

STATE OF VERMONT
PUBLIC SERVICE BOARD

DOCKET NUMBER 7250

IN RE: AMENDED PETITION OF DEERFIELD WIND, LLC, FOR
A CERTIFICATE OF PUBLIC GOOD AUTHORIZING IT TO
CONSTRUCT AND OPERATE A 15-TURBINE, 30 MW WIND
GENERATION FACILITY, AND ASSOCIATED TRANSMISSION
AND INTERCONNECTION FACILITIES, ON APPROXIMATELY 80
ACRES IN THE GREEN MOUNTAIN NATIONAL FOREST, LOCATED
IN SEARSBURG AND READSBORO, VERMONT, WITH 7 TURBINES
TO BE PLACED ON THE EAST SIDE OF ROUTE 8 ON THE SAME
RIDGELINE TO THE WEST OF ROUTE 8 IN THE NORTHWESTERLY
ORIENTATION (WESTERN PROJECT AREA)

July 6, 2016
9:30 a.m.

112 State Street
Montpelier, Vermont

Technical Hearing held before the Vermont Public
Service Board, at the Third Floor Conference Room,
People's United Bank Building, 112 State Street,
Montpelier, Vermont, on July 6, 2016, beginning at 9:30
a.m.

P R E S E N T

HEARING OFFICER:	George Young
STAFF:	Thomas Knauer
	Monica Stillman

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1 HEARING OFFICER YOUNG: Good morning.
2 This is a technical hearing in Docket 7250 amended
3 petition of Deerfield Wind for a CPG authorizing it
4 to construct and operate a 15-turbine 30 megawatt
5 wind generation facility. This is a limited hearing
6 on compliance filing related to condition 11 of the
7 CPG. The Board has directed -- has appointed me
8 Hearing Officer for the limited purpose of holding
9 this hearing and the recommendations to the Board or
10 gathering evidence on issues related to the
11 compliance filing on condition 11.

12 So I'm George Young. Assisting me is
13 Monica Stillman and Tom Knauer. Why don't we start
14 by taking appearances. Start on my left.

15 MS. ELIAS: Jeanne Elias for the
16 Department of Public Service.

17 MR. FIDEL: Jamey Fidel with Vermont
18 Natural Resources Council.

19 MS. GJESSING: Catherine Gjessing with
20 the Vermont Fish and Wildlife Department.

21 MR. RAUBVOGEL: Andy Raubvogel and Geoff
22 Hand with Dunkiel Saunders representing the
23 Petitioner or CPG holder Deerfield Wind, LLC.

24 HEARING OFFICER YOUNG: Any other
25 parties? Okay. I think that means that it's likely

1 to be mostly our questions since the others are
2 largely signatories to the stipulation here. That's
3 useful.

4 AUDIENCE: Could you speak up please?
5 We're having trouble hearing you. Thank you.

6 HEARING OFFICER YOUNG: Okay. So in
7 terms of proceeding today since this is an
8 evidentiary hearing I think the primary purpose is to
9 basically try to get answers to some of the Board's
10 questions. We sent out a list of questions in
11 advance of the hearing and I think I'm going to
12 actually ask the parties who were signatories to the
13 stipulation what would make most sense, since you
14 have already seen sort of our preliminary list of
15 questions, big picture items, is it better for us to
16 hear a general presentation from the witnesses on the
17 subject first and then follow up, or would you like
18 it to be just a straight Q and A and we'll go through
19 the list of questions one at a time?

20 I don't know what's most efficient from
21 your standpoint in terms of providing a narrative for
22 us, and the reason -- and when I say that I realize
23 some of the questions overlap and therefore the
24 narrative might be easier, but it's up to you guys.

25 MR. RAUBVOGEL: Thank you, and I will

1 see if I can summarize what I think the stipulating
2 parties are -- we have given this some thought and
3 prepared. We've taken your questions and we've tried
4 to follow your instructions quite closely. So we are
5 prepared today to present a witness -- witnesses that
6 will go through your questions largely in the order
7 you presented them. As you said there's some overlap
8 so the presentation may come out slightly differently
9 than the questions, but it's pretty close.

10 We also have six exhibits, one of them
11 being the stipulation itself, and then five other
12 exhibits which support answers to those questions,
13 and it turns out that because really the vast
14 majority -- or all the questions are best answered by
15 -- in the outset by ANR's witnesses, that ANR would
16 make the presentation through their witnesses and we
17 would file joint exhibits, and then Deerfield Wind
18 has a witness as well available after that
19 presentation to the extent there are lingering issues
20 or to the extent that the Board wants to make sure
21 that the Hearing Officer has heard from a company
22 witness, but the preview is that it's really ANR is
23 really providing the lion's share of the information,
24 and I have marked exhibits that we can provide you in
25 advance so you have the road map.

1 HEARING OFFICER YOUNG: That works from
2 our standpoint. Mr. Fidel.

3 MR. FIDEL: I guess I would just add
4 we're generally okay with that plan. I think there's
5 maybe one, perhaps maybe two, questions that are
6 directly posed to the parties such as G and that
7 would be one where I would like to offer at least a
8 response of -- legal response on that question.
9 Brian Shupe is with me, our Executive Director, but
10 we're not offering him as a witness. We just thought
11 that question could perhaps be adequately answered by
12 me as opposed to needing a witness to answer that
13 one.

14 MR. RAUBVOGEL: That clarification, I
15 apologize, I did leave that out that the parties
16 discussed that to the extent the Board is looking for
17 interpretations or an understanding of the
18 stipulation that goes beyond technical issues, that
19 it's really about sort of how it was struck that
20 those might be -- that may be more of a colloquy with
21 the lawyers if that's permissible.

22 HEARING OFFICER YOUNG: I think that
23 would probably be useful. Obviously we need --
24 what's needed right now is sort of the evidence, you
25 know, what does this mean from a practical

1 standpoint, and I will say the Board's order and
2 condition 11 set out certain standards that had to be
3 met. The stipulation, depending upon how one reads
4 it, either will achieve exactly what the Board order
5 said or may not achieve because it doesn't -- there's
6 no sort of specific commitment anywhere that that
7 number of acres will be preserved, and so one could
8 view this as sort of a request to modify condition 11
9 which is one of the reasons we're here today. So we
10 want to make sure we understand the parties'
11 perspectives, particularly since the issues that led
12 to condition 11 were fairly heavily litigated as all
13 of you may recall.

14 MS. GJESSING: So the two witnesses that
15 the State is offering are Jane Lazorchak and Forrest
16 Hammond. Forrest Hammond is the person who has the
17 bulk of information, but Jane has some information
18 about land acquisition which I think is relevant to
19 the Board's questions, and I would like to ask that
20 she be allowed to go first because I think her
21 testimony will be relatively short. She will be
22 talking about kind of the general process of land
23 acquisition and some of the recent sort of land
24 acquisition projects that we have had and how much
25 they have cost, and that's kind of relevant to the --

1 one of the prongs of the stipulation that calls for
2 additional conservation acquisition.

3 HEARING OFFICER YOUNG: That's fine. I
4 mean given the statements of the various parties I
5 think it's probably efficient to let you guys drive
6 the bus. So whatever sequence you prefer. If you
7 would prefer to actually have your two witnesses as a
8 panel, I know the Board in the past is not a big fan
9 of panels, but this is actually a compliance hearing
10 and it may be more efficient. I'll leave that to
11 your discretion.

12 MS. GJESSING: I don't think it's
13 necessary. I think that Forrest has most of the
14 information. Jane is just a little bit more familiar
15 with past projects and how much things have cost. So
16 we would like the Board to have that information.

17 HEARING OFFICER YOUNG: Okay. Then
18 we'll let you proceed. Call your witnesses. Thank
19 you.

20 MS. GJESSING: I call Jane Lazorchak.
21 JANE LAZORCHAK,

22 Having been duly sworn, testified
23 as follows:

24 DIRECT EXAMINATION

25 BY MS. GJESSING:

1 Q. Can you state your name for the record please?

2 A. Jane Lazorchak.

3 Q. And spell your last name?

4 A. L-A-Z-O-R-C-H-A-K.

5 Q. What is your -- where do you work?

6 A. I work for the Vermont Fish and Wildlife
7 Department.

8 Q. And that's part of the?

9 A. Agency of Natural Resources.

10 Q. And what is your job?

11 A. I'm a land acquisition coordinator for the
12 Fish and Wildlife Department.

13 Q. And what is your educational background?

14 A. I have a Bachelor of Science from the
15 University of Vermont and a Master's of Science from the
16 University of Vermont Field Naturalist Program.

17 Q. Can you generally describe your job duties at
18 the Department?

19 A. Yes. For the last ten years I've worked for
20 the Vermont Fish and Wildlife Department handling land
21 acquisition specifically for the Wildlife Division
22 enhancing and developing our wildlife management areas
23 across the state. I work statewide and I work very
24 closely with our district offices to set priorities and
25 facilitate acquisition for both critical wildlife

1 habitats, ecologically sensitive areas, as well as
2 enhancing lands that we already own with respect to
3 purchasing rights-of-ways and holdings, things like that.

4 Q. And can you generally describe the process for
5 land acquisition?

6 A. Sure. As I said we work very closely with
7 respect to our district offices, five offices around the
8 state, to set priorities for acquisition on an annual
9 basis, and then more broadly on a five to ten-year basis.
10 Those priorities are vetted with our Commissioner as well
11 as our Secretary and leadership team within the Agency,
12 and as projects come in we respond to opportunities and we
13 also strive to be proactive in determining areas that we
14 work in. Those parcels are vetted through the district
15 stewardship teams up through the Commissioner and to the
16 Secretary's level prior to even beginning to work on a
17 project.

18 Once projects receive approval it's my job to
19 do all of the -- or the sort of coordination and work
20 associated with acquiring it. That can include things
21 like an appraisal, determining funding sources, title
22 work, purchase and sales agreement. I work very closely
23 with our General Counsel, Catherine Gjessing, as well as
24 contract outside counsel, to represent us for all of our
25 closings.

1 There's a series of other outside approvals we
2 need to get with respect to funding. We often use federal
3 funding from the U.S. Fish and Wildlife Service that
4 requires a grant process and approval from them as well as
5 approvals from the Governor and -- well first the town and
6 then the Governor for every single acquisition, and as
7 well as the Joint Fiscal Committee of the Legislature for
8 the funding and donation of land value associated with
9 that.

10 Q. Are the federal funds usually U.S. Fish and
11 Wildlife or are there other sources?

12 A. The majority of funding that Fish and Wildlife
13 Department uses is U.S. Fish and Wildlife Service. We
14 also use competitive funds from our federal agencies, but
15 95 percent of our funding is U.S. Fish and Wildlife
16 Service.

17 Q. And is there a state match for the federal
18 funding?

19 A. All of our federal funds require a minimum of
20 25 percent match. We've set up a process within Fish and
21 Wildlife where we've been taking in land donations to
22 assume, matched, and banked, and that enables us to spend
23 a hundred percent federal on projects, but largely all of
24 our projects we need to leverage with a minimum of 25
25 percent match; and if we're going to competitive funding,

1 often more than that.

2 Q. What involvement, if any, have you had in the
3 Deerfield mitigation?

4 A. I've been consulted by staff with respect to
5 parcels that I knew of in the area that may contain bear
6 scarred beech and might be on the market that were a
7 priority for us with respect to where we owned land and
8 other agencies, and I also was consulted with respect to
9 valuation of recent acquisitions in the southern part of
10 the state for forested parcels.

