

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

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

**VERMONT AGENCY OF NATURAL RESOURCES BRIEF IN SUPPORT OF
PERMANENT INJUNCTION**

Background

This matter concerns unauthorized site clearing activities which have occurred at the 27-acre parcel known as the “Apple Hill site” in Bennington Vermont. The Apple Hill site is forested and contains two plant species which are classified as rare in Vermont.¹ The Apple Hill site is the subject of three related Section 248 petitions² concerning proposals by the Developer to construct and operate 4MW of solar electric generation.³

On June 26, 2020, the Vermont Public Utility Commission (“Commission”) issued a temporary restraining order (“TRO”) after conducting an evidentiary hearing

¹ One species, White Arrow-Leaved Aster (*Symphyyotrichum urophyllum*), is an S1-ranked very rare species. The other species, Nimblewill Muhly (*Muhlenbergia schreberi*), is an S2-ranked rare species. See, Robert Popp, Agency of Natural Resources (“Popp”) aff. 6/24/20 ¶ 6; see also, Exhibits ANR-9, ANR-11; ANR-12; ANR-13; ANR-14; and ANR-15.

² See, PUC Case Nos. 8302, 8454, and 17-5024.

³ PLH LLC (the owner of the Apple Hill site), Allco Renewable Energy Limited, Chelsea Solar LLC and Apple Hill Solar LLC are all related entities under common ownership and control. See, Case No. 17-5024, Petition of Chelsea Solar, Order dated 6/12/19, at 56, fn. 70; see also, Case No. 8454, Procedural Order Re: PLH Motion to Intervene, dated 6/15/17, at 2. For purposes of this Brief, these entities are collectively referred to as the Developer.

(the “TRO hearing”) in this matter.⁴ The Commission determined that site preparation had occurred in violation of the prohibition contained in 30 V.S.A. § 248(a)(2).⁵ The TRO was converted to a preliminary injunction and a second evidentiary hearing was held on December 4, 2020.⁶ At the conclusion of the hearing, the Commission requested that the parties brief both the standards applicable to a preliminary injunction and the standards applicable to a permanent injunction.⁷

For the reasons set forth below, the Agency recommends, and requests, that the preliminary injunction be made permanent.

Legal Discussion

I. The Commission should convert the preliminary injunction to a permanent injunction prohibiting the Developer from conducting any site clearing activities at the Apple Hill site.

The four factors that the Commission considers in determining whether to issue a preliminary injunction are: “(1) the threat of irreparable harm to the movant; (2) the potential harm to the other parties; (3) the likelihood of success on the merits; and (4) the public interest.”⁸ The Commission, at the conclusion of the TRO hearing, determined that these four factors were met (and also determined that substantial and irreparable harm existed due to the proposed tree clearing and the threat to rare plants), issued the

⁴ 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, Order of 6/26/20.

⁵ *Id.*, at 4.

⁶ Tr. 12/4/20 at 28.

⁷ *Id.* at 213-214.

⁸ *Taylor v. Town of Cabot*, 2017 VT 92, ¶ 19, 205 Vt. 586, 596, 178 A.3d 313, 319 (2017). See also, *In re Central Vermont Public Service Corp.*, 1994 WL 400981 (1994) (PUC Case No. 5686, Order dated 6/7/1994).

TRO, and scheduled an evidentiary hearing on whether to grant a preliminary injunction.⁹

The evidentiary record in this matter has been further developed through the proceedings which have occurred since the TRO hearing.¹⁰ The evidentiary record now confirms that the Commission was correct in issuing the TRO (subsequently converted to a preliminary injunction) *and* supports the issuance of a permanent injunction prohibiting any further clearing at the Apple Hill site.¹¹

To obtain a permanent injunction, a party must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.¹²

Here, irreparable injury has been suffered because multiple individuals of, not one but, two separate species of rare plants have already been destroyed by the Developer's clearing activities at the Apple Hill site. Hundreds of additional plants are at risk of destruction should the clearing activities resume by virtue of the fact they are located within the remaining area the Developer admits it intends to clear.¹³ In addition, the

⁹ See, Case No. 20-1611-INV, Order of 6/26/20 at 5-7. The evidentiary hearing, which was scheduled to occur on July 9, 2020, was subsequently postponed after the Developer filed a motion on July 1, 2020 to vacate the injunction hearing. See, Order of 7/2/2020 at 1.

