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December 6, 2020

Don Einhorn
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620

Re: **Case No. 20-1611-INV – Apple Hill Solar LLC Discovery on Agency of Natural Resources**

Dear Mr. Einhorn:

Filed today in ePUC are Apple Hill Solar LLC's First Set of Discovery Requests on the Vermont Agency of Natural Resources ("ANR"). These questions have replaced the questions filed on November 27, 2020 which inadvertently listed Otter Creek Solar LLC as the requester. Although the template used for these questions was taken directly from the discovery questions served on ANR in Case No. 19-0516, none of the questions from that proceeding have been repeated here in Case No. 20-1611.

Please feel free to contact me with any questions.

Very truly yours,

Michael Melone

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Investigation pursuant to 30 V.S.A. §§ 30 and 209 into whether the petitioner- initiated site preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. § 248(a)(2)	))))))	Case No. 20-1611-INV

APPLE HILL SOLAR'S FIRST SET OF INFORMATION REQUESTS ON THE AGENCY OF NATURAL RESOURCES

Apple Hill Solar LLC ("Petitioner" or "AHSAHS") by undersigned counsel, hereby serves the following First Set of Information Requests upon the Agency of Natural Resources ("Agency" or "ANR") in accordance with Public Utility Commission Rule 2.214 and V.R.C.P. 33 and 34, and requests that ANR answer the requests in accordance with V.R.C.P. 33 and 34 and deliver its answers and all requested documents and materials to the Agency's offices as soon as possible but in no case later than December 14, 2020. ANR is requested to provide a copy of its answers in electronic format, that is, Microsoft Word or another format readable by AHS.

DEFINITIONS AND INSTRUCTIONS

For the purposes of these Interrogatories, the following definitions shall apply:

1. "Agent" means any past or present director, officer, counsel, shareholder, member, representative, contractor, consultant or employee of any person or entity or any person that assisted, acted for, or purported to assist or act for or on behalf of such person or entity.
2. "ANR MOU" means that certain Memorandum of Understanding, dated as of June 29, 2015 between AHS and ANR.
3. "Aster" means the *Symphyotrichum urophyllum.*

4. "Concerning" means describing, discussing, constituting, containing, considering, embodying, evaluating, mentioning, memorializing, supporting, collaborating, demonstrating, proving, evidencing, showing, refuting, disputing, rebutting, regarding, controverting, contradicting, made in connection with or by reason of, or derived or arising from.
5. "Communicate" or "Communication" means any written or other transmission or exchange of words, thoughts or ideas to another person or entity, whether person-to-person, in a group, in a meeting, by telephone, by letter, by telex, facsimile, electronic mail, texting, or by any other process or medium, electronic or otherwise.
6. "State" and "Describe" means to: (a) describe fully by reference to underlying facts rather than ultimate facts or conclusions of law; (b) particularize as to: (i) date and time, (ii) place, (iii) manner and (iv) identity of person or persons involved, including the present residence address and name and address of employer.
7. "Document" or "Documents" have the broadest meaning permissible under the Vermont Rules of Civil Procedure and include, by way of example and not limitation, the original and all copies and translations of any information in any written, recorded, electronic, or graphic form, including all memoranda, notes, inter-office and intra-office Communications, telegrams, letters, e-mail, computer models spreadsheets, data, reports, accounts, records, calendars, diaries, minutes, contracts or other legal documents, insurance policies, telephonic or personal Communications, tape recordings, microfilm, film, stenographic notes, bulletins, notices, computer data and other data or information sources in any written, printed

or recorded matter of any character in the possession, custody or control of you, your attorneys, Agents, or other persons under your control Without limiting the foregoing, the term "Document" or "Documents" shall include any copy which differs in any respect from the original or other versions of the document, such as copies containing notations, insertions, corrections, marginal notes or any other variations.

