

Norwich Planning Commission Regular Meeting – July 11, 2023 6:30pm

To be Held in person in the Tracy Hall Multipurpose Room and via Zoom
Zoom Information:

Topic: Planning Commission

Time: July 11, 2023 06:30 PM Eastern Time (US and Canada)

<https://us02web.zoom.us/j/81307504748>

Meeting ID: 813 0750 4748

888 475 4499 US Toll-free

1. Approve Agenda
2. Public comment for items not on agenda
3. Correspondence
 - a. Letter from Michael Hennessey, 6-30-23
4. Upper Loveland Solar Project – Question whether to reopen preferred siting letter
5. Planning Commission staff – Job description and hiring process
6. Planning Commission work plan – Priorities and process
7. Planning & zoning files
8. Approve minutes of June 27, 2023
9. Public comment
10. Adjourn

AGENDA ITEM #3

Michael Hennessey
249 Bragg Hill Rd
Norwich, VT 05055

TOWN OF NORWICH
PLANNING AND ZONING
RECEIVED
7-3-23

TO: Persons and Entities Entitled to Notice Pursuant to Public Utility Commission Rule 5.107(B) (See Enclosed List)

RE: Michael Hennessey's Proposed Net-Metered Solar Project in Norwich, VT
45-Day Notice of Application to be filed with Vermont Public Utility Commission

DATE: June 30, 2023

Dear Interested Persons and Entities,

Pursuant to 30 V.S.A. §§ 8010 and 248 and Public Utility Commission Rule 5.107(B), Michael Hennessey is pleased to submit the following pre-application notice concerning his proposed 50 kilowatt (kW) net-metered solar project ("the Project"), to be sited on his property at 249 Bragg Hill Road, Norwich, Vermont.

I. Introduction

Michael Hennessey is preparing to file an application for a Certificate of Public Good ("CPG") with the Vermont Public Utility Commission ("Commission"), requesting approval to install and operate a 50 kW (alternating current or "AC") solar electric generation facility in Norwich, Vermont (the "Project"). Michael Hennessey is developing this net-metering project as a "Preferred Site" (item 9) under Commission Rule 5.103.

The Project will be a net-metered facility interconnected to the Green Mountain Power ("GMP") electric distribution system and will produce power to offset the electricity requirements of the Hennessey property.

The remainder of this letter briefly describes: (1) Michael Hennessey's plans for construction and operation of the Project, including how equipment and materials will be transported to the site; (2) expected benefits of the Project; (3) a preliminary assessment of impacts; (4) the expected date an application will be filed with the Commission; and (5) the rights of persons and entities receiving this notice to comment on the Project in accordance with Commission Rule 5.107(B).

II. Project Description and Construction Plans

The Project will be located on a portion of his approximately 197 acre parcel of land on Bragg Hill Road, Norwich, Vermont, and owned by Michael Hennessey. See Location Map and Site Plan, Attachment A.

The 50 kW solar electric generation facility will consist of approximately 152 solar modules (485 Watt) each mounted on fixed metal racks, string inverters, electrical collector system components consisting of underground conduit, wire, AC combiner panel, and AC disconnects. The Project proposes to install the system disconnect and inverters on the north side of the racking system.

Michael Hennessey chose the site based upon its solar exposure, accessibility to existing roads and its minimal impacts on natural resources and the character of the area. The array area is on an under utilized portion of the property out of sight from the neighboring properties.

The project parcel is not subject to any Act 250 permits.

The attached site plan represents the current preferred layout. The final layout to be applied for may vary somewhat based upon further engineering, environmental, and other siting considerations. However, the final layout will fall within the overall site area where environmental and other impacts have been evaluated for the purposes of this 45-day notice.

The basic parameters of the site plan include the following working assumptions:

- The parcel on which the solar site will be located can be accessed from existing public roads within the area, specifically Bragg Hill Rd, Town Highway 59, and Elm St.
- Construction will be performed in accordance with the Vermont Standards & Specifications for Erosion Prevention and Sediment Control (2006).
- Year-round daily access to the array is not required. No on-site septic or water supply systems will be constructed. The solar project's energy production will be monitored remotely and, if any abnormal conditions are detected, technicians will be dispatched as required.

Site Access & Equipment Delivery

Standardized trucking methods will be used to transport the panels and other project components (e.g. racking, wire, conduit, and construction materials) to the site. Typical tractor trailer/box truck vehicles and/or pick-up trucks will be used to transport materials to the site for construction. The Project will not require any oversized loads. The property's access roads coming off Bragg Hill Road and or Elm St will be used for bringing in all construction-related equipment and machinery. Construction equipment will likely include a mini excavator, a rough terrain forklift or similar equipment to lift the panels in place and to move material around the site.

Solar Panels and Electrical Collection System

The Project will utilize (152) 485-watt solar panels, or the equivalent, mounted at a fixed angle of 35 degrees to maximize solar collection. The bottom of the solar panels will be at approximately three feet above existing grade and the top at approximately 12 feet above grade.

The array will be arranged in a single row running east-west. The row will be connected to string inverters at the north side of the array, which convert the electricity from DC to AC. From the inverters, the electrical interconnect will take place at a new dedicated service.

The final selection of all equipment will be made after a CPG is issued and contractors and vendors are selected.

III. Project Benefits

The Project will provide several benefits to Norwich and the state, including but not be limited to:

- Payment of municipal property taxes.
- Purchasing equipment from Vermont businesses, when commercially feasible.
- Employing Vermont businesses for pre-application, construction, and operation and maintenance work, when commercially feasible.

In addition to these economic benefits, the proposed solar electric facility will also result in important environmental benefits. The 2016 Vermont Comprehensive Energy Plan set a goal for the State to receive 90% of its energy from renewable resources by the year 2050, and solar power is needed to meet that goal. The solar energy produced by this Project will result in less electricity needed in the New England region from plants that likely use fossil fuel or nuclear energy. It will emit no air pollutants (including CO₂) in generating electricity, and thus could help in a small but measurable way to reduce global climate change, acid rain, and the negative public health effects associated with the use of fossil fuel and the waste storage challenges presented by nuclear energy production.

IV. Preliminary Impact Assessment

Based upon our initial review including the use of the State's environmental databases, the Project will either avoid or not cause undue adverse impacts to environmental resources, and will not create public health or safety concerns. Key elements include the following:

- The Project will not impact any wetlands, streams, or other sensitive environmental resources.
- The Project will be designed to meet electric safety and utility interconnection standards for safe and reliable operation of solar electric facilities.
- The Project will require no new municipal services and will not pose undue burdens on town fire, police, or water/sewer services. The Project will not impact the ability of the town to provide educational services.

With respect to aesthetic impacts, the Project site is away from the road and neighboring properties, giving it little or no visibility from any public roads or area residences.

V. Expected Petition Filing Date with Vermont Public Utility Commission

Michael Hennessey intends to file a Section 8010 application and supporting materials with the PUC soon after the 45-day notice period expires, approximately August 15, 2023.

VI. Comments and Inquiries Concerning the Project

At this juncture, if you have any questions or comments concerning the Project please feel free to contact us as follows:

Catamount Solar Attn: Philip Parrish
44 Hull St. Suite 3
Randolph, VT 05060
802-728-3600
phil@catamountsolar.com

Michael Hennessey hopes that you will support this Project, given the benefits it will provide the town and the state, and given its extremely limited impacts. You will have an opportunity to file comments with the Public Utility Commission once the application for a certificate of public good is filed. In the meantime, I invite you to contact me with any questions or comments you have, as we welcome your input and suggestions to make this a successful project.

Sincerely,
Michael Hennessey

Enclosures:
List of Persons and Entities Receiving Notice
Attachment A – Location Map, Site Plan

**Michael Hennessey – Proposed Solar Project in Norwich, VT
List of Persons and Entities Receiving 45-Day Notice of the Application**

By ePUC:

Vermont Public Utility Commission
112 State Street, 4th floor
Montpelier, VT 05620-2701
(1 hard copy via first class mail)

Vermont Division for Historic Preservation
1 National Life Drive, # 6
Montpelier, VT 05620

Vermont Public Service Department
Commissioner's Office
112 State Street, 3rd Floor
Montpelier, VT 05620-2601

Vermont Agency of Agriculture,
Food and Markets
116 State Street
Montpelier, VT 05602

Vermont Agency of Natural Resources
Secretary's Office
1 National Life Dr., Davis 2
Montpelier, VT 05620-3901

Green Mountain Power
163 Acorn Lane
Colchester, VT 05446

By first class mail:

Town of Norwich Selectboard
Tracy Hall
300 Main St.
PO Box 376
Norwich, VT 05055

Two Rivers-Ottawaquechee
Regional Commission
128 King Farm Rd
Woodstock, VT 05091

Town of Norwich Planning Commission
Tracy Hall
300 Main St.
PO Box 376
Norwich, VT 05055

Adjoining Landowners (by certified mail)

Dept Of Interior National Park Service
1849 C Street NW
Washington, DC 20241

Jon Wilkinson
391 Bragg Hill Rd
Norwich, VT 05055

Peter Silberfarb
287 Bragg Hill Rd
Norwich, VT 05055

Phillip McCaull
28 Goddard Rd
Norwich, VT 05055

Redpath Trust Margaret C
PO Box 202
Norwich, VT 05055

Katherine Fisher
117 Dutton Hill Rd
Norwich, VT 05055

Sarah Reeves
PO Box 887
Norwich, VT 05055

Peter Griggs
256 Dutton Hill Rd
Norwich, VT 05055

Charles Richards
54 Simpson Rd
Norwich, VT 05055

Michael Hennessey
249 Bragg Hill Rd
Norwich, VT 05055



Catamount Solar
44 Hull St, Suite #3,
Randolph, VT 05060
802-728-3600
www.catamountsolar.com

PROJECT NAME
HENNESSEY, MICHAEL

ADDRESS
249 BRASSY HILL ROAD, NORWICH, VT

DATE
6/22/2023

REVISIONS

#	DATE

SHEET
SITE PLAN

DRAWN BY
CB

SCALE
NTS

ORIGINAL SHEET SIZE
11" x 17"

Hennessey Residence Preliminary Site Plan
(152) Hanwha Q Cell 485 Modules
(4) Fronius Primo 12.5k Inverters

- Impacts:**
- Limits of disturbance: 0.42 acres +/-
 - Array area: 0.37 acres +/-
 - Utility trench area: 0.055 acres +/-
 - Transformer area: 0.0022 acres +/-

THIS DRAWING IS THE PROPERTY OF CATAMOUNT SOLAR. THIS INFORMATION IS CONFIDENTIAL AND IS TO BE USED ONLY IN CONNECTION WITH WORK DESCRIBED BY CATAMOUNT SOLAR. NO PART IS TO BE DISCLOSED TO OTHERS WITHOUT WRITTEN CONSENT FROM CATAMOUNT SOLAR.

AGENDA ITEM #4

From: Jaan Laaspere
To: Norwich Planning Commission
Date: July 5, 2023
Re: Abbreviated chronology of NST Upper Loveland Solar review process

May 6, 2021 - NST sent letter to neighboring landowners, including a schematic plan outlining property boundary and array locations.

June 29, 2021 - NST sent letter to Rod Francis addressed to the Norwich Planning Commission and Selectboard requesting preferred siting letter. Includes site plan that will go to PUC on 7/14/21.

July 13, 2021 – Planning Commission meeting approves preferred siting letter with packet containing Rod Francis memo, viewshed analysis, and general items about preferred siting letters. Vote to approve is 6 - 0 with one abstaining.

July 14, 2021 - NST initial filing to PUC, includes the site plan that was sent to the Planning Commission on 6/29.

July 27, 2021 - email from NST McBride to Francis and Durfee asking for letter and meeting with Selectboard.

Aug 10, 2021 – Planning Commission meeting. Packet includes PUC July 14 filing and more details about aesthetic and environmental impact.

Aug 11, 2021 - Selectboard meeting. 7/14 site plan included in packet. Selectboard approves preferred siting letter after topic was bounded by saying ANR is responsible for habitat.

Aug 23, 2021 - Letter to the town giving notification of site plan adjustment. Stating “We don’t see any impact on the visual analysis - but are confirming the visual analysis as part of the full application.”

Aug 31, 2021 - Official filing of application with PUC after 45-day notice period, including modified site plan with changes noticed to town on 8/23/21

Sept 14, 2021 - Planning Commission meeting. Packet includes McBride 8.23 email in correspondence. Rod mentions the change in the plan by noting the correspondence was received.

Oct 12, 2021 – Planning Commission meeting. Draft minutes for 9/14/21 meeting included under correspondence section: “Norwich Technologies provided details of an environmental review of the Upper Loveland RD project site. There has been a minor adjustment to the location of panels in response to findings, but there will be no visual impact.”

Aug 31, 2021 to present - Hundreds of documents submitted to the PUC, including detailed aesthetic, land-use, legal, planning and natural resource analyses. These documents are public record and part of the PUC process, submitted by all sides. These include aesthetic impact studies submitted by the applicant, opponents and a separate aesthetics review commissioned by the PUC. All documents available here: <https://epuc.vermont.gov> - search by case number 21-3587-NMP

Feb 9, 2022 - Selectboard meeting. Concerns raised in correspondence section and discussed.

Feb 23, 2022 - Selectboard meeting. Extensive correspondence and discussion. Calloway moved to set a future SB agenda item on solar siting. No second. Interested parties pointed to the PUC. No action taken after this review.

Mar 23, 2022 - Selectboard meeting - Correspondence on this topic but no discussion or action taken shown in the minutes.

TO: Planning Commission
FROM: Rod Francis, Planning Director
RE: Solar Generation Project "Preferred Site" Status review, Upper Loveland RD
DATE: July 3, 2021

Background

The 2020 Town Plan Energy Chapter contains Policy 3.2.h:

For solar generation projects sized from 15kW to 500kW the presumption is that all of Norwich meets the Public Utility Commission definition of 'preferred site', notwithstanding the existing areas of local concern including the Ridgeline Protection Overlay Area and the historic village district as identified in the Norwich Land Use Regulations

The subject site is located in the Ridgeline Protection Overlay Area, and therefore does not automatically qualify as a preferred site.

Process

Under such circumstances the following process is available to applicants:

1. Applicant presents materials for review to the Planning Commission requesting a "letter of support" for the project (effectively a conclusion that the project as described does not pose a material conflict with the purpose of the Ridgeline Protection Overlay District)
2. Planning Commission votes on a motion recommending the Selectboard provide a letter of support
3. Applicant presents to the Selectboard, which votes on a motion to provide a letter of support (drafted by the Planning Director)

Standard of Review:

The Ridgeline Protection Overlay (RPO) District Overlay is described on page 28 of the Norwich Zoning Regulations (NZR) as adopted July 1, 2009.

(A) Purpose. The purpose of the Ridgeline Protection Overlay District is to protect Norwich's rural character and scenic landscape by ensuring that development is located and designed in a manner that protects the uninterrupted skyline and minimizes adverse visual impact on designated ridgelines and adjacent slopes as viewed from public roads (Class 1, 2 and 3 town highways, state highways and interstate highways within the town).

The NZR addresses natural and scenic features in Section 3.13 (page 43). The standard described is "minimize adverse impact of development on significant natural, scenic, and cultural resources" and more specifically:

(3) Scenic Resources. Development shall be *located and configured to avoid undue adverse impacts to scenic resources* identified on maps created in conjunction with the document entitled Inventory of Scenic Resources, prepared by the Scenic Resources Committee of the Norwich Conservation Commission and dated January 2000. (See Map C).

Development within view of scenic roads, as identified in the aforementioned planning documents, shall be designed to avoid undue adverse impact to the identified scenic resources. [emphasis added]

Attached is a map from the ANR Atlas for the subject site. The applicants have provided other materials for review addressing the possibility of visual impact.

Staff Findings:

1. Upper Loveland RD is not a designated 'scenic road'
2. The subject parcel is developed with a telecommunications tower and a high voltage power transmission line
3. There are no mapped wetlands, or other key natural or cultural resources
4. The site has an existing service road for the telecommunications tower, which traverses steep slopes
5. The location for the solar generation project on the parcel is not subject to steep slopes
6. The solar generation project does not cause an undue adverse visual impact to travelers on town, state or interstate highways.

Recommendation

Staff offers the following in the form of a proposed motion:

I move that the Planning Commission recommend to the Selectboard a letter of support be provided to Norwich Technologies for their proposed solar generation project on Upper Loveland Road.

NORWICH PLANNING COMMISSION
Tuesday July 13, 2021, 6:30pm

DRAFT MINUTES

Zoom Meeting:

<https://us02web.zoom.us/j/89339717735>

Meeting ID: 893 3971 7735

Physical meeting location: small conference room, Tracy Hall

Members Present: Brian Loeb, Jaci Allen, Jeff Lubell, Leah Romano, Melissa Horwitz, Jeff Goodrich,
Ernie Ciccotelli
Public Present: Troy McBride, Ryan Darlow, Brendan Malley, Claudette Brochu, Linda Cook
Staff: Rod Francis

Meeting Opened: 6:34pm

1. Approve Agenda:

Lubell moved and Ciccotelli seconded a motion to approve the agenda Motion carried 6 – 0 – 1. For: Allen, Loeb, Lubell, Romano, Horwitz, Ciccotelli. Abstain: Goodrich.