11 Q. And were you able to identify any bear scarred
12 beech habitat in the context of the mitigation
13 discussions?

14 A. No. We were not able to find any parcels that
15 were on the market currently to buy.

16 Q. And that was specifically for the total of 144
17 acres?

18 A. Yes.

19 Q. And did you happen to look at fair market
20 values for other parcels in southern Vermont?

21 A. Yes, I did.

22 Q. Do you have an exhibit in front of you?

23 A. I do have the exhibit in front of me.

24 Q. And that's exhibit DFLD-ANR-VNRC-6?

25 A. Yup.

1 Q. And can you tell the Board what that exhibit
2 is?

3 A. Sure. This exhibit, while not totally
4 inclusive of all projects we have done in southern
5 Vermont, it includes the most accurate representation of
6 forested parcels that we've purchased within the last
7 three years in southern Vermont that represent forested
8 habitat, in some cases including bear scarred beech, but
9 largely have not been inventoried with respect to that but
10 have been acquired for other reasons, largely federal
11 endangered species habitat and also mitigation for
12 connectivity. Actually one of those parcels was for
13 Bodenmiller. All of these parcels were acquired by Fish
14 and Wildlife, like I said, within the last three years.
15 For all of them we did appraisals to very high standards,
16 USPAP, which is in order for us to obligate federal funds
17 it's a very high level of appraisal, and all of them
18 accurately represent sort of the cost per acre of large
19 forested parcels in southern Vermont.

20 I would like to draw the attention that the
21 lower two ones, Dewitt and Bemis at Turner Hill, those
22 parcels have very limited access. One only has access for
23 logging and so those -- the cost per acre of those are
24 slightly lower than the other two. So I think Sheehan and
25 Bodenmiller, which both have a cost per acre of over a

1 thousand dollars, is the most accurate representation of
2 valuation for forested parcels.

3 Q. Can you tell the Board what your opinion would
4 be about whether the Department could purchase viable bear
5 scarred beech habitat for \$185,000 to \$335,000, somewhere
6 in that range? What kind of purchase could we make with
7 that kind of money?

8 A. I think we could make a very substantial
9 purchase largely because we could use that money to
10 leverage federal funds as well. So my hope would be that
11 we would use whatever money was brought here to leverage
12 additional federal funding to buy a larger more
13 significant parcel, and hopefully use the work that
14 Forrest is doing now with the bear study to inform and
15 direct conservation acquisition to mitigate impacts to the
16 bear population in that area, as well as look to enhance
17 wildlife management areas in and around that area to
18 create a more substantial land protection area.

19 MS. GJESSING: Thank you. I would like
20 to move exhibit DFLD-ANR-VNRC-6.

21 HEARING OFFICER YOUNG: Any objection?

22 MS. ELIAS: No.

23 HEARING OFFICER YOUNG: Admitted.

24 (Exhibit DFLD-ANR-VNRC 6 was admitted
25 into the record.)

1 HEARING OFFICER YOUNG: I assume you're
2 out of questions for the moment?

3 MS. GJESSING: Yes. Thank you.

4 HEARING OFFICER YOUNG: Okay. Any of
5 the parties have questions?

6 MS. STILLMAN: I'm just a little bit
7 curious as far as your role -- maybe this will be
8 answered when Forrest takes the stand -- your role,
9 the tasks that you listed include land purchase tasks
10 and then you mentioned being consulted about parcels
11 that might contain bear scarred beech, but does your
12 role include evaluating the habitat characteristics
13 or the type of information available or is that done
14 by others?

15 MS. LAZORCHAK: Generally it's done by
16 our wildlife biologists.

17 MS. STILLMAN: So they are making that
18 checkoff and come to you with parcels that they think
19 meet those criteria?

20 MS. LAZORCHAK: Yes.

21 MS. STILLMAN: Thank you.

22 MR. KNAUER: Are you part of the team
23 that would be closing or negotiating the purchase of
24 these transactions?

25 MS. LAZORCHAK: I would be the person

1 leading that part once the project was developed.
2 When the parcel was identified I would be the one
3 working with the landowner to do that.

4 MR. KNAUER: As part of your
5 responsibilities would you have any input on whether
6 the easement that we're talking about today would
7 contain the bear habitat protection provisions?

8 MS. LAZORCHAK: If you're speaking to
9 the Meadows End parcel --

10 MR. KNAUER: Yes.

11 MS. LAZORCHAK: -- that's actually being
12 negotiated on behalf with another organization, The
13 Conservation Fund, and then the Forest Parks &
14 Recreation is actually holding that easement. So
15 that's actually not -- I would be the one to use the
16 additional funding as part of the package to then buy
17 additional conserved lands, but the parcel being
18 discussed as part of the overall package has actually
19 already been identified by a partner organization,
20 and then a sister department within our agency is
21 working on that one.

22 MR. KNAUER: Thanks.

23 HEARING OFFICER YOUNG: To follow up on
24 that I mean one of the things that's in this
25 stipulation -- and, by the way, if I start asking

1 questions that really need to be deferred to Mr.
2 Hammond, I'm assuming you're going to throw him under
3 the bus.

4 MS. LAZORCHAK: Happy to.

5 HEARING OFFICER YOUNG: But the
6 provisions in here in terms of the parcel is that the
7 Stratton conservation easement are conditional. I
8 mean essentially the goal is to buy that and meet a
9 lot of the -- essentially conserve a hundred acres,
10 but there are also provisions that if you can't get
11 the right conservation measures in, then that doesn't
12 count and then all the money becomes available, as I
13 understand it, for other acquisitions; is that
14 correct?

15 MS. LAZORCHAK: I'll defer to Catherine,
16 but that is my understanding of how it works, yes.

17 HEARING OFFICER YOUNG: And if that
18 occurred, then you would be the one responsible for
19 spending all of the million dollars or --

20 MS. LAZORCHAK: Whatever is left over
21 after the study.

22 HEARING OFFICER YOUNG: What's not used
23 for the study. Is it your view that after you take
24 the money out for the study that there's sufficient
25 funds to acquire the equivalent of 144 acres of bear

1 habitat -- of high quality bear habitat?

2 MS. LAZORCHAK: Yes. It is my opinion.

3 HEARING OFFICER YOUNG: Any sense over
4 what time period that would occur?

5 MS. LAZORCHAK: So all I can do is speak
6 to the time it typically takes us to acquire a
7 property. So an acquisition will typically start
8 once the parcel has been identified 6 to 12 months.
9 When that parcel is identified it's sort of unknown
10 to me for when that will happen. I would like to
11 think that the best case scenario is that we'll use
12 the study to inform acquisition over time. So it
13 could be a number of years out before we even
14 initiate the project, but if the right parcel came up
15 soon, then it would take 6 to 12 months to acquire it
16 with a willing seller.

17 HEARING OFFICER YOUNG: So based upon
18 what you're saying there is a reasonable possibility
19 that the mitigation of the equivalent of 144 acres or
20 whatever eventually comes out could be years down the
21 road?

22 MS. LAZORCHAK: Yes.

23 HEARING OFFICER YOUNG: Depending upon
24 what comes on the market, what you can buy, and the
25 adequacy of the parcels the Agency finds, correct?

1 MS. LAZORCHAK: I think realistically at
2 this juncture it would be at least a year from now
3 before we closed on anything.

4 HEARING OFFICER YOUNG: And implicit in
5 that I assume the Agency is comfortable with letting
6 Deerfield proceed with construction in advance of
7 those purchases on the assumption that you're
8 eventually going to be able to acquire the right type
9 of habitat?

10 MS. LAZORCHAK: I'll defer that to
11 Catherine, but yes I assume that's the basis for the
12 stipulation.

13 HEARING OFFICER YOUNG: I think that's
14 all the questions I would have for you I think. The
15 rest are probably for Mr. Hammond.

16 MS. STILLMAN: Can I ask another one
17 based on yours?

18 HEARING OFFICER YOUNG: Sure.

19 MS. STILLMAN: Your answer just included
20 that you will use the study to inform acquisition
21 over time. Are you talking about the funds already
22 dedicated to the bear study at the project site or
23 are you talking about a separate study?

24 MS. LAZORCHAK: The study that's already
25 ongoing at the site that will obviously need to be

1 completed once construction starts. So the intent is
2 to see where the bears -- I feel like I should let
3 Forrest talk about this, but my understanding is we
4 would use the study to see what happens to the bears
5 as the construction is completed and hopefully use
6 that to inform us to buy, figure out which lands are
7 most important for acquisition of that specific
8 population.

9 MS. STILLMAN: Within the study radius
10 or within the limits, the broader limits, where bears
11 are actually being tracked?

12 MS. LAZORCHAK: I'm going to let Forrest
13 answer that one.

14 MS. STILLMAN: Since you said it I
15 thought I would bring it up.

16 MS. LAZORCHAK: I'm okay though.

17 MS. STILLMAN: We'll wait for Forrest.

18 MS. LAZORCHAK: Thank you.

19 MS. STILLMAN: Thank you.

20 HEARING OFFICER YOUNG: Any followup to
21 the Board's questions? Mr. Raubvogel.

22 MR. RAUBVOGEL: Thank you.

23 CROSS EXAMINATION

24 BY MR. RAUBVOGEL:

25 Q. Mr. Young asked you whether you thought there

1 was sufficient -- whether there would be sufficient funds
2 in the entire 144 acres needed to be acquired and I think
3 you said yes you thought there was?

4 A. Yes.

5 Q. So maybe this is self-evident, but if the
6 present Meadows End parcel goes through and there's 44
7 acres left, and assuming that you would have between
8 \$185,000 and \$385,000, do you believe that is sufficient
9 funds to acquire the 44 acres?

10 A. Yes I do recognizing that we would never be
11 able to acquire just 44 acres. It would be part of a
12 larger parcel. So that, yes, the money that is there is
13 enough to buy that larger parcel that hopefully the 44
14 acres is part of.

15 Q. Thank you. And when you said earlier that you
16 initially looked to see whether there were any parcels on
17 the market today that had bear scarred beech and you said
18 you didn't find anything today, would you agree that that
19 isn't necessarily indicative of whether the Department may
20 in fact find parcels in the future based upon bear study
21 information or otherwise?

22 A. Yes.

23 MR. RAUBVOGEL: Thank you. That's all
24 we have. Thank you.

25 HEARING OFFICER YOUNG: Mr. Fidel.

1 MR. FIDEL: One question.

2 CROSS EXAMINATION

3 BY MR. FIDEL:

4 Q. Do you have any knowledge of when the Stratton
5 parcel may come to fruition as far as the process that's
6 involved with that particular parcel?

7 A. My understanding from our partner is that they
8 anticipate closing by the end of the year.

9 HEARING OFFICER YOUNG: Anything
10 further? Any followup?

11 MS. GJESSING: No. Thank you.

12 HEARING OFFICER YOUNG: Thank you very
13 much for your testimony.

14 MS. GJESSING: Forrest Hammond

15 MR. RAUBVOGEL: Would it be helpful if I
16 gave you now the set of documents that are going to
17 be discussed?

18 HEARING OFFICER YOUNG: It would
19 probably be useful just because then we can dispense
20 with the administrative time as we go along. Thank
21 you.

22 FORREST HAMMOND,

23 Having been duly sworn, testified
24 as follows:

25 DIRECT EXAMINATION

1 BY MS. GJESSING:

2 Q. Would you state your name for the record
3 please?

4 A. Forrest Hammond.

5 Q. And spell your last name please?

6 A. H-A-M-M-O-N-D.

7 Q. Where do you work?

8 A. I work out of the Springfield State Office for
9 the Vermont Fish and Wildlife Department as part of Agency
10 of Natural Resources.

11 Q. And what is your position with the Agency?

12 A. I'm a wildlife biologist for the state. I
13 serve on the big game team, the habitat team, I do
14 regulatory review work, and I'm also the leader of the
15 bear program in the state.

16 Q. And can you just give us a brief explanation
17 of your background -- your educational background?

18 A. Sure. I have both a Bachelor's and a Master's
19 degree in wildlife management from the University of
20 Wyoming. My experience one way or another I guess I've
21 worked with bear habitat, bear issues, for all of my
22 career. Several decades now.

23 Q. Several decades.

24 A. Yes. Several decades.

25 Q. And can you briefly describe your

1 participation in this docket?

2 A. Sure. In the docket itself I've been involved
3 as the Department's point person for habitat issues,
4 wildlife habitat issues, especially bear, for the
5 Deerfield project.