8. "Evidence" means the available body of facts or information indicating whether a belief or proposition is true or valid.
9. "Include," "Includes," and "Including" shall be construed to mean "without limitation."
10. "Guidance" means "Guidance for Conducting Rare, Threatened, and Endangered Plant Inventories" issued by Louis Porter, Commissioner on October 5, 2016.
11. "Nimblewill" means the nimblewill muhly (*Muhlenbergia schreberii*).
12. "Person," means any natural person or any business, legal or governmental entity or association.
13. "Population" shall be defined as set forth in the "Guidance for Conducting Rare, Threatened, and Endangered Plant Inventories in Connection with Section 248 Projects" dated October 5, 2016
14. "Project" "Proposed Facilities" "Project Site" "Project Area" means the proposed solar electric generation facility referenced in this case as the "Apple Hill Solar Project" (as amended on March 23, 2020) located off Willow Road in Bennington, Vermont, and all associated site preparation, construction, maintenance and decommissioning activities, including any electric distribution line extension, as described in Petitioner's filings in this case.
15. "You" or "Your" refers to ANR.

16. When referring to a Person, "Identify" means give, to the extent known, the person's (i) full name, (ii) present or last known address, and (iii) when referring to a natural person, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.
17. When referring to Documents, "Identify" means give, to the extent known the (i) type of Document, (ii) title of the Document, (iii) general subject matter, (iv) date of the Document; and (v) author(s), addressee(s), and recipient(s). Whenever the identification of a Document is requested, you may, in lieu of such identification, attach a true and legible copy of such Document to your answers to these requests, with the understanding that counsel may inspect the original Document at a mutually agreed time and place.
18. "You" and/or "Your," and all variants thereof, shall refer to the Defendants including any of their respective divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, representatives, advisors, accountants, Agents, attorneys, associates or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time.
19. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all;" "any" means

"any and all;" "And" and "or" encompass both "and" and "or;" words in the masculine, feminine or neuter form shall include each of the other genders.

20. These Interrogatories require that You respond in a manner that satisfies the requirements of the Vermont Rules of Civil Procedure and shall be deemed continuing pursuant to Vermont Rule of Civil Procedure 26.
21. Where knowledge or information in Your possession or control is requested or inquired of, such request or inquiry also seeks knowledge or information in the possession or control of Your employers, prospective employers, former employers, employees, former employees, representatives, relatives, friends, Agents, independent contractors, consultants, attorneys, affiliates or any other Person or public or private entity acting on Your behalf.
22. Each answer should be preceded by the identification and verbatim quote of the interrogatory to which the answer responds.
23. V.R.C.P. 33 requires the response to each request to be made under oath by a person competent to testify concerning the response and all documents and exhibits produced as part of the response. With respect to each request, please state (1) the name(s) and title(s) of the person or persons responsible for preparing the response; (2) the administrative unit which maintains the records being produced or maintains the data from which the answer was prepared; and (3) the date on which each question was answered.
24. If an interrogatory cannot be answered in full, it should be answered to the extent possible, with an explanation as to why the remainder cannot be answered,

disclosing whatever information, knowledge, or belief You do have with respect to the unanswered portion, including the names and addresses of any Persons or entities having further information.

25. All interrogatories should be answered on the basis of Your knowledge or information and belief. If any answer is given on information and belief, that fact should be stated in the answer. All interrogatories should include all information available to You as of the date of the answers and responses, including information obtained by or in the possession of Your Agents and representatives, and any other person acting on Your behalf.

26. If You assert a privilege, in whole or in part, with respect to any interrogatory, or You object to answering an interrogatory, in whole or in part, on any ground, You shall answer all remaining parts of the interrogatory, state the nature of the privilege or objection, including work product, that is being claimed, the facts sufficient to support Your claim of privilege or objection. You shall also Identify each item of information, Communication, Document, or part thereof upon which the privilege is claimed, including: (a) the type and title of the Document or Communications; (b) the general subject matter of the Document or Communication; (c) the date of the Document or Communication; (d) the author of the Document or Person who Communicated the information; (e) the recipient or addressees of the Document or Communication and the entity with which the recipient or addressee is affiliated; (f) the signer of the Document and the entity with which the signer is affiliated; (g) each Person now in possession of the original or a copy of the Document,

information, or Communication; (h) such other information as is sufficient to establish the privilege and/ or immunity claimed; and (i) the number of the interrogatory to which the Document, information, or Communication is responsive.