¹⁰ The proceedings in this matter which have taken place since the June 26, 2020 TRO hearing include: filing and admission of additional testimony and exhibits of multiple witnesses; a day-long hearing during which cross-examination of witnesses was conducted; and the completion of discovery.

¹¹ See, Commission Rule 2.406 (A)(3), which provides that the Commission may issue a permanent injunction "after a hearing held upon legal notice and where the proceedings have allowed the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provisions of law." At this stage of the proceeding, the parties have had adequate opportunity to avail themselves to all such procedures contemplated by the Commission's rules (*see*, fn. 10, above).

¹² *Entergy Nuclear Vermont Yankee, LLC v. Shumlin*, 733 F.3d 393, 421 (2d Cir. 2013) (quoting *Monsanto Co. v. Geerston Seed Farms*, 561 U.S. 139, 156 (2010)).

¹³ See, Popp supp. aff. 11/25/20 ¶¶ 18-23; Tr. 12/4/20 at 184-191 and 193-195 (Popp); Exhibits ANR-11; ANR-12; ANR-13; ANR-14; ANR-15; Exhibit RK-2 (showing that the area cleared by the Developer in June overlaps with the area where rare plants had been documented as depicted in ANR-14); *see also*,

Developer has cleared mature trees at the Apple Hill site, including an area described by the Developer's logging contractor at the December 4 hearing as containing "full forest cover".¹⁴

Rare plants which once existed at the Apple Hill site are now gone; they have been destroyed by the Developer's site clearing activities.¹⁵ The mature trees that have been cleared by those same activities also cannot be replaced (rather, they will take decades to grow back). As such, monetary damages are inadequate to compensate for the injuries which have occurred to the natural environment.

Any hardship on the Developer is minimal and is far outweighed by the harm to Vermont's natural environment, which the Agency is charged with oversight and management of on behalf of the people of Vermont.¹⁶ The Developer admitted at the

Exhibit PLH-TMM-5 (confirming additional asters will be destroyed if the clearing resumes). The Agency notes that Exhibit PLH-TMM-5 contains information which exceeds the scope of the limited supplemental information (i.e., the number of individual aster plants which existed in *two* aster polygons for which plant counts had not previously been provided) that the Developer was directed to provide in the Commission's post-hearing order issued on December 8, 2020. That order describes the limited evidence to be allowed after the evidentiary record was closed at the conclusion of the December 4 evidentiary hearing (*see*, Tr. 12/4/20 at 210 and 221). As such, the PLH exhibit contains inadmissible evidence (i.e., all information beyond the plant counts for the two polygons). In addition, there is no foundation provided for the exhibit and the accuracy of the information which it purports to contain (such as conclusions it offers by depicting a finite number of aster plants that will be destroyed and contending others would not be (or haven't already been) destroyed – contrary to evidence presented at the 12/4/20 hearing). The reliability of exhibit therefore cannot be adequately assessed. That said, the exhibit serves as an admission by the Developer that multiple individual plants of the very rare aster *have been* destroyed, and that additional aster plants *will be* destroyed if the Developer proceeds with the clearing it intends to perform.

¹⁴ *See*, Exhibit AH-RK-2; Exhibits ANR-2 and ANR-4; Tr. 12/4/20 at 48-52 (Kobelia). The mature trees which have been cleared cannot be replaced. Rather, they will take decades to grow back. The Agency notes that the tree clearing which has occurred constitutes land conversion for development purposes. This is fundamentally different than silvicultural activities which are regulated by the Agency and which are, by their nature, planned and conducted in a manner which promotes regeneration and are therefore sustainable.

¹⁵ *See*, Popp supp. aff. 11/25/20 ¶¶ 23 and 25; *see also*, Tr. 12/4/20 at 193-195 (Popp).