6 Q. And are you familiar with the recent
7 stipulation regarding bear mitigation --

8 A. I am.

9 Q. -- in this matter?

10 A. Yes.

11 Q. Would you look at exhibit DFLD-ANR-VNRC-1?

12 A. Sure.

13 Q. I'm just going to refer to them from now on by
14 the number at the end of the string.

15 A. Okay.

16 Q. Is this the stipulation?

17 A. Yes.

18 Q. And can you very briefly describe the major
19 components of the stipulation?

20 A. Sure. There's three major components to this
21 new stipulation, and that would be the acquisition of
22 forest legacy parcel helping that parcel of 679 acres get
23 acquired. It's all bear habitat in the Town of Stratton.
24 The second part to that would be to provide the funding to
25 shore up the bear study to ensure that that gets

1 completed, and then the third part would be that the
2 remaining money, at least \$185,000 and perhaps as much as
3 \$350,000, would be used to acquire critical black bear
4 habitat in southern Vermont.

5 Q. And if you would look at exhibit 5 please, do
6 you recognize that exhibit?

7 A. I do.

8 Q. And what does it -- what information does it
9 have on it?

10 A. Well it's got a lot of numbers so it's kind of
11 complicated just looking at it, but it's got the numbers
12 on what would be the high costs of this package and what
13 might be the low. Because there's some uncertainties
14 about what the Stratton parcel especially would cost to
15 complete that and also to even complete the bear study,
16 it's -- we've got a high and low cost. We've got high
17 estimates, very conservative on the high side, but what it
18 provides is what would be the remaining funds to go into
19 the final pool of money to acquire land. Land that would
20 be identified by the bears themselves as to what's
21 important fall habitat for the bears. They include bear
22 scarred beech based on movements of bears within the
23 study. The bears are at this time outfitted with
24 satellite GPS collars and we get -- we can see not quite
25 in realtime, but a day or so behind the movements of the

1 bears and where they feed and where they travel to.

2 Q. Okay. So I'm going to take you back to the
3 Stratton parcel. What is the range in the stipulation of
4 what we think the Stratton parcel might cost?

5 A. Well the range in the 25 percent match would
6 be somewhere between \$350,000 and \$500,000 dollars as part
7 of this package.

8 Q. And is that more than was estimated by our
9 partners?

10 A. Yes. The most recent numbers apparently were
11 derived in 2013. There would be 1.3 million dollars to
12 complete that purchase. There's an appraisal going on
13 right now and so we projected it might be as much as 2
14 million dollars.

15 Q. Okay. And would you look at exhibit number 3.
16 What is this document?

17 A. This is a document here with a list of the
18 Windham Regional Working Forest -- Forest Legacy Project
19 for a grant with the Forest Service, and it lists -- it
20 also includes the Stratton parcel as tract four that is
21 part of this package that we're talking about in the
22 stipulation.

23 Q. Okay. And that's the estimate that you were
24 talking about that was lower than the 350 to --

25 A. That's right. It might be as low as this, but

1 because some years have gone by we've projected it
2 slightly higher than that.

3 Q. So we've essentially made a conservative
4 estimate, if you will, of what the Stratton parcel might
5 cost?

6 A. That's my understanding. Yes.

7 Q. Can you tell the Board what attributes the
8 Stratton parcel has that may or may not be related to bear
9 habitat?

10 A. Sure. And this is something -- I'm very
11 familiar with this parcel even before this process that's
12 involved right now. In the 1990's I was involved with a
13 bear study in Stratton where we had some 30 bears that
14 were collared which we tracked with, at that time, VHF
15 collars, not nearly as accurate as current technology, but
16 it was centered on Stratton Mountain itself and Stratton
17 Resort as part of the master planning process for the
18 Stratton Resort, and so we were able to track bears and
19 see their movements and a great number of the bears
20 actually used this property as well. We know that there's
21 a fairly large amount of bear scarred beech on the
22 property. There's also attributes of other fall feeding
23 habitat of oak and black cherry. It's also something of a
24 travel corridor, we feel, from the Forest Service land,
25 Ryebrook wilderness and Stratton Mountain itself to points

1 east as well, and the reason there needs to be a travel
2 corridor and the importance is we found that there's such
3 variability in food availability from year-to-year that
4 any bear with a home range has to travel elsewhere at
5 least every other year to find the food requirements to
6 survive, and so they go east and drop down to lower
7 elevations in years there are not beechnuts available and
8 to look for acorns or apples in commercial orchards or
9 corn, and they have to have those avenues of travel to do
10 that, otherwise, the population could cease to exist if
11 you didn't have these travel corridors that are protected.

12 Q. What is its proximity to some other parcels
13 that have bear habitat?

14 A. Well one of the results of the Stratton bear
15 study that was done at that time and also the Stratton
16 Resort master planning process was they actually conserved
17 nearly a thousand acres of their property that's directly
18 adjacent to the one we're talking about here. It's high
19 elevation habitat that's -- a lot of it's on bear scarred
20 beech and travel corridor, as well as their wetlands have
21 a lot of importance as well for bear feeding as well as
22 cooling during the summer.

23 Q. Are there any other parcels that are in
24 proximity that this parcel serves as a travel corridor to?

25 A. Well certainly other parcels within the travel

1 corridor. That's what a lot of this Windham Regional
2 working forest project with legacy funds is they connect
3 to other properties as part of this travel corridor. They
4 are also important to the bears.

5 Q. And do you have a sense of how many acres of
6 bear scarred beech there are on this parcel?

7 A. Yeah. This past winter we went in at the
8 request of the applicant and actually did transects and
9 looked at where there might be bear scarred beech and how
10 many acres were available, and we created a map of that of
11 approximately a hundred acres of bear scarred beech. Some
12 of it is higher quality than others, but it's all
13 something that through this we could manage and we're
14 excited about having that much bear scarred beech and
15 working with. In a larger parcel it also provides a
16 buffer for the bear scarred beech as well.

17 Q. And what was the acreage of the bear scarred
18 beech?

19 A. Well it was broken down. There were, I think,
20 57 acres of very high quality concentrated beech far
21 enough away from the roads and we would consider to be at
22 least as high a quality as the Deerfield parcel we're
23 talking about, and then we have something that's somewhere
24 around 43 acres that was a little bit more disbursed, not
25 as concentrated. Some of it, maybe 20 acres, closer to

1 the road than I would have been more comfortable with, but
2 there was obviously some bear use with that, but overall,
3 like I said, a total of a hundred acres of bear scarred
4 beech habitat.

5 Q. And were there any other sort of habitat
6 features on the property? Spring feeding?

7 A. Yes. Certainly. There's spring and summer
8 feeding and a series of wetlands that provide shading and
9 cooling for the bears and a lot of spring and summer food
10 as well, succulent forbs for the most part, around those
11 wetlands. There's approximately 55 acres, I think, of
12 class two wetlands are also on the property.

13 Q. And is it -- where is it in location to other
14 state and federal lands?

15 A. Well this property here is directly adjacent
16 to Forest Service lands as well as the conserved lands
17 with this Stratton Resort.

18 Q. So what is your understanding of the status of
19 the Stratton parcel purchase currently?

20 A. My understanding is there's an agreement
21 that's pretty much completed, but there needs to be
22 additional assessments done and the paperwork and tying up
23 the legal aspects of having the project completed.

24 Q. And what is the target date for that?

25 A. My understanding the target date is the end of

1 this year, December 30th.

2 Q. Okay. I want to direct your attention to
3 exhibit 2. Can you identify this exhibit?

4 A. Sure. This is actually the Forest Service
5 grant to award the funds for this forest legacy project
6 which this parcel four is part of.

7 Q. Thank you. And I want to direct your
8 attention to page three under H. There's an expiration
9 date?

10 A. Yes. There certainly is an expiration date on
11 this grant form is September 30, 2015.

12 Q. And has there been an extension?

13 A. Yes. There's been an extension to September
14 30, 2016, and my understanding is there's an application
15 to extend that again.

16 Q. Thank you. What is the amount of stewardship
17 that would be devoted towards the Stratton parcel?

18 A. For monitoring purposes between \$15,000 is
19 part of this as well.

20 Q. Okay. And going back to exhibit 5 can you
21 give us an estimate of how much you believe it will cost
22 to continue the bear study?

23 A. Sure. The reason for the shortage of funds
24 for the bear study, first of all, is the Forest Service
25 appeal to the EIS. We had thought the bear study that we

1 had to rush to get one year predevelopment data and to
2 compare to after construction and so we started collaring
3 bears, and then the project's been delayed. So instead of
4 having one year of predevelopment data and bears collared
5 for one year they have actually been -- this is the sixth
6 year. So we have lots of predevelopment data right now,
7 but what it did was on the other end we've expended funds
8 needed to complete it because we have to have at least
9 what we feel is three years of post development data, and
10 so we've identified a budget shortfall of somewhere around
11 250 to \$300,000 needed to complete the project.

12 Q. And if you look at exhibit number 4, can you
13 identify what that exhibit is?

14 A. Sure. This is a budget, kind of anticipated
15 budget, for the bear study, and again there's a lot of
16 numbers here. It's kind of complicated, but it's the
17 numbers that are in purple and then the very bottom line
18 total funding I guess is what's important, and that is we
19 expect that the field portion of the study to get the post
20 development data that we need will go through 2020 and an
21 additional year of data analysis and report writing, and
22 erring probably on the high side we think that can cost as
23 much as \$609,000.

24 Q. So you're looking at -- what's the title of
25 the line that you're looking at?

1 A. Total expenses.

2 Q. Okay. So it's that line across and the very
3 total is at the far right?

4 A. Yes.

5 Q. Okay. Can you tell us a little bit about the
6 status of the bear study?

7 A. Sure. As I've mentioned we've been putting
8 collars on study animals since 2011 and we're in the sixth
9 year of the project now. We have had -- we're in the
10 process of capturing a couple more study animals, but
11 we've had over 30 bears with these new technology
12 satellite collars that allows us to track the bears. So
13 we're at the what we consider is the end of the
14 predevelopment stage of the study.

15 Q. And how many years post construction do you
16 think you would need?

17 A. Well what we need is data about the bears use
18 of the wind project area and that is constituted primarily
19 by concentrated beech stands at high elevation, and the
20 thing about beechnuts they are not available every year,
21 and so we feel we probably need at least three years to
22 ensure that we get at least one good year of beechnut
23 production where we're tracking bears and get the
24 information about bear use of the study area.

25 What we found already just from tracking the

1 bears is it's been almost an every other year occurrence
2 that we see a good production of beechnuts followed by a
3 very poor one, and in the years that the beechnuts are
4 available we've seen bears -- influx of bears from outside
5 the study area as well as the bears within the study area
6 staying there and going up to the ridges to feed on it.

7 In those years beechnuts fail or are in very
8 small numbers the bears drop down to lower elevations. We
9 found a large number of them actually go to Massachusetts
10 where there's a lot more alternative foods in the fall,
11 especially acorns and blueberries, and what they do is
12 they drop down to those areas and feed and then return to
13 the study area to den back in the study area.

14 HEARING OFFICER YOUNG: Can I jump in
15 just for a second here?

16 MS. GJESSING: Sure.

17 HEARING OFFICER YOUNG: I don't want to
18 disrupt your presentation. Part of the study you
19 have done so far are you discovering different
20 migration patterns that you had anticipated
21 previously? I'm just curious, you know, based upon
22 your current description.

23 MR. HAMMOND: Well we're certainly
24 finding out details of the migration patterns is
25 something of a surprise to us, but the general

1 pattern is why we considered this so important to
2 begin with and we described it of regional
3 importance, and especially this past year, which was
4 a good beechnut production year, we had lots of study
5 animals collared. What we saw was a lot of bears,
6 including all of our study animals, right up there on
7 the ridges in the area near where the turbines are
8 going to be put in feeding on the beech stand, which
9 is what we predicted, but the details of where they
10 go at other times has been something of a surprise to
11 us.

12 The fact that they go all the way down
13 to Massachusetts is a surprise and a concern to us
14 because what we're getting is every other year the
15 bears are in one state and then back, and we do
16 separate management of the population where we don't
17 coordinate that at all and perhaps we need to start
18 doing that more in the future.