2. Public Comment: none

3. Norwich Technologies Upper Loveland Rd solar installation:

Francis provided an overview of his memo outlining the process and standard of review for the proposed solar generation project. In particular that the Norwich Zoning Regulations only address the visual impact of development as experienced by road users on town roads, state highways and the interstate (I-91). Possible impacts to other natural and cultural resources are not part of the review. In addition, the standard calls for “minimal adverse impact” from development, which is similar to the “no undue adverse impact” standard found in criterion eight of Act 250 review, which in turn is used by the Public Utility Commission (PUC, the regulating body for the proposed project) in Section 248 hearings. This standard allows for some impact from development.

Troy McBride of Norwich Technologies introduced the project and presented a study of visual impact including slides portraying the proposed site super-imposed on arial photographs and viewshed analysis that demonstrated the proposed solar installation was not be visible from Upper Loveland Road, Route 5 North or I-91.

Goodrich commented that there was no evidence of a wetland scientist reviewing the possible impact of the project, therefore he could not support the application.

McBride responded that a wetland scientist will be characterizing the site in preparation for the Section 248 Certificate of Public Good (CPG) hearing where the Vermont Agency of Natural Resources (ANR) is a party to the proceedings. ANR has jurisdiction over wetlands in Vermont.

Ciccotelli commented that the site was already disturbed with an electric transmission line and mobile telecommunications tower, so he has no real concerns.

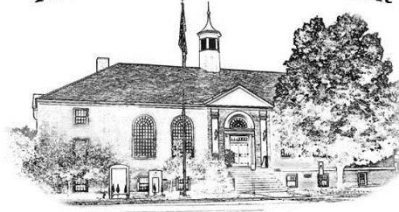
Romano asked what the anticipated timeline would be.

McBride said that the 45-day notice will likely be released before the end of the week allowing the Town and residents to comment on the project direct to the PUC. Meanwhile, he hoped the planning commission and selectboard would be able to provide a support letter on behalf of the project as required by PUC procedure. Then they would submit an application for reviewed by the Public Service Department (PSD). Assuming approval he expected a Section 248 hearing will occur in July 2022 and construction to commence in July 2023.

Commissioners continued to discuss the question of potential wetland impacts. Francis reminded them that this was outside the scope of their review and would be addressed in the Section 248 CPG application (and review).

Horwitz moved and Ciccotelli seconded a motion that the Planning Commission recommend to the selectboard a letter of support be provided for Norwich Technologies for their proposed solar generation project on Upper Loveland Road. Motion carried 6 – 0 – 1. For: Ciccotelli, Allen, Loeb, Lubell, Romano, Horwitz. Abstain: Goodrich.

Town of Norwich, Vermont



CHARTERED 1761

BY MAIL

August 20, 2021

Public Service Board of Vermont
112 State Street
Montpelier, VT 05620-2701
Ms. Judith Whitney, Clerk

Re: Preferred Siting Designation under Rule 5.100

Dear Ms. Whitney,

We refer to the application for a Certificate of Public Good (the "Application") to be filed by Norwich Upper Loveland Solar LLC, in respect of the 500 kW-AC solar electricity generation project (the "Project") proposed to be sited at the parcel located at 201 Upper Loveland Rd, Norwich, VT 05055, approximate latitude and longitude of 43.723836, -72.292770 (the "Location"). Having made our review, we wish to support the Project and declare our desire to have the Location designated as a "Preferred Site" under Section 5.103 of your Rule 5.100.

We note that we take no position on the Project's compliance with any requirement of Rule 5.100 or of other applicable provisions of Vermont law. This letter is solely for the purpose of providing support for the Project under Section 5.103.

Sincerely,

Town of Norwich
Planning Commission

Jaci Allen

Town of Norwich
Selectboard

Roger Arnold

A handwritten signature in cursive script, appearing to read "Roger Arnold".

Two Rivers-Ottawaquechee
Regional Commission

Chair

Chair



July 5, 2023

Norwich Selectboard
300 Main Street
Norwich, VT 05055

Norwich Planning Commission
300 Main Street
Norwich, VT 05055

Dear Selectboard and Planning Commission Members,

We deeply appreciate the time and the effort that the Planning Commission and Selectboard have committed to undertake as part of its work in general and in particular with respect to the Norwich Upper Loveland Solar Project (the "Project").

Norwich Solar Technologies is providing this letter and the documents appended hereto to present a complete record of what was presented to the Planning Commission and Selectboard in 2021 in connection with Norwich Upper Loveland Solar LLC's (the "Applicant") request for preferred siting of the Project. As these materials clearly show, accurate information was provided and proper process was followed by us as individuals and by our company. To summarize, the main facts are clear and straightforward:

- The same plan that was submitted as part of the 45 Day Notice on July 14, 2021 was provided to the Planning Commission on June 29, 2021 in preparation for the July 13th Planning Commission meeting on our request for a preferred site letter; and
- On August 23, 2021, Troy emailed the Town an iteration to the plan based on the results of the environmental review. This same plan was included in the application submitted to the PUC, which was also provided to the Planning Commission and the Selectboard

Discussion of Key Events

On June 29, 2021, Norwich Solar Technologies emailed the request for preferred site designation for the Project to the Town Planning Commission and Selectboard. See Exhibit A to this Letter. Exhibit A is the June 29, 2021 email with the attached three-page Preferred Site Letter Request that was sent to the Norwich Town Planner, Rod Francis, and addressed to the Planning Commission and Selectboard. The third page of the Preferred Site Letter Request, inserted below, includes the very same Site Plan that was included in the 45-Day filing made on July 14, 2021, contrary to assertions that have been made.



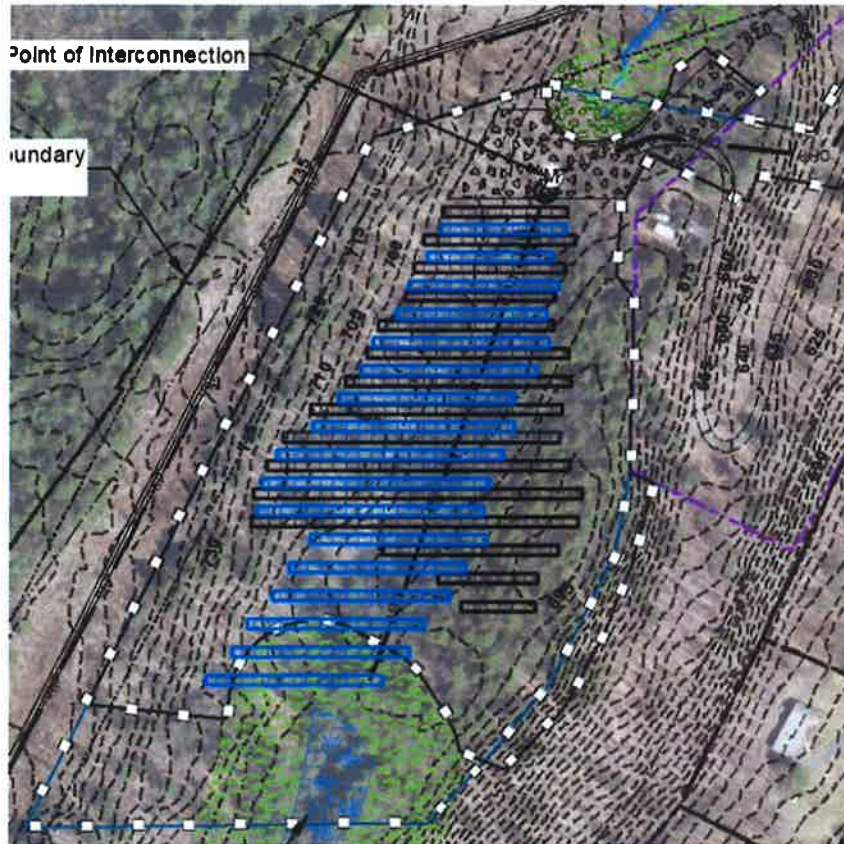
6/29/21/Preferred Site Letter Request for 7/13/21 PC Meeting (Exhibit A)



7/14/21 45 Day Notice Site Plan (Exhibit B)

Furthermore, although it has been suggested by Mrs. Gorman that our company did not inform the Planning Commission of Site Plan adjustments made following the August, 2021 wetlands

review, Mr. McBride emailed Mr. Francis on August 23, 2021, following results of Arrowood Environmental's environmental inventory work. See Exhibit C to this letter. This same plan was submitted as part of the application to the PUC filed on 8/31/21.



**8/23/21 Comparison Site Plan Showing Shift Due to Environmental Review (Exhibit C)
(the blue image of the array is the original layout, and the black version shows the
adjustment following environmental review)**



On February 23, 2022, the Selectboard conducted a lengthy hearing to re-visit the Preferred Site letter based upon requests from the Neighbors. Ultimately, the Selectboard voted to take no action. See Exhibit I to this letter.

After more than a year and a half of administrative proceedings at the PUC, including multiple rounds of discovery and filing of multiple rounds of testimony, exhibits, and legal briefs, and a day-long evidentiary hearing, the matter is now pending review and recommendations from the Hearing Officer. Importantly, the Public Advocate, the DPS, filed expert testimony that concludes that the Project's visibility is limited and is consistent with the Town Plan, and the DPS recommended that the CPG be issued for the Project. See Exhibits K & L.

Conclusion

The full factual record establishes that from the outset of our engagement with the Town on our preferred siting request for the Project, the same site plan was provided as the site plan we filed with the PUC 45-Day Letter on July 14, 2021. Also, as represented by our company, on August 23, 2021, Mr. McBride did in fact report back to the Planning Commission (see Exhibit M), to inform the Town that the array had shifted as a result of the environmental review. See Exhibit C. These communications prove that we have been forthcoming and truthful in our representations to the Town.

The claims that our company provided inaccurate information are simply not true. We respectfully ask that the Planning Commission include this letter and all attachments in the packet for the next Planning Commission meeting. This is important in order to ensure that a complete and accurate record of the facts, and not incomplete and therefore inaccurate information, is being reviewed and deliberated. We also request that if there are any further meetings of the Selectboard on this issue, all of these materials also be included in the Selectboard packet in advance of such meeting(s).

Sincerely,

Joel Stettenheim
President and Co-Founder

Troy McBride
Chief Technology Officer and Co-Founder

APPENDIX I – CHRONOLOGY OF KEY EVENTS

The following is a chronology of key events:

- **June 29, 2021:** Norwich Solar Technologies, on behalf of Norwich Upper Loveland Solar LLC (“Applicant”), sent an email to the Town Planning Director, Rod Francis, with an attached 3-page letter addressed to the Planning Commission and Selectboard requesting that the Town issue a preferred site letter for the Project site – page 3 of the request letter included an image of the June 24, 2021 Project Site Plan (see **Exhibit A**);
- **July 13, 2021:** The Planning Commission held a meeting and voted to approve preferred siting, but with the understanding that the Applicant would inform the Planning Commission of Project changes resulting from a wetlands review (see **Exhibit M**);
- **July 14, 2021:** The Applicant filed the 45-Day Notice with the Public Utility Commission (“PUC”) and mailed copies to Planning Commission, the Selectboard, the Regional Commission, and adjoining landowners – the same June 24, 2021 Site Plan sent to the Town on June 29, 2021, was included (see **Exhibit B**);
- **August 23, 2021:** Norwich Solar Technologies, on behalf of the Applicant, notified Mr. Francis on behalf of the Planning Commission of the shift in the array north and east and sent an image from the Site Plan showing same (see **Exhibit C**);
- **August 27, 2021:** Norwich Solar Technologies receives the fully executed Preferred Siting Letter (see **Exhibit E**);
- **August 31, 2021:** Norwich Solar Technologies filed the full Section 248 petition filing with the PUC, including a list of entities (including the Town Planning Commission and Selectboard) entitled to the complete petition once the filing is deemed complete in accordance with PUC Rule 5.107 with the same plan as sent in the August 23 email to Mr. Francis (see **Exhibit F**);
- **December 3, 2021:** The PUC issued a memorandum deeming the petition complete and establishing a deadline of January 3, 2021 for filing public comments, notices of intervention, motions to intervene, and requests for hearing (see **Exhibit G**);
- **December 6, 2021:** Norwich mails the PUC deemed complete notice and petition package to the Town Planning Commission and Selectboard, the Regional Commission, and adjoining landowners, including a letter providing ePUC links to the PUC website for instructions on how to comment and participate in the PUC proceeding (see **Exhibit H**);
- **January 3, 2022:**



- The Vermont Department of Public Service, the public advocate (“DPS”), filed comments stating and the Agency of Natural Resources (“ANR”) filed comments that it did not identify and significant concerns with the Project;
 - ANR filed comments requesting that the Project certificate of public good (“CPG”) contain certain conditions to protect natural resources;
 - The Town of Norwich did not file comments or notice its intervention in the PUC case;
- **February 23, 2022:** Norwich Selectboard determines not to rescind preferred siting (see Exhibit I) based on the as filed plan. As evidenced by statements made by Robert Gere during the Selectboard hearing on May 24, 2023, members of the Selectboard took their review seriously viewing the array from numerous public roads in Town;
 - **August 19, 2022:** PUC Hearing Officer denies Adjoining Landowners’ Motion to dismiss and for Sanctions alleging the Applicant misrepresented material facts when it requested preferred siting from the Town (see Exhibit J);
 - **October 13, 2022 through April 6, 2023:** Parties in PUC Case (PUC Case No. 21-3587-NMP) file discovery, prefiled testimony, and exhibits and the Hearing Officer conducts a site visit;
 - **April 28, 2023:** A PUC evidentiary hearing was held lasting approximately seven hours;
 - **May 22, 2023 & June 5, 2023:** Parties in the PUC case file briefs and reply briefs (see Exhibits K & L for Applicant’s and DPS briefs and reply briefs).



APPENDIX II - EXHIBIT LIST WITH NST'S COMMENTS TO THE TOWN OF NORWICH PLANNING

COMMISSION

- Exhibit A: The June 29 email and letter (this was filed as Petitioner Reply Brief-3)
- Exhibit B: 45 Day filing
- Exhibit C: Troy's August 23, 2021 email (this was filed as Pet Reply Brief-2)
- Exhibit D: August 24, 2021 email exchange
- Exhibit E: NST August 27, 2021 email acknowledging the Preferred Sites Letter was dropped off at NST (attached)
- Exhibit F: August 31 List of Entities Entitled Compliance with rule 5.107 (attached)
- Exhibit G: 12/3/21 PUC Deemed Complete Notice
- Exhibit H: 12/6/21 NST Letter re Petition Deemed Complete
- Exhibit I: 2/23/22 Selectboard Meeting Minutes
- Exhibit J: 8/19/22 HO Denial of Motion to Dismiss/Sanctions
- Exhibit K: DPS and Applicant 5/22/23 Briefs
- Exhibit L: DPS and Applicant 6/5/22 Reply Briefs
- Exhibit M: Excerpts from 7/13/21 PC Meeting

Exhibit A
Exhibit NUL Reply Brief-3

----- Forwarded message -----

From: **Troy McBride** <mcbride@norwichtech.com>

Date: Tue, Jun 29, 2021 at 4:24 PM

Subject: Preferred siting meeting request for potential solar project

To: Rod Francis <norwichvtplanner@gmail.com>

Cc: Herb Durfee <hdurfee@norwich.vt.us>, Martha Staskus <staskus@norwichtsolar.com>, Ryan Darlow <darlow@norwichtsolar.com>, Hannah Boudreau <boudreau@norwichtsolar.com>

Hello Rod, Herb,

Norwich Solar Technologies is assessing a site for the installation of a ground mounted community solar project off Upper Loveland Rd under the Vermont Net Metering program. We would like to discuss this project with you and, at an upcoming meeting, present the project to the Planning Commission and Selectboard. This potential project is near the cell tower and transmission lines above Upper Loveland Road. The proposed site is in the Ridgeline Protection Overlay. Our analysis shows that we would not have an impact on the Ridgeline viewshed from all public roads and Norwich homes. We are requesting a "preferred siting" letter from Norwich Planning Commission and Selectboard. More information on the proposed project is attached.

We have sent letters to neighbors to the proposed parcel (also attached). We did not receive much feedback on this potential project, however, the feedback we did receive was positive about the potential solar project and continued land use.

I look forward to discussing with you at your convenience.