¹⁶ In addition to the broad array of environmental protection and management functions provided by the Agency on behalf of the people of Vermont, it is noted that pursuant to 30 V.S.A. § 248(a)(4)(E), the Legislature has directed that the Agency: "shall appear as a party in any proceedings held under [Section 248(a)], shall provide evidence and recommendations concerning any findings to be made [concerning the natural environment], and may provide evidence and recommendations concerning any other matters to be determined by the Commission in such a proceeding." Thus, the Agency, by statute, is charged with protecting Vermont's natural environment on behalf of the people of Vermont in all such energy siting proceedings before the Commission.

TRO hearing that its plans to grow hemp and graze sheep were not likely to be realized in 2020 in any event.¹⁷ Even with an injunction in place, the Developer is able to pursue its solar electric generation project approvals, which it not only intends to do, but is in fact doing through its pending appeals. Should the solar development proposals be approved, the Developer may then proceed with site clearing (albeit in accordance with any CPG conditions the Commission requires). At worse, the Developer's "plans" to "farm" the site are only delayed temporarily pending the conclusion of the underlying Section 248 matters and, if the Commission's denials of the 248 petitions are ultimately sustained, abandonment of its standard offer contracts and pursuit of energy generation at the Apple Hill site.

The public interest would not be disserved by a permanent injunction. Rather, the public interest would be served by the issuance of a permanent injunction because the public has a strong interest in protecting natural resources (including rare species and forests) and for the policy reasons discussed below.

II. Even if irreparable harm has not been demonstrated, a permanent injunction is still warranted because the Developer's activities violate a clear statutory prohibition, its actions are substantial, deliberate, and persistent; and public policy weighs in favor of injunctive relief to protect the integrity of the Section 248 process, prevent abuse by others and not penalize energy developers who comply with regulatory requirements.

A. The clear violation of a statutory prohibition supports issuance of an injunction even if irreparable harm has not been demonstrated.

The Commission, in discussing the injunction criteria, has stated that the criteria:

in toto are meant to inform a tribunal, but that a compelling showing upon each single criterion is not an essential prerequisite to equitable relief.

¹⁷ Case No. 20-1611-INV, Order of 6/26/20 at 5. These "plans" appear to be of questionable provenance having only recently come to light in the Developer's proposed March 23, 2020 amendment in Case No 8454 (which amendment was denied by the Commission) despite years of site ownership and control by the Developer dating back to before 2014, and its pursuit of solar projects during that entire time.

[And that] ...the criteria should be balanced so as to produce the “best result.”¹⁸

The Commission may still issue a permanent injunction even if irreparable harm has not been demonstrated. A governmental entity authorized to seek an injunction to enforce compliance is not required to show irreparable harm or the unavailability of an adequate remedy before obtaining an injunction if the statute is silent as to the injury caused.¹⁹ Instead, it must merely show a violation of the governing law.²⁰

Here, the Agency (a governmental entity which is also statutorily charged to appear before the Commission in energy siting matters) seeks an injunction because of the Developer’s actions which clearly violate Section 248 (the law governing energy siting in Vermont). The Commission, serving in its adjudicative role, has the discretion to issue a permanent injunction within its jurisdiction even without a finding of irreparable harm.²¹ The Commission is an administrative body to whom the General Assembly granted quasi-judicial powers.²² In the exercise of these judicial powers, the Legislature authorized the Commission to investigate claims and determine the facts upon which the existing laws shall operate.²³

Clearly, it is within the Commission’s authority to investigate the Developer’s clearing activities at the Apple Hill site (activities which are related to, and necessary for,

¹⁸ *In re Central Vermont Public Service Corp.*, 1994 WL 400981 (1994) (PUC Case No. 5686, Order of 6/7/1994 at 3).

¹⁹ *Town of Sherburne v. Carpenter*, 155 Vt. 126, 129 (1990).

²⁰ *Id.*

²¹ *Trybulski v. Bellows Fall Hydro-Electric Corp.*, 112 Vt. 1, 7 (1941).

²² *Id.* at 7.