19 So that's been a concern, but as far as
20 the use of the beech we've also learned through
21 monitoring the bears with the satellite collars, as
22 well as we're using cameras set out around the beech
23 stands around where the turbines are going to go,
24 there's also a higher use of the softwood cover
25 adjacent to these beech stands than what we

1 anticipated. It's almost like the bears don't feel
2 comfortable staying 24 hours a day out feeding in the
3 more open beech stands and they retire and spend as
4 much time in the adjacent softwoods, and so that in
5 future mapping of these beech stands throughout the
6 state and with this type of project and others will
7 probably give a larger buffer to include softwood
8 cover for these beech stands as well. So we haven't
9 analyzed the data yet, but anecdotally we are
10 discovering things that we think will be very helpful
11 in the future.

12 HEARING OFFICER YOUNG: Thank you.

13 Sorry. I just remember the testimony from seven plus
14 years ago. So thank you.

15 BY MS. GJESSING:

16 Q. Can you talk a little bit about the technology
17 of the collars and the quality of that data?

18 A. Sure. It's been pretty amazing to use this
19 new technology. It's the first wildlife project in the
20 state we've been able to use satellite collars to collect
21 this kind of data. One, it's very precise, accurate data
22 and we get a lot of data points. When I did the Stratton
23 bear study at the very most we got one point a day and
24 that took a lot of intensive work with people scurrying
25 around with VHF telemetry antennas trying to triangulate

1 where the bears might be. Now once the bear is collared
2 now we can sit back in our offices and look at our
3 laptops, and after the data is downloaded after so many
4 points we can actually see the progression of where the
5 bear's at, what type of habitat it's in, how much time
6 it's spending there, and also even if it's a bear that has
7 any nuisance behavior or goes into a potentially high risk
8 environment such as a cornfield where a farmer doesn't
9 want it there, or even identify if someone is in the study
10 area trying feed bears. If it shows up in someone's
11 backyard and it stays there, we can go pay them a visit
12 and that's actually illegal to feed bears. We can deal
13 with that. So yeah it's been -- the technology has been
14 very good.

15 Q. So do you think that the -- this technology
16 will be helpful in terms of determining the impacts of
17 noise on bears?

18 A. Yeah. Noise is something I think the Board
19 itself asked us to -- that's a component of -- one of the
20 objectives of the study, and noise is one of the more
21 difficult things to look at what's the impact on wildlife
22 because there's always other factors and wildlife often
23 even hears noise at a different level than we do which
24 makes it very difficult, but with the amount of data that
25 we're collecting up there now on the ridgetop in the area

1 adjacent to where the turbines are going to be, and once
2 they are there we can at least look at whether or not
3 there's movements closer to the turbines or further away
4 once the turbines are operating and during time periods
5 when specific turbines are shut down or not operating, and
6 also how close bears choose to den from the turbines and
7 things like that, so we'll at least be able to analyze the
8 data and have some assessment of what the potential impact
9 was. We'll need to work with Iberdrola to get information
10 about when different turbines have been shut down and how
11 long so that we can compare our location data with that.
12 It will be a challenge. That's probably one of the
13 biggest challenges we'll have in analyzing the data once
14 it's done.

15 Q. Okay. So the next thing that I want to talk
16 about is the range of money that might be available for
17 additional land purchases other than the Stratton parcel.
18 So if you would look at exhibit 5 again --

19 A. Sure. The range that's provided in this table
20 is something that we looked at what might be the high cost
21 of the Stratton parcel acquisition as well as perhaps the
22 high cost of the Stratton -- I mean on the actual
23 Deerfield bear study that's going on, and I think that on
24 the very low end it might be as little as \$185,000
25 remaining that could go toward the purchase of bear

1 habitat, but we think that probably somewhere around
2 \$235,000 is a more realistic number. It could be as high
3 as \$335,000.

4 Q. Did you get that figure right? Look at the
5 far, far right-hand column at the bottom.

6 A. Oh. \$385,000 could be as high. Sorry. I
7 didn't go over far enough.

8 Q. And can you tell the Board what your opinion
9 is about this stipulation in comparison to the existing
10 condition 11? Do you have an opinion about how they
11 compare?

12 A. Yeah. Part of it is my opinion. I think it's
13 no surprise that our original reaction to that condition
14 at first we thought that was a bit weak to provide only
15 144 acres, and the reason why is that we usually ask for a
16 higher amount that would be encompassed in direct impacts
17 and the 144 acres is just direct impacts for that. So we
18 had always thought that was on the low end of what
19 mitigation should be, and so when we were asked by the
20 applicant to look at whether or not there could be an
21 alternative and through a lot of work this package, the
22 new stipulation, came out, we think this will be an
23 outstanding mitigation offer in that it will be much
24 better than the original condition. It captures still 144
25 acres, but also probably considerable acreage above that

1 as well.

2 Q. One of the questions that the Board asked was
3 about the -- whether there was a possibility that the
4 Stratton parcel wouldn't result in a bear focused
5 conservation easement. Can you talk a little bit about
6 that, about our discussions with Forest Parks & Recreation
7 and the landowner?

8 A. Sure. We have met with Meadows End and
9 discussed this parcel and what an easement might look
10 like. There have been drafts of it. What we would ensure
11 would have to happen to be part of this is that the land,
12 especially the beech portion of it, would be managed in
13 the most advantageous way for bear habitat, and that's the
14 difference between just forest legacy working forest
15 habitat and this here is that we would work very closely
16 with the owners of the property still to make sure it's
17 managed in a way to maintain and improve the bear scarred
18 beech on the parcel.

19 Q. Have you worked with the Meadows End landowner
20 before?

21 A. We have. They own other properties around the
22 state and we've done other projects where we have had
23 opportunities to look at habitat conditions and how they
24 did management and have had a chance for input with that,
25 and even on this parcel here when we went in to do the

1 mapping with the bear scarred beech I was impressed with
2 the fact that that was managed properly. There had been
3 signs there have been timber harvests that had taken
4 place, but they obviously had managed with the realization
5 that there's value to bear scarred beech, and so that they
6 actually harvested it in a manner to enhance the bear
7 scarred beech that was there. One way they did that was
8 to take other trees and leave the healthy beech and they
9 also left the black cherry and oak trees that are there.
10 Normally valuable commercial trees and they left them and
11 adjacent to it which makes the beech component even more
12 valuable for the bears having that there.

13 So when I left I was confident that they have
14 already been managing that. I think what's happening is
15 maybe even through this process what we're seeing is
16 growing awareness that these kind of beech stands are
17 actually fairly unique and valuable. I mean it was a long
18 process that consultants for the applicant, as well as
19 some within our department, were searching for at least a
20 144 acre high quality bear scarred beech stand and it just
21 wasn't found, and that's why we entertained this
22 stipulation and we're willing to work with them.

23 Q. Are you confident that this stipulation will
24 result in a greater conservation result?

25 A. Oh I really am. There's several safeguards

1 with this. In particular, the fact that if something
2 happened to the Stratton parcel, that the remaining funds
3 would -- it would be put in a fund that the Department
4 holds that would go toward acquisition of that land. It
5 would just beef up the amount that's available to purchase
6 land at the end of it.

7 Q. So can ANR confirm that the mitigation funds
8 would be used in accordance to the stipulation?

9 A. Yes. I think they can and I think just
10 looking at the existing bear study the way it was done was
11 money was paid upfront by Iberdrola to go into a special
12 fund which the Department manages and we can expend funds
13 from that, but it's there, it's safe, and one of the neat
14 things is our Department does not charge overhead for that
15 while if it had been through another entity we would have
16 had to pay funds as well.

17 Q. And do you have a list of potentially feasible
18 properties that would provide the balance of mitigation
19 after this parcel?

20 A. We don't at this time, no. What we try to
21 help with was looking for a 144 acre parcel and we found
22 that very difficult as well. There was one parcel that
23 looked like it would meet it, but that didn't work out.
24 That fell through. So we were looking for a large parcel,
25 and as it turns out it's very difficult on private land to

1 find large acreages of bear scarred beech, and I think the
2 reason why is private landowners don't value beech trees,
3 especially beech trees that are very concentrated, because
4 they are not a commercially valuable tree, and so almost
5 nobody that owns a large amount of land that's managed
6 will even leave those beech trees in place. They will
7 even girdle them to get rid of them. So it was very
8 difficult to find that, but one thing we haven't done --
9 we think it will be much easier to find a parcel that's
10 less than 50 acres of bear scarred beech; that we think we
11 can probably find quite a few of those. We probably even
12 have the information now if we just look at the movement
13 data of the bears that we have had collared so far
14 throughout southern Vermont, where they end up in the fall
15 during those time periods there are beechnuts and are
16 using beech stands.

17 So it's going to take a matter of looking at
18 that data, creating maps, and contacting landowners and
19 that type of thing to see, but I think the data exists.
20 We've actually kind of tested that with the following
21 spring of after there had been a good beechnut year we've
22 actually walked into areas in the spring when the bears
23 came out of hibernation they would move to areas we didn't
24 know currently what the habitat was like in those areas,
25 but we predicted that there would be bear scarred beech

1 stands that the bears would go to and try to get those
2 nuts that are overwintering first thing in the spring, and
3 by walking into those sites we verified that was the case,
4 but we haven't tried to map any of those sites at this
5 time. The data exists, but we just haven't analyzed the
6 data.

7 HEARING OFFICER YOUNG: May I jump in
8 here again?

9 MS. GJESSING: Sure.

10 HEARING OFFICER YOUNG: When you
11 testified before both you and a witness on behalf of
12 VNRC generally opposed the project and you raised
13 concerns about basically the impacts on this
14 concentrated area, correct?

15 MR. HAMMOND: Correct.

16 HEARING OFFICER YOUNG: And when the
17 Board crafted its condition I think the -- part of
18 the intent was to try to ensure conservation of a
19 concentrated area in part on reliance upon what the
20 testimony that you and VNRC's witnesses had been
21 presenting. What I hear you saying today is gee that
22 might have been nice, but this is actually going to
23 produce a better result. Is that a fair
24 characterization? That by having the money and
25 focusing on some of these smaller parcels, since

1 you're not finding the bigger ones, you will actually
2 get a better overall result. Is that a fair
3 characterization?

4 MR. HAMMOND: To some extent. Certainly
5 we just couldn't find -- if you will recall from my
6 testimony, we're going back a number of years, and I
7 think -- I thought about this a lot because I was
8 disappointed in the final outcome, right, of how that
9 went after my testimony, but I think what I testified
10 was that it would be almost impossible to find enough
11 large stands of concentrated beech to mitigate for
12 indirect impacts, and I can't help but believe you
13 used that as part of the reason why you came up with
14 the findings the way you did, and I guess I can
15 understand that.

16 You know I think the process that we've
17 gone through trying to find just 144 acres, much less
18 than a couple thousand acres, of bear scarred beech
19 has borne out that, that it's very difficult to find
20 these large stands, and we haven't been able to find
21 one nearly 150 acre stand size yet that's
22 concentrated beech on private lands, and so what do
23 we do next, and the applicant has come to us with
24 parcels, what about this, what about this, and we
25 just said it doesn't meet it, and finally to allow

1 the project to go forward they say is there anything
2 else we can do? And that's where we met with the
3 habitat team and talked about what kind of package
4 might be put together that would be an outstanding
5 mitigation offer that might not be what we wanted but
6 would provide most of the characteristics of that and
7 be something that would satisfy most of the
8 stakeholders with this, as well as be a good thing
9 for the bear resource, and we think that we've come
10 up with that. It will mean there might be some small
11 parcels or maybe not. Maybe we'll come up with one
12 parcel that has 144 acres. I'm not sure yet. We're
13 certainly going to look for that over the next few
14 years trying to do that.

15 HEARING OFFICER YOUNG: Thank you.

16 MS. GJESSING: I think I'll end on that
17 note.

18 HEARING OFFICER YOUNG: I thought I was
19 interrupting you. Any of the parties with questions
20 for Mr. Hammond?

21 CROSS EXAMINATION

22 BY MR. FIDEL:

23 Q. Just one question, Forrest. You spoke a
24 little bit about the overall context of the Stratton
25 parcel being adjacent to the Green Mountain National

1 Forest and other conserved land. Can you just talk a
2 little bit more about -- there's been more work at the ANR
3 as far as identifying habitat blocks which are in these
4 stands. Can you talk about the context of the parcels as
5 far as overall potential bear movement of the population
6 that will be affected by the project?