Best,
Troy



Troy McBride

| Norwich Solar Technologies

| cell: [802-738-8059](tel:802-738-8059)

| email: mcbride@norwichsolar.com

| site: norwichsolar.com

| address: 15 Railroad Row, WRJ, VT 05001





June 29, 2021

Norwich Planning Commission
Norwich Selectboard

Dear members of the Norwich Selectboard and Planning Commission,

Norwich Solar Technologies proposes the permitting and installation of a new net metered 500 kW-AC community solar array within the Town of Norwich. The net metering array is proposed to be located on the 34-acre parcel behind the cell tower (shown conceptually on the next pages) at 201 Upper Loveland Rd. This potential project is near the cell tower and transmission lines above Upper Loveland Road. The proposed site is in the Ridgeline Protection Overlay. Our analysis shows that we would not have an impact on the Ridgeline viewshed from all public roads and Norwich homes. We are currently in the early permitting phase of the installation. The focus of the permitting is an application for a Certificate of Public Good (CPG) from the Vermont Public Utilities Commission (PUC). The CPG establishes the process and requirements for meeting environmental, historic, aesthetic, public safety and interconnection requirements. Part of the application requires the designation of the site as "preferred." As summarized in the attached "Guidance on Preferred Siting Designation," one of the preferred categories is locations that a Town and a Regional Planning Commission have so designated. To facilitate the most efficient and quickest review of the CPG by the PUC, Norwich Solar Technologies is seeking a letter for preferred site designation from the Town and Regional Planning Commission.

An example of such a letter is attached for convenience and to facilitate your review. Also provided are additional viewshed analysis and background information including a letter sent to the property neighbors. If appropriate, we would like to attend a meeting in the near future at your convenience to present information on the site and the project, to answer any questions and, to hopefully, confirm your agreement and memorialize your support for the preferred site designation.

I look forward to discussions on the project and your process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Troy McBride".

Troy McBride
Norwich Solar Technologies
Cell: (802) 738-8059
Email: mcbride@norwicksolar.com

General Location of Property and Proposed Solar Project:

The 500 kW (AC) Norwich Upper Loveland Solar array will occupy approximately two to three acres and be a low-profile installation typical of solar electric generation installations of its type and size. The panels will be mounted on fixed-tilt, supporting racks. The racks are designed to support the bottom of the solar panels approximately 3 feet above existing grade to the top of the panels at approximately 10 feet. The array will be arranged in multiple rows running generally east-west with sufficient distance between the rows to minimize self-shading. The panels will be adjacent to the existing transmission line corridor and include some tree clearing to reduce shading. Much of the parcel will remain undisturbed and open to the public for walking and biking. By our analysis, the solar panels would be screened from view by existing trees and vegetation from any public roads or existing homes. Additionally, our analysis indicates the project will not impact the natural environment and the project will be installed in compliance with all local and state regulations.



Draft Site Plan for proposed solar project:



Exhibit B



15 Railroad Row, Suite 101
White River Junction, VT 05001
802.281.3213

July 14, 2021

To Those Persons Whose Names Appear on the 45 Day Notice List Attached Hereto

**Re: Advanced Notice for Norwich Upper Loveland Solar LLC Solar Project
Vermont Statutes Title 30 Section 8010/248 Permit Process**

Introduction

Pursuant to the Public Utility Commission ("PUC" or "Commission") Rule 5.100, Norwich Upper Loveland Solar LLC ("Applicant") is pleased to provide the following advance notice and information of plans for a 500 kW group net-metering, ground mount solar electric system to be sited on 201 Upper Loveland Rd, Norwich, Vermont property (the "Project"). The property is a wooded 40± acre parcel currently hosting a telecommunications tower, and the Project site is adjacent to the portion of the parcel hosting the cell tower. Lat: 43.724132°N Long: -72.291876°W. Filing of an Application with the PUC pursuant to 30 V.S.A. §§ 248 & 8010 for a Certificate of Public Good ("CPG") is anticipated to be on or after August 28, 2021.

This letter describes the Project, the expected Application filing date, and your rights to participate in review of the Project. Under Sections 8010 and 248, and PUC Rule 5.107(B), the parties listed on the attached 45 Day Notice List (*Attachment A*) are entitled to receive notice by mail sent at least 45 days in advance of the Application filing. Norwich Solar Technologies is managing the Project. Please feel free to reach me using my contact information provided at the end of this letter if you are interested in learning more about the Project, have comments or suggestions for the proposal or learning more about Norwich Solar Technologies.

Project Benefits

The Project creates a number of benefits with local and statewide significance. For example, the Project supports numerous clean energy economy jobs from design and development phases through installation and operation. The Project will annually contribute to the State Education Fund through a production tax and to the town through a local tax.

Importantly, the Project is an in-state new renewable energy generation resource that will help reduce our dependence on out of state electricity sources, a significant portion of which is nuclear power, and instead fuel local customers and Vermont's economy with clean power from local resources and strengthen the growth of our resilient local electrical system.

Project Description

The preliminary plan identifies the location of the array (43.724132°N, -72.291876°W), its primary components and access. This 500 kW (AC) ground mount array is typical of solar electric generation

installations of its type and size, comprising photovoltaic modules (“solar panels”) on fixed-tilt, supporting racks. The racks are designed to support the bottom of the solar panels approximately 3 feet above grade to the top of the panels at approximately 10 feet. The array will be arranged in multiple rows running generally east-west with sufficient distance between the rows to minimize self-shading. The solar array may be fenced or, if not fenced, will be otherwise electrically secure.

The solar panels will be connected electrically with string inverters mounted discretely behind the panels. The power will then travel underground between the rows to an AC disconnect, and then interconnect to Green Mountain Power Corporation’s (“GMP”) distribution circuit nearby via a GMP line extension at new GMP pole-mounted transformers near the array. These transformers are typical of what GMP uses throughout their distribution system.

The parcel is subject to Act 250 Land Use permit # 3W0917. Throughout the life of the Project, the site will remain with ground cover maintained by periodic mowing or brush cutting and monitored remotely.

Materials and equipment will be transported to the site during installation by standard-size delivery vehicles over state and local roads. Traffic will be limited in duration, and typical of small construction jobs.

Potential Aesthetic Impacts

The property is a wooded 40± acre parcel currently hosting a telecommunications lower permitted for 12 cellular panel antennas and a 150-foot-wide transmission line corridor along the northwest length of the property boundary. The solar array footprint is approximately 2.7 acres with 9.6± acres to be disturbed and/or cleared for installation and shade management. The site will be maintained with vegetative ground cover. The solar array will be a low-profile installation and will appear like other fix-tilt, ground mounted renewable energy solar arrays commonplace in Vermont. The site is screened from public views along Upper Loveland Rd by the existing and to be remaining forest vegetation surrounding the array. Upper Loveland Road is over 100 ft lower in elevation than the lowest elevation of the solar array and the array is sited to be setback 535± feet from the road. The low profile of the array, the topographic separation and natural vegetative screening will filter visibility from nearby public traveled ways. For these reasons, no landscape screening is currently proposed. A full aesthetic review will be included with the Application.

Potential Environmental Impacts

The Applicant’s preliminary analysis shows the array is not expected to have an undue adverse impact on the natural environment. A natural resource assessment addressing all relevant nearby natural resources as described by 30 V.S.A. § 248(b)(5) and (b)(8) will be included with the Application.

Your Ability to Comment on the Project

Pursuant to 30 V.S.A § 248, you are entitled to make recommendations to the PUC and to us, at least 7 days prior to the expiration of this 45-day notice period. We anticipate filing the Section 248/8010 Application on or after August 28, 2021. Members of the public may participate in proceedings before the Vermont Public Utility Commission by submitting public comments or by intervening as a formal party to a case. Public comments must be submitted within 30 days of the Commission’s determination that the Application is administratively complete. In addition, the Norwich Selectboard and Planning Commission will have the right to appear as a party in any proceedings held.

For additional information regarding this process, including your right to participate in the PUC's proceeding, please refer to the following Commission documents and links (<https://puc.vermont.gov/public-participation>):

Pursuant to Sections 8010 and 248 and Commission rule 5.107, all adjoining landowners and host landowner will receive notice of the Application filing following the Commission's determination that the Application is complete, and will also be able to access the filing at the PUC's electronic filing system (<https://epuc.vermont.gov/>).

Norwich Solar Technologies is a research, development, and EPC (engineering, procurement and construction) company servicing local schools, municipalities, businesses and non-profits. We have extensive experience incorporating solar into our working Vermont landscape with Vermont business owners, municipalities, farmers, non-profits alike, interested in benefiting from solar and contributing to Vermont's clean energy economy with renewable energy projects. Again, we welcome the opportunity to further share information about this Project and Norwich Solar Technologies, and to learn of any comments you may have. Please feel free to contact me at 802-359-7416 or my email at staskus@norwichsolar.com.

We appreciate your participation in this process.

Sincerely,



Martha Staskus
Project Manager

Appendices: Attachment A – 45 Day Notice List
Attachment B – Preliminary Site Plan

Attachment A

45 Day Advance Notice Service List

Via Certified Mail: Return Receipt Requested

Norwich Selectboard
300 Main Street
Norwich, VT 05055

Norwich Planning Commission
300 Main Street
Norwich, VT 05055

Two Rivers Ottauquechee Regional Planning
128 King Farm Road
Woodstock, VT 05091

38 Acres LLC
John Lewis
346 Palm St
Hollywood, FL, 33019
(Landowner)

Joy Kenseth
133 Upper Loveland Rd
Norwich, VT 05055

Samin Kim and Jayoung Joo
147 Upper Loveland Rd
Norwich, VT 05055

Daniel Goulet and Jennifer Goulet
185 Upper Loveland Rd
Norwich, VT 05055

Aaron and Noelle Lamperti et al
557 New Boston Rd
Norwich, VT 05055

John and Claudia Lamperti
244 Upper Loveland Rd
Norwich, VT 05055

Adjoining Landowners to the site:

Hugh and Cheryl Rostad
74 Four Wheel Dr
Norwich, VT 05055

James and Sarah Cook
81 Upper Loveland
Norwich, VT 05055

Terry Melendy
95 Upper Loveland
Norwich, VT 05055

Lee and Janice Winslow
80 Wiley Hill
Norwich, VT 05055

Gursharan Kaur
PO Box 1231
Norwich, VT 05055

Via Commission Electronic Filing System

Vermont Public Utility Commission

Vermont Department of Public Service

Vermont Agency of Natural Resources

Vermont Natural Resources Board

Vermont Division for Historic Preservation

VT Agency of Agriculture Food and Markets

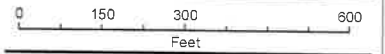
Green Mountain Power
8294423_2:00001-00178

PRELIMINARY DRAFT
Norwich Upper
Loveland Solar
 201 Upper Loveland Road
 Norwich, Vermont



Legend

- Proposed Solar Array
- Existing Access Roads
- Proposed Upgraded Woods Road
- Proposed Temporary Staging Area
- Proposed Perimeter Fence
- Point of Interconnection
- AC Disconnect Pedestal
- AC Combiner Pad
- Proposed Upgraded Overhead Power
- Proposed New Overhead Power
- Proposed Underground Power
- Limit of Disturbance
- Approximate Subdivision Area
- Existing Overhead Power, VCGI
- Existing Transmission
- 150 ft Transmission ROW
- Streams, VCGI
- Deer Wintering Areas, VCGI
- Primary Agricultural Soils, VCGI
- Approximate Property Lines, VCGI
- 50 ft Property Setback
- 5 ft Elevation Contours, VCGI



- Notes:
1. Array sizing for 500 kWAC using 33 ft rows.
 2. The approximate solar array footprint is 2.7 acres.
 3. The total Limit of Disturbance is 9.6 acres.
 4. Aspects of this plan are approximate and from aerial imagery.
 5. The design shown is for the purposes of permitting.
 6. Publicly available data are provided by the Vermont Center for Geographic Information (VCGI).

Prepared on: 6/24/21 RD

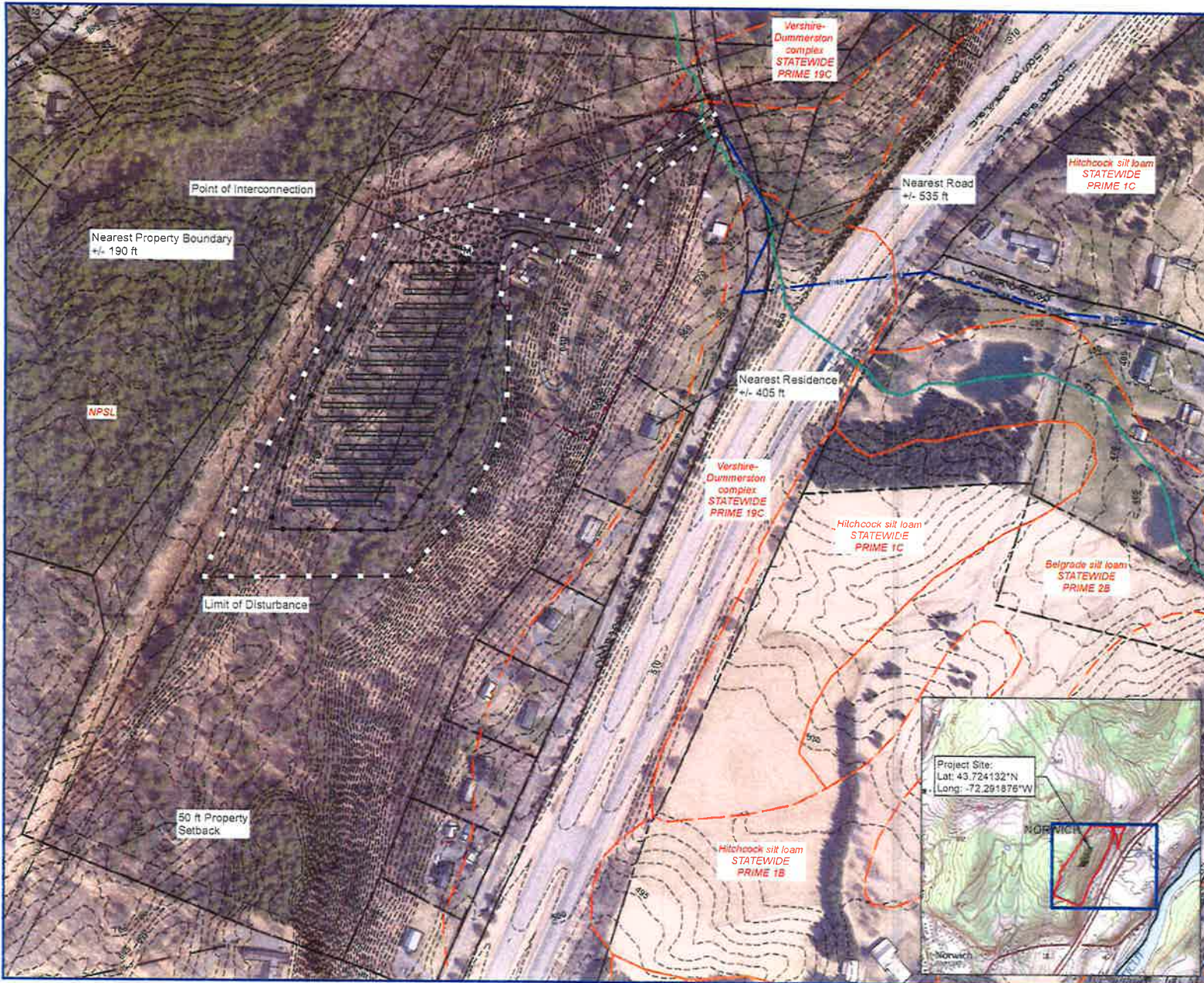


Exhibit C

Exhibit NUL Reply Brief-2

From: Troy McBride <mcbride@norwichtech.com>
Date: Mon, Aug 23, 2021, 5:50 PM
Subject: Norwich Upper Loveland
To: Rod Francis <RFrancis@norwich.vt.us>
Cc: Martha Staskus <staskus@norwicksolar.com>, Ryan Darlow <darlow@norwicksolar.com>

Hi Rod,

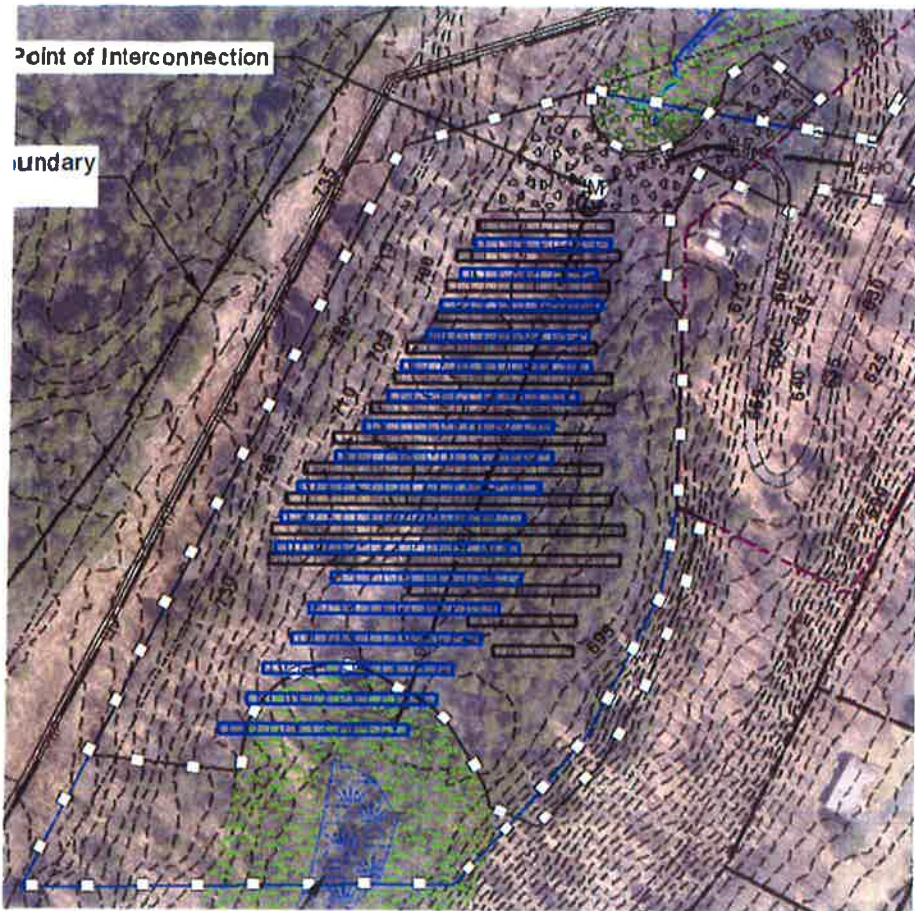
We have the environmental review on Norwich Upper Loveland and are attaching it here for your and the Planning Commission's reference. As we discussed, there is one area that is wet and was determined to be a likely vernal pool. We will observe a 100 foot buffer from that area. There is also a small stream in the north portion of the parcel, we will observe a 50 foot buffer from that area.

