STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7250

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 as the existing GMP Searsburg wind facility (Eastern Project Area), and 8 turbines along the ridgeline to the west of Route 8 in the northwesterly orientation (Western Project Area)	)

Order entered: 8/4/2016

SEVENTH ORDER RE: COMPLIANCE FILINGS

I. INTRODUCTION

On April 16, 2009, the Vermont Public Service Board ("Board") issued an order ("Order") and certificate of public good ("CPG") in this docket approving, subject to certain conditions, the construction and operation of a wind electric generating facility (the "Project"). On July 17, 2009, the Board issued an amended CPG ("Amended CPG"), in which several of the conditions contained in the CPG were altered. Among other things, the CPG and Amended CPG required the CPG Holder, Deerfield Wind, LLC ("Deerfield"), to make a number of post-certification compliance filings.

On July 2, 2015, Deerfield submitted a draft letter of credit and drawing certificate as required by the decommissioning plan developed in compliance with Condition 19 of the Amended CPG.

On January 8, 2016, the Board approved the draft letter of credit, requested a revision to the drawing certificate, and reminded Deerfield that a fully executed letter of credit would need to be filed by Deerfield for Board review prior to commencement of construction.

On March 16, 2016, Deerfield filed a stipulation regarding bear habitat mitigation (the "Mitigation Stipulation") that was intended to meet the requirements of Condition 11 of the Amended CPG.[1]

On July 6, 2016, Board staff held an evidentiary hearing to clarify portions of the Mitigation Stipulation and to enter it into the evidentiary record for this proceeding.

On July 12, 2016, Deerfield filed a fully executed letter of credit with a revised drawing certificate in accordance with the Board's order of January 8, 2016.

In this order we determine that the Mitigation Stipulation fulfills the objectives of Condition 11 of the Amended CPG and that the fully executed letter of credit and drawing certificate fulfill the requirements of Condition 19 of the Amended CPG.

II. Findings

1. The Mitigation Stipulation is an agreement among Deerfield, the Vermont Agency of Natural Resources ("ANR"), and the Vermont Natural Resources Council ("VNRC") (the "Stipulating Parties") that addresses the provision of funds by Deerfield to be used by ANR for implementing bear habitat mitigation to comply with Condition 11 of the Amended CPG.
Exh. DFLD-ANR-VNRC-1.

2. The Mitigation Stipulation requires Deerfield to provide $1 million to fund: (a) land conservation or purchase(s) to comply with Condition 11 of the Amended CPG, and (b) continuation and completion of the bear study required by Condition 12 of the Amended CPG.
Exh. DFLD-ANR-VNRC-1.

3. Bear habitat mitigation specifically identified in the Mitigation Stipulation (i.e., for compliance with Condition 11 of the Amended CPG) consists of 100 acres of remote, high-elevation, concentrated beech stands that are contained within a larger parcel slated for conservation called the Stratton Conservation Easement. If the Stratton Conservation Easement contains appropriate bear habitat mitigation measures, then a portion of the mitigation funds would be used to contribute 25% of the cost to establish the easement. The remaining 75%

---

1. Deerfield filing of March 16, 2016, Attachment 1.

would be funded through the U.S. Forest Service Forest Legacy Program. Final terms of the easement will be known by the end of 2016. Exh. DFLD-ANR-VNRC-1; tr. of 7/6/16 at 22 (Lazorchak).

4. The remaining 44 acres of habitat mitigation (or the entire 144 acres if the Stratton Conservation Easement does not apply[2]) required by Condition 11 of the Amended CPG will need to be identified by ANR. The funds provided by Deerfield pursuant to the Mitigation Stipulation will be held by ANR for that purpose. Based on the difficulty in finding suitable private parcels, the timing is likely to be such that not all of the required mitigation acreage will be identified and/or conserved prior to construction and operation of the Project. Exh. DFLD-ANR-VNRC-1; tr. of 7/6/16 at 17-19 (Lazorchak); tr. of 7/6/16 at 42 (Hammond).

