

**STATE OF VERMONT  
PUBLIC UTILITY COMMISSION**

Investigation into potential violations of the	)	
Public Utility Commission's March 23, 2021,	)	
Order in Case No. 20-2570-PET'	)	Case No. 21-2501-INV

**MEMORANDUM OF UNDERSTANDING BETWEEN GREEN MOUNTAIN POWER  
AND THE VERMONT AGENCY OF NATURAL RESOURCES**

This Memorandum of Understanding is entered into between Green Mountain Power ("GMP") and the Vermont Agency of Natural Resources ("ANR")<sup>1</sup> ("GMP-ANR 2021 MOU") regarding resolution of a violation of the Final Order issued by the Commission on March 23, 2021 in Case No. 20-2570-PET' ("Final Order"). After consultation with ANR and the Vermont Department of Public Service ("DPS" or "Department"), GMP and ANR agree and stipulate as follows:<sup>2</sup>

WHEREAS, on May 10-11, 2021, GMP cleared  $\pm$  2 acres of land, with stump removal and installation of erosion control measures occurred concurrently and completed by May 17, 2021 ("May 2021 clearing work"), to facilitate construction of the bypass flow pipe and Emergency Spillway improvements that were approved by the Commission in this docket; and

WHEREAS, GMP's design-level plans submitted to the Commission in September 2020 with its Chapter 43 Petition (Exh. GMP-AH-3) did not specify any tree clearing; and

WHEREAS, GMP's discovery responses and testimony in the proceeding indicated that the Project involved no tree clearing beyond routine maintenance of emerging vegetation; and

WHEREAS, due to an unintentional oversight, GMP did not submit to the Commission updated Project plans showing the proposed tree clearing when it submitted applications for ANR collateral permits on February 15, 2021 or after issuance of the Commission's Final Order on March 23, 2021, and should have done so; and

WHEREAS, a portion of this May 2021 clearing work occurred within an area identified in ANR's natural resources database as a Deer Wintering Area ("DWA"); and

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<sup>1</sup> Collectively, "the Parties".

<sup>2</sup> In conjunction with ANR and GMP, the Department participated in discussions concerning the monetary penalty recommendations set forth in this GMP-ANR 2021 MOU. Consistent with its internal policy, the Department has elected to separately advise the Commission of its position in this matter rather than being a party to the MOU.

WHEREAS, the May 2021 clearing work was reflected in the following collateral permit applications submitted to ANR on February 15, 2021: VT Wetlands Permit, VT Shoreland Protection Permit, VT Construction Stormwater General Permit, and Army Corps of Engineers (“ACOE”) 404 General Permit (the “Collateral Permits”); and

WHEREAS, GMP was required to submit the Collateral Permit applications by February 15, 2021 under the 2020 GMP-ANR Memorandum of Understanding (Exh. GMP-Panel-7) entered into in this proceeding (“the GMP-ANR 2020 MOU”); and

WHEREAS, the Collateral Permits were issued prior to the May 2021 clearing work; and

WHEREAS, the May 2021 clearing work was conducted in accordance with the Collateral Permits; and

WHEREAS, an additional  $\pm$  0.49 acres of the tree clearing specified in the Collateral Permits is scheduled to take place in the 2022 construction season in connection with the Emergency Spillway improvements; and

WHEREAS, on May 12, 2021, ANR was notified by the Ryegate Biomass Facility that a GMP contractor had attempted to deliver and sell the wood chips from the tree clearing without demonstrating the proper approvals from the Commission; and

WHEREAS, ANR contacted GMP on May 12, 2021, to inquire about the tree clearing, noting that the tree clearing did not appear to be included in the CPG record or Final Order; and

WHEREAS, GMP investigated the issue and filed a letter with the Commission on May 21, 2021, in which it reported the above-stated circumstances and that a potential violation of the CPG had occurred; and

WHEREAS, as memorialized in this MOU, GMP has agreed to take appropriate measures to address the concerns of the DPS and ANR, including payment of a total penalty of \$15,000 under 30 V.S.A. § 30, subject to Commission approval.