The two features don't change our proposed solar project much -- there is a small amount of squishing -- one feature is to the north and one to the south.

We will provide more information in the full filing. We don't see any impact on the visual analysis -- but are confirming the visual analysis as part of the full application. You should see the full application in the next week or so.



Above is the environmental map from Arrowood Environmental and below is a sketch showing the proposed "squishing" of the solar array (black) vs presented at the Planning Commission (blue).



Please send any questions or concerns our way.

Best,
Troy



Troy McBride
 | Norwich Solar Technologies
 | cell: 802-738-8059
 | email: mcbride@norwichsolar.com
 | site: norwichsolar.com
 | address: 15 Railroad Row, WRJ, VT 05001



----- Forwarded message -----

From: **Rod Francis** <norwichvtplanner@gmail.com>

Date: Tue, Aug 24, 2021 at 1:07 PM

Subject: Re: Letter for Upper Loveland

To: Troy McBride <mcbride@norwichtech.com>, Rod Francis <RFrancis@norwich.vt.us>

Cc: Martha Staskus <staskus@norwicksolar.com>

Hi Troy,

Yes. The letter is circulating for signatures.

One quick question. The version of the letter you provided includes a space for TRORC to sign. Have you sent them an identical letter? Do you need us to coordinate with them for obtaining signatures?

Thanks,

Rod

On 8/24/2021 9:00 AM, Troy McBride wrote:

> Hi Rod,

>

> Could i pick up the preferred siting letter at the town office at your
> convenience? This week would be great as we are filing before the
> change in rates coming next week.

>
> Thank you,
> Troy

--
Rod Francis
Director, Planning & Zoning
Town of Norwich, VT

----- Forwarded message -----

From: **Rod Francis** <RFrancis@norwich.vt.us>
Date: Fri, Aug 27, 2021 at 11:47 AM
Subject: RE: FW: FW: Norwich Upper Loveland
To: Troy McBride <mcbride@norwichtech.com>

Hi Troy,
I think it was just a quick confirmation note.

We are all set,

Thanks,
Rod

Planning & Zoning
Town of Norwich, VT

----- Original message -----

From: Troy McBride <mcbride@norwichtech.com>
Date: 8/27/21 08:43 (GMT-05:00)
To: Rod Francis <RFrancis@norwich.vt.us>
Subject: Re: FW: FW: Norwich Upper Loveland

Hi Rod,

I don't see any text on this forward? Was there information on this email that maybe got truncated?



Troy McBride
| Norwich Solar Technologies
| cell: [802-738-8059](tel:802-738-8059)
| email: mcbride@norwichtsolar.com
| site: norwichtsolar.com
| address: 15 Railroad Row, WRJ, VT 05001



On Thu, Aug 26, 2021 at 6:10 PM Rod Francis <RFrancis@norwich.vt.us> wrote:

Planning & Zoning
Town of Norwich, VT

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Norwich Upper Loveland Solar LLC)
 for a certificate of public good pursuant to 30)
 V.S.A. §§ 248 and 8010, authorizing installation) 21-___-NMP
 and operation of a 500 kW (AC) photovoltaic)
 group net-metering system in Norwich, Vermont)

**LIST OF ADJOINING LANDOWNERS AND
STATEMENT OF COMPLIANCE WITH COMMISSION RULE 5.107(E)**

On behalf of Norwich Upper Loveland Solar LLC (the “Applicant”), I certify that the following are entitled to receive a copy of the petition filing in this matter under Rule 5.107(E), and that the Applicant will mail a complete copy of the Application materials within two business days of the Commission deeming complete:

Norwich Selectboard
 300 Main Street
 Norwich, VT 05055

Terry Melendy
 95 Upper Loveland
 Norwich, VT 05055

Norwich Planning Commission
 300 Main Street
 Norwich, VT 05055

Lee and Janice Winslow
 80 Wiley Hill
 Norwich, VT 05055

Two Rivers Ottauquechee Regional
 Planning
 128 King Farm Road
 Woodstock, VT 05091

Gursharan Kaur
 PO Box 1231
 Norwich, VT 05055

38 Acres LLC
 John Lewis
 346 Palm St
 Hollywood, FL, 33019

Jay Kenseth
 133 Upper Loveland Rd
 Norwich, VT 05055

Hugh and Cheryl Rostad
 74 Four Wheel Dr
 Norwich, VT 05055

Samin Kim and Jayoung Joo
 147 Upper Loveland Rd
 Norwich, VT 05055

James and Sarah Cook
 81 Upper Loveland
 Norwich, VT 05055

Daniel Goulet and Jennifer Goulet
 185 Upper Loveland Rd
 Norwich, VT 05055

Aaron and Noelle Lampertie et al
 557 New Boston Rd
 Norwich, VT 05055

John and Claudia Lamperti
224 Upper Loveland Rd
Norwich, VT 05055

Dated at Waterbury, Vermont this 30th day of August, 2021.

NORWICH UPPER LOVELAND SOLAR LLC

BY: 
Martha Staskus
Chief Development Officer
Norwich Solar Technologies
15 Railroad Row, Suite 101
White River Junction, VT 05001
staskus@norwicksolar.com

8324227_1:12602-00075

112 State Street
4th Floor
Montpelier, VT 05620-2701
TEL: 802-828-2358



TTY/TDD (VT: 800-253-0191)
FAX: 802-828-3351
E-mail: puc.clerk@vermont.gov
Internet: <http://puc.vermont.gov>

**State of Vermont
Public Utility Commission**

MEMORANDUM

To: Norwich Upper Loveland Solar LLC
From: Rowan Cornell-Brown, Reviewer **RCB**
Re: 21-3587-NMP – Notice of Complete Petition
Date: December 3, 2021

On August 31, 2021, the Vermont Public Utility Commission (“Commission”) received your petition to construct a 500 kW solar electric generation facility in Norwich, Vermont. The Commission received supplemental filings on September 22, 2021, and December 2, 2021.

Commission staff have determined that your petition is administratively complete as of December 2, 2021. **Your case number is 21-3587-NMP.**

The period for filing public comments, notices of intervention, motions to intervene, and requests for hearing will end on January 3, 2022.

You must provide a copy of your petition and notice of your petition pursuant to PUC Rule 5.107(E) to all entities and persons entitled to receive such copies and notice within 2 business days of this memorandum.

You must provide the case number when you provide copies and notice of the petition, as well as information on how members of the public may participate in this case. Notice must include the following links to the Commission’s website:

- For information on the Commission:
<http://puc.vermont.gov/document/citizen-guide-public-utility-commission>
- For information on public participation through public comment or intervention:
 - <http://puc.vermont.gov/document/public-participation-and-intervention-proceedings-public-utility-commission>
 - <http://puc.vermont.gov/document/net-metering-procedures>, and
- For access to all documents in this case, using the above case number:
<http://epuc.vermont.gov>.

Please understand that acceptance of your petition does not constitute a determination on the merits of the petition. You may be required to provide additional information at a future date if necessary.

PUC Case No. 21-3587-NMP - SERVICE LIST

Parties:

*Greg Boulbol, General Counsel (for Vermont Natural Resources Board)
Vermont Natural Resources Board
nrb.comments@vermont.gov

*John Zaikowski, Acting General Counsel (for Vermont Agency of Natural Resources)
Vermont Agency of Natural Resources
anr.notice@vermont.gov

Kimberly K. Hayden, Esq. (for Norwich Upper Loveland Solar LLC)
Paul Frank + Collins PC
One Church Street 05402
P.O. Box 1307
Burlington, VT 05401
khayden@pfclaw.com

*James Porter, Director of Public Advocacy (for Vermont Department of Public Service)
Vermont Department of Public Service
DPS-PA@vermont.gov

KIMBERLY K. HAYDEN
khayden@pfclaw.com

December 6, 2021

To Those Persons Whose Names Appear
on the Service List Attached Hereto

**Re: Case No. 21-3587-NMP – Notice of Complete Petition for Petition of Norwich Upper
Loveland Solar LLC**

Norwich Upper Loveland Solar LLC (the “Applicant”) is sending this letter to notify you that on August 31, 2021, the Applicant filed an application with the Vermont Public Utility Commission (“Commission”) requesting approval of a 500 kW (AC) photovoltaic group net-metering system in Norwich, Vermont (the “Project”), which has been assigned Case No. 21-3587-NMP.

On December 2, 2021, the Commission commenced the 30-day period for filing public comments, notices of intervention, motions to intervene, and requests for hearing. In accordance with Commission Rule 5.107(E), the Applicant is providing you with this notice and a complete copy of the application materials. The period for filing public comments, notices of intervention, motions to intervene, and requests for hearing will end on January 3, 2022.

For information on the Commission, please refer to: <http://puc.vermont.gov/document/citizen-guide-public-utility-commission>.

For information on public participation through public comment or intervention, please refer to: <http://puc.vermont.gov/document/public-participation-and-intervention-proceedings-public-utility-commission> and <http://puc.vermont.gov/document/net-metering-procedures>.

For access to all documents in this case, using the above case number, please see <http://epuc.vermont.gov>.

Cordially yours,

PAUL FRANK + COLLINS P.C.



Kimberly K. Hayden

KKH:

Enclosures

5.107(E) Service List

Norwich Selectboard
300 Main Street
Norwich, VT 05055

Daniel Goulet and Jennifer Goulet
185 Upper Loveland Rd
Norwich, VT 05055

Norwich Planning Commission
300 Main Street
Norwich, VT 05055

Aaron and Noelle Lampertie et al
557 New Boston Rd
Norwich, VT 05055

Two Rivers Ottauquechee Regional
Planning
128 King Farm Road
Woodstock, VT 05091

John and Claudia Lamperti
224 Upper Loveland Rd
Norwich, VT 05055

38 Acres LLC
John Lewis
346 Palm St
Hollywood, FL, 33019

Hugh and Cheryl Rostad
74 Four Wheel Dr
Norwich, VT 05055

James and Sarah Cook
81 Upper Loveland
Norwich, VT 05055

Terry Melendy
95 Upper Loveland
Norwich, VT 05055

Lee and Janice Winslow
80 Wiley Hill
Norwich, VT 05055

Gursharan Kaur
PO Box 1231
Norwich, VT 05055

Jay Kenseth
133 Upper Loveland Rd
Norwich, VT 05055

Samin Kim and Jayoung Joo
147 Upper Loveland Rd
Norwich, VT 05055

DRAFT Minutes of the Selectboard Meeting of
Wednesday, February 23, 2022, at 6:30 pm

This meeting was conducted via teleconference using ZOOM according to Open Meeting Law requirements. Members present: Roger Arnold, Chair; Mary Layton, Vice Chair; Claudette Brochu; Marcia Calloway; Robert Gere; Rod Francis, Interim Town Manager; Miranda Bergmeier, Assistant to the Town Manager.

Also participating: Bonnie Batchelder, Cheryl Lindberg, Rita Seto, Chris Kaufman, Jaci Allen, Mary Albert, Joy Kenseth, Charlotte Metcalf, Harrison Whitecloud, Chris Rimmer, Brooke Dingleline, Doug Wilberding, Jack Cushman, Aaron Lamperti, Will Smith, Neil Fulton, Pam Smith.

1. Approval of Agenda. Layton **moved** (2nd Gere) to approve the agenda. **Motion approved unanimously.**
2. Public Comment. No public comment was offered.
3. Consent Agenda. Layton **moved** (2nd Gere) to approve the consent agenda. **Motion approved unanimously.**
4. Presentation of Audit Report. Bonnie Batchelder, the Town's contracted auditor, appeared to answer questions about the audit she prepared for the Town. Batchelder said that overall, the town is in a very strong financial position. Batchelder said the last couple of years have been very challenging for the Finance Office, in particular. Batchelder said her strongest recommendation is to make sure the Finance Office has the personnel and training they need. She also recommended that the pending taxpayer refunds need to be cleared up. Batchelder said that having strong financial controls is important, as well. Cheryl Lindberg said that the town doesn't have a sweep account; instead, we have collateralized up to \$12 million. Lindberg asked about wages expenses and about the unassigned fund balance. Batchelder said the town does not have an unreasonable amount of unassigned funds.
5. Warrant & Recording Fee Waiver for Woody Adams Conservation Forest & Easement. Arnold **moved** (2nd Layton) to approve a warrant in the amount of \$131,180.17; with \$130,000 coming from the Conservation Designated Fund and the remainder from the general fund for the Town's contribution to the purchase of the Woody Adams Conservation Forest. **Motion approved unanimously.** Arnold **moved** (2nd Gere) to waive the recording fees for the Woody Adams transaction. **Motion approved (4-yes; Calloway-no).**
6. Tigertown Culverts Construction Inspection Services & Contractor Bid and VT132 Contractor Bid Approvals. Rita Seto from TRORC gave background information on the Tigertown culvert project and Rte. 132 project. Seto summarized the process and proposals. Chris Kaufman, DPW Director, offered further details about the projects. Layton **moved** (2nd Brochu) to authorize the Town Manager to sign the DuBois and King contract to conduct Contract Inspection Services for \$79,204. **Motion approved unanimously.** Layton **moved** (2nd Gere) to authorize the Town Manager sign the Notice of Award to Kirk Fenoff & Son Excavating, LLC for construction services for \$414,176.10. **Motion approved unanimously.** Layton **moved** (2nd Brochu) to authorize the Town Manager sign the Notice of Award to Kirk Fenoff & Son Excavating, LLC for construction services \$216,583.74. **Motion approved unanimously.**

7. Review of Preferred Siting for Solar Projects in Norwich. Arnold introduced the topic and summarized the issues at hand. Francis then shared his screen to present a series of slides explaining the town's preferred site policy and review process. Jaci Allen said the vast majority of the land in town is zoned as rural residential. Brochu said the presentations on the Loveland Project before the Planning Commission and Selectboard were very clear about the fact that there will be no undue visual impact of this project. Mary Albert said she found the process of reviewing this project to be very clear and thorough. Joy Kenseth said she is an abutter to the project; she had questions about the site and is very concerned about the possible impact to her property. Charlotte Metcalf expressed concern about cutting down trees. Chris Rimmer, a member of the Conservation Commission, recommended a thorough study of the ecological impact of solar installations such as the Loveland project. Harrison Whitecloud agreed that it is very important to move forward with solar power. Brooke Dingleline, an attorney from Barre, said she is very concerned about the town's process of review. Calloway proposed a motion for the SB to set a future agenda item to more fully discuss the issue of solar siting. No one seconded the motion and it therefore failed. Francis said this project is before the Vermont Public Utilities Commission (PUC) and people can access the PUC website to gather information and become involved. Francis said he can help people access the PUC website if they need help.

8. Presentation from Article 36 Task Force. Rob Gere, as SB liaison to the Article 36 Task Force (TF), introduced the topic and thanked the TF for their work. Jack Cushman talked about the necessity of rapidly reducing the use of greenhouse gas usage. Aaron Lamperti shared his screen and summarized some of the data gathered by the TF. Also, the TF came up with 6 recommendations, listed in the TF's report, which is included in the SB meeting packet. SB members discussed the report and possible actions to address energy usage issues. Will Smith suggested the SB reach out to other towns that have successfully eliminated fossil fuel use. Neil Fulton talked about some options for electric vehicles for the town. Pam Smith said that, since Article 36 was passed, the town has purchased fossil fuel vehicles. She also suggested the town will need to own more solar to produce the electricity we'll need when we switch to using more electricity. SB members thanked the TF for their work.