5. The Stipulating Parties agree that the Mitigation Stipulation describes the signatories' commitment to conserve no less than 144 acres of bear habitat. Tr. of 7/6/16 at 76 (Hammond).

6. ANR represents that its cost estimates for typical land purchases indicate the Mitigation Stipulation provides sufficient funds for the intended purpose. Exhs. DFLD-ANR-VNRC-5 and DFLD-ANR-VNRC-6.

7. ANR believes that the Mitigation Stipulation will result in conservation of more than the 144 acres of habitat required by Condition 11. This is because conservation of suitable parcels will generally include the purchase of surrounding land for access, as well as ANR's ability to leverage federal funding to increase total funds available for land purchase. This is supported by the fact that the Stratton Conservation Easement will conserve 100 acres of concentrated beech stands, but will conserve a total of 679 acres, including buffer areas around the beech stands and other valuable bear habitats such as travel corridors and wetlands. Exh. DFLD-ANR-VNRC-1; tr. of 7/6/16 at 14, 21 (Lazorchak); tr. of 7/6/16 at 24, 27-28, 76, 77-78 (Hammond).

8. ANR believes that the Mitigation Stipulation will result in a better outcome than conservation of 144 acres as required by Condition 11 of the CPG for the reasons described in Finding 7, above. Tr. of 7/6/16 at 44-46, 49 (Hammond).

---

2. If the Stratton Conservation Easement is not successfully implemented or participants in the easement cannot come to agreement on inclusion of bear habitat conservation measures, it will not be counted as bear habitat mitigation for the Project.

9. The Mitigation Stipulation allocates a portion of the mitigation funds, between $250,000 and $300,000, for continuation of the bear study. These funds are in addition to the $500,000 originally required to be provided by Deerfield for the bear study[3] and are deemed necessary by ANR because delays in the start of construction have substantially extended the pre-construction monitoring period, resulting in expenditure of a greater proportion of the bear study budget than anticipated prior to construction. The Mitigation Stipulation also accelerates the time-frame for the last payment of funds for the bear study required by Condition 12 of the Amended CPG. The outstanding balance to be paid is $150,000, which is not part of the $1 million of mitigation funds. Exh. DFLD-ANR-VNRC-5; tr. of 7/6/16 at 31-32 (Hammond).

10. The Mitigation Stipulation increases the amount of funding for the bear study and may result in a decrease in post-construction (i.e., operational) monitoring of bear use of the Project area from four to three years. ANR believes that three years of operational monitoring will be sufficient to accomplish the bear study objectives. ANR also represents that no other provisions of the bear study protocol are altered by the Mitigation Stipulation.[4] Exh. DFLD-ANR-VNRC-4; tr. of 7/6/16 at 54, 57.

11. The letter of credit and drawing certificate assign the Board as beneficiary of an aggregate amount of $2,048,000 for Project decommissioning. Deerfield filing dated July 12, 2016, at attachment.

III. DISCUSSION

A. The Mitigation Stipulation

Condition 11 of the Amended CPG states:

> Deerfield shall file a proposal, for approval by the Board, for the land it proposes to conserve as a mitigation measure for the impact of the Project on bears. The proposal shall conserve at least 144 acres of land that is comparable to the remote, high elevation area of concentrated beech stands impacted by the Project. Deerfield may not commence site preparation or construction until the Board has approved the mitigation proposal, unless otherwise authorized by the Board.

3. *See* Petition of Deerfield Wind, Docket 7250, Order of 4/7/2011 ("Bear Study Order").
4. *See* Bear Study Protocol dated January 26, 2011, approved as part of the Bear Study Order.

The Stipulating Parties assert that the Mitigation Stipulation meets the requirements of Condition 11 because it proposes to conserve land as a mitigation measure for the impact of the Project on bears. According to the Stipulating Parties, it meets Condition 11 by making funds available to ANR that will enable ANR to conserve at least 144 acres of remote, high-elevation concentrated beech stands accompanied by an obligation to use the funds for this purpose. The Mitigation Stipulation describes the possible conservation of 100 acres of suitable habitat on the Stratton Conservation Easement, the allocation of funds to continue the bear study required by Condition 12 of the Amended CPG, and provision of the remaining funds to be used by ANR for conservation of either (a) the remaining 44 acres of suitable habitat required in accordance with Condition 11, or (b) 144 acres of suitable habitat in the event the Stratton Conservation Easement is not completed in a manner that fulfills the requirements of the Amended CPG.