NOW THEREFORE GMP and ANR agree as follows:

1. The Parties agree that GMP’s actions in conducting the May 2021 tree clearing without receiving Commission approval of the revised site plans was a violation of Conditions 2 and 3 of the Final Order.
2. The Parties agree that GMP’s actions in conducting the May 2021 tree clearing without receiving ANR approval was a violation of paragraph III of the GMP-ANR 2020 MOU.
3. The Parties also agree that GMP’s failure to submit the revised plans to the Commission,

which were part of the Collateral Permit applications, was inadvertent and unintentional.

Upon being notified by ANR of the potential violation, and after internal investigation and consultation with ANR and DPS, GMP timely reported the issue to the Commission.

4. The Parties also agree that GMP has cooperated with the DPS and ANR, has investigated the cause of the non-compliance, and has agreed to implement remedial actions to reduce the likelihood of recurrence. Such remedial actions will include: (i) GMP updating its CPG/Ch. 43 and ANR collateral permit compliance matrix to specifically include, in addition to any project-specific conditions that a CPG or other PUC approval may contain, the review of any updated project plans in comparison with previously-approved plans and submitting updated plans to the Commission if required by PUC practice or precedent, and (ii) GMP conducting training for all responsible project managers at GMP regarding Commission practice and precedents related to seeking amendments for material deviations or substantial changes to a project, or a determination of non-substantial change, as appropriate.
5. The Parties agree that the May 2021 tree clearing and remaining tree clearing to occur in 2022 has not and will not result in an undue adverse effect on the natural environment under Section 248(b)(5), subject to the conditions described below.
6. The Parties agree that the revised site plan attached hereto as Exhibit 1, which reflects the May 2021 tree clearing and remaining 2022 tree clearing, should be formally adopted and approved by the Commission in this proceeding.
7. The Parties agree that the Commission should condition its approval of the revised site plan to include the following:
  - a. After all Project-related construction is complete for both the bypass pipe and

emergency spillway, the cleared areas will be allowed to naturally revegetate and no mowing shall occur, *except* in those areas that must remain clear to maintain the integrity of project-related infrastructure, i.e., the bypass pipe corridor and toe of the dam, spillway, and plunge pool, all as depicted in Exhibit 1.

- b. To prevent the spread of invasive species in the tree clearing areas reflected on Exhibit 1, all contractors' equipment shall be cleaned so as to contain no observable soil or vegetation prior to movement of equipment into the cleared areas. For a period of five years after completion of construction, between August 1 and October 30 of each year, GMP shall perform monitoring surveys and take any required control measures to identify and eradicate from the cleared areas any non-native invasive species included on the List of Noxious Weeds maintained by the Agency of Agriculture, Food and Markets and Watch List Species from the Vermont Invasive Exotic Plant Committee *Quarantine and Watch List Update*. No later than December 1 of each year, GMP shall submit to ANR a report of both its findings and any control actions preformed, including the dates of survey and treatment, treatment methods used, and quantities of herbicide used, if any. If no non-native invasive species are documented for three consecutive years, the monitoring and control obligation may cease.

#### PENALTY

8. Section 30(a)(1) of Title 30 states in pertinent part "A person, company, or corporation subject to the supervision of the Commission...who fails within a reasonable time to obey a final order or decree of the Commission, or who violates a provision...of Section 231 or 248 of this title, or a rule of the Commission, shall be required to pay a civil penalty...after notice

and opportunity for hearing.”

9. In assessing a penalty under 30 V.S.A. § 30, the following factors may be considered:

- the extent that the violation harmed or might have harmed the public health, safety, or welfare, the environment, the reliability of utility service, or the other interests of utility customers;
- whether the respondent knew or had reason to know the violation existed and whether the violation was intentional;
- the economic benefit, if any, that could have been anticipated from an intentional or knowing violation;
- the length of time that the violation existed;
- the deterrent effect of the penalty;
- the economic resources of the respondent;
- the respondent’s record of compliance;
- any other aggravating or mitigating circumstance.