9. Rule Requiring Wearing Masks in Indoor Public Spaces. Layton said the case rate hasn't come down quite enough yet to suspend the mask rule. Layton **moved** (2nd Brochu) to extend the Rule Requiring Wearing Face Coverings Indoors in Public Spaces for an additional 30 days through March 25, 2022. **Motion approved (4-yes; Calloway- abstain).**

10. Future Agenda Items. SB members discussed a variety of possible future agenda items, including:

ARPA

Childcare issues

Article 36 Task Force

Dog Policies

Working collaboratively with the Town Mgr. to move forward

Timeline for agenda setting with town staff

Discussions about how staff can support the SB

Relationships with town's committees, the SB, and town staff
Digitization and website improvement
Land Management Council discussion
Tracy Hall phone system

SB members agreed to hold the 2022 reorganization meeting the day after Town Meeting; March 2, 2022 at 5:30 pm via Zoom.

11. Adjourn. Brochu **moved** (2nd Layton) to adjourn. **Motion approved unanimously.**

Meeting adjourned at 10:15 pm.

By Miranda Bergmeier

Approved by the Selectboard on _____, 2022

Roger Arnold, Selectboard Chair

Next Meeting – March 2, 2022 – Meeting at 6:30

PLEASE NOTE: CATV POSTS RECORDINGS OF ALL REGULAR MEETINGS OF THE NORWICH SELECTBOARD

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-3587-NMP

Petition of Norwich Upper Loveland Solar, LLC. for a certificate of public good, pursuant to 30 V.S.A. §§ 248 and 8010, authorizing the installation and operation of a 500 kW (AC) group net-metering solar electric generation system in Norwich, Vermont	
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Order entered: 08/19/2022

**ORDER RE: MOTION TO DISMISS, REQUEST FOR SANCTIONS, AND MOTION TO STRIKE,
AND NOTICE OF SCHEDULING CONFERENCE**

This case involves an application filed with the Vermont Public Utility Commission (“Commission”) by Norwich Upper Loveland Solar, LLC (“Applicant”) for a certificate of public good (“CPG”) to construct and operate a 500 kW solar electric generation project in Norwich, Vermont (the proposed “Project”). In this order, I deny the motion to dismiss and the motion for sanctions filed on June 1, 2022, by Dan and Jenn Goulet, Samin Kim and Jayoung Joo, Stephen Gorman, John and Heather Benson, Laurence and Shelley Ufford, and Joy Kenseth (the “Intervenor Landowners”), as well as the motion to strike included in the Intervenor Landowners’ reply brief. I also provide notice to the parties that the scheduling conference in this case will be held on September 1, 2022, at 2:00 p.m.

I. PROCEDURAL HISTORY

On June 1, 2022, Attorney L. Brooke Dingleline filed a limited notice of appearance on behalf of the Intervenor Landowners for the purpose of filing and arguing a concurrently filed motion seeking to dismiss the application and requesting sanctions.

On June 3, 2022, the Applicant filed a response to Intervenor Landowners’ motion to dismiss and request for sanctions. The Applicant opposes the motion and request for sanctions.

On June 15, 2022, the Vermont Department of Public Service (“Department”) filed a response to the Intervenor Landowners’ motion to dismiss. The Department recommends denying the motion to dismiss and argues that the dismissal of the application is not warranted without additional factual development.

On June 20, 2022, the Intervenor Landowners filed a reply to the Applicant's June 3, 2022, response to Intervenor Landowners' motion to dismiss and request for sanctions.

II. DISCUSSION

A. Motion to Dismiss

The Intervenor Landowners argue that the Commission should dismiss the Applicant's petition because the Applicant misrepresented material facts regarding the Project footprint when the Applicant obtained the joint letter of support that it relies on for preferred site status ("Preferred Site Letter").¹ According to the Intervenor Landowners, the Applicant misrepresented the location and visibility of its proposed project by presenting a different site plan for the Project to the adjoining landowners, the municipal selectboard and planning commission, the regional planning commission, and the Commission.

The Applicant responds that no information was knowingly withheld or misstated to intentionally mislead any recipient of the Project plans. The Applicant states that the course of project development and review leading up to the filing of the Project application on August 31, 2021, was "entirely consistent with the iterative process for development and review" of solar projects, and that the site plan changes were made to avoid adverse impacts to a vernal pool complex based on the recommendations of the Vermont Agency of Natural Resources and the Applicant's environmental consultant.² The Applicant explains that it sent a copy of the application materials ultimately deemed complete by the Commission in this case to the adjoining landowners, the Town of Norwich, and the regional planning commission. The Applicant also notes that the Town of Norwich was later asked to revisit and rescind its support for the Project based on the changes to the site plan described in the Intervenor Landowners' motion, but the selectboard voted not to revisit the Preferred Site Letter.

The Intervenor Landowners' motion to dismiss is based on Commission Rule 5.107(B)(4). Commission Rule 5.107(B)(4) states that:

If, within 180 days of the date of the advance submission, the applicant has not filed a complete application for the project that fully complies with the filing

¹ Pursuant to Commission Rules 5.103 and 5.104, a solar net-metering system greater than 150 kW may only be constructed on a preferred site.

² Petitioner's Response to Landowners' Motion to Dismiss and Motion for Sanctions, filed 6/6/22, at 1-2.

requirements of this Rule, the submission will be treated as withdrawn without further action required by the Commission.

The advance submission for the Project was filed on July 14, 2021, and the Commission determined that the application was administratively complete on December 3, 2021, which is a period of 142 days and less than the 180-day period set by Commission Rule 5.107(B)(4). Commission Rule 5.107(D) explains that “[a] determination that an application is administratively complete enough to process is not a legal determination regarding the sufficiency of the information included on the application.”³

Although the Intervenor Landowners challenge its validity, the Preferred Site Letter is sufficient to satisfy the Commission’s completeness review requirements. It is signed by members of the Selectboard and Planning Commission for the Town of Norwich, as well as a representative of the Two Rivers-Ottauquechee Regional Commission. Any further validity challenge requires an evaluation of evidence, which is beyond the scope of a completeness review. The Intervenor Landowners have not shown that the Commission’s determination that the application was administratively complete enough to process was incorrect.⁴ Because the period between the date of the advance submission and the Commission’s determination that the application filed was administratively complete was less than 180 days, the requirements for dismissal specified in Commission Rule 5.107(B)(4) are not met, and the Intervenor Landowners’ motion to dismiss is denied.

B. Request for Sanctions

Intervenor Landowners also argue that the Commission should impose sanctions on the Applicant because the Project’s Preferred Site Letter was acquired through false and misleading information.

In light of my conclusion above, I also conclude that sanctions are not warranted. The Intervenor Landowners are correct that the “presentation of false or misleading information and the failure to apprise the Commission of material information in a timely manner are

³ Commission Rule 5.107(E).

⁴ See Exh. NUL MS-5.

sanctionable offenses under 30 V.S.A. § 30.”⁵ However, the evidentiary record in this case has not been developed, and any conclusion regarding the facts surrounding the Applicant’s joint letter of support would be premature. Design details frequently change over the course of the development process for a variety of valid reasons, such as to minimize natural resource impacts as the Applicant represents here.⁶ If the Intervenor Landowners wish to continue to challenge the validity of the Preferred Site Letter, they may do so through discovery and at the evidentiary hearing. The Intervenor Landowners’ request for sanctions on the Applicant is denied.

C. Motion to Strike

The Intervenor Landowners also move in their reply to strike the Applicant’s opposition memorandum as an *ad hominem* attack on their attorney for attributing arguments in the motion to dismiss as advanced by Attorney Dingedine. While Intervenor Landowners are correct that the motion and arguments should be credited to the Intervenor Landowners, not their counsel, this did not affect my review of the briefing, and no refile of the document is necessary. In future filings and proceedings, I ask that all parties and representatives remain focused on the facts and evidence and avoid unnecessarily inflammatory statements or arguments.

III. NOTICE OF SCHEDULING CONFERENCE

I will hold a scheduling conference in this case on **Thursday, September 1, 2022, at 2:00 p.m.** The scheduling conference will be held online via GoToMeeting videoconference.⁷ Participants and members of the public may access the scheduling conference online at <https://meet.goto.com/566591581>, or call in by telephone using the following information: phone number: +1 (646) 749-3129; access code: 566-591-581. Participants may wish to download the GoToMeeting software application in advance of the hearing at <https://meet.goto.com/install>. Guidance on how to join the meeting and system requirements may be found at <https://www.gotomeeting.com/online-meeting-support>.

⁵ Intervenor Landowner Br. at 33-34 (quoting *Investigation Pursuant to 30 V.S.A. §§ 30 & 209 into Alleged Violation of Newbury GLC Solar, LLC’s Certificate of Pub. Good Issued in Case #17-4721-NMP*, Case No. 19-0734-INV, Order of 8/1/19 at 5).

⁶ Applicant Response at 2.

⁷ Pursuant to 30 V.S.A. §§ 20 and 21, the Applicant will be responsible for court reporter costs incurred by the Commission as a result of this hearing. Invoices for these costs will be mailed to the attorney of record or the Applicant’s official representative.

I ask that the parties discuss and submit a joint proposed schedule, if possible, or submit separate proposals by Tuesday, **August 30, 2022**.

SO ORDERED.

Dated at Montpelier, Vermont, this 19th day of August, 2022.



Micah Howe
Hearing Officer

OFFICE OF THE CLERK

Filed: August 19, 2022

Attest: Parola Linahan
Deputy Clerk of the Commission

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

PUC Case No. 21-3587-NMP - SERVICE LIST

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STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Norwich Upper Loveland Solar LLC)
for a certificate of public good pursuant to 30)
V.S.A. §§ 248 and 8010, authorizing installation) 21-___-NMP
and operation of a 500 kW (AC) photovoltaic)
group net-metering system in Norwich, Vermont)

Order entered: / /2023

**PETITIONER’S PROPOSED FINDINGS & ORDER GRANTING NET-METERING
CERTIFICATE OF PUBLIC GOOD**

I. INTRODUCTION

This case involves an application filed by Norwich Upper Loveland Solar LLC (“Petitioner” or the “Applicant”) with the Vermont Public Utility Commission (“Commission” or “PUC”) for a certificate of public good (“CPG”), pursuant to 30 V.S.A. §§ 248 and 8010, to install and operate a 500 kW solar net-metering system at 201 Upper Loveland Road in Norwich, Vermont (the proposed “Project”).

II. PROCEDURAL HISTORY

On August 31, 2021, the Applicant filed an application for a CPG for the Project with the Commission. The application was supplemented on September 22, 2021.

On December 3, 2021, Commission deemed the application complete.

On January 3, 2022, the Vermont Department of Public Service (the “Department” or “DPS”) filed comments. The Department stated that it did not identify any significant concerns with the Project under the § 248(b) criteria within its review.

On January 3, 2022, the Vermont Agency of Natural Resources (the “Agency” or “ANR”) filed comments regarding streams, wetlands, necessary wildlife habitat, and vernal pools. With respect to steams, ANR commented in relevant part:

The Exhibit NUL MS-2 Site Plan indicates a stream within a wetland north of the Project. Another stream segment is indicated at the entry of the Project access road. The application proposes to use an existing road as the Project access route. The Agency has no concerns if, over the life of the Project, no Project activities would be conducted outside the existing road footprint. Under Criterion 1E, the Agency reviews projects for conformance with the Agency’s Guidance for Agency Act 250 and Section 248

Comments Regarding Riparian Buffers (“Guidance”). In accordance with the Guidance, the stream riparian zone at this site is measured 50-feet from top-of-bank or, where the wetland is contiguous to the stream, from the upland edge of the delineated wetland, and continues to the water’s edge. To prevent accidental encroachment, the Agency requires construction flagging to be installed outside the riparian zone boundaries where the Project limits are proximate. ...

The CPG conditions below are required to ensure compliance with Criteria 1E:

The CPG Holder shall maintain undisturbed, naturally vegetated riparian zones except for activities within the existing footprint of the access road depicted on Exhibit NUL MS-2 Site Plan. The riparian zone shall be measured inland, perpendicular to and horizontally 50-feet from the streams top-of-bank or, where a wetland is contiguous to the stream, from the upland edge of the delineated wetland, and extends to the water’s edge at base flow conditions. The term “undisturbed” means no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing and mowing.

Where the Project is within 100 feet of any riparian zone boundary, prior to site preparation and construction, maintenance involving earth disturbance, and decommissioning, the CPG Holder shall install a continuous line of visible flagging along the Project Limits identifying the riparian zone as a protected area.

ANR 1/3/22 comments at 1-2.

With respect to wetlands, ANR commented in relevant part:

A Class II wetland buffer abuts the north Project limits. The south Project limits abut a vernal pool boundary. Under Criterion 1G, the Agency’s Wetlands Program reviews projects for conformance with the Vermont Wetland Rules (“VWR”). Under the VWR Section 4.6, vernal pools are presumptive Class II wetlands. Any disturbance within wetlands and buffers zones must comply with the Allowed Use standards or an authorized Vermont Wetland Permit. The Program agrees with the Applicant’s wetlands classification and delineation. The Wetlands Program confirmed that the application site plan accurately indicates the jurisdictional Class II wetlands. The Project impacts remain outside the 50-foot wetlands buffer zone, therefore the Project does not require a Vermont Wetland Permit.

The Agency requests that the Party's Proposed CPG condition 12 protecting Class II wetlands not be included in the final CPG.

The CPG conditions requested under Criterion 1E requiring an undisturbed riparian zone provide the necessary protections for the north Class II wetland and buffer. The CPG conditions requested under Criterion 8A requiring an undisturbed area within 100 feet of the vernal pool provide the necessary protections for the south Class II wetland and buffer.

ANR 1/3/22 comments at 2-3.

With respect to necessary wildlife habitat, ANR's comments stated in relevant part:

The Project has the potential to cause an undue adverse effect on necessary wildlife habitat for pool-breeding amphibians under Criterion 8(A), if the CPG conditions requested below are not implemented. The south Project limits about a 100-foot area surrounding a vernal breeding pool that is mapped on the Agency's Natural Resource Atlas. The Project lies within the 650-foot amphibian habitat zone, where migration and hibernation occur and where the Applicant proposes disturbance from tree clearing, an access drive, electric lines, solar infrastructure, and on-going vegetation management. "Necessary wildlife habitat means concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life including breeding and migratory periods. Because the natural resource assessment was conducted in June and July outside the species breeding period the type of species and abundance of breeding cannot be determined. ...

To ensure the proposed Project would not result in an undue adverse effect on the natural environment under Section 248(b)(5) and would comply with Criterion 8A, the following CPG conditions are necessary:

The CPG Holder shall leave the vernal pool and pool envelop undisturbed. The pool envelop boundary is measured 100 feet perpendicularly around the perimeter of the vernal pool's high-water mark.

Where the Project is within 100 feet of the pool envelop boundary, prior to site preparation and construction, maintenance involving earth disturbance, and decommissioning, the CPG Holder shall install a continuous line of visible flagging along the Project Limits identifying the protected vernal pool and envelop.

Site preparation, construction, vegetation management, maintenance activities that may cause earth disturbance, and decommissioning shall only

occur between May 15th and August 31st or between October 16th and March 14th.

Erosion prevention and sediment control measures required by the Vermont Stormwater Rules shall be installed outside the pool envelop, designed to allow for amphibian passage, and designed to prevent sediment transport into the pool envelop. CPG Holder shall remove erosion prevention and sediment control measures within 30-days following final stabilization.

Where fencing is installed for the Project, it shall be designed with a minimum 6"x6" mesh extending from the ground level up to 3 feet or higher.

ANR 1/3/22 comments at 3-5.

On January 10, 2022, the Hearing Officer issued an order granting party status to adjoining landowners Dan and Jenn Goulet, and Samin Kim and Jayoung Joo. The Hearing Officer requested more information with respect to intervention filings submitted by landowners Stephen Gorman, John and Heather Benson, Laurence and Shelley Ufford, and Adam Lamperti.

On February 25, 2022, the Applicant filed a notice that James and Kathleen McTaggart, who own a property that adjoins the host property, did not receive the 45-day advance notice of the Project or the notice of the complete petition. The application materials were hand-delivered to the McTaggarts on February 24, 2022.

On March 17, 2022, the Hearing Officer issued an order granting late interventions filed by adjoining landowners Joy Kenseth and Aaron Lamperti.

