited to emergency and forest management
12 purposes, as well as for hunting-related vehicle use where such vehicles remain “on
13 trail” as opposed to “off trail.” **Exh. HWV-JH-4**, pp.3, 5, (¶II(8), III(5)).
- 14 • The grant contains a general, discretionary right for ANR or a subsequent assignee to
15 prohibit uses and activities with the potential to become inconsistent with the
16 purposes of the grant. **Exh. HWV-JH-4**, p.2, (¶II(9)).
- 17 • The grant includes a reservation of GMCW's right with respect to the Project
18 construction to install appurtenances for interconnection, as well as an explicit right
19 to enter upon the property for decommissioning purposes (including the “abandon in
20 place” language requested in the Conservation Order). **Exh. HWV-JH-4**, pp.3-4,
21 (¶III(1)).

- 1 • The grant clarifies GMCW's rights to use existing approved access roads and trails
2 for non-motorized, non-mechanized recreational activities. **Exh. HWV-JH-4**, pp.4-5,
3 (¶III(2-4)).
- 4 • The grant specifies that GMCW's rights to engage in maple-sugaring operations are
5 to be no greater in intensity or scope as those operations exist on the date of the grant.
6 **Exh. HWV-JH-4**, pp. 5, (¶III(5)).¹
- 7 • The grant provides authority for H.W. Ventures—with ANR's written approval—to
8 limit public access in order to protect natural habitats or for public safety reasons.
9 **Exh. HWV-JH-4**, pp. 5, (¶IV).
- 10 • The grant includes a provision requiring cooperation to execute additional
11 instruments, or to amend the grant, if necessary to effectuate the executory interest for
12 the 26.6 acres where the Project is located. **Exh. HWV-JH-4**, pp. 5, (¶VII).
- 13 • The grant contains a substantially-reformed property description for the protected
14 property and the Project area in comparison to the draft deed, including metes and
15 bounds descriptions cross-referenced to the recorded survey. **Exh. HWV-JH-4**,
16 pp.11-14, (Sched A).
- 17 • The grant contains a reference to the CPG and the Conservation Order, as well as
18 subsequent docket entries for the Project, in the property description. *Id.*

¹ H.W. Ventures separately provided to ANR photo documentation regarding the extent of maple operations as of March 2018, portions of which are included for the benefit of the Commission and other parties as **Exhibit GMCW-JH-5**.

1 **Q9. Do these changes to the deed approved by the Commission in the Conservation**
2 **Order have the potential for significant impact on the relevant statutory criteria, or**
3 **are they inconsistent with the Conservation Order?**

4 A9. No. As a threshold matter, the CPG Order makes clear that the conservation easement
5 was requested by ANR to mitigate the Project's impacts on the Georgia Mountain's
6 natural environment pursuant to 30 V.S.A. §248(b)(5). The remaining section 248(b)
7 criteria—(1) through (4) and (6) through (10) —are not germane to the changes to the
8 conservation plan, as those criteria relate to the electric grid and transmission system,
9 economic benefit, need, local, regional and state planning, and specific siting
10 considerations that are wholly unrelated by the changes to the conservation easement.

11
12 With respect to the Conservation Order, as shown in **Exhibit GMCW-JH-4**, the changes
13 in the language of the easement are primarily clarifications to ensure greater consistency
14 with the purposes of the grant, or else to provide greater restrictions on the uses of the
15 parcel than were found in the draft deed (e.g., limits on motorized vehicles, prohibition
16 on charging fees, authority to restrict public access to protect habitat and for public safety
17 reasons). All of these restrictions are consistent with the purposes of Condition 26 of the
18 CPG, among other things by making it less likely that motorized vehicles will come
19 anywhere near the Class 3 vernal pool. Moreover, in contrast to the incomplete and
20 vague property description in the original plan, the highly detailed, survey-backed metes
21 and bounds description included in the revised document leaves no doubt as to the
22 locations of the protected property, which will provide parties with greater certainty for

1 managing uses and activities on the protected property, without ever reducing or
2 compromising the core protections afforded for Georgia Mountain in the original plan.
3 The grant is thus consistent with Section 248's emphasis on ensuring no undue adverse
4 impacts on natural resources (including rare and irreplaceable natural areas, wetlands,
5 and wildlife habitat), as acknowledged in the Conservation Order.