7 A. Sure. Our conservation biologists have been
8 working on forest block analysis and least risk analysis
9 for travel, and what they found is this one project,
10 exhibit 2 and 3 I guess, it talks about the Windham
11 Regional working forest has identified these parcels as
12 being very important to the bears as a travel way which is
13 least risky. We have had more open forest than other
14 routes and that's part of why these were chosen and the
15 benefit of these. Does that answer your question, Jamey?

16 Q. Yes. I guess habitat connectivity is
17 something that's now considered when you're looking at
18 impacts of proposed projects and ways to mitigate beyond
19 just direct or indirect impacts to habitat. Is habitat
20 connectivity something now that the Agency is looking at
21 more?

22 A. We're developing more and more of an argument
23 for habitat connectivity and trying to conserve that, yes,
24 and this is, I guess, a leader in that type of project and
25 it's been analyzed for that. The actual Stratton parcel,

1 tract four, is kind of like a stepping stone toward those
2 other parcels that the bears would need to go through and
3 provide the protection for that.

4 HEARING OFFICER YOUNG: All set?

5 MR. FIDEL: Yes.

6 HEARING OFFICER YOUNG: Mr. Raubvogel.

7 MR. RAUBVOGEL: Thank you. While I'm
8 thinking of it should we move the exhibits in?

9 MS. GJESSING: Yes. I move the exhibits
10 1 through 5.

11 HEARING OFFICER YOUNG: Any objection?

12 MS. ELIAS: No.

13 HEARING OFFICER YOUNG: They are
14 admitted.

15 (Exhibits marked DFLD-ANR-VNRC 1-5 were
16 admitted into the record.)

17 CROSS EXAMINATION

18 BY MR. RAUBVOGEL:

19 Q. Forrest, we've -- there's been a lot of
20 testimony about acquisition of lands. I just want to be
21 clear. Acquisition could be in the form of an outright
22 purchase or of a conservation easement?

23 A. Correct.

24 Q. In fact, the Stratton parcel is going to be
25 just a conservation easement not an outright purchase?

1 A. That's right. It will be a conservation
2 easement where we've got a say about the management of the
3 property and we'll -- actually that's part of that. There
4 will be management. Monitoring will be involved with it.

5 Q. Thank you. Following up on Mr. Young's
6 question, maybe to ask it in a slightly different way but
7 a similar question, looking at the package you have today
8 in front of you that's reflected in the stipulation,
9 assuming that Stratton parcel goes through, assuming that
10 the bear study is completed and the money is used from
11 this stipulation and that the remainder of the money is
12 then used to make up the 44 acres, when that all happens
13 would you agree that that is a better result; that overall
14 the conservation of bear and bear habitat will be
15 furthered better by that package than if you had simply --
16 if Deerfield had simply gone out, purchased 144 acres, and
17 not done the remainder?

18 A. Yes.

19 Q. Thank you. With respect to the study am I
20 correct that the study doesn't have to be completed for
21 you to have some of the good information that you are
22 looking for on possible acquisition areas, areas that
23 bears use that you would target for potential acquisition?

24 A. That's correct. We'll start -- knowing that
25 now this is part of it and looking for it we can start

1 identifying those potential parcels.

2 Q. The -- I think this was covered, but the
3 Hearing Officer's questions, written questions, just
4 wanted to clarify the \$150,000 expedited payment is an
5 amount that Deerfield has already committed to in the
6 prior stipulation, correct?

7 A. That's correct.

8 Q. And the 250 and \$300,000 comes out of this new
9 pot of money under the stipulation?

10 A. Yes.

11 Q. Okay. If you would go back to exhibit -- if
12 you have exhibits 5 and 6 in front of you, the bottom of
13 exhibit 5 there are two columns that have per acre values;
14 is that correct?

15 A. That's correct.

16 Q. So this is showing what Stratton parcel
17 purchase is going to cost per acre under different --
18 under the high Stratton parcel scenario and the low
19 Stratton scenario, correct?

20 A. Correct.

21 Q. So just I'm going to approximate. It looks
22 like to the high scenario it's about \$3,000 an acre and
23 under the lower scenario it's about \$2,000 an acre?

24 A. Correct.

25 Q. And then it shows what the remainder of funds

1 would be after Stratton parcel is purchased and after the
2 bear study money is spent, and would you agree with me
3 that the range that's available for additional land
4 purchases is somewhere between \$4,000 an acre and close --
5 and \$8,700 an acre?

6 A. Right. Looks like it's two to four times
7 higher.

8 Q. So would you say that is a very healthy margin
9 of safety or buffer to have in terms of knowing that you
10 have sufficient funds available for the additional land
11 purchases?

12 A. Yes. It increases my confidence that we can
13 find that land and we have enough money to do it.

14 Q. Particularly in comparison when you look at
15 exhibit 6 and what the per acre cost has been on a couple
16 of recent transactions they have been in the \$1,000 to
17 \$1,300 range; is that correct?

18 A. Yes.

19 Q. And I think, as you've said before or as the
20 prior witness said, this can be used on a match basis.
21 So, in fact, the value -- the leverage is even greater?

22 A. That's correct and that's our intention as
23 well. Having a pool of money to work with we'll try to
24 stretch that just as far as we can to get as much good as
25 we can, and Jane will be a large part of that. We've got

1 someone hired who's a specialist with that.

2 MR. RAUBVOGEL: Thank you.

3 HEARING OFFICER YOUNG: Nothing else
4 from the parties? Why don't we go to our questions.

5 MS. STILLMAN: This should be obvious by
6 now, but I just want to confirm 25 percent comes from
7 the minimum state match for federal funding --

8 MR. HAMMOND: Yes.

9 MS. STILLMAN: -- that Jane described?

10 MR. HAMMOND: Yes.

11 MS. STILLMAN: Thanks. You talked about
12 the bear habitat conservation measures for the
13 Stratton conservation easement, and from what I heard
14 you sounded hopeful that that would be included. I'm
15 just curious about what process needs to be completed
16 to ensure that those habitat conservation measures
17 would be included in the purchase agreement and what
18 the timing for that is? It sounds like that has not
19 been confirmed at this point.

20 MR. HAMMOND: We have sat down with the
21 landowner, with Meadows End, and with the other
22 parties, and already talked about the language that
23 we feel would have to be there for this to work and
24 the parties have agreed to that. There just isn't a
25 final easement that's been done yet.

1 MS. STILLMAN: So you have preliminary
2 agreement those will be in there and you're satisfied
3 with them?

4 MR. HAMMOND: Yes.

5 MS. STILLMAN: Just won't be formalized
6 until the purchase and sale agreement?

7 MR. HAMMOND: That's right.

8 MS. STILLMAN: Okay. You talked about
9 -- well let me see. I'll jump around a little bit
10 here because my notes are all in jumbled order. It
11 sounds -- reviewing condition 12 of the CPG, which
12 was later augmented or supplemented with the bear
13 study order which had requirements to follow the bear
14 study stipulation and the bear study protocol, so all
15 those pieces and going back through those pieces to
16 see what you are required to accomplish for the bear
17 study it sounds to me like you're asking today for --
18 or through the stipulation for at least two changes
19 to that protocol. One is the funding amount because
20 originally it was set at \$500,000. So you're asking
21 for an increase in the funding for the bear study,
22 and you have said that's because of the delay
23 essentially.

24 MR. HAMMOND: Right.

25 MS. STILLMAN: And the other item that I

1 noticed in the protocol said it required at least
2 four years of post construction or operational phase
3 monitoring and now you're saying it may be three. So
4 what is your estimated construction end date or
5 operational start date in -- you're assuming in
6 exhibit 4?

7 MR. HAMMOND: The field work we expect
8 will be done in 2020 and the report writing should be
9 completed by the end of 2021.

10 MS. STILLMAN: But if construction is
11 occurring in 2017, that would only give you three
12 years of operational data. Is that what you're
13 saying?

14 MR. HAMMOND: Yes. Post construction
15 data and we think that will be enough. One reason we
16 feel it's enough is we augmented the study or made a
17 change in the original design that we had. What we
18 found was the bears were -- the collars were being
19 programmed to collect a point every three hours, and
20 what we began to question was whether or not the fact
21 that the bears go over a wide area, they are not
22 always up there on top of the ridge, it's near the
23 turbines, whether or not one point every three hours
24 with that number of study animals would give us
25 enough data points to analyze with the kind of detail

1 we need to know if there was displacement say a
2 hundred yards from the turbines to two hundred yards,
3 three hundred yards and break out what the
4 differences are. You need a lot of data points to do
5 that, and the answer came about through something --
6 by reprogramming the collars with something called
7 virtual fence, and that you can -- the technology now
8 exists where you can kind of lay out on a map or on a
9 computer to begin with the boundaries of where you
10 would want that kind of data and when the bear
11 crosses kind of a virtual imaginary line out in the
12 woods you can program that in the collar to suddenly
13 increase the number of data points assumes it does,
14 and so what we've done is in the area of where we
15 would want to analyze very intensively that data near
16 where the turbines are going. We've got -- we're
17 collecting points now every 20 minutes we get another
18 location point on the bear, and it gives us more
19 detailed information on how long it is staying in
20 that type of habitat. Perhaps even if it's bedded,
21 whether or not it's just passing quickly through and
22 that type of thing, plus the overall number of data
23 points we're convinced now will be high enough to do
24 the kind of analysis we feel needs to be done. We
25 knew even with the once every three hours we were

1 going to end up with tens of thousands of data
2 points. That's one thing about the new technology
3 and these collars you end up with lots and lots of
4 data, but we need the lots and lots of data in a very
5 small area, and this is the way we can do that.

6 MS. STILLMAN: I think it was in the
7 protocol, I'm not a hundred percent sure, it talked
8 about looking at bear usage within an eighth, a
9 quarter, half mile of the proposed turbine locations.
10 Based on your looking over the information so far you
11 think you're going to have enough points within those
12 ranges or might those need to be shifted?

13 MR. HAMMOND: I do. In fact, the reason
14 we mentioned those is because we currently use a
15 quarter mile buffer. In the past it had been more
16 than that, as much as half a mile, but in most of the
17 work we've done in the past ten years or so we've
18 looked at a quarter mile buffer for black bears and
19 their habitat. We think with the amount of data
20 we'll have we can go beyond that and actually look at
21 hundred meter increments and whether or not there was
22 a less use for the habitat available than we would
23 have expected there would be or if there's more than.
24 We'll have that kind of data now.

25 MS. STILLMAN: You know where the den

1 locations are?

2 MR. HAMMOND: Yes. All the dens are
3 located. We used the denning time period to replace
4 collars on study animals and also to check health
5 condition of the animals and whether or not they had
6 any cubs, and also because they den the next year
7 with their cubs that are yearlings we check
8 survivorship of the young as well.

9 MS. STILLMAN: Okay. Have you had a
10 chance to look through the bear study protocol in
11 light of the stipulation to give us guidance on any
12 other changes there might be? I mean we need to
13 document changes that the stipulation will impose on
14 things that we've already approved. So I'm just
15 curious, in addition to the funding level and
16 possibly the post construction duration of the study,
17 are you aware of anything else that might be changing
18 going forward from what was laid out in the bear
19 study protocol?

20 MR. HAMMOND: I'm not. No.

21 MS. STILLMAN: You talked about using
22 results of the study to target additional beech
23 stands. So you have got the bear study funds that
24 would go to doing your normal bear study tasks, the
25 costs. Then you talked about costs associated with

1 looking for additional mitigation sites, and that
2 could include going out to identify areas that the
3 bears have been using, mapping beech stands in those
4 areas and contacting landowners, all those sorts of
5 costs for looking for new mitigation sites I'm
6 thinking would be wrapped into that 185 to 385 of
7 funds left over? That wouldn't be part of the study
8 itself, right?