Also on March 17, 2022, the Hearing Officer granted in part and denied in part interventions submitted by landowners Stephen Gorman, John and Heather Benson, and Laurence and Shelley Ufford. The Hearing Officer found that the interventions had not explained why natural resource interests stated would not be adequately represented by other parties such as the ANR, although the Uffords' motion to intervene on issues related to the potential impacts to their pond was granted. The Hearing Officer also ruled that the economic concerns of the Bensons as ratepayers were general in nature and did not provide a basis for intervention or for rescinding the Commission's waiver of the economic benefit criterion. The Hearing Officer conditioned the landowners' participation in the proceedings as follows:

To ensure that the proceeding is not unduly delayed and that the interests of the parties are not prejudiced, I will require intervening parties with similar or shared interests to join together for presenting evidence and submitting briefing pursuant to Commission Rule 2.209(C). Based on the overlapping issues identified in the intervention and hearing requests, the following intervening parties should plan on joint participation in this proceeding:

- Opposing Landowners: Stephen Gorman, John and Heather Benson, Joy Kenseth, Dan and Jenn Goulet; and
- Supporting Landowners: John Lewis and Aaron Lamperti.

If an evidentiary hearing is held, I will also require the joint cross-examination of witnesses.

3/17/22 Order at 8-9.

On June 1, 2022, Attorney L. Brooke Dingleline filed a limited notice of appearance on behalf of intervenor parties the Goulets, Samin Kim, Jayoung Joo, Stephen Gorman, the Bensons, the Uffords, and Joy Kenseth ("Opposing Landowners") for the purpose of filing and arguing a concurrently filed a motion seeking to dismiss the application and requesting sanctions.

On June 2, 2022, the Hearing Officer granted the McTaggarts' intervention.

Also on June 2, 2022, the Hearing Officer issued a second procedural order expanding the scope of landowners Benson and Gorman's interventions to include natural resource interests.

On August 19, 2022, the Hearing Officer issued an order denying the Opposing Landowners' motion to dismiss and the motion for sanctions.

A scheduling conference was held on September 20, 2022.

On October 25, 2022, the Hearing Officer conducted a site visit.

On November 17, 2022, the Opposing Landowners filed motions to enlarge the schedule and to require Petitioner to file an amended site plan. The motions included an affidavit from Mr. Goulet describing a discussion with the Applicant's employees and an employee of a logging company regarding the logistics of clearing the proposed Project site.

On November 21, 2022, the Hearing Officer denied the Opposing Landowners' motions.

On December 1, 2022, Joy Kenseth, Jenn Goulet, and Stephen Gorman filed testimony on behalf of Opposing Landowners.

On December 15, 2022, the Petitioner filed a motion to strike certain portions of Opposing Landowners' prefiled evidence.

On January 19, 2023, the Petitioner filed rebuttal testimony and exhibits.

On February 9, 2023, the Hearing Officer issued an order affirming in part and denying in part the Petitioner's motion to strike portions of the Opposing Landowners' prefiled evidence.

On March 16, 2023, Joy Kenseth, Jenn Goulet and Stephen filed rebuttal testimony on behalf of Opposing Landowners.

On April 28, 2023, the Hearing Officer conducted an evidentiary hearing, at which time he admitted into evidence the stipulated list of evidence consisting of all of the parties' prefiled testimonies and exhibits not otherwise previously stricken, together with comments from the Department and ANR.

III. PUBLIC COMMENTS

A number of public comments regarding the proposed Project were submitted to the Commission. While the Commission's decision must be based upon the evidence presented by formal parties during the evidentiary hearings, its decision is also informed by public comments raising new issues or offering perspectives that the Commission may consider. *Petitions of Vermont Electric Power Company, Inc. (VELCO) and Green Mountain Power Corporation (GMP) for a certificate of public good, pursuant to 30V.S.A. Section 248, authorizing VELCO to construct the so-called Northwest Vermont Reliability Project*, Order of 1/28/2005 at 202.

Of the nine public comments submitted by members of the public, six strongly supported the Project, including a nearby landowner, and only one non-Opposing Landowner stated opposition. . The comments supporting the Project noted that it is well sited and is important to address the Town's renewable energy goals. Below are excerpts of some of the supporting public comments posted in ePUC which clearly reflect that Opposing Landowners perspectives are not shared by all of the public, including another nearby Upper Loveland Road resident:

"As a renter at 55 Upper Loveland Rd, I'm very close to the proposed project and write support. I walk the site regularly. It is already disturbed, with a transmission line, a cell tower and access road, roads and houses on all sides, and Interstate-91

about 600 feet away - yet the project will not be visible. The project responds directly to the Town Plan objective "to increase the amount of renewable energy being produced in Norwich" without raising forest or wildlife concerns."

"I am in support of this project. While some forest will be cleared it is in an area with access roads, power lines and a cell tower, so it has minimal environmental limitations. It fits with the town plan which calls for more renewable energy. It will add to resilience, clean energy, and support the transition from fossil fuel to clean energy for home heating and transportation."

"I am writing to voice my support for the Loveland Road solar project. Local solar will help us meet our climate goals, as a town and state. While any development of a forested parcel has impacts, the urgent need to reduce carbon outweighs these considerations. In fact, recreation and conservation goals can be compatible with solar development."

**IV. CONDITIONAL WAIVER OF REVIEW UNDER CERTAIN CRITERIA FOR
NET-METERING PROJECTS**

Pursuant to 30 V.S.A. § 8010 and Commission Rule 5.111, the Commission has conditionally waived review of the following criteria, and no party presented any testimony that warrants rescinding any part of that waiver in this proceeding:

- 30 V.S.A. § 248(b)(2) (need);
- 30 V.S.A. § 248(b)(4) (economic benefit);
- 30 V.S.A. § 248(b)(6) (integrated plan);
- 30 V.S.A. § 248(b)(7) (electric energy plan);
- 30 V.S.A. § 248(b)(9) (waste-to-energy facilities); and
- 30 V.S.A. § 248(b)(10) (transmission facilities).

Therefore, only the criteria applicable to the system under Rule 5.111 are addressed in this Order.

V. FINDINGS & CONCLUSION OF LAW

Description of the Project

1. The Project is a 500 kW AC ground-mounted solar electric generation facility proposed to be sited at 201 Upper Loveland Road, Norwich, Vermont. The array is set back approximately 455± feet from the traveled way of Upper Loveland Road, the nearest public roadway. Staskus pf. at 4; exh. NUL MS-2 (rev. 1-17-23).

2. The site is a combination of woods and 150-foot-wide cleared transmission corridor land. The host parcel is subject to an Act 250 Land Use permit number 3W0917 for a cellular communications tower. Staskus pf. at 5.

3. Access to the Project will be off Upper Loveland Road via the existing cell tower access drive. Staskus pf. at 4-5.

4. The electric power will travel between the rows enclosed in code compliant conduit, below grade, connecting the panel rows, string inverters, AC combiner panel and AC disconnect, and interconnecting to three new pole-mounted transformers owned by Green Mountain Power Corporation ("GMP"), typical of transformers used throughout GMP's distribution system. A GMP line extension will connect the new pole-mounted transformers to GMP's existing distribution circuit. Staskus pf. at 6.

5. The solar array is typical of an installation of its type and size, comprised of photovoltaic panels on fixed-tilt ground mounted racks, anchored to the ground using purpose-built posts. Staskus pf. at 5.

6. The Project will include the following principal Project components:

- multiple rows of solar panels mounted on a racking system anchored to the ground¹;
- ten (10) string inverters each having a capacity of 50 kW (AC), for an aggregate nameplate capacity of 500 kW (AC);

¹ The exact number and wattage will be determined at time of procurement.

- electrical lines enclosed in code compliant conduit, connecting the panel rows, string inverters, AC combiner panel and AC disconnect pedestal;
- three (3) 167 kVA pole-mounted transformers on a new GMP distribution pole;
- a GMP line extension to connect to the existing GMP distribution system;
- access via an existing gravel drive and a discontinued town road off the Upper Loveland Road; and
- a wildlife fence 8-foot high, with mesh size no smaller than 6 inches by 6 inches extending from the ground level up to three feet or higher and secured by a locked gate. In the event a fence is not required, energized equipment will be rated for outdoor use, securely shielded by locked enclosure covers and otherwise compliant with NEC code Guarding of Live Parts.”

Staskus pf. at 8; exh. NUL MS-2.

7. Installation activities and related deliveries will occur between 7:00 AM and 7:00 PM Monday through Friday, and on Saturdays from 8:00 AM to 5:00 PM, if required to meet the Project schedule. No construction activities or deliveries will occur on Sundays or on state or federal holidays. Staskus pf. at 10.

Applicable Rate Adjustors

8. The Applicant has elected to transfer the Project's renewable energy credits (“RECs”) to GMP. Application at 4.

9. The Norwich Selectboard and Planning Commission and the Two Rivers-Ottawaquechee Regional Commission (“TRORC”) have each designated the Project location as a Preferred Site under PUC Rule 5.103. Staskus pf. at 10; exh. NUL MS-5.

10. In February, 2022, more than six months after the petition in this proceeding was admitted and following requests by the public, including some of the Opposing Landowners, to rescind its preferred siting designation, the Town Selectboard determined not to rescind the Preferred Site designation. Exh. NUL MS-13.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

11. The Project will not unduly interfere with the orderly development of the region. This finding is supported by findings 12 through 48, below.

12. 30 V.S.A. § 248(b)(1) requires that a project not “unduly interfere with the orderly development of the region, with due consideration to the recommendations of the town and regional planning commissions, town selectboards, and the land conservation measures contained in the plan of any affected municipality.” 30 V.S.A. § 248.

13. Section 248(b)(1)(C) also provides that, with respect to an in-state electric generation facility, the Commission shall give substantial deference to the land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance. 30 V.S.A. § 248(b)(1)(C). While the TRORC has adopted an Enhanced Energy Plan, the Town of Norwich has not. Exh. NUL MS-6 at 9.

14. Section 248(b)(1) “relates to the orderly development of the region, not to a particular municipality within the region.” *In re Petition of Rutland Renewable Energy, LLC for Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 Vt. 50, ¶ 9. There was no evidence offered to suggest that the Project will unduly interfere with the orderly development of the region. Staskus reb. pf. at 7.

15. On a regional basis, the Project's impacts are localized and minimal. The array has a low profile in the landscape and the character and components of the array and associated equipment are visually consistent with similar solar projects seen throughout Vermont. Exh. NUL MS-6 at 9.

16. When evaluated on the local and regional level, the scale of the Project can be considered appropriate. Exh. PSD-LT-2 at 12.

17. From the perspective of land use, the scale of the Project is appropriate for the surroundings. The Project is collocated next to other large utility infrastructure, including a commercial cell tower and an electric utility transmission line in a 150-foot cleared utility corridor.

The Project area, ±8.2 acres, is also comparable to nearby fields and clearings, and will be sited above/higher in elevation than the nearby travel corridors. Exh. PSD-LT-2 at 12.

18. The Project will further the goals and policies of both the Norwich Town Plan and the TRORC Regional Plan to encourage the development of renewable energy sources. Exh. NUL MS-6 at 7-9 and Appendices A & B.

19. The TRORC Plan promotes the region's achievement of the 2016 Comprehensive Energy Plan renewable energy targets to "[m]eet 25% of remaining energy need from renewables by 2025, 40% by 2035 and 90% by 2050" and to "[m]eet end use sector goal of 67% renewable electric by 2025." Staskus reb. pf. at 7; exh. NUL MS-6, Appendix B at 220.

20. The TRORC Plan states that "[t]o reach the state's renewable energy generation targets, more renewable generation will need to be developed and we believe most of this will be in the form of solar" and points out that that the amount of renewable energy generation in the TRORC region must increase from 2015 levels by 163 MW by 2050. Staskus reb. pf. at 7; exh. NUL MS-6, Appendix B at 225, 229.

21. The Norwich Town Plan emphasizes the need for the Town to "provide for the development of renewable energy resources, and reduce emissions of greenhouse gases." It also provides that the Town should "[s]hift energy use in Norwich from non-renewable to renewable sources" and "[i]ncrease the amount of renewable energy being produced in Norwich in a manner that is consistent with the goals, objectives and policies of th[e] Town Plan", and "[p]ursue strategies identifies [sic] in the State Energy Plan." Staskus reb. pf. at 7-8; exh. NUL MS-6 at 8, 9 and Appendix A at 21.

22. The Norwich Town Plan Energy Chapter also emphasizes that "[w]e have understood for at least fifty years that human dependence on fossil fuels is not sustainable. Only now are we beginning to grapple with the climate crisis resulting from burning fossil fuels." Staskus reb. pf. at 8; exh. NUL MS-6 at 8 and Appendix A at 22.

23. The Town Energy Plan seeks to achieve the objectives of Vermont's Comprehensive Energy Plan "90 percent renewable by 2050" energy goal. The Town Plan expresses the Town's strong desire to shift away from fossil fuel use to renewable power for consumers in Norwich. Staskus reb. pf. at 8; exh. NUL MS-6 at 8 and Appendix A at 24.

24. Opposing Landowners challenge that the preferred site approval is “invalid” because the array shifted to the east after the preferred site letter was issued by the Town, and because the Project site is located within the zoning district designated by the Town of Norwich as the Ridgeline Protection Overlay District (“RPO”). Kenseth reb. pf. at 9; exh. NN-JK-2 at 19; exh. NN-JK-21.

25. Opposing Landowners point to Section 3.8 of the Town Plan Energy section, which contains the Renewable Energy Project Siting Standards, and states in relevant part:

This plan calls upon the Public Utility Commission to issue Certificates of Public Good for projects between 15 kW and 500 kW based on the *presumption that lands in Norwich meet the so-called ‘preferred site criteria’, except in areas already mapped as Ridgeline Protection Overlay Area, the Shoreline Protection Overlay Area, and the designated village center.*

Kenseth reb. pf. at 10; exh. NUL JK-6 at 28 (emphasis added).

26. In contrast to Section 3.8, Section 3.2.h, which lays out energy policies, provides:

For solar generation projects sized from 15kW to 500kW the *presumption is that all of Norwich meets the Public Utility Commission definition of ‘preferred site’, notwithstanding the existing areas of local concern including the Ridgeline Protection Overlay Area, Shoreline Protection Overlay Area and the historic village district as identified in the Norwich Land Use Regulations.*

Exh. NUL JK-6 at 22 (emphasis added).

27. Opposing Landowners’ testimony asserted that the term “except” in Section 3.8 should be given more weight than the term “notwithstanding” in Section 3.2.h. Based upon the contention that the Project site is within the RPO, Opposing Landowners contend that the Commission should conclude that the Project unduly interferes with orderly development of the region under § 248(b)(1). Kenseth reb. pf. at 6-7.

28. Opposing Landowners’ undue emphasis on Section 3.8 is mis-placed. First, while Town Plan Section 3.8 “calls upon” the PUC to issue a CPG for solar projects between 15 kW and 500 kW, except for sites in the RPO, neither does it express a standard or policy calling upon the PUC to deny a CPG based on a location that is within the RPO. There is no stated prohibition of allowing a solar array in the RPO. *See* Exh. NN-JK-6 at 22, 28.

29. Instead, both Sections 3.8 and Section 3.2.h. speak to whether the Town should presume a solar site is preferred and whether the PUC should be called upon by the Town to approve a solar petition for a site within the RPO. However, it is not necessary for the PUC to rely upon a presumption of preferred siting under the Town Plan in this case, because the Town of Norwich did in fact follow a process to designate the Project site as preferred. Exh. NUL MS-5.

30. Opposing Landowners also argued that the Commission should impose sanctions on the Petitioner asserting the Project's Preferred Site Letter was acquired through false and misleading information. This request was squarely rejected by the Hearing Officer because "[d]esign details frequently change over the course of the development process for a variety of valid reasons, such as to minimize natural resource impacts as the Applicant has represented here." Case No. 21-3587-NMP, 8/19/22 *Order re Motion to Dismiss, Request for Sanctions, and Motion to Strike and Notice of Scheduling Conference* at 4.

31. During the pre-CPG iterative project development process, no information was knowingly withheld or mis-stated by Petitioner to mislead the Town of Norwich, the Two Rivers Ottaquechee Regional Planning Commission, the Opposing Landowners, or the Commission. Staskus 6/3/22 Aff., ¶ 3.

32. On August 4, 2021, ANR notified the Petitioner regarding the 45-day filing that it had identified what appeared to be a vernal pool as part of a wetland located at the southern end of the array. The Petitioner's environmental consultant reviewed the location, and the vernal pool and associated 100 foot buffer were added to the Project mapping. Staskus 6/3/22 Aff., ¶ 4.

33. The course of Project development and review at the local and regional level leading up to the Project petition filing on August 31, 2021 was entirely consistent with the iterative process for development and review of solar projects. As compared to earlier conceptual designs shared with the Town and in the 45-day filing submitted on July 14, 2021, the Project array was shifted east by approximately 175 feet and reduced from the south by approximately 110 feet by the time the full Section 248 Application was completed and submitted to the Commission on August 31, 2021. This movement of the array design was necessary to avoid the recently identified vernal pool complex and its associated 100-foot buffer south of the array. Staskus 6/3/22 Aff., ¶ 5.

34. The Town revisited its decision to designate the Project site as preferred in February 2022, at which time many of the Landowners and Attorney Dingleline made presentations that focused on the iterative shift of the array to the east. Nevertheless, the Town Selectboard chose not to change its preferred site designation. Staskus reb. pf. at 3; exh. NUL MS-13.