27. If You object to any interrogatory on the basis that it is overbroad, respond to that interrogatory narrowed in such a way as to render it not overbroad in Your opinion and state the extent to which You have narrowed the interrogatory for purposes of Your response.

28. If in answering these interrogatories, You claim any ambiguity in a question, instruction or definition, set forth the matter deemed ambiguous and the construction used in answering the interrogatory.

29. If any of the following interrogatories call for identification or reference to Documents that You know to be missing, destroyed or otherwise disposed of, identify such Documents and give particular details as to the disposition of each Document, the identity of the Person last known to have the document in his or her possession or subject to his or her or its control, and the identity of each person You have reason to believe had knowledge of its contents or received a copy of the document.

30. Wherever responses include estimated information, include an explanation (or reference to a previous explanation) of the methods and calculations used to derive the estimates.

31. With respect to each document produced by Defendants, identify the person who prepared the document and the date on which the document was prepared.

32. If your response to each request for admission served with these information requests is not an unqualified admission, please:

    (a) state all facts upon which you base your denial or qualified response;

    (b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of those facts;

    (c) identify all DOCUMENTS and other tangible things that support your denial or qualified response and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

33. Plaintiffs reserve the right to amend, supplement, and/ or modify the interrogatories contained herein.

34. **These Requests shall be deemed continuing as provided in the Vermont Rules of Civil Procedure, so as to require further and supplemental production if additional documents called for by this Request are obtained or created by You between the time of the Request and the time of the technical hearing.**

Interrogatories, Requests to Produce, and Requests to Admit

Q.ANR:OCS.1-1. Admit that with respect to the Project, there are no agreements between ANR and AHS relating to the treatment of the Aster and the Nimblewill other than those set forth in paragraphs 5 and 6 of the ANR MOU (the "RTE Conditions"). If not admitted, please state all other agreements between ANR and AHS with respect to the Project that relate to the Aster and the Nimblewill.

Q.ANR:OCS.1-2. Admit that the ANR MOU states that if AHS satisfies all of the conditions set forth in the ANR MOU that the Project will satisfy the conditions under Section 248(b)(5).

Q.ANR:OCS.1-3. Admit that if AHS satisfies the conditions under Section 248(b)(5), ANR will not suffer any irreparable harm with respect to the Project.

Q.ANR:OCS.1-4. Admit that all of the RTE Conditions have been satisfied. If not admitted, please state with specificity which of the RTE Conditions ANR believes AHS has violated and list and provide all Evidence in support thereof.

Q.ANR:OCS.1-5. Admit that the 2019 Report indicates that the transplantation of the Aster within the area of the solar arrays (i.e., within the Project fence line) were transplanted to the conservation areas established pursuant to the ANR MOU (the "Conservations Areas") by the end of calendar year 2018.

Q.ANR:OCS.1-6. Admit that Bob Popp approved transplanting of all of the known Asters at the time existing at the Project Site to the Conservation Areas.

Q.ANR:OCS.1-7. Were more than 10% of the local Population of Asters impacted by transplanting them to the Conservation Areas?

Q.ANR:OCS.1-8. Admit that the Asters currently in the Conservation Area are part of the local Population.

Q.ANR:OCS.1-9. Admit that the ANR MOU does not require the transplantation of any Nimblewill.

Q.ANR:OCS.1-10. Admit that the ANR MOU does not require anything be done with respect to the Nimblewill at the Project site other than the requirements set forth in Paragraph 5 a. vii. of the ANR MOU.

Q.ANR:OCS.1-11. Admit that AHS has placed a temporary perimeter fence around the Conservation Areas (as required by the ANR MOU) and Site D of the Nimblewill (as described in the 2019 Report).

Q.ANR:OCS.1-12. Please provide all Evidence that ANR has of AHS violating any provision of the ANR MOU.

Q.ANR:OCS.1-13. If AHS satisfies the RTE Conditions, please detail what harm (if any) will be suffered by ANR as a result of the clearing of the Project site.