6
7 With respect to any discrepancy in the acreage set forth in the draft easement, I do not see
8 this as representing a substantial change to the intent of the Conservation Order given that
9 the Commission, ANR, and all parties always understood that the Project would involve
10 development on a roughly 26.6 acre portion of Georgia Mountain, and that the impacts
11 would be extensive. Logically, the Wind Farm Area could not be conserved and
12 developed simultaneously: it was the anticipated impacts of Project development that
13 prompted ANR's concerns regarding fragmentation of natural communities on Georgia
14 Mountain. The executory interest is a specific legal concept for ultimately conserving
15 that portion where the Project has been developed, but it merely operationalizes the
16 means for achieving what was envisioned back in 2011 with Condition 26. The
17 "amendment" clause in the updated grant further serves to ensure that the natural
18 resources on Georgia Mountain will be conserved once the Project is fully removed and
19 the lands restored per a very detailed decommissioning plan that was approved by ANR.
20 Moreover, when the executory interest is eventually exercised, the protected property will
21 contain 113.79 acres—this represents slightly more than the original 108 acres of land set
22 forth in the Conservation Order.

1 **5. Delays in Finalizing Conservation Easement Since 2011**

2 **Q10. Can you explain the delay in satisfying the requirements of the Conservation**
3 **Order?**

4 A10. As I alluded to at the outset, the process for completing Condition 26 took much, much
5 longer than any party could have realistically foreseen at the time the Conservation Order
6 was issued. However, I wish to emphasize that since 2011, GMCW and H.W. Ventures
7 have worked in earnest with contractors, consultants, and attorneys to satisfy Condition
8 26, without losing sight of its importance in relation to the Project, all while balancing a
9 number of competing priorities relative to the continued viability of an important
10 renewable energy infrastructure project. For simplicity sake, I've divided the trajectory
11 for ultimately fulfilling Condition 26 into four periods of time:

12 **a. 2011-2013**

13 In the two years immediately following the Conservation Order, GMCW's paramount
14 focus was on fulfilling the multitude of post-CPG conditions and on constructing the
15 project, all during a period of intense litigation over compliance-related matters. ANR's
16 focus during this period with respect to the Project was primarily on the
17 decommissioning plan rather than the conservation easement. Beginning in September
18 2012, attorneys for H.W. Ventures and ANR exchanged some emails regarding the
19 conservation easement, but those attorneys determined that a third-party designee /
20 grantee for the easement needed to be identified before H.W. Ventures could finalize the
21 conveyance.

1 b. 2014-2016

2 During this time period, GMCW's energy and efforts were largely focused on marketing
3 the Project to third parties. The ANR and H.W. Ventures attorneys responsible for
4 negotiating the original draft easement left their employment or retired; it took some time
5 to transition responsibility for Condition 26 to new attorneys. The key obstacle during
6 this period towards finalizing the Conservation Plan was the fact that no third party
7 designee had been identified by any party (ANR, H.W. Ventures, or GMCW) to serve as
8 the grantee, and discussions with the VLT had not advanced out of concerns over the
9 Wind Farm Area.

10
11 c. 2017

12 H.W. Ventures and GMCW renewed their focus on Condition 26 last year for two
13 specific reasons: first, the conservation easement was identified as a critical issue in the
14 sale of the GMCW membership interests to Greenbacker, as set forth in the
15 accompanying prefiled testimony of Richard C. Butt. Second, the unresolved easement
16 surfaced in connection with my efforts to place several other parcels under a grant of
17 development rights to the VLT for forest management and tax-related purposes. By mid-
18 2017, ANR had directed H.W. Ventures to work with the VLT to finalize the easement
19 plan; however, communications with the VLT's attorney made clear that the presence of
20 the "Wind Farm Area" within the conservation easement was inconsistent with the VLT's
21 easement-acquisition guidelines and mission statement, and ultimately outside its realm

1 of expertise to manage. Other efforts by the parties at identifying potential designees
2 were unsuccessful, for largely the same reasons.

3
4 d. 2018

5 By the beginning of 2018, ANR had determined that the best course of action was for
6 H.W. Ventures to grant the easement directly to the State of Vermont, understanding that
7 this would potentially require several months of review based on the State's requirements
8 for direct acquisitions of land. Efforts during the first half of this year focused on
9 preparing a survey through a licensed surveyor, resolving certain title issues, photo-
10 documenting the state of the property to satisfy ANR that Georgia Mountain remained in
11 suitable condition for conservation (including as a result of the maple operations), and
12 revising language in the easement where necessary to address new concerns. Once
13 negotiations were complete, H.W. Ventures provided assistance while ANR shepherded
14 the approved instrument through the land approval process, ultimately securing approval
15 of the Town and the Governor.