35. The Project will not unduly interfere with any land conservation measures contained in the Norwich Town Plan or the TRORC Regional Plan. Exh. NUL MS-6 at 9.

36. The only references to the RPO in the Town Plan Energy Chapter are brief references, with no discussion of the purpose, in Sections 3.2.h and 3.8, and in both cases the context is to address whether a presumption for preferred siting should apply. Again, no such presumption is needed because the Town determined the Project site to be preferred for siting solar. Exh. NUL MS-5.

37. The purpose of the RPO district in the Zoning Regulations also is not clearly articulated as a conservation measure intended to prohibit all development within the RPO. As to purpose, the Zoning Regulations state in relevant part:

(A) Purpose. The purpose of the Ridgeline Protection Overlay District is to protect Norwich's rural character and scenic landscape by ensuring that development is located and designed in a manner that protects the uninterrupted skyline and *minimizes adverse visual impact on designated ridgelines and adjacent slopes as viewed from public roads* (Class I, II, and III town highways, state highways and interstate highways *within the town*).

Exhibit NN-JK-5 at 28 (emphasis). This section of the Zoning Regulations then goes on to describe standards that the Development Review Board undertake in evaluating whether a development proposed for the RPO minimizes visual impacts to ridgelines designated as within the RPO. *Id.* at 28-29.

38. That is exactly what Petitioner has accomplished here. As the array was designed, Petitioner limited the area of clearing on the east side of the site to retain the canopy of existing tall vegetation to minimize views of the array. Notwithstanding that the array shifted to the north and east between the time of initial conception until the petition was submitted, the array remains behind the ridge. Tr. at 74-5, 210-11 (Staskus).

39. The tree clearing from the eastern edge of the array to the east of the array is 35 feet. The difference in the elevation from where the Petitioner will cut trees along the eastern ridge

of the slope and the solar array is approximately 60 to 65 feet. As such, the canopy of the trees downslope that will be retained hides the side of the hill as well as the eastern side of the array so that it will not be visible off site. Tr. at 78-79 (Staskus).

40. Many of the trees along the slope of the hill east of the array that are up to 60' to approximately 90' feet tall. Exh NN-JK-2 at 7 ("Many of the trees in this area and in the upper half of the slope range in height from 60' to approximately 90'"); Tr. at 79 (Staskus).

41. By only cutting the trees down the slope enough so that the canopy remains to cover the ridgeline, Petitioner will minimize visibility of the ridgeline. Tr. at 79-80 (Staskus).

42. The Norwich Zoning Map for the RPO is dated 2008, fifteen years ago, and marked "DRAFT". The map also contains an express disclaimer that it is survey quality only and to be used for planning purposes, but "not as a basis for legal decisions." Staskus reb. pf. at 2; exh. NN-JK-4.

43. The draft map is also a zoning map. Under Section 248, town zoning regulations are preempted. *Petition of Rutland Renewable Energy LLC*, 2016 VT 50, ¶ 36 ("the permitting process pursuant to § 248 preempts municipal zoning requirements altogether").

44. Importantly, the guidance provided by the Town for interpreting the Town Plan is laid out in Section 1.4 of the Plan, and instructs to consider the entire context of the Plan, not individual statements alone:

1.4 Using the Plan

The Norwich Town Plan conveys a vision for thoughtful stewardship of rich cultural and natural resources, a commitment to address the climate crisis and fostering housing development that is appropriate in scale and responsive to community needs.

When using this plan for a regulatory purpose, the objectives, policies and actions found throughout must be considered in context as part of a whole rather than individual statements meant to stand alone. Norwich (like any community) has competing objectives that must be weighed carefully when applied on an individual basis. This plan is a guide for such decisions.

Exh. NN-JK-6 at 2. The Town Plan statements about the need to site more renewable energy must be read in context with whatever weight should be afforded the limited references to whether a presumption does or does not apply for preferred siting of solar in the RPO.

45. Opposing Landowners also contend that the location of the Project site on a parcel adjacent to land owned by the Town of Norwich which is forested and includes trails, causes the Project to unduly interfere with orderly development of the region. However, the Town Plan does not designate this Town land as a Town forest or as deserving scenic protection. The trails on this Town land are not identified on the Town of Norwich Trail Map or in Figure 20 of the Town Plan, which depicts trails. Staskus reb. pf. at 4; exh. NUL MS-20; exh. NN-JK-6 at 44.

46. No evidence is offered to suggest that locating the solar array next to this Town parcel will have any impact on the orderly development of the region. Staskus reb. pf. at 7.

47. The Project array is sited roughly 50 feet lower in elevation from the utility transmission powerline, which itself is more prominent and visible from the Town land than the array. Staskus reb. pf. at 4.

48. The Project is consistent with orderly development of the area in that it will be co-located adjacent to an existing electric transmission power line corridor located on the parcel and adjacent to an existing cell tower, cell tower building, and will use the cell tower access that is already built. Staskus pf. at 4-5; Staskus NUL MS-2.

Discussion

Prior to issuing a CPG, the Commission must find that a project “will not unduly interfere with the orderly development of the region.” 30 V.S.A. § 248(b)(1). “In making this finding, the PUC is required to give ‘due consideration’ to the ‘recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of an affected municipality.’” *In re Acorn Energy Solar 2, LLC*, 2021 Vt. 3, ¶ 87 (quoting 30 V.S.A. § 248(b)(1)).

Importantly, § 248(b)(1) “relates to the orderly development of the region, not to a particular municipality within the region.” *In re Petition of Rutland Renewable Energy, LLC for Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 Vt. 50, ¶ 9. In this case, no evidence was offered to demonstrate any adverse regional impacts caused by the Project. Just the opposite. The evidence demonstrates that the Project is consistent with the goals and policies of the TRORC Regional Plan, and the TRORC designated the Project site as preferred for solar.

Even if the Project violated a provision of the Norwich Town Plan, which it does not, Opposing Landowners “failed to show how such a violation would interfere with the orderly development of the region.” *In re New Haven GLC Solar, LLC*, 2017 VT 72, ¶ 33, 175 A.3d 1211 (emphasis added).

Section 248(b)(1)'s due consideration standard was recently explained by the Vermont Supreme Court in *In re Petition of Apple Hill Solar LLC*, 2021 VT 69:

In contrast to the Act 250 permitting context, where compliance with duly adopted local or regional plans is a prerequisite to an Act 250 permit, see 10 V.S.A. § 6086(a)(10), for purposes of § 248 review, land-conservation measures in municipal plans are entitled only to “due consideration.” 30 V.S.A. § 248(b)(1). As a consequence, *even a clear, written land-conservation measure in a municipal land-use plan does not present an insurmountable obstacle to approval of a certificate of public good under § 248.*

In re Petition of Apple Hill Solar LLC, 2021 VT 69, ¶ 31 (emphasis added). As the Court held in *Petition of Rutland Renewable Energy LLC*, 2016 VT 50, even a clearly mandated solar siting restriction is entitled to limited or no deference under § 248(b)(1) *Id.*, ¶ 36 (concurring opinion) (“the permitting process pursuant to § 248 preempts municipal zoning requirements altogether—an aspect of the statutory structure that further undermines any suggestion that the [Commission] owes deference to the Town's solar siting standards”). There, the Court held that a Rutland Town solar setback mandate was not entitled to any deference because it was in fact a de facto zoning standard preempted by § 248. *Id.* (citing *City of S. Burlington v. Vt. Elec. Power Co.*, 133 Vt. 438, 447-48, 344 A.2d 19, 24-25 (1975) (“recognizing that municipalities’ role in § 248 matters is advisory” and that § 248 “did not give ‘single municipalities the power to subvert utility projects statewide in scope and broadly entrusted to a single planning and supervisory agency’”)).

The Opposing Landowners’ over-reliance on Section 3.8 of the Town Plan to suggest that the RPO zoning district prohibits solar on designated ridgelines, is mis-placed. As already noted, RPO is a zoning district and cannot be imputed as a de facto zoning standard under the Town Plan merely because it is referenced in the Town Plan.

The Town itself did not interpret its Town Plan to prohibit solar siting within the RPO. Notwithstanding the incongruity between Sections 3.2.h and 3.8, the Town deliberated and decided

that the Project qualified as a preferred site for solar. “[W]here there is ambiguity in the wording of a plan, the [Commission] must look to the interpretation of the plan by the municipal bodies responsible for its implementation and enforcement.” *In re Kisiel*, 172 Vt. 124, 133 (2000) (“we are endorsing the primacy of local determinations as to the meaning of Town plans”) *Id.*, 172 Vt. at 136.

Importantly, the Town re-evaluated its decision to designate the Project site as preferred in February of 2022 and the Town Selectboard chose not to change its preferred site designation.

As important, the Town Plan itself does not expressly discuss or describe the RPO. The only references to the RPO in the Town Plan Energy Chapter are the two brief references in Section 3.2.h and 3.8, and in both cases the context is to address whether a presumption for preferred siting should apply. Neither brief reference in the Town Plan constitutes a land conservation measure within the meaning of Section 248(b)(1). As this Commission has said:

[F]or a provision in a municipal plan to constitute a "measure" that is cognizable under Section 248(b)(1), that provision must "evinced a sufficiently 'specific policy'" promoting land conservation. *In re John A. Russell Corp.*, 2003 VT 93, ¶ 19, 838 A.2d 906, 913 (Vt. 2003). The Court concluded that without that specificity, it would be "thus left with precisely the sort of broad goals lacking in specific policies or standards that we have consistently disallowed as the basis for the denial of a permit under Criterion 10." *Id.* Non-specific provisions of municipal plans should not carry more weight in applying Section 248(b)(1) than in applying Criterion 10 of Act 250(10 V.S.A. § 6086(a)(10), given that Section 248(b)(1) requires "due consideration" of the land conservation measures of the municipal plans, rather than a finding of conformance as required by Criterion 10.

Petitions of Vermont Electric Power Company, Inc. (VELCO) and Green Mountain Power Corporation(GMP) for a certificate of public good, pursuant to 30V.S.A. Section 248, authorizing VELCO to construct the so-called Northwest Vermont Reliability Project, Order of 1/28/2005 at 202.

Finally, the portion of the zoning regulations that address the RPO is extremely generalized, and does not contain a blanket prohibition against development in the RPO, but instead articulates standards of review to ensure that development impacting views of ridgelines are

minimized. This is exactly what the Petitioner did by retaining a sufficient canopy of trees on the ridge to minimize views of the ridgeline.

Municipal Screening Requirements

[30 V.S.A. § 248(b)(1)(B)]

49. The Town has not adopted screening requirements for ground-mounted solar electric generation facilities pursuant to either 24 V.S.A. §§ 2291(28) or 4414(15). Staskus pf. at 11.

Impact on System Stability and Reliability & Transmission

[30 V.S.A. § 248(b)(3) & § 248(b)(10)]

50. The Project will not have an undue adverse impact on system stability or reliability or adversely impact the transmission system. This finding is supported by findings 51 through 53, below.

51. On September 15, 2021, GMP issued a Feasibility Study for the Project. Exh. NUL MS-12.

52. In a letter dated October 25, 2021, GMP advised that the Project “may be interconnected with the GMP distribution system without adverse impact on system stability and reliability provided that the requirements outlined in the September 15, 2021 GMP Feasibility Study are met.” Exh. NUL MS-12.

53. The Applicant has budgeted for and will be responsible for paying all necessary interconnection costs designated as Applicant’s responsibility in the Feasibility Study, as required by Rule 5.500. Staskus pf. at 12.

Aesthetics, Historic Sites, Air and Water Purity, the Natural Environment, the Use of Natural Resources, and Public Health and Safety

[30 V.S.A. § 248(b)(5)]

54. Subject to the conditions described below, the Project will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, or public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K), impacts on primary agricultural soils as defined in 10 V.S.A. § 6001, and greenhouse gas (“GHG”) impacts. This finding is supported by findings 55 through 155, below.

Outstanding Resource Waters

[10 V.S.A. § 1424a(d)] and [30 V.S.A. § 248(b)(8)]

55. The Project will not affect any outstanding resource waters as defined by 10 V.S.A. § 1424a(d) because there are no outstanding resource waters at or near the Project. Exh. NUL DB-2 at Section VI.

Noise, Air & Water Purity and Greenhouse Gas Impacts

[30 V.S.A. § 248(b)(5); 10 V.S.A. § 6086(a)(1)]

56. The Project will not cause undue noise. The combined impact of all noise-emitting equipment from the nearest residence is 27.4 dBA. Staskus pf. at 13; Exh. NUL MS-8.

57. During the limited installation period sounds typical of construction equipment will be generated by the light installation activities. Staskus pf. at 13.

58. The Project represents a meaningful, concrete means to reduce Vermont's GHG emissions in the near term. Staskus pf. at 15.

59. The Project will contribute to reducing greenhouse gas emissions. Based upon 2021 US EPA equivalency numbers, the approximately 900,000 kWh/year of electricity that is expected to be generated annually by the Project equates to 638 metric tons/year of avoided CO2 emissions. Over a 25-year period, the Project is estimated to avoid approximately 15,950 metric tons of greenhouse gases. Staskus pf. at 13 (citing <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>).

60. In 2020, the Vermont Legislature passed the Global Warming Solutions Act, adopting legislative findings that emphasize the need for more action:

A climate emergency threatens our communities, State, and region and poses a significant threat to human health and safety, infrastructure, biodiversity, our common environment, and our economy.

According to the IPCC and the World Bank, a failure to substantially reduce emissions over the next ten years will require even more substantial reductions later and will increase the costs of decarbonization. Delaying necessary policy action to address the climate crisis risks significant economic damage to Vermont.

By implementing climate mitigation, adaptation, and resilience strategies, Vermont will also position its economy to benefit and thrive from the global transition to carbon neutrality and national and international efforts to address the crisis.

Staskus pf. at 15 (quoting Act No. 153 (2020), § 2 (Legislative Findings)).

61. The GWSA modified 10 V.S.A. § 578 and now expressly requires that the State of Vermont undertake actions to significantly reduce Vermont's greenhouse gas emissions and meet mandated emissions reductions slated beginning in 2026. Staskus pf. at 15.

62. The UN Secretary General has rung the alarm bells for policymakers to take climate change seriously:

“IPCC Working Group 1 Report is a code red for humanity. The alarm bells are deafening, and the evidence is irrefutable: greenhouse gas emissions from fossil fuel burning and deforestation are choking our planet and putting billions of people at immediate risk. Global heating is affecting every region on Earth, with many of the changes becoming irreversible.”²

Staskus pf. at 14 (quoting United Nations Secretary-General's statement on the IPCC Working Group 1 Report on the Physical Science Basis of the Sixth Assessment, August 9, 2021)(emphasis added).

63. Mr. Gorman submitted a report prepared by him addressing forest value and carbon costs associated with the Project, in which he claimed: “[O]ne acre of Vermont forest absorbs the carbon dioxide emissions of 62 automobiles each year. The 8.2+ acres that will be cut to make room for the Upper Loveland Road solar project absorb the annual emissions of 514 automobiles each year.” Exh. NN-SG-2 at 17.

64. Mr. Gorman admitted that he has not prepared a lifecycle greenhouse gas emissions calculation for this Project or for any solar project. Martin reb. pf. at 4; exhs. NUL GM-7 and GM-8.

² United Nations Secretary-General's statement on the IPCC Working Group 1 Report on the Physical Science Basis of the Sixth Assessment, August 9, 2021.

65. The carbon calculations offered by Mr. Gorman were shown to be significantly inaccurate. Martin reb. pf. at 2-3.

66. The Vermont 2021 Forest Carbon Inventory correctly reports that the amount of carbon that an average acre of VT forest sequesters is 1.3 MT CO₂e, not 293 MT CO₂e cited by Mr. Gorman. Martin reb. pf. at 3; exh. NUL GM-4.

67. Based on the corrected carbon accounting information provided by the State, the 8.2+ acres of forest to be cleared for the Project would sequester the equivalent greenhouse gas emissions of approximately 2.2 average automobiles annually, not the 514 reported by Mr. Gorman. Martin reb. pf. at 3.

68. An analysis was prepared that tallied the greenhouse gasses emitted during all stages of the Upper Loveland solar array's lifecycle, including forest carbon storage, site preparation, manufacture, installation and operation. The total carbon footprint of the Upper Loveland solar array, including consideration of trees cleared for the array, is estimated to be one quarter of its avoided emissions, 4,200 metric tons of carbon dioxide equivalents. Goulet reb. pf. at 3. In other words, there is a greater GHG emissions reduction achieved by installing and operating the solar array than there would be simply leaving the existing forest intact.

69. According to the 2021 Vermont Forest Carbon Inventory, the net carbon flux of Vermont's forests remains negative, sequestering about -5.5 million MT CO₂e per year. Exh. NUL GM 4.