10. Each of the 30 V.S.A. § 30(c) factors is considered and addressed separately below. The

Parties stipulate and agree to the incorporation of the following findings into any order issued by the Commission in this matter.

- 1) 30 V.S.A. § 30(c)(1). The extent that the violation harmed or might have harmed the public health, safety, or welfare, the environment, the reliability of utility service, or the other interests of the utility customers. The tree clearing occurred in mapped deer wintering area. Certain impacts of the tree clearing were considered as part of the Collateral Permit application review. In addition, GMP’s consultant conducted a rare plant inventory prior to the work and no rare, threatened, or endangered species were identified in the clearing areas. Thus, there was minor actual impact and minimal potential impact to the environment or to the other enumerated factors.
- 2) 30 V.S.A. § 30(c)(2). Whether the respondent knew or had reason to know the violation existed and whether the violation was intentional. The Final Order and GMP-ANR 2020 MOU each contain provisions requiring Commission approval of any material

- deviations to the project plans. The Parties agree that the clearing which occurred was a material deviation of the PUC-approved plans and GMP thus had reason to know and should have known of the violation because the tree clearing was planned before the Project was approved. However, there is no indication that the violation was intentional, and GMP showed the tree clearing on the submitted Collateral Permit applications.
- 3) 30 V.S.A. § 30(c)(3). The economic benefit, if any, that could have been anticipated from an intentional or knowing violation. There is no indication that GMP anticipated any economic benefit from the violation. Because the tree clearing would have been acceptable as part of the Project plans (subject to certain conditions), GMP gained no impermissible economic benefit by completing the tree clearing and selling wood chips to the Ryegate Biomass Facility without prior approval.
- 4) 30 V.S.A. § 30(c)(4). The length of time that the violation existed. GMP identified the need for the tree clearing no later than February 15, 2021, when it submitted the Collateral Permit applications to ANR. The tree clearing occurred over two days, May 10 and 11, 2021, and stumping and erosion control measures were completed by May 17, 2021. GMP notified the Commission on May 21, as soon as feasible after hearing from ANR on May 12<sup>th</sup>, investigating the issue internally, and discussing its findings with ANR and DPS.
- 5) 30 V.S.A. § 30(c)(5). The deterrent effect of the penalty. A total penalty in the amount of \$15,000, taking into consideration the mitigating and aggravating circumstances discussed below, will have the effect of deterring GMP and other CPG holders from committing similar violations and will ensure the credibility of the PUC process. A total penalty of \$15,000 is appropriate here, where GMP had sufficient knowledge and

resources at its disposal to comply with its agreed upon conditions with a requisite level of care and due diligence. A lower penalty would not be sufficient to place the CPG holder and others similarly situated on notice that they are responsible for ensuring that they and their consultants are in strict compliance with state law and other applicable PUC requirements.

- 6) 30 V.S.A. § 30(c)(6). The economic resources of the respondent. GMP is a sophisticated utility with extensive experience before the Commission in over 60 proceedings (section 248 and Ch. 43) in the past ten years. GMP has sufficient economic resources to sustain a penalty and to comply with any improved internal compliance process that it implements without significant harm to its economic standing, adverse impact to its business or customers, and/or harm to the viability of the Emergency Spillway Improvement Project.
- 7) 30 V.S.A. § 30(c)(7). The respondent's record of compliance. GMP's record of compliance is as follows:
  - GMP has had no other violations in this proceeding or in the related proceeding concerning the Molly's Falls Service Spillway Project (Case No. 18-2549-PET).
  - Over the past ten years GMP has been the petitioner in over 60 proceedings (section 248 and Ch. 43), during which time it had three reported violations.
- 8) 30 V.S.A. § 30(c)(8). Any other aggravating or mitigating circumstance. The following mitigating circumstances are relevant in this matter:
  - GMP showed the tree clearing in the Collateral Permit applications, performed the RTE survey work before doing any clearing, and previously evaluated the mapped DWA and provided information to ANR earlier in this proceeding.