Conservation of 144 Acres

The Mitigation Stipulation does not specifically identify 144 acres of remote, high-elevation, concentrated beech stands to be conserved. The Stipulating Parties represent that ANR and Deerfield have had difficulty identifying suitable parcels. The Stipulating Parties expect that acquisition of the Stratton Conservation Easement will conserve 100 acres of suitable habitat and that ANR will be successful in including bear habitat preservation measures in the easement. The disposition of that effort will not be finalized until the end of 2016.

The Mitigation Stipulation provides funding that will be dedicated by ANR for conservation and/or land purchases to comply with Condition 11 regardless of the length of time that it takes to accomplish that objective. This will include the funds that would otherwise have been spent acquiring the Stratton Conservation Easement if ANR is unable to incorporate acceptable bear habitat conservation measures in that agreement. The Stipulating Parties concur that this means that suitable mitigation projects (i.e., purchase or conservation easements) may not be identified or finalized prior to construction or operation of the Project. The Stipulating Parties agree that the funds will be sufficient for full compliance with Condition 11 of the Amended CPG. In reaching this conclusion, the Stipulating Parties considered a range of cost estimates for each component of the Mitigation Stipulation. ANR represents that it would be able to conserve the full 144 acres required by Condition 11 using the funds provided under the Mitigation Stipulation.

Increase in Funding for the Bear Study

The Mitigation Stipulation dedicates a portion of the $1 million of mitigation funds to continuation of the bear study, to pay for an increase in study cost that is attributable to the substantial delays in Project construction. Construction delays resulted in several more years of pre-construction data being collected than originally budgeted. These data will not be meaningful for the intended purpose without sufficient post-construction, operational monitoring. ANR contends that the bear study data will also be useful in helping to identify additional parcels to fulfill the mitigation requirements specified in Condition 11. The bear tracking data will help ANR identify beech stands used by the bears, which can then be investigated for conservation opportunities. Therefore, we find the request to use some of the mitigation funds for extending the bear study to be reasonable.

The Mitigation Stipulation also accelerates the time-frame for payment of the remaining $150,000 for the bear study required by Condition 12 of the Amended CPG. This money is not part of the $1 million of mitigation funds.

Status of Stratton Conservation Easement

The approval process for the Stratton Conservation Easement is on-going. ANR represents that approval of the easement is far enough along to characterize it as "an agreement that's pretty much completed, but there needs to be additional assessments done and the paperwork and typing up the legal aspects of having the project complete" (tr. of 7/6/16 at 30). If completed, the easement will conserve 100 acres of remote, high-elevation, concentrated beech stands that will count as part of the 144 acres required to be conserved by Condition 11 of the Amended CPG.

ANR represents that it has discussed bear habitat conservation measures with the landowner and the other parties: ". . . [the parties have] already talked about the language that we [ANR] feel would have to be there for this to work and the parties have agreed to that" (tr. of

7/6/16 at 52). The Stipulating Parties all agree that the parcel provides additional habitat value by virtue of bear feeding areas (approximately 55 acres of wetlands used by bears for spring and summer feeding) as well as bear travel corridors and connectivity to adjacent habitat areas.

Funds and Scope of Stewardship for the Stratton Conservation Easement

The Mitigation Stipulation allocates a relatively small portion of the mitigation funds ($15,000) to a stewardship fund for the Stratton Conservation Easement. This fund will pay for an employee to periodically check on the property and to ensure that the bear habitat conservation measures are being implemented.

Conservation of Additional Acreage to Meet the Requirements of Condition 11

The Stipulating Parties estimate that between $185,000 and $385,000 will be available for conservation of at least 44 acres of additional bear habitat, after payments are deducted from the mitigation funds for the Stratton Conservation Easement purchase, stewardship fund, and continuation of the bear study. Based in part on comparison to typical costs for recent land purchases and conservation projects, the Stipulating Parties believe this is a reasonable amount of money for conserving the required acreage.