Q.ANR:OCS.1-14. Please refer to the Guidance. List each member of (i) the Scientific Advisory Group on Flora and (ii) staff within ANR that worked on establishing the Guidance impact thresholds (i.e. 10% for S1 and 20% for S2).

Q.ANR:OCS.1-15. Please refer to the Guidance. Please provide the studies referenced in Bob Popp's live testimony in the hearing in these proceedings on December 4, 2020 that were relied upon by ANR in establishing the Guidance impact thresholds (i.e. 10% for S1 and 20% for S2).

Q.ANR:OCS.1-16. Admit that there is no definition of "impact" in the Guidance. If denied, please provide the definition of "impact", not examples of "impacts".

Q.ANR:OCS.1-17. Please refer to the Guidance. The Guidance states that "Generally, the Agency will not consider an impact to be unduly adverse if less than 10% of an S1 (very rare) or 20% of an S2 (rare) plant population at the site is impacted." Please (i) explain why a 10% impact will not lead to an undue adverse impact the health of a S1 plant population and why an 11% would and (ii) produce all Evidence in support thereof.

Q.ANR:OCS.1-18. Admit that it is possible to impact greater than 10% of a S1 plant Population without having an undue adverse effect on that Population.

Q.ANR:OCS.1-19. Admit that it is possible to impact greater than 20% of a S2 plant Population without having an undue adverse effect on that Population.

Q.ANR:OCS.1-20. Admit that the Aster occurs in Vermont in field, meadow, scrub and wooded habitats on poorly-drained to excessively-drained soils (i.e., they tolerate broad ecological conditions).

Q.ANR:OCS.1-21. Admit that the *Flora of North America* confirms that the Aster occurs in a wide variety of habitats.

Q.ANR:OCS.1-22. Admit that the Aster occurs on roadsides and along railroads, habitats similar to those found near the Chelsea and Warner project sites, which contain the Aster.

Q.ANR:OCS.1-23. Please estimate the number of acres of suitable habitat identified in 1-19 that are available to the Aster in Vermont.

Q.ANR:OCS.1-24. Admit that the Aster has similar dispersal mechanisms that are found in its closely related species, *Symphyotrichum cordifolium*.

Q.ANR:OCS.1-25. Has anyone at ANR personally confirmed the identification of the Aster on or near the Apple Hill and Warner project (Case No. 19-0516) sites?

Q.ANR:OCS.1-26. Explain how the habitat at the Apple Hill site is different from the habitat at the Warner project site.

Q.ANR:OCS.1-27. How did you distinguish the Aster identified on or near the Apple Hill and Warner project sites from similar asters, particularly *Symphyotrichum cordifolium*?

Q.ANR:OCS.1-28. With reference to the Guidance, is there a definition of "isolating barrier" in the Guidance?

Q.ANR:OCS.1-29. With reference to the Guidance, list all "isolating barriers" within 1 kilometer of the Project.

Q.ANR:OCS.1-30. List the particular habitat requirements of the Aster in Vermont.

Q.ANR:OCS.1-31. List the particular habitat requirements of the Nimblewill in Vermont.

Q.ANR:OCS.1-32. Are the Asters currently subject to habitat loss in Vermont? If so, explain why.

Q.ANR:OCS.1-33. Are the Nimblewills currently subject to habitat loss in Vermont? If so, explain why.

Q.ANR:OCS.1-34. Are the Asters currently at the edge of their range in Vermont? If so, explain why.

Q.ANR:OCS.1-35. Are the Nimblewills currently at the edge of their range in Vermont? If so, explain why.

Q.ANR:OCS.1-36. Are the Asters vulnerable to disturbance or collection in Vermont? If so, explain why.

Q.ANR:OCS.1-37. Are the Nimblewills vulnerable to disturbance or collection in Vermont? If so, explain why.

Q.ANR:OCS.1-38. Do the Asters in Vermont have difficulty reproducing? If so, explain how this is known or why that may be.