9 MR. HAMMOND: We anticipate that that
10 will cover the costs of that. What I do is my work
11 on this study I don't code toward this and we've got
12 funds for statewide bear work, and so I don't usually
13 code my time toward it because I would have been
14 doing bear work anyway, and so there's a little bit
15 more expense with that, but certainly what's provided
16 with this sets the groundwork for the primary field
17 person. Their time would be covered with this. Yes.

18 MS. STILLMAN: And I guess exhibit 5 has
19 -- gives an indication that there's a bit of a
20 cushion there to cover those sorts of costs as
21 needed?

22 MR. HAMMOND: Yes.

23 MS. STILLMAN: Okay. So it looks like
24 the study is going on this year; is that correct?

25 MR. HAMMOND: Yes.

1 MS. STILLMAN: I'm curious about the
2 \$15,000 for the stewardship fund. Is that the only
3 -- well ANR funds be the only stewardship funds for
4 that Stratton conservation easement? And, if so,
5 what will that cover?

6 MR. HAMMOND: That is the only funds for
7 that. What it covers is the cost of a seasonal
8 employee that we've already got hired that does other
9 things, to spend a day every so often to go in to,
10 one, walk the boundaries and to look at the major
11 entry points and make sure those are unchanged and
12 look at aerial photos as well. It's just to make
13 sure there's not violations to the conditions of the
14 easement. It doesn't cost a lot of money to do that,
15 but to have some money set aside for what we know
16 then that this, with other monitoring monies from
17 other parcels, can provide for a position to be doing
18 this around the state.

19 MS. STILLMAN: So that pertains to the
20 entire parcel, not just the hundred acres of bear
21 scarred beech?

22 MR. HAMMOND: It would be the entire
23 parcel. Yes.

24 MS. STILLMAN: And whose responsibility
25 will it be to ensure any bear habitat conservation

1 measures for that bear scarred beech portion of the
2 property are being implemented and maintained? Is
3 that part of the stewardship fund?

4 MR. HAMMOND: That's part of it and that
5 they would alert us if they see any kind of
6 violation, the person who does -- who is assigned to
7 do that stewardship, but it goes beyond that. With
8 the easement what it would be doing is prior to a
9 forest harvest prescription for that area, Meadows
10 End or whoever the owner is at the time, would
11 contact us and ask for comments whether or not we
12 approve the way that it would be harvested and things
13 like that. So it's supposed to be some give and take
14 and some coordination of that.

15 Once we have an easement we don't just
16 back away. We actually set it up to work with the
17 landowner and it's not an adversarial relationship.
18 It's something normally we enjoy doing and we're not
19 fighting over it and say we're discussing what's the
20 best way to do it.

21 MS. STILLMAN: And that's all covered
22 under the stewardship funds?

23 MR. HAMMOND: Yes.

24 MS. STILLMAN: Okay. The other
25 questions I have are just sort of out of curiosity, I

1 guess, because I was able to read your interim report
2 that was available online from August of last year
3 with some of the results of the study so far, and I'm
4 wondering if you could explain just a little bit, I
5 know you talk about monitoring the beechnut
6 production at the site, and I think that's not like a
7 quantitative monitoring of beech production at the
8 site. I think it's more per tree how productive an
9 individual tree might be in any given year from
10 year-to-year.

11 What I'm getting at is there's an
12 indication in this interim report that there might be
13 some changes to the number of trees, live trees, at
14 the site, and if you're monitoring the value of the
15 beech trees for bear food year-to-year that tells you
16 how productive the -- a beech year it might be, but
17 if the actual number of trees are changing then
18 that's going to be changing over time and could
19 affect bear usage, and is that something you're going
20 to be able to track over the longer duration that the
21 study is now studying?

22 MR. HAMMOND: That's interesting you
23 bring that up because that's true. Beech have a
24 range of diseases that can affect them, especially
25 beech bark disease is one that kills off trees

1 especially seems like at high elevation. It
2 certainly -- we have that on the study area and
3 there's been some indication that the number of large
4 healthy beech trees in that area has declined because
5 of the disease. So we're doing a couple things. We
6 look at beech mass production, on whether or not
7 there's beechnuts available in the area, and that's
8 connected to a statewide -- we do that on a statewide
9 basis as well. So -- and then we rank it from --
10 basically we quantify it, but it's used to rank
11 whether or not it's beechnuts or if it's poor that
12 year or if there's some nuts or it's a good year or
13 an excellent year or just an outstanding year, and we
14 get that information from it, but as far as knowing
15 how many trees have died and how many survive we
16 haven't got that as part of this.

17 We do take notes on the amount of
18 diseased trees and stuff we see. With our management
19 emphasis with bear scarred beech we still protect a
20 stand that's perhaps at a certain time in decline
21 because what we find is the understory coming up is
22 all beech. Even if you have got some dead trees, it
23 allows more sunlight in and beech are the dominant
24 tree species. So there may be some temporary
25 reduction in use of a stand because of the health,

1 but we feel later it will improve and there will be
2 more. So it's something that's, I guess, never
3 static on beech stands, but if you have got a large
4 area of beech trees and they are producing nuts, the
5 bears will use it.

6 MS. STILLMAN: Is that how you would
7 characterize the study site as of right now despite
8 the fact that you have seen some decline?

9 MR. HAMMOND: Yes. In some areas we've
10 seen decline. Other areas of younger beech is
11 probably being improved and coming on and things like
12 that.

13 MS. STILLMAN: I'm thinking what would
14 be unfortunate if the beech production was declining
15 and that was affecting bear use. It's hard to
16 untangle whether that was keeping bears away or the
17 turbines were keeping bears away.

18 MR. HAMMOND: Well certainly that's a
19 part of research and things are never quite black and
20 white. There's other variables you have to try to
21 piece out and that's part of any study and the
22 analysis of your data and the interpretation of it
23 and that's happening statewide, but we know that the
24 bears are attracted to that area and even with some
25 beech bark disease we think that will continue to

1 happen.

2 MS. STILLMAN: So it sounds like you're
3 comfortable that your approach and the information
4 that you're collecting even if it's not quantitative
5 to the tree it's going to be robust enough to draw
6 conclusions as far as those two causes of bear use?

7 MR. HAMMOND: Yes.

8 MS. STILLMAN: Okay. Great. Thank you.
9 The only other thing of interest in here you talked
10 about the collars. There are some comments in the
11 interim report about problems with the collars and
12 there's a statement that you're looking into
13 different collars. Has that been resolved? Are you
14 using the same collars or have you looked at using
15 different collars or are you still thinking about
16 investigating different collars going forward?

17 MR. HAMMOND: What we're doing is -- I
18 think anybody working with any type of technology is
19 always on the lookout for something better or a
20 company that can do it or is more reliable or has
21 better customer satisfaction. The company that we
22 started out with we weren't satisfied with their
23 customer service and we found more failure. So we
24 have gone with another company, but the collar itself
25 and what it can do is the same.

1 MS. STILLMAN: Does it go around their
2 whole --

3 MR. HAMMOND: It does. It goes around.
4 It's like a dog collar and we only put those on a
5 certain size bear. The smallest bears don't get
6 collars at all.

7 MS. STILLMAN: This is off the wall. I
8 should have googled it, but they can't do little
9 chips or something? I have a chip in my dog if I
10 lose my dog. It just seems like reading some of the
11 complications with the collars falling off and
12 breaking and causing neck abrasion they don't have
13 the little micro chips or something or is that just
14 too costly?

15 MR. HAMMOND: There actually are chips
16 that can be used to identify different animals and
17 those -- like say the same type of chip used on your
18 dog is just like a rice kernel, can be put on other
19 animals, and we have actually used that. Especially
20 we have done some snake studies and put those on so
21 if we capture an animal we know it's the same one,
22 but unfortunately that chip doesn't give us any
23 information about behavior and movement, where it's
24 been, stuff like that, and so we have to go with a
25 larger collar that has a battery and because it's

1 difficult to capture these we try to get at least a
2 year's worth out of it or as much as two. So it's
3 larger because of that, and one thing -- actually one
4 benefit of the fact that the predevelopment phase has
5 been extended to six years instead of just one year
6 that we thought we had was there was some bugs that
7 needed to get worked out in the beginning of the
8 study, and it took us a while to do that and improve
9 on it, and we've got a much better study because of
10 that. That's one problem with say a graduate
11 student's work out of university often it's a
12 two-year period. The first year they are just
13 learning how to do it and you hope the next year will
14 provide the data enough to get good results. Often
15 it doesn't, but it's an educational thing. This goes
16 beyond a graduate study. It's a long term study with
17 professionals who aren't just trying to get degrees
18 that are out there doing it. So we feel the results
19 will be much better because of that.

20 MS. STILLMAN: And your data points are
21 giving you potential mitigation sites well beyond the
22 five mile study area?

23 MR. HAMMOND: Yes. The bears travel and
24 that's one of the challenges is to collar the right
25 bears and enough bears to get enough data in a small

1 area where they will travel maybe 20 miles from a
2 project area, and we feel now that, especially going
3 to the virtual fence, we've increased slightly the
4 number of study animal collars that will have that
5 information, but even the outliers where they go is
6 providing some interesting information. We had one
7 bear that actually went up into the area of the
8 Stratton parcel we're talking about and feed on beech
9 in the fall. It spent time on the Stratton
10 mitigation area and perhaps even on this area here.
11 We had another bear that went north of the study area
12 over to the Haystack Resort in an area that working
13 with their master plan we've been trying to make sure
14 that there's an important bear scarred beech stand
15 that's conserved there, and the bear made a beeline
16 for that stand and spent a couple weeks in the stand
17 we're trying to conserve. Even 10, 15 years ago
18 those outlier bears that travel we usually would lose
19 those or only find them once or twice a year. You
20 would have to fly to do it. It's very expensive and
21 hard. With the GPS collars it still shows up on your
22 laptop where they are going and the route, and so the
23 information we're getting off of bears when they
24 travel away and come back to the study area is really
25 helping with that habitat linkage effort that Jamey

1 mentioned, as well as from Massachusetts and Vermont
2 will be using -- that data will get used down the
3 road as well.

4 MS. STILLMAN: Are there other -- are
5 there other pieces of your statewide bear program
6 that did give comparable kinds of information
7 throughout the rest of the state? I mean our
8 condition doesn't specify a distance within the
9 project site that the mitigation needs to be, and I'm
10 thinking if it's very difficult to find a suitable
11 parcel, like how far out do you look?

12 MR. HAMMOND: Well we've talked about
13 that and -- the habitat team has and this is
14 something whenever we do off-site mitigation we try
15 to consider it, and as a general rule we try to do
16 off-site mitigation as close as possible to the
17 habitat that was actually impacted. With deer
18 wintering areas we have a lot more of those. We try
19 to actually do it within the town that that happened
20 in or within the range we think a deer might go to
21 find a deer wintering area. Bears travel wider and
22 so 20 or 30 miles isn't unknown for bears. In fact,
23 most of the bears at one time or another will travel
24 that far in a straight line. So for this we've kind
25 of chosen probably the south third of the state is an

1 area we'll be looking at for this most intensively as
2 close as possible to Searsburg and Readsboro.

3 MS. STILLMAN: I think I'm right with
4 the five-mile study radius; is that right?

5 MR. HAMMOND: Yes.

6 MS. STILLMAN: But your data points go
7 further?

8 MR. HAMMOND: Because the bears go
9 further.

10 MS. STILLMAN: And then in the southern
11 third of the state are there other programs or
12 mechanisms for identifying bear scarred beech
13 parcels?

14 MR. HAMMOND: Not as intensively as this
15 where we have collared animals and stuff like this,
16 but we do have other programs, and one that we work
17 with is with a federal agency NRCS. We've got an
18 EQIP program where landowners can get advice from --
19 we've got folks that are employed to help landowners
20 manage their properties, and so they visit and help
21 map habitat on different people's properties, and
22 certainly we'll be reaching out to the folks that
23 work with that program if they come across beech
24 stands that are important and seem very large.

25 MS. STILLMAN: That's the -- NRCS,

1 that's the federal NRCS that's providing some of the
2 bear study funding?