16 Whether, with the benefit of hindsight, some of the periods referenced above could have
17 been accelerated or compressed so as to have completed the easement sooner is difficult
18 to say. That being said, H.W. Ventures and GMCW concluded that it was important for
19 the Commission to evaluate the end work product to ensure that the intent of the
20 Conservation Order and Condition 26 of the CPG have been satisfied.

1 **6. Status of Conservation Property**

2 **Q11. How has H.W. Ventures managed the property during the intervening years while**
3 **it, GMCW and ANR sought to finalize the conservation easement?**

4 A11. Since the Conservation Order was issued, H.W. Ventures has managed the property
5 consistent with the intent of the easement and Condition 26. H.W. Ventures has
6 preserved the property in essentially the same state as was found in 2011 – i.e., forested
7 land with medium-scale sugaring operations, all as shown on the orthophoto supplied as
8 **Exhibit GMCW-JH-3**, and as demonstrated in the photographs provided as **Exhibit**
9 **GMCW-JH-4**, taken weeks before the Grant. The Commission is separately aware of
10 GMCW’s construction, stabilization and continued management of the Project parcel.
11 Since it was constructed, GMCW has been actively and responsibly managing the Wind
12 Farm Area in a manner consistent with preserving the surrounding protected property
13 (i.e., confining all activities to the 26.6 acre portion), all in accordance with the CPG and
14 related permits.

15
16 **Q12. Are there any additional circumstances of which the Commission should be aware?**

17 A12. Yes. Beyond the protected property itself as set forth in the conservation easement, the
18 adjacent parcels held by H.W. Ventures, myself and my wife have been placed under
19 separate conservation grants to the VLT, thereby adding another ±830 acres adjacent to
20 the protected property comprising Georgia Mountain. These additional conveyances are
21 active now, and provide additional protection for the Georgia Mountain area’s natural
22 resources in perpetuity, consistent with the Commission’s Order. To the extent that the

1 Commission has any concerns regarding the slight variation in total acreage between the
2 original easement and the current grant, these additional lands plus the executory interest
3 and decommissioning plan should assuage those concerns.

4
5 I also point out that ANR, by and through the Department of Fish and Wildlife, has
6 reviewed my prefiled testimony, the exhibits, and the motion in advance of submission,
7 and has provided a recommendation letter in favor of a non-substantial change
8 determination by the PUC. The letter, attached as **Exhibit GMCW-JH-6**, makes clear
9 that ANR agrees with my general characterization of the events and facts underlying the
10 motion.

11
12 **7. Conclusion**

13 **Q13. Does this conclude your testimony at this time?**

14 A13. Yes.

STATE OF VERMONT
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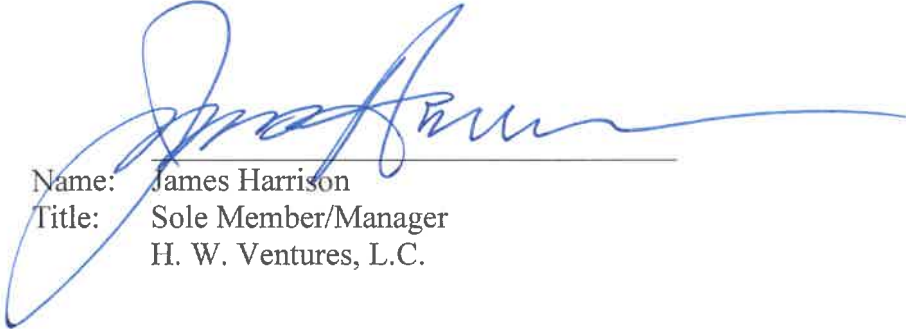
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AFFIDAVIT

I, James Harrison, hereby state that the information provided in my testimony and exhibits is accurate to the best of my knowledge and that I have personal knowledge of and am able to testify as to the validity of the information contained in my testimony and exhibits.

Date: August 17, 2018


Name: James Harrison
Title: Sole Member/Manager
H. W. Ventures, L.C.

STATE OF VERMONT
COUNTY OF CHITTENDEN SS.

On this 17 day of August, 2018, personally appeared James Harrison, known to me, or satisfactorily proven to be the person who is the signatory to the foregoing, and made oath that the foregoing instrument, subscribed by him is true.

Before me,


Notary Public

My commission expires: 2/10/19