²³ *Condosta v. Vermont Elec. Co-op., Inc.*, 400 F.Supp. 358, 362 (D.Vt. 1975)(citing *North v. City of Burlington Electric Light Department*, 125 Vt. 240, 214 A.2d 82 (1965)).

construction of the Developer's energy generation proposals).²⁴ The Commission has jurisdiction over property which is subject to the Commission's oversight under Chapter 5 of Title 30.²⁵ This includes jurisdiction to hear, determine and render judgment.²⁶ Section 248, which lies within Chapter 5 of Title 30, regulates the siting and construction of electric generation facilities in Vermont. Section 248 prohibits site preparation or construction of an electric generation facility in Vermont prior to issuance of a certificate of public good ("CPG") by the Commission.²⁷ Review of unauthorized site clearing activities, such as those which have now occurred at the Apple Hill site, and the ability to enjoin such activities, is logically and reasonably related to (and a necessary part of) the Commission's jurisdiction.²⁸

The courts have recognized that injunctions may appropriately be issued in response to zoning ordinance violations without a showing of irreparable harm or the unavailability of an adequate remedy at law.²⁹ As a practical matter, Section 248 functions as the equivalent of a zoning ordinance for energy generation facility citing in Vermont. This is because electric generation facilities, such as those proposed by the Developer at the Apple Hill site, are exempt from municipal zoning ordinances.³⁰

Injunction cases which derive from municipal zoning ordinance violations rationally apply to Section 248 site clearing and construction violations (i.e., state energy "zoning" law violations). Therefore, the Commission is within its rights to issue a

²⁴ The Developer admitted, at the June 26, 2020 TRO hearing, that the trees on the Apple Hill site would need to be cleared before the Developer's proposed solar projects could be built. *See*, Tr. 6/26/20 at 89-90 (Melone).

²⁵ 30 V.S.A. § 209(a).

²⁶ *Id.*

²⁷ 30 V.S.A. § 248(a)(2).

²⁸ 30 V.S.A. §§ 209(a) and 248(a)(2).

²⁹ *Town of Sherburne v. Carpenter*, 155 Vt. 126, 129 (1990).

³⁰ 24 V.S.A. § 4413(b).

permanent injunction prohibiting further site clearing at the Apple Hill site even without a showing of irreparable harm (irreparable harm has been shown) or the unavailability of an adequate remedy at law (also shown).

B. Here, the violation and the actions of the Developer are substantial, deliberate, and persistent, making an injunction appropriate. Indeed, necessary.

Zoning cases where the courts have addressed violations which are substantial, deliberate, or persistent, also provide appropriate guidance. This is because, as previously noted, Section 248 is the functional equivalent of a zoning ordinance which regulates energy generation facilities in Vermont and the Commission's singular role in implementing and enforcing that statute's requirements.

In *City of St. Albans*, property owners converted a former conforming nursery school into a sixth residential unit without the necessary permit, in violation of the town's zoning ordinance.³¹ The property owners argued, in reliance on the proposition in *Carpenter* that some violations are so insubstantial, that removal of the unit through a mandatory injunction would be "unjust and inequitable."³² On appeal, the Court ruled that failure to obtain a permit and site-plan approval does not fall under the scope of an insubstantial violation.³³ Additionally, the Court found that the property owners, following notice from the city, persisted in their violation.³⁴ Accordingly, the Court dismissed the property owner's claim that they did not engage in conscious wrongdoing.³⁵

³¹ *City of St. Albans v. Hayford*, 183 Vt. 596 (2008).

³² *Id.* at 598-99.

³³ *Id.* at 599.

³⁴ *Id.*

³⁵ *Id.*

Here, the Developer has failed to obtain a CPG, the Section 248 equivalent of a zoning permit. In addition, the Commission has determined that the Developer consciously ignored a prior decision of the Commission.

The Commission issued an order on May 7, 2020, explicitly denying the petitioner's request to amend a pending application for a certificate of public good. Although the petitioner seeks reconsideration of that order, that order remains binding on the petitioner unless and until the Commission grants his request for reconsideration. Yet, the petitioner has gone ahead with making the very same permanent changes to the landscape that we told him he could not make when we denied his amendment request.³⁶

To make matters worse, the Developer then continued site clearing activities for several hours on June 27, 2020, despite being told by the Commission to cease clearing at the conclusion of the June 26, 2020 TRO hearing and despite issuance of the TRO on June 26 by the Commission.³⁷ Such an act can only be viewed as conscious and deliberate. It strains credulity to also suggest, as the Developer has here, that its conscious destruction of very rare (and rare) species (and mature trees), no matter the number, can be considered insubstantial under those circumstances.