3 MR. HAMMOND: Yes.

4 MS. STILLMAN: I didn't know that.
5 Interesting.

6 MR. HAMMOND: And the way they are
7 providing some of the funding is our principal field
8 investigator, who has a Master's degree and works a
9 lot with bears, she was hired on to work part-time on
10 the bear study and part-time on that EQIP program
11 doing that.

12 With this additional funding will reduce
13 the amount of time she works in that other program
14 and increase it on the bear study, but she will still
15 be involved with the other program and it helps quite
16 a bit with our budget for the bear study because
17 personnel costs can just be such a high cost of any
18 study that you do.

19 MS. STILLMAN: I think that's it for me.

20 MR. KNAUER: I have a question about the
21 habitat that's under consideration within the
22 Stratton parcel. You discussed that there would be
23 57 acres within that parcel that are of high quality
24 and 43 that is of lesser quality. I'm not sure if
25 those were your exact words.

1 In the stipulation page 2 it is
2 characterized as less concentrated beech mast. Do
3 those 43 acres -- are they at high elevation?

4 MR. HAMMOND: Yes. They are nearly the
5 same elevation, maybe a little bit less, but what we
6 consider makes it a lesser quality is a portion of
7 those is closer to a highway and we think that
8 highways -- bears use the areas less near highways.
9 The other is they are less concentrated, you have to
10 go further between the trees, but one thing that they
11 have done with the management is they have actually
12 opened -- they left the existing healthy beech and
13 they removed other trees that were competing for
14 sunlight, and so those trees should see a spurt in
15 health and growth, and also as more beech trees grow
16 up around them it will actually improve that stand,
17 and so they have already taken steps to do that.

18 MR. KNAUER: Okay. How close is the
19 highway to those 43 acres?

20 MR. HAMMOND: Well it varies. We first
21 started finding some bear scarred beech, geez,
22 probably within a hundred, two hundred yards off the
23 pavement. Then the further you get out the more
24 trees you found that have been climbed by the bears.

25 MR. KNAUER: So part of the 43 acres

1 could be described as remote and part of it maybe not
2 so remote?

3 MR. HAMMOND: Yes.

4 MR. KNAUER: Do you have exhibit 1 with
5 you? That's the stipulation.

6 MR. HAMMOND: I do.

7 MR. KNAUER: I have a question that has
8 to do with the additional habitat conservation which
9 is discussed on page 5. At the bottom under
10 paragraph 4B it says that within 30 days after
11 closing ANR shall file with the Board a description
12 of the land and a copy of the deed or conservation
13 easement.

14 So my understanding is ANR will have
15 access to the mitigation funds and will be seeking to
16 obtain easements or ownership of additional lands and
17 that the Board will find out after the fact what
18 transactions take place. Is that a correct
19 interpretation of this paragraph of the stipulation?

20 MR. HAMMOND: That's my understanding.
21 Catherine certainly would be involved with any
22 coordination with the Board.

23 MR. KNAUER: Okay. And is it your
24 understanding that the description that's
25 contemplated in paragraph 4B would include a

1 description of how the acquired lands would meet the
2 requirements of condition 11 such as being remote
3 high elevation and contains concentrated beech mast?

4 MR. HAMMOND: I guess we haven't talked
5 about that in detail, but I would think that to
6 fulfill this we would submit something in a report
7 form that contained an easement, a map of the
8 property, a description of how they found it, and how
9 many acres and things like that.

10 MR. KNAUER: Okay. I have a question
11 about exhibit 4 and you may not need to refer to the
12 exhibit itself, but you and Ms. Stillman just had an
13 exchange discussing NRCS and I just would like to
14 have a clear record and understand what NRCS stands
15 for.

16 MR. HAMMOND: Sure. That's actually a
17 federal agency, the Natural Resource Conservation
18 Service, and we've got a cooperative project with
19 them for landowner habitat improvement. They provide
20 the funds for landowners to apply to do projects on
21 their property and improvement for wildlife. The
22 NRCS oversees that, provides the funds, the Fish and
23 Wildlife Department provides manpower in the field to
24 work with the landowner to help with that application
25 process and with the project itself.

1 MR. KNAUER: Thank you. And a question
2 relating to exhibit 6. Do you have that exhibit with
3 you?

4 MR. HAMMOND: I don't think I actually
5 have exhibit 6 as part of this. Wait a minute.

6 MS. STILLMAN: Do you want to look at
7 this one?

8 MR. HAMMOND: Sure. Okay.

9 MR. KNAUER: Are you familiar with these
10 parcels?

11 MR. HAMMOND: The very first one,
12 Bodenmiller, I was involved in helping identify that.
13 It was some mitigation provided by VELCO for one of
14 their power lines and I helped identify and was part
15 of that. The next three are with the Turner Hill
16 Wildlife Management Area in Athens by Grafton, and
17 I'm familiar with those, but I didn't -- I wasn't
18 part of the negotiation and I don't know the
19 property. I have walked through some of these
20 properties, but not all of them.

21 MR. KNAUER: Okay. I'm going to ask you
22 questions and if you don't know the answer, you don't
23 know the answer.

24 MR. HAMMOND: Sure.

25 MR. KNAUER: Do you know whether any of

1 these properties contain characteristics of what
2 condition 11 was asking for? Do they contain remote
3 high elevation bear scarred beech?

4 MR. HAMMOND: I don't know how much bear
5 scarred beech. We didn't have any concentrated
6 stands identified there. These properties were heavy
7 to wetlands and there was a lot of bear sign, a lot
8 of bear use as wetlands, but we have not actually
9 identified bear scarred beech stands with those. I
10 do know that there's a stand very close to that.
11 That might be a potential for adding it, if the
12 landowner is willing, that has a lot of bear scarred
13 beech.

14 MR. KNAUER: The reason I'm asking is I
15 think very early in your testimony today you said the
16 landowners are going to realize the value when they
17 have bear scarred beech on their property, and so I'm
18 wondering whether the cost per acre shown in this
19 exhibit is reflective of property or acreage that
20 contains remote high elevation bear scarred beech or
21 whether it has other characteristics?

22 MR. HAMMOND: When I say they are
23 starting to realize that I don't think it's
24 widespread. Meadows End has already worked with this
25 with some of the other wind projects and stuff and so

1 I think they perhaps were looking ahead. I don't
2 think many other landowners have at this time
3 probably.

4 MR. KNAUER: Those are all of my
5 questions.

6 HEARING OFFICER YOUNG: I just have a
7 few questions. I have gotten most of mine in
8 earlier. Just to make sure I understand it is the
9 intent of the stipulation that there still would be
10 conserved at least 144 acres of equivalent habitat?
11 Is that your understanding?

12 MR. HAMMOND: Yes.

13 HEARING OFFICER YOUNG: And this is just
14 a different mechanism for achieving that, correct?

15 MR. HAMMOND: Correct.

16 HEARING OFFICER YOUNG: And it also
17 changes the timing. It would not be -- under the
18 condition 11 it had to be in advance of construction.
19 This would alter that; is that correct?

20 MR. HAMMOND: Yes, and I think that's
21 part of the reason why it's a larger amount of money
22 than what would be needed probably to do that.
23 There's a little bit of uncertainty with the time
24 frame and so we're also looking for a larger amount
25 of habitat than just 144 acres as part of that, and

1 that's what makes it attractive to us.

2 HEARING OFFICER YOUNG: And let me turn
3 briefly to exhibit 5. You have - the lower row you
4 have these values, these per acre values.

5 MR. HAMMOND: Yes.

6 HEARING OFFICER YOUNG: Am I correct
7 what that represents is basically dividing the
8 remainder available for additional land purchases by
9 44 to get a per acre value? Is that essentially how
10 that was calculated?

11 MR. HAMMOND: That's my understanding,
12 yes.

13 HEARING OFFICER YOUNG: Okay. So this
14 is just -- if we are aiming to meet the 144 or
15 assuming Stratton goes through, we could pay up to
16 this to get -- assuming you could find something that
17 was exactly 144?

18 MR. HAMMOND: Right.

19 HEARING OFFICER YOUNG: But I think, as
20 you said earlier, the parcels may come in larger
21 chunks and you're going to have to pay more?

22 MR. HAMMOND: Part of the reason we want
23 more than that is in order to get a 44-acre parcel
24 that's valuable to the bears it can't be a 44-acre
25 parcel right near a road or something like that. It

1 has to be further out in the open so there's some
2 kind of buffer with it as well. So normally the land
3 that's acquired is larger than what the critical
4 habitat is we're looking for.

5 HEARING OFFICER YOUNG: Your assumption
6 on the bear study is three years of data. It looks
7 like it's ending in 2020. From that do I assume that
8 you're thinking that construction will be occurring
9 in 2017?

10 MR. HAMMOND: That's my understanding
11 and perhaps even later this year.

12 HEARING OFFICER YOUNG: I think that
13 exhausts the questions that I have. Is there any
14 followup from any -- Mr. Raubvogel.

15 MR. RAUBVOGEL: Thank you.

16 BY MR. RAUBVOGEL:

17 Q. Forrest, you were just asked a question about
18 whether bear scarred beech has a higher value or is
19 perceived as having high value to landowners, and I think
20 you said that it might be some landowners or a limited set
21 of landowners may believe that.

22 In terms of how that could affect the purchase
23 price of a parcel for conservation would you agree with me
24 that if it's an ANR purchase, that your purchase is going
25 to be limited by a fair market value appraisal of that

1 property? That is ANR is not going to be in a position to
2 pay more than an appraiser would assess that property's
3 value?

4 A. Yes. Probably so.

5 Q. That's particularly the case if you were using
6 matching funds, is that right?

7 A. Right.

8 Q. That's a requirement of the federal
9 government's grant or award?

10 A. Yes.

11 HEARING OFFICER YOUNG: I didn't hear an
12 audible answer.

13 MR. HAMMOND: Yes.

14 MR. RAUBVOGEL: Excuse us for a minute.
15 That is all we have right now.

16 HEARING OFFICER YOUNG: Any other
17 followup?

18 MS. STILLMAN: Just because I don't have
19 my calculator and just to make sure we've exhausted
20 this map issue, on exhibit 5 the last line the cost
21 per available funds per acre for purchase of 44
22 acres, if you were to purchase a larger parcel,
23 instead of a hundred acres it had 44 acres of bear
24 scarred beech in the middle, this cost, purchase
25 price per acre, would go down?

1 MR. HAMMOND: Yes for the entire parcel.

2 MS. STILLMAN: And this does not assume
3 matching federal funds which would make your
4 available dollars per acre go up?

5 MR. HAMMOND: This does not assume that
6 even though we're going to try to leverage it that
7 way.

8 MS. STILLMAN: Great. That's it. Thank
9 you.

10 HEARING OFFICER YOUNG: Thank you very
11 much for your testimony.

12 MR. HAMMOND: Thank you.

13 HEARING OFFICER YOUNG: Why don't we
14 take a short break. Before we do that let's go off
15 the record for a minute.

16 (A discussion was held off the record.)

17 HEARING OFFICER YOUNG: We're back on
18 the record after a short break. Mr. Raubvogel, it's
19 up to you to decide what you're doing.

20 MR. RAUBVOGEL: Thank you. We don't
21 think we need another witness to be heard on the bear
22 stipulation. We would like to have a discussion, if
23 possible, about the schedule for your decision as it
24 relates to the overall project schedule just so that
25 you're mindful of that, if I may, and then we also

1 would like to be heard just on the condition 11 and
2 the language itself.

3 HEARING OFFICER YOUNG: Okay. Let me
4 ask you one question. I'm fine with that. I'm not
5 sure I see the need for a witness with one caveat
6 which is I assume that Deerfield and Deerfield's
7 prospective witness are comfortable with the answers
8 ANR provided and that there aren't any disagreements
9 and interpretations of what the stipulation meant?

10 MR. RAUBVOGEL: We would agree with
11 that. There's no disagreement about what the
12 stipulation means.

13 HEARING OFFICER YOUNG: No. I just want
14 to make sure, since you're a counterparty and to the
15 extent there might be caveats, I would want to make
16 sure.

17 MR. RAUBVOGEL: Well, as I said, the
18 only exception, and I think it's more about the way
19 the question was framed rather than the answer, is
20 what condition 11 requires versus what the
21 stipulation accomplishes.