- GMP acted in a timely and cooperative manner after being advised of the potential violation by ANR. GMP is updating its internal compliance process to reduce the likelihood of similar violations in the future.
- There is no harm done to service reliability as it affects utility customers.

The following aggravating circumstances are relevant in this matter:

- GMP should have known that it required Commission approval prior to the attempted sale of wood chips to the Ryegate Biomass Facility.
- But for the Ryegate Biomass Facility notifying ANR of GMP's unauthorized delivery and sale of wood chips, the violation may have gone undiscovered.
- The penalties and internal compliance process that GMP committed to in a prior enforcement proceeding were inadequate in this instance at reducing the likelihood of GMP proceeding with work related to a change to the project plans before obtaining Commission approval.

11. After consideration of the factors above, the Parties stipulate and agree that a total penalty of \$15,000 should be assessed.<sup>3</sup>
12. This Stipulation may be modified only upon mutual written agreement by the Stipulating Parties and is subject to any necessary Commission approvals.
13. The Stipulating Parties agree that this Stipulation shall not be construed by any party or tribunal as having precedential impact on any future proceeding involving the Stipulating Parties, except as necessary to implement this Stipulation or to enforce an order of the Commission resulting from this Stipulation.

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<sup>3</sup> The Parties understand that a \$4,000 portion of this penalty is attributable to a recommendation by the Department. ANR agrees to this apportionment on condition that the total penalty is \$15,000.



14. The Stipulating Parties agree that, should the Commission fail to approve this Stipulation in all material aspects, the Stipulating Parties' agreements set forth herein shall terminate and the Stipulating Parties shall have the right to submit filings in this case and the Stipulating Parties' agreements in this Stipulation shall not be construed by any party or tribunal as having precedential impact on any testimony or positions that may be advanced in these proceedings.
15. Any disputes arising under this Stipulation shall be resolved by the Commission under Vermont law.
16. The Stipulating Parties hereby waive their rights under 3 V.S.A. § 811 to review and comment upon a Proposal for Decision, and to present oral argument thereon, provided that the Proposal for Decision is consistent in all material respects with this Stipulation.

[SIGNATURE PAGES TO FOLLOW]

Dated at Burlington, Vermont this 16th day of July, 2021.

VERMONT AGENCY OF NATURAL RESOURCES

By:



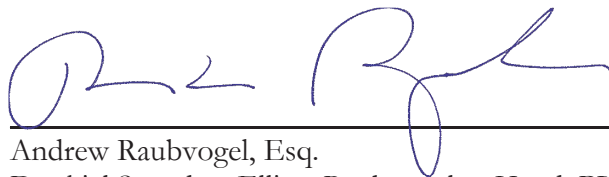
Kane Smart, Esq.

Vermont Agency of Natural Resources  
1 National Life Drive, Davis 2  
Montpelier, VT 05602

Dated at Burlington, Vermont this 16th day of July, 2021.

GREEN MOUNTAIN POWER

By:

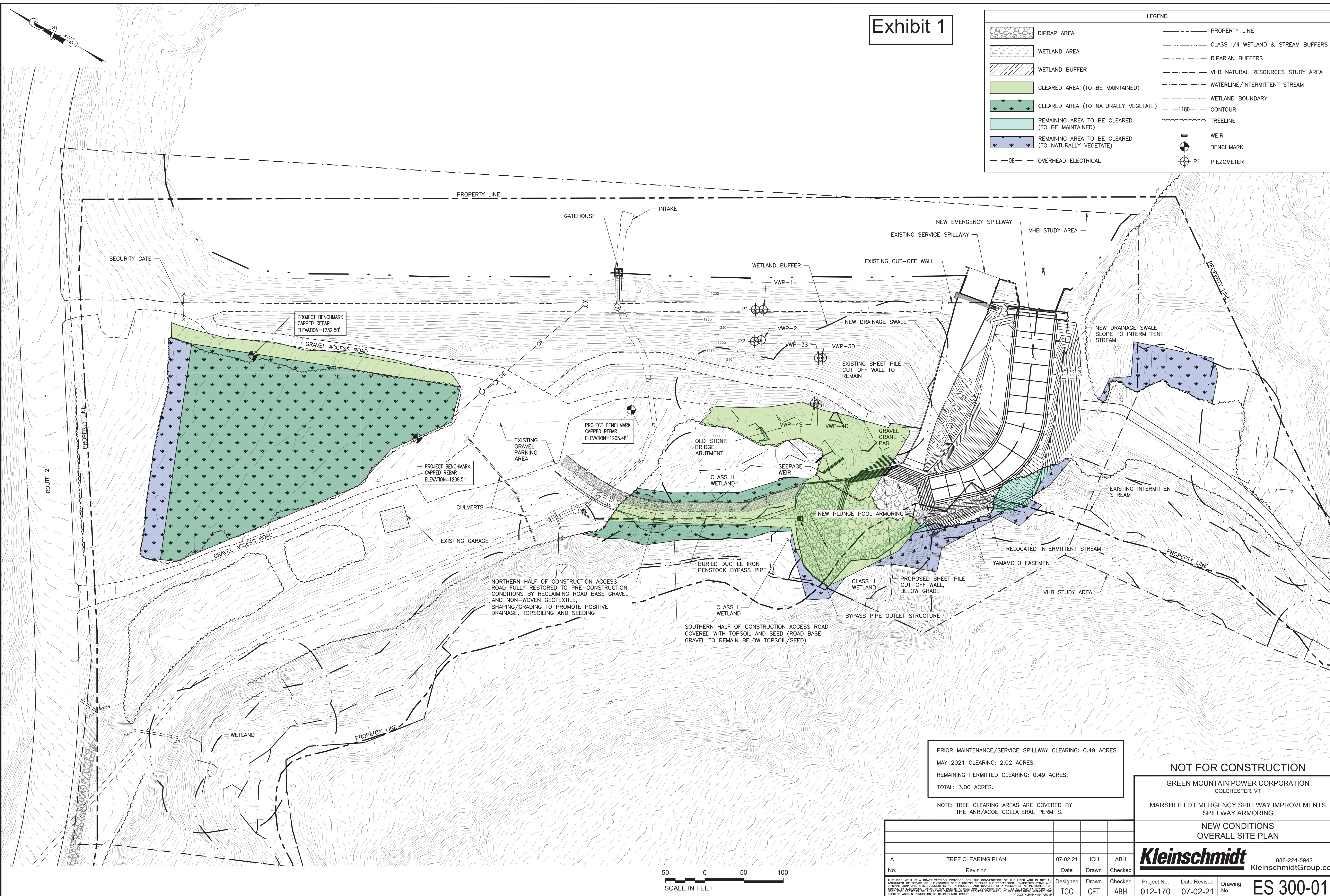
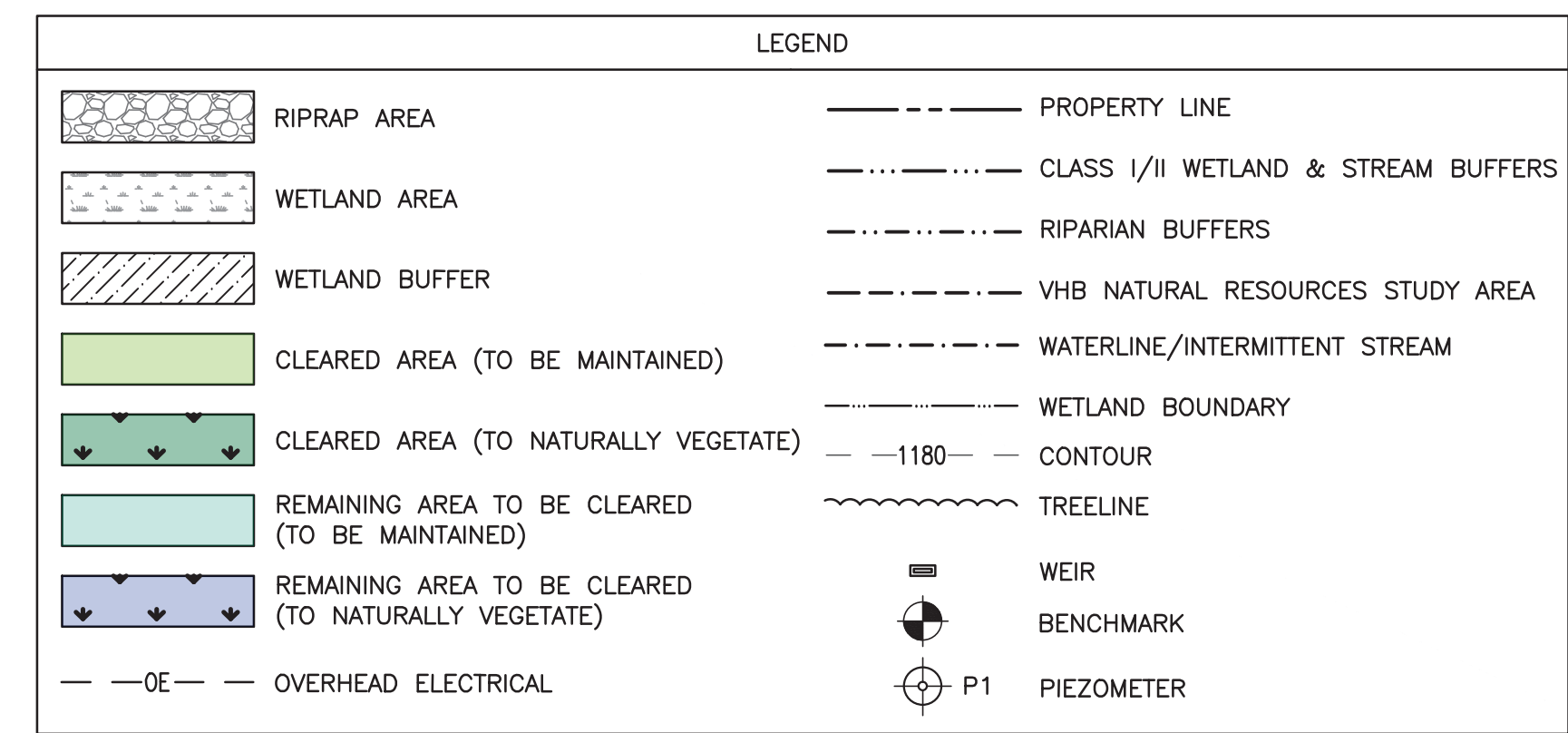


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## Exhibit 1



PRIOR MAINTENANCE/SERVICE SPILLWAY CLEARING: 0.49 ACRES.  
MAY 2021 CLEARING: 2.02 ACRES.  
REMAINING PERMITTED CLEARING: 0.49 ACRES.  
TOTAL: 3.00 ACRES.

NOTE: TREE CLEARING AREAS ARE COVERED BY  
THE ANR/ACOE COLLATERAL PERMITS.

NOT FOR CONSTRUCTION

GREEN MOUNTAIN POWER CORPORATION  
COLCHESTER, VT

MARSHFIELD EMERGENCY SPILLWAY IMPROVEMENTS  
SPILLWAY ARMORINGNEW CONDITIONS  
OVERALL SITE PLAN

## ***Kleinschmidt***

888-224-5942  
KleinschmidtGroup.com

A	TREE CLEARING PLAN	07-02-21	JCH	ABH	
No.	Revision	Date	Drawn	Checked	
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Project No. 012-170	Date Revised 07-02-21	Drawing No.	ES 300-01
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ES 300-01