In *In re Wood*, the landowner constructed a retaining wall which did not meet design specifications or comply with a permit issued by the town.³⁸ The environmental court found that the fine levied upon the landowner by the town was warranted due to the landowner's "persistent avoidance of his obligations to abide by [the permit] and the applicable Regulations," causing the town to incur considerable expense to enforce its regulations.³⁹ On appeal, the Court upheld the fine and the injunctive relief granted by

³⁶ Case No. 20-1611-INV, Order of 6/26/20 at 5-6.

³⁷ Tr. 12/4/20 at 48-51 (Kobelina).

³⁸ *In re Wood NOV & Permit Applications*, 194 Vt. 190 (2013).

³⁹ *Id.* at 210.

the lower court.⁴⁰ In its (2013) decision, the Court noted the “lengthy history” of the dispute between the landowner and the town (dating back to a 1999 permit), quoting from the decision on appeal:

[The parties] have engaged in multiple litigations, in multiple courts, over multiple years, all with common themes: whether various plans for development of two adjoining parcels of land along Vermont Route 14 should be approved, whether the development that has occurred is in accordance with either a prior zoning permit or the applicable zoning regulations, and whether Marc Wood's development of those parcels should be regarded as violating those zoning regulations.⁴¹

The Court made extensive references to the prior proceedings between the landowner and the town, and noted that, in 2006, the landowner began building the retaining wall which was at the center of the litigation “even though he did not have a new or amended permit” for the activity.⁴²

The parallels between the actions of the landowner in *Wood* and the Developer in this matter are notable. Here, the Developer’s failure to abide by the Section 248 prohibition on site clearing without a CPG was followed by a persistent and repeated failure to abide by multiple directives issued by the Commission in the very proceedings (this investigation) which the Developer’s unlawful activities spawned.

The Developer’s project proposals date back many years and involve many iterations. As previously noted, the Developer last attempted to amend its proposal as recently as March 2020. That proposed amendment was rejected by the Commission. The Developer then ignored the Commission’s ruling and proceeded to make the very same permanent changes to the landscape that the Commission told him he could not make. Astoundingly, the Developer continued its clearing activities even after the

⁴⁰ *Id.*

⁴¹ *Id.* at 193.

⁴² *Id.* at 196.

Commission issued the June 26, 2020 TRO.⁴³ At the status conference held on August 31, 2020 (in advance of an injunction hearing scheduled for September 8), the Developer requested an opportunity to conduct discovery on the Agency.⁴⁴ The Developer's request was granted and the hearing was adjourned, but the Developer then elected not to pursue discovery, filing an appeal instead.⁴⁵

The September 8 hearing was eventually rescheduled to December 4, 2020 after the Developer's appeal was denied. The parties were then directed by the Commission (in an order dated November 13) to make filings on November 25, in advance of the hearing.⁴⁶ The Developer ignored that deadline and instead made extensive filings December 3, 2020, on the very eve of the hearing.⁴⁷ The Developer then followed those filings with additional filings made on December 4, 2020 - the day of the hearing.

At the conclusion of the December 4 hearing, the Developer represented it would file (within days - so that briefing could occur in accordance with the schedule established by the Commission) individual (aster) plant counts for two mapped polygons which were discussed at the hearing but lacked plant counts.⁴⁸ The Commission issued a procedural order on December 8, 2020, reminding the Developer of the need to timely file the plant counts.⁴⁹ The Developer did not file the plant counts.

⁴³ Tr. 12/4/20 at 48-52 (Kobelia).

⁴⁴ See, Tr. 8/31/20 at 18-19.

⁴⁵ See, Tr. 12/4/20 at 220-222.

⁴⁶ See, Case No. 20-1611-INV, Order of 11/13/20 at 3.

⁴⁷ See, Case No. 20-1611-INV, ePUC. Such late filings by the Developer (which leave the Agency little time to adequately prepare for hearings), as well as after the fact attempts to supplement the record, are part of a persistent pattern of disregard, not only of the Commission's orders, but of the parties' expectations of, and rights to, an orderly proceeding. For example, after being provided with the opportunity to serve discovery in this matter, the Developer chose to forego doing so for months, only to then attempt to serve the Agency with 70 separate discovery requests after 6:00 PM on the night before Thanksgiving, and demanded responses three days later (<http://epuc.vermont.gov/?q=downloadfile/440897/150086>).