The Stipulating Parties all agree that any additional land conservation parcels are likely to exceed 44 acres, in the same way that the Stratton Conservation Easement includes land beyond the beech stand boundaries. Therefore, the Stipulating Parties acknowledge the likelihood of similar added value in additional land conservation projects as characterized for the Stratton Conservation Easement. ANR will attempt to leverage federal funding sources in addition to the mitigation funds, which would substantially increase the available funds for the purchase or conservation of mitigation parcels.

In terms of identifying suitable parcels, ANR is hopeful that data analysis from the bear study will help with finding potential mitigation sites. The bear tracking data can be used to locate beech stands, which would be investigated by ANR for parcels with the potential for purchase or conservation easements to conserve the additional acreage required by Condition 11.

For the reasons set forth above, we determine that the Mitigation Stipulation meets the objectives of Condition 11 of the Amended CPG. The Stipulating Parties' proposal is a contract mechanism for conserving remote bear habitat to offset the direct impacts of the Project.

B. Fully Executed Letter of Credit and Drawing Certificate

Condition 19 of the Amended CPG states:

> Deerfield shall implement the Decommissioning Plan submitted as Exh. DFLD-HGC-2. The Decommissioning Plan may allow the fund to grow as the construction process proceeds such that the funding level is commensurate with the costs of removing infrastructure in place. The amount of the fund may not net out the projected salvage value of the infrastructure.

The decommissioning plan referenced in the Amended CPG, Exh. DFLD-HGC-2, states, "The Decommissioning Fund will initially be funded with a letter of credit ("LC") (or other appropriate financial security) to be issued solely for the benefit of the Board by an A-rated institution." The decommissioning plan further states, "Deerfield shall provide the LC (or other appropriate financial security) to the Board prior to the commencement of construction of the Project." Finally, the decommissioning plan requires that prior to commencement of commercial operations, Deerfield shall post an LC (or other appropriate funding security) equal to the estimated cost of decommissioning, and that on each annual anniversary thereafter, Deerfield shall adjust the estimated cost of decommissioning to account for any price level changes in the preceding 12-month period.

On July 2, 2015, Deerfield filed a draft letter of credit and drawing certificate in compliance with Condition 19 of the Amended CPG. By order dated January 8, 2016,[5] the Board specified that to fulfill compliance with Condition 19, Deerfield must file a final, executed letter of credit that is consistent with the draft letter of credit with the following revision (text in italics to be added):

> The Beneficiary represents that it has issued an order that decommissioning shall occur and [Deerfield] or its successor is unable or unwilling to commence decommissioning activities within a reasonable period of time *not to exceed ninety (90) days* after the issuance of the order.

---

5. Order re: Third Compliance Filing, dated January 8, 2016.

The executed letter of credit filed by Deerfield is for an aggregate amount of $2,048,000,[6] conforms to the content of the draft letter of credit previously filed, and incorporates the requested revision to the drawing certificate. We have determined that the fully executed letter of credit and drawing certificate meet the requirements of Condition 19 of the Amended CPG.

IV. CONCLUSION

We hereby determine that the Mitigation Stipulation fulfills the objectives of Condition 11 of the Amended CPG and that the fully executed letter of credit and drawing certificate fulfill the requirements of Condition 19 of the Amended CPG.

SO ORDERED.

6. This amount is sufficient to cover the revised decommissioning cost estimate of $1,877,400, which reflects estimated decommissioning costs without credit for any salvage value.

Dated at Montpelier, Vermont, this 4th day of August, 2016.

s/James Volz	)	
	)	PUBLIC SERVICE
	)	
s/Margaret Cheney	)	BOARD
	)	
	)	OF VERMONT
s/Sarah Hofmann	)	

OFFICE OF THE CLERK

FILED: August 4, 2016

ATTEST: s/Judith C. Whitney
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)