22 HEARING OFFICER YOUNG: Right, and the
23 question may have not been a hundred percent accurate
24 in terms of what condition 11 requires, although
25 there might be interpretation even on that issue.

1 Okay. Why don't you proceed and I know Mr. Fidel had
2 wanted to make a statement probably on the same point
3 a little later. So we'll start with Deerfield and I
4 think from your preliminary statement you're actually
5 going to answer one of the questions I was going to
6 ask you anyways, but -- so why don't you go ahead.

7 MR. RAUBVOGEL: So with respect to the
8 schedule of a final Board order on the bear
9 stipulation and how that plays into the schedule for
10 the project, I thought it would be useful to -- first
11 of all, let me start backwards.

12 We would ask the Board to issue -- to be
13 in a position to issue a final decision on the bear
14 stipulation by very early August, and the reason we
15 are asking that is we are now at the -- we are at the
16 11th hour. We are very, very close to having every
17 compliance filing in place and approved to begin
18 construction. This has been, as you know, a year and
19 a half to a two-year process. The only things that
20 remain to my knowledge are the bear stipulation
21 approval. We need to refile the final executed
22 letter of credit with two changes that the Board
23 asked for in its order concerning the decommissioning
24 letter of credit. So that has to be filed and that's
25 going to happen any day now, and we need to begin the

1 Duncan Cable Television baseline study, but it has to
2 occur no more than 45 days prior to construction. So
3 in that sense we need to know when we can begin
4 construction to accomplish that.

5 The -- probably the most important thing
6 is that in order for the company to invest what will
7 be millions of dollars in turbine -- placing a
8 turbine order it needs to have this decision because
9 this is really the last decision given that the
10 letter of credit has essentially been resolved. So
11 the company can't place that order until this
12 decision is issued, but needs to place that order as
13 soon as possible. The lead time is such that if the
14 order isn't placed soon that we're going to lose 2017
15 as a construction season.

16 As you know one of our prior filings in
17 this case was a request that the schedule with
18 respect to construction during breeding bird season
19 be structured so that we could accomplish
20 construction really over one season rather than two.
21 That one season will be 2017 if things go as I'm
22 describing them, but we do -- the company does need
23 this fall to really prepare the site to be in a
24 position to accomplish construction in 2017 and to
25 complete it during that time period.

1 So this fall would be used for site
2 clearing and potentially some road construction or
3 the preparation for road construction, and as I said
4 that to have -- to be able to mobilize in an
5 efficient way that can't happen -- that mobilization
6 can't happen in November or October. It needs to
7 happen really no later than September 1st.

8 So for all those reasons, and given the
9 limited scope of what I think you have in front of
10 you, we would ask for your indulgence to have a
11 decision, as I say, a final Board order by early
12 August. So that's what I had to say on that issue.
13 I'll pause and ask if you have any questions.

14 HEARING OFFICER YOUNG: You know me too
15 well. The answer is yes. Okay. So the plan is
16 actually the construction will be next year. You
17 just need to do some site preparation this fall, but
18 you also need to place an order and there's a fairly
19 long lead time on turbines. That's where we're at
20 right now?

21 MR. RAUBVOGEL: Correct.

22 HEARING OFFICER YOUNG: In terms -- is
23 it your representation, and I haven't gone back and
24 matched it up to the order yet, that other than the
25 three items that you mentioned; the bear study, the

1 letter of -- final letter of credit, and the
2 commencement of the Duncan Cable baseline study, all
3 the other compliance filings have now been submitted
4 and/or -- and approved essentially?

5 MR. RAUBVOGEL: That is to the best of
6 my knowledge. We would be happy to confirm that and
7 have a followup letter if my recollection is
8 incorrect on that front, but that is --

9 HEARING OFFICER YOUNG: I think we can
10 rely upon -- I will ask you check. If you're wrong,
11 let us know because when we brief the Board I'm going
12 to tell them according to Deerfield this is the only
13 things outstanding, and if I'm wrong I would just as
14 soon tell me I'm wrong so I can correct myself.

15 MR. RAUBVOGEL: Yes. I understand.

16 HEARING OFFICER YOUNG: Okay.

17 MS. STILLMAN: Can I ask a quick
18 question? Never mind. Sorry.

19 HEARING OFFICER YOUNG: Okay. That was
20 all. I was going to get into that area anyway even
21 though it was outside the bear study scope. So next.

22 MR. RAUBVOGEL: Thank you. On condition
23 I don't feel like I need to belabor this. I think
24 the wording -- the issue that came up in the back and
25 forth when Mr. Hammond was on the stand was whether

1 the existing condition 11 actually required the
2 acquisition of the 144 acres prior to construction,
3 and I don't believe there's any interpretation of
4 condition 11 that goes that far. Condition 11 is
5 recited, or at least the relevant portion, on the
6 first page of the stipulation, and it states that
7 Deerfield shall submit a proposal, quote, for the
8 land it proposes to conserve as a mitigation measure
9 for the impact of the project on bears. The proposal
10 shall conserve at least 144 acres of land that is
11 comparable to the remote high elevation area of
12 concentrated beech stands impacted by the project.
13 Deerfield may not commence site preparation or
14 construction until the Board has approved the
15 mitigation proposal unless otherwise authorized by
16 the Board.

17 So the mitigation proposal is the thing
18 that you have to approve prior to construction. The
19 mitigation proposal that you have in front of you,
20 which the witnesses and parties have described as an
21 outstanding mitigation proposal, is the combination
22 of the Stratton parcel, additional bear study monies
23 which would go in part towards helping identify
24 further lands, and the remaining funds available for
25 the remainder of the purchase of 44 acres. So that

1 is the proposal that we are asking you to approve.
2 We are not asking you to modify condition 11 based
3 upon our interpretation that it doesn't require
4 modification; that all you need to approve is that
5 proposal prior to construction, and we understand
6 that if you approve that proposal, you are
7 effectively incorporating the stipulation as an
8 enforceable document that you would require Deerfield
9 and the parties who are stipulating parties to
10 implement and complete. That was what I had to say.

11 HEARING OFFICER YOUNG: The lawyer part
12 would like to engage in a different type of
13 discussion with you on the semantics of this issue,
14 but I'm not going to. I understand your position
15 that basically this is in conformance with condition
16 11 and we'll work with that assumption. Mr. Fidel.

17 MR. FIDEL: I wanted more to respond to
18 the Board's question G which was all the stipulating
19 parties essentially asking the Board to modify the
20 original condition 11 to allow Deerfield to conserve
21 less than the original 144 acres specified in the
22 order, and I know from our position in supporting the
23 stipulation the answer would be no, and I just want
24 to provide a little bit of context for that and close
25 with something similar to what Mr. Raubvogel said

1 about the stipulation being enforceable.

2 Just quickly by way of background, as I
3 know the Hearing Officer and Board recalls, VNRC did
4 have serious concerns about the proposed project and
5 potential impact on bears, and part of that concern
6 was that if the project was going to be approved,
7 that we felt that there should be a mitigation of
8 both direct and indirect impacts. We filed a motion
9 to amend the Board's order, and the Board in the end
10 decided that it was the bear study that would inform
11 whether there are indirect impacts. So there was the
12 requirement for condition 11 and the funding of the
13 bear study.

14 The Board also required VNRC or
15 Deerfield to work with ANR and VNRC in identifying an
16 appropriate mitigation proposal, and so we were under
17 -- we felt obligated through the Board order to
18 participate in this process.

19 Just since the ruling in 2009 I think
20 the Board has recognized that there is value in
21 conserving both -- mitigating habitat for both direct
22 and indirect. So, for example, in the Lowell
23 decision there was an acknowledgment of mitigating
24 for indirect impacts. There was also an
25 acknowledgement, at least in that case which was

1 after Deerfield, of mitigating the impacts of
2 fragmentation habitat, impacts to habitat
3 connectivity, and so we think that there's been a
4 progression, at least with the Board's orders, of
5 understanding the larger context of trying to
6 mitigate both impacts to habitat connectivity,
7 fragmentation of habitat, and then potentially direct
8 and indirect impacts, which I guess gets us to the
9 stipulation and condition 11, and we are very
10 concerned that the Board's requirement -- we very
11 much support the study and the funding of the study
12 as a way to understand ultimately how bears are going
13 to respond to these turbines. As you know we had
14 concerns already out of the gate about what the
15 impacts would be, what the study is, what it is and
16 we're happy that it will hopefully be allowed to
17 continue with the appropriate funding.

18 The issue of conserving land we were --
19 we are disappointed that only 144 acres were required
20 to be mitigated, and what this stipulation offers is
21 habitat conservation at a much greater level, and we
22 think that there's been -- the way that we read the
23 stipulation is that the required 144 acres of
24 comparable habitat do need to be conserved so you get
25 the broader benefit of having a larger parcel that

1 has value both for bear scarred beech habitat, but
2 also for the oak, for the cherry, for the wetlands,
3 and the habitat connectivity components. For that
4 reason we think the overall acreage is addressing
5 more of the indirect impacts that we hoped would have
6 been actually addressed through the mitigation.

7 The way that we read the stipulation,
8 and especially in regards to section 4A, is that any
9 remaining mitigation -- that additional high quality
10 bear mast stand habitat, consistent with the
11 outstanding mitigation approach described in this
12 stipulation, will provide any remaining mitigation
13 that is required under CPG 11, condition 11. So we
14 see any outstanding amount that is not secured in
15 Stratton as being necessary to achieve through the
16 stipulation and such land shall contain habitat value
17 comparable to the beech stands impacted by the
18 project, and we think that this stipulation should be
19 enforceable by the Board so that it will now be ANR's
20 responsibility utilizing the funds to actually find
21 the remaining amount of comparable habitat that's
22 necessary.

23 I think the net gain in the stipulation
24 is that you're actually going to have additional
25 acreage that's conserved that's valuable for bears,

1 and through part of the stipulation ANR shall consult
2 with VNRC in identifying mitigation lands, and we
3 will continue to advocate, as Mr. Hammond expressed
4 when he testified, that it would be very advantageous
5 to actually conserve more than just the required 44
6 acres of bear scarred beech. If they can leverage
7 additional funding, we would be supporting a much
8 larger mitigation package that would then result in a
9 much larger amount of land that gets at both direct
10 and indirect impacts and habitat fragmentation which
11 we think are appropriate.

12 So I think that's a bit of a long winded
13 way of saying we would certainly not support the
14 Board weakening the requirements of condition 11 to
15 have a net result of 144 acres of comparable habitat
16 achieved through conservation. We understand there's
17 a bit of a timing question here, but that we would
18 hope that would be an enforceable term that
19 ultimately needs to be met both through the Stratton
20 parcel and additional lands.

21 HEARING OFFICER YOUNG: Thank you for
22 that. I will make the one observation the question
23 was not intended to suggest that the Board might
24 relax the 144, but whether the stipulation could be
25 read as permitting something less than the 144 to be

1 conserved, and I think we've heard testimony that
2 that is not the intent of any of the parties. Just
3 on that point and -- but thank you.

4 Anything further that anybody else wants
5 to add? Great. Well let me just thank you all for
6 your time. I will say I appreciate the efforts of
7 ANR to put on a presentation here that addresses the
8 concerns the Board had tried to lay out. It was very
9 useful and made the process go smoothly. So thank
10 you for that and on that basis we're adjourned.

11 (Whereupon, the proceeding was
12 adjourned at 12:05 p.m.)
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C E R T I F I C A T E

I, JoAnn Q. Carson, do hereby certify that I recorded by stenographic means the technical hearing re: Docket Number 7250 at the Susan M. Hudson Hearing Room of the Public Service Board, 112 State Street, Montpelier, Vermont, on July 6, 2016, beginning at 9:30 a.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting, and the foregoing 92 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings, to the best of my ability.

I further certify that I am not related to any of the parties thereto or their Counsel, and I am in no way interested in the outcome of said cause.

Dated at Burlington, Vermont, this 8th day of July, 2016.

JoAnn Q. Carson

Registered Merit Reporter

Certified Real Time Reporter