⁴⁸ See, Tr. 12/4/20 at 210.

⁴⁹ See, Case No. 20-1611-INV, Order of 12/8/20 at 1-2.

Instead, on January 25, 2021 (four days before the amended filing deadline for briefs), the Developer filed supplemental testimony and three additional documents including a map which contained not just the plant counts, but additional information unrelated to the plant counts and beyond what the Developer was directed by the Commission to file. The filing disregarded the Commission's prior determination that the record in this matter was closed and did not comply with the Commission's December 8 post-hearing order. Then, on that same day (52 days after the evidentiary record in this matter was closed to new evidence), the Developer filed a motion attempting to supplement the record with six additional documents for which no foundation existed – again, ignoring the Commission's prior directives.⁵⁰

The Developer has persistently and willfully refused to abide by the Commission's requirements in these proceedings. The Developer has abused the process and demonstrated disregard for other parties' rights to an orderly proceeding. The Developer's actions have imposed unnecessary and inappropriate burdens on the parties and their counsel in dealing with and responding to the Developer's unauthorized, unacceptable, and persistent conduct.

The Developer's statutory violations, and its subsequent actions in disregard of the Commission's authority and the rights of the other parties in these proceedings, are substantial, deliberate, and persistent, and provide further justification for issuance of a permanent injunction.

C. Public policy weighs in favor of injunctive relief to protect the integrity of the Section 248 process, prevent abuse by others and not penalize energy developers who comply with Vermont's regulatory requirements.

⁵⁰ The Agency objects to this filing and asks that the Commission reject the motion and the accompanying documents. The Agency intends to file a separate response formally objecting to the motion when time permits.

A governmental entity, in seeking to enjoin a threatened or existing violation of zoning regulations, need not show damage accruing to it by reason of the violation. In acting to enforce such regulations it acts on behalf of the interest of all property owners to enforce their right to acquire conformity with the regulation as the quid pro quo for their own submission to the restrictions imposed upon their property.⁵¹

The Agency, at the June 26, 2020 TRO hearing, indicated that the Developer's actions, up to that point, undermined the integrity of the Section 248 permitting process. Acknowledging this fact, and in support of its decision to issue the TRO, the Commission stated that the Developer's actions:

create[d] a significant risk that undue adverse effects to the environment will occur before the Commission has had a chance to review the proposed project. This does not comply with the applicable statutes or serve the public interest.⁵²

Since that time, the Developer has essentially doubled down on its recalcitrant and reckless behavior. Clearing continued even after the TRO was issued. Orders and scheduling dates have been ignored. Irreparable environmental harm has occurred.

The Section 248(a)(2) prohibition on site clearing and construction without first obtaining a CPG is clear. Strict adherence to, and enforcement of, the prohibition is necessary to preserve the integrity of the Section 248 statutory requirements, the Commission's rules implementing those requirements, and the Commission's oversight of them. It is also necessary to protect the integrity of the Legislature's directive that the Agency, acting on behalf of the people of Vermont, be able to provide evidence and make recommendations to the Commission concerning an energy facility proposal's

⁵¹ 3 Rathkopf, *The Law of Zoning & Planning* § 45.01, pp. 45–6 through 45–7. *Johnson v. Murzyn*, 1 Conn.App. 176, 180. (1984).

⁵² *See*, Case No. 20-1611-INV, Order of 6/26/20 at 6.

potential to impact the natural environment of Vermont. When activities, such as the Developer's occur before potential impacts are fully assessed, the Agency's cannot perform this role. It is eviscerated, and the Legislature's directive rendered superfluous. Finally, allowing such abuse would penalize all energy developers who comply with Vermont's regulatory requirements. Law abiding developers deserve a fair and level playing field in Vermont's critically important and competitive energy arena.

Conclusion

For the reasons set forth above, the Agency respectfully requests that the Commission issue a permanent injunction prohibiting all clearing at the Apple Hill site.

Dated January 29, 2021, at Waterbury, Vermont.

Respectfully submitted,
State of Vermont
Agency of Natural Resources



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