Q.ANR:OCS.1-39. Do the Nimblewills in Vermont have difficulty reproducing? If so, explain how this is known or why that may be.

Q.ANR:OCS.1-40. Are the Asters at very high risk of extinction in Vermont? If so, explain why.

Q.ANR:OCS.1-41. With reference to the Guidance, admit that route 7 near the Project Site is not an "isolating barrier". If denied, please explain why it is an isolating barrier.

Q.ANR:OCS.1-42. With reference to the "Guidance, admit that route 279 near the Project Site is not an "isolating barrier". If denied, please explain why it is an isolating barrier.

Q.ANR:OCS.1-43. Admit that the area containing the local Aster Population found at the Project site could be as large as or larger than 776.28 acres.

Q.ANR:OCS.1-44. Has the Vermont legislature appropriated sufficient funds to carry-out the mission of the RTE program?

Q.ANR:OCS.1-45. Admit that science does not operate by consensus (i.e., Even if a majority of "scientists" concur on a particular hypothesis, this is insufficient to prove the hypothesis is correct.)

Q.ANR:OCS.1-46. Admit that the 10% and 20% thresholds in the Guidance are not based upon any scientific basis or scientific evidence.

Q.ANR:OCS.1-47. If you denied the immediately preceding request, produce all reports and documents that support the scientific basis and scientific evidence for the designation of the 10% and 20% thresholds in the Guidance.

Q.ANR:OCS.1-48. Admit that the Nimblewill is classified by the USDA as a noxious weed.

Q.ANR:OCS.1-49. If you denied the immediately preceding request, produce all Evidence that support your denial.

Q.ANR:OCS.1-50. Admit that the classification of the Aster as S1 is not based upon any scientific basis or scientific evidence.

Q.ANR:OCS.1-51. If you denied the immediately preceding request, produce all Evidence that support your denial.

Q.ANR:OCS.1-52. Admit that the classification of the Nimblewill is not based upon any scientific basis or scientific evidence.

Q.ANR:OCS.1-53. If you denied the immediately preceding request, produce all Evidence that support your denial.

Q.ANR:OCS.1-54. Admit that ANR has no statutory authority to list plant species using its S1 to S5.

Q.ANR:OCS.1-55. If you denied, the immediately preceding request state the statutory authority for ANR's listing of plant species using its S1to S5 scale.

Q.ANR:OCS.1-56. List all the purposes for which ANR uses its S1 to S5 plant classification system.

Q.ANR:OCS.1-57. Admit that prior to publishing its S1to S5 plant classification systems, ANR did not prepare (i) an analysis of economic impact and the environmental impact of its S1 to S5 plant classification, (ii) an explanation of the strategy for maximizing public input on the its S1 toS5 plant classification, (iii) a brief summary of the scientific information upon which the S1 to S5 plant classification depends on for its validity, or (iv) an environmental impact analysis of its S1 to S5 plant classification .

Q.ANR:OCS.1-58. If you denied the immediately preceding request, produce all Evidence that support your denial.

Q.ANR:OCS.1-59. Admit that prior to publishing its Guidance, ANR did not prepare (i) an analysis of economic impact and the environmental impact of its Guidance, (ii) an explanation of the strategy for maximizing public input on the its Guidance, (iii) a brief summary of the scientific information upon which the Guidance depends for its validity, or (iv) an environmental impact analysis of its Guidance.

Q.ANR:OCS.1-60. If you denied the immediately preceding request, produce all Evidence that support your denial.

Requests to Produce

1. Please produce all documents requested in the preceding questions.

2. Please produce all Evidence including all records and notes from the consultation with (i) the members of the Scientific Advisory Group on Flora and (ii) staff within ANR that led to the establishment of the Guidance impact thresholds (i.e. 10% for S1 and 20% for S2).

3. Please produce any and all documents identified, referenced, relied upon, or referred to in responding to these information requests.

4. Please produce any and all documents you expect to offer as exhibits at the hearings of these proceedings.

Dated this 6th day of December, 2020.

APPLE HILL SOLAR LLC

By: *<u>/s/ Michael Melone</u>*

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