70. The applicable Vermont Comprehensive Energy Plan ("CEP") expressly endorses the build-out of community scale solar distributed generation, like this Project, as a mitigation strategy to combat climate change:

Renewable generation technologies deployed on a small scale are currently more expensive than other sources of electricity. Even so, these smaller---scale renewable projects offer great potential, given the need for zero----and low----emission energy supply; for long----term affordability and price stability, as helped by the low----cost or no----cost fuels required to generate most forms of renewable electricity; for energy security and stability; and for a diverse resource mix, along with the expressed preferences of Vermonters for greater use of renewable resources, especially distributed and community----scale resources. Fostering small----scale and distributed renewable energy is an objective of the CEP.

Staskus pf. at 16 (quoting 2016 CEP at 243).

Water Pollution
[10 V.S.A. § 6086(a)(1)]

71. The Project will not result in undue water pollution. This finding is supported by findings 72 through 101, below.

Headwaters
[10 V.S.A. § 6086(a)(1)(A)]

72. The Project is located in a headwater as it is located within a watershed with a drainage area less than 20 square miles and is characterized by steep slopes. The headwater drains from a stream adjacent to the Project access drive, through a culvert located under the interstate, and eventually into the Connecticut River. Barton reb. pf. at 2; exh. NUL DB-2 at Section IV.

73. Ms. Goulet prepared a report and mapping that claims to demonstrate that “Schmidt Bog” located northwest of the proposed array, is the origin of a second headwater stream/snowmelt channel that flows through the Project staging area and array. Exh. NN-JG-2 at Figure 3 and page 5.

74. Figure 3 of Exhibit NN-JG-2 includes the label for ANR’s Biofinder mapping, but in fact the claimed snowmelt channel is not visible in Biofinder and instead appears to have been hand drawn over the Biofinder data print out. Barton reb. pf. at 4.

75. The claimed snowmelt channel is neither a stream nor a channel, as confirmed to Ms. Goulet by the U.S. Army Corps of Engineers (“USACE”) following a March 29, 2022 e-mail complaint of an alleged violation filed by Ms. Goulet. Barton reb. pf. at 3-4; exh. NUL DB-3.

76. The Vermont USACE staff conducted a site visit on April 26, 2022, and on April 28, 2022 emailed Ms. Barton of Arrowwood Environmental to confirm that the USACE would not assert jurisdiction as to what Ms. Goulet had mis-identified as a stream, and subsequently issued a determination of no jurisdiction. Barton reb. pf. at 4; exhibit NUL DB-4 and DB-5.

77. Ms. Goulet’s statements in her report and testimony that the Project will result in the discharge of dredged or fill material into waters of the United States is inaccurate, as confirmed by the USACE’s formal determination. Barton reb. pf. at 4.

78. The Project qualifies for and was granted authorization to proceed as a Low Risk construction project for purposes of stormwater runoff under the ANR Department of

Environmental Conservation's ("DEC") Construction General Permit 3-9020. Homsted reb. pf. at 3; exh. NUL MS-18.

79. The Project grounds, including space between the solar panel rows, will remain vegetated and maintained. Staskus pf. at 9; exh. NUL DB-2 at Section IV.

80. The Project will not involve the disposal of wastes and will not involve the injection of waste materials or any harmful toxic substances into groundwater or wells. Staskus pf. at 18; exh. NUL DB-2 at Section IV.

81. The proposed Project will not result in a reduction of the quality of ground or surface waters in the area. Exh. NUL DB-2 at Section IV.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

82. The Project will meet all applicable Vermont Department of Health and Vermont Department of Environmental Conservation regulations regarding the disposal of wastes and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Staskus pf. at 18.

83. There are no onsite sanitary wastewater systems, and therefore no associated injection of sanitary wastewater into the ground. Staskus pf. at 18.

Water Conservation & Burden on Existing Water Supply

[10 V.S.A. § 6086(a)(1)(C) & § 6086(a)(2) & (3)]

84. The Project itself will not utilize water. Use of water will be limited to what is necessary to control dust during installation and to promote germination of seed. Staskus pf. at 19.

85. The Project will not unreasonably burden existing water supply. Staskus pf. at 19.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

86. The proposed Project is not located within a flood hazard area, floodway or a floodway fringe and will not restrict or divert the flow of floodwaters or significantly increase the peak discharge of a river or stream within or downstream from the Project, or endanger health, safety, or welfare of the public or of riparian owners during flooding. Exh. NUL DB-2 at Section V.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

87. The Project will whenever feasible where development is on or adjacent to the banks of a stream, maintain the natural condition for the stream, and will not endanger the health, safety, or welfare of the public or adjoining landowners, and will not adversely impact any streams. This finding is supported by findings 88 through 91, below.

88. There are no surface waters within the Project area. The existing gravel access crosses a small tributary of the Connecticut River. The Project will utilize this existing road with no upgrades or tree clearing within the riparian buffer zone of this stream resource. Exh. NUL DB-2 at Section VI.

89. The Project improvements will not impact the stream adjacent to the access road as this is an already developed gravel road established for the existing cell tower. Barton reb. pf. at 5.

90. The "snowmelt/stormwater channel" claimed by Ms. Goulet within the Project footprint does not meet Vermont's definition of a stream because there is no identifiable defined "channel". Barton reb. pf. at 4-5.

91. ANR agreed with Applicant's stream delineations and requested the following CPG conditions, which Applicant supports:

The CPG Holder shall maintain undisturbed, naturally vegetated riparian zones except for activities within the existing footprint of the access road depicted on Exhibit NUL MS-2 Site Plan. The riparian zone shall be measured inland, perpendicular to and horizontally 50-feet from the streams top-of-bank or, where a wetland is contiguous to the stream, from the upland edge of the delineated wetland, and extends to the water's edge at base flow conditions. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing and mowing.

Where the Project is within 100 feet of any riparian zone boundary, prior to site preparation and construction, maintenance involving earth disturbance, and decommissioning, the CPG Holder shall install a continuous line of visible flagging along the Project Limits identifying the riparian zone as a protected area.

ANR 1/3/22 comments at 1-2.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

92. The Project is not located on a shoreline river, lake, pond, or reservoir. Exh. NUL DB-2 at Section VII.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

93. The Project will not violate the rules of the Secretary of Natural Resources, as adopted under chapter 37 of Title 10, Vermont Statutes Annotated, relating to significant wetlands. This finding is supported by findings 94 through 98, below.

94. The Arrowwood Environmental ("AE") field review confirmed the presence of two presumed Class 2 wetlands adjacent to the Project area. Per the wetland survey protocol, AE flagged wetland boundaries in the field and subsequently located with a GPS unit capable of sub-meter accuracy. Exh. NUL DB-2 at Section VIII; exh. NUL MS-2.

95. There is a vernal pool south of the Project with a designated undisturbed 100-foot buffer. Exh. NUL DB-2 at Section VIII; exh. NUL MS-2 (rev. 1-17-23).

96. The Project also avoids a Class 2 wetlands and associated 50-foot buffer located to the north of the array. Exh. NUL DB-2 at Section VIII; exh. NUL MS-2.

97. ANR commented that it agrees with Applicant's wetland determinations and proposed wetland and vernal pool buffers. ANR 1/3/22 comments at 2-3.

98. The Project will have no impact on the vernal pool to the south of the Project area.. The Project has provided an undisturbed 100-foot pool envelop as recommended for protection by ANR. Petitioner has agreed to the conditions requested by ANR as listed below to ensure the Project will not result in an undue adverse effect to pool-breeding amphibians. Barton reb. pf. at 11; ANR 1/3/22 Comments at 3.

The CPG Holder shall leave the vernal pool and pool envelop undisturbed. The pool envelop boundary is measured 100 feet perpendicularly around the perimeter of the vernal pool's high-water mark.

Where the Project is within 100 feet of the pool envelop boundary, prior to site preparation and construction, maintenance involving earth disturbance, and

decommissioning, the CPG Holder shall install a continuous line of visible flagging along the Project Limits identifying the protected vernal pool and envelop.

Site preparation, construction, vegetation management, maintenance activities that may cause earth disturbance, and decommissioning shall only occur between May 15th and August 31st or between October 16th and March 14th.

Erosion prevention and sediment control measures required by the Vermont Stormwater Rules shall be installed outside the pool envelop, designed to allow for amphibian passage, and designed to prevent sediment transport into the pool envelop. CPG Holder shall remove erosion prevention and sediment control measures within 30-days following final stabilization.

Where fencing is installed for the Project, it shall be designed with a minimum 6"x6" mesh extending from the ground level up to 3 feet or higher.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

99. The Project will not cause undue soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results. This finding is supported by findings 100 and 101, below.

100. Total Limit of Disturbance ("LOD") for purposes of the stormwater Construction General Permit for installation activities will be approximately 8.20± acres. Staskus pf. at 19-20; exh. NUL MS-2.

101. Project installation will be performed in accordance with the Vermont Standards and Specifications for Erosion Prevention and Sediment Control (2020), the Department of Environmental Conservation Construction General Permit 3-9020 Notice to Proceed as a "Low Risk" project, issued December 27, 2022, and the Vermont Low Risk Handbook for Erosion Prevention and Sediment Control dated February, 2020 (the "Low Risk Handbook"). Staskus reb. pf. at 8-9; exhs. NUL MS-17 and MS-18.

Transportation

[10 V.S.A. § 6086(a)(5)]

102. There will be no long-term transportation impacts, and only short-term, periodic traffic impacts due to deliveries of Project equipment to the site during installation. Staskus pf. at 20.

103. Such deliveries will use existing roads with vehicles that commonly use public roads. No oversized or overweight trucks or permits are necessary. Staskus pf. at 20.

Educational Services
[10 V.S.A. § 6086(a)(6)]

104. The Project will not place an unreasonable burden on the ability of a municipality to provide educational services because the Project will not require or affect educational services. Staskus pf. at 20.

Municipal Services
[10 V.S.A. § 6086(a)(7)]

105. The Project will not place an unreasonable burden on the ability of the affected municipality to provide municipal or government services. Use of municipal roads to transport equipment and materials will be limited in duration and similar to many other small-scale projects. Staskus pf. at 20.

Aesthetics, Historic Sites, and Rare and Irreplaceable Natural Areas
[10 V.S.A. § 6086(a)(8)]

106. The Project will not have an undue adverse impact on aesthetics or on the scenic or natural beauty of the area, nor will the Project have an undue adverse effect on historic sites or rare and irreplaceable natural areas. This finding is supported by findings 107 through 134, below.

Aesthetics

107. The Project will not result in an adverse impact to aesthetics. This finding is supported by findings 108 through 132, below.

108. The Project is located on an undeveloped parcel on the eastern side of the Town of Norwich off Upper Loveland Road, a dead-end road serving local residential traffic. A cellular communications tower facility east of the proposed array and GMP transmission line are also accessed off the dead-end road (A 150-foot-wide cleared transmission corridor is located on the parcel north and west of the Project. Interstate 91 and the Connecticut River are east of the parcel. The surrounding area has lower density, rural residential development, with twelve residential lots abutting the Project parcel on the south, east and north, all of which are accessed from Upper Loveland Road, except for one lot that is accessed from Four Wheel Drive. Exh. PSD-LT-2 at 7-8.

109. The Project will be set back 455± feet from Upper Loveland Road, the nearest public road. Views along Upper Loveland Road will be limited, if any, due to the low profile of the array, intervening vegetation, and changes in topography. Exh. NUL MS-6 at 6-7.

110. The Project will not be a dominant element in this landscape and is proposed between other utility infrastructure including the high voltage transmission line and a communications tower. It will be screened from public views by remaining onsite vegetation and the varying topography. This choice of siting provides reasonable mitigation, reducing the Project's potential visual impact. Exh. NUL MS-6 at 7

111. The Village of Norwich is approximately 1 mile southwest. The greater surrounding area has a mix of wooded areas, forest blocks, open agricultural fields, and residential lots. Exh. PSD-LT-2 at 8.

112. Vegetation on the site includes mature deciduous and evergreen trees where the array is proposed and a cleared transmission line north and west of the array. The panels are sited on relatively level portion of a hill that runs parallel to Upper Loveland Road and I-91. Exh. PSD-LT-2 at 5.

113. The Project is located on a relatively level portion of land atop a steep hill that runs parallel to Upper Loveland Road, ascending from east to west. In the area where the array is located, there is a small dip in the middle where the land is lower than the top of slope to the east and where the land rises again to the west toward the 150' utility corridor. The elevation of the utility corridor is approximately 45' higher than the low point of the Project and approximately 10' higher than the panels on the highest elevation at the southwest end that follow the slope and are within about 35' of the utility corridor. Slopes in the area of the array range from ±3% north-south, 19-20% the western side of the Project area, and up to ±47% where the southwestern panels are located near the utility corridor. From the southernmost panels – at the location noted on the site plan as “±325' from array to nearest residence” – there is an elevational difference of ±160 feet. Exh. PSD-LT-2 at 5, 9.

114. These elevational differences from the nearby area roads to the panels will reduce, buffer and/or block visibility of the Project from nearby locations and area roads including Upper Loveland Road, Loveland Road, Route 5, Interstate 91, Maple Hill Road, Four Wheel Drive, Hawk

Pine Road, and River Road. No visibility of the Project from nearby locations is expected due to the site and surrounding area topography and vegetation that serve to screen the Project from offsite. Exh. PSD-LT-2 at 5.

115. Notwithstanding that the array shifted to the north and east between the time of initial conception until the petition was submitted, the array remains behind the ridge. Tr. at 74-5, 210-11 (Staskus).

116. The tree clearing from the eastern edge of the array to the east of the array is 35 feet. The difference in the elevation from where the Petitioner will cut trees along the eastern ridge of the slope and the solar array is approximately 60 to 65 feet. As such, the canopy of the trees downslope that will be retained, hides the side of the hill as well as the eastern side of the array so that it will not be visible off site. Tr. at 78-79 (Staskus).

117. Many of the trees along the slope of the hill east of the array that are up to 60' to approximately 90' feet tall. Exh NN-JK-2 at 7 ("Many of the trees in this area and in the upper half of the slope range in height from 60' to approximately 90' "); Tr. at 79 (Staskus).

118. By only cutting the trees down the slope enough so that the canopy remains to cover the ridgeline, Petitioner will minimize visibility of the ridgeline. Tr. at 79-80 (Staskus).

119. Through careful site selection, the array is compatible with its surroundings. The Project footprint relative to the surrounding landscape is minimal and localized, and its low-profile and structural elements are consistent with activities occurring in the area and will appear similar to other renewable energy solar arrays commonplace in Vermont. Exh. NUL MS-6 at 6.

120. The character of the array and associated equipment is also suitable for the context in which the Project is located. Neither the regional nor municipal plans have designated the area as open space or conservation lands. Additionally, the Project will be fully decommissioned at the end of its useful life, and infrastructure removed. Exh. NUL MS-6 at 6.

121. The Project is not part of a specific open or scenic viewshed. The Town Plan does not identify any specific, special, unique, or preserved open spaces or open space views on or near the Project site that would be impacted or diminished as a result of the Project. Exh. PSD LT-2 at 16.

122. The Town has not adopted screening requirements for ground-mounted solar electric generation facilities pursuant to either 24 V.S.A. §§ 2291(28) or 4414(15). Staskus pf. at 11.

123. The Project will not be visible from nearby local roads, travel corridors, trails, or accessible nearby locations, including residences, because it is sited up a steep slope from roads to the east and blocked by vegetation and topography in other directions. With the nature of the surrounding topography, existing vegetation, and low height of the panels, the mass of the Project is mitigated for offsite observers and is compatible with the land use and density patterns in the vicinity. Exh. PSD-LT-2 at 12.

124. The Project area does not have particular scenic values. The Town Plan does note that Route 5 is part of the Connecticut River Scenic Byway, described as “a popular bicycle route” in the Town Plan. The Project will not be visible from Route 5, so the Project will not impact this scenic resource. Exh. PSD-LT-2 at 10.

125. The Project does not violate any clearly written community standard to preserve the aesthetics or scenic, natural beauty of the area. To constitute a clear community standard under Quechee, a town or regional plan provision must “identif[y] the area of th[e] project for special protection to protect aesthetics or scenic beauty.”³ Neither the Norwich Town Plan nor the TRORC Regional Plan identify the Project site as needing special protection for aesthetics or scenic beauty. Exh. NUL MS-6 at 8; exh. PSD-LT-2 at 18.

126. The Town does not have any screening ordinances or bylaws with regard to solar development that are applicable to the Project, but does have a section in the Ridgeline Overlay District that relates to screening, excerpted below:

127. Landscaping & Screening. In instances where existing forest cover or topography will not adequately screen proposed development, a landscaping plan may be required by the development Review Board. Such plan shall be designed to minimize the visibility of the structure as viewed from public roads. Exh. PSD-LT-2 at 18.

³ *In re Petition of Rutland Renewable Energy, LLC for a Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 Vt. 50, ¶ 19.

128. The Project meets the above criteria and will be adequately screened by topography and vegetation. Exh. PSD-LT-2 at 18.

129. The Project will further the goals of each plan to encourage the development of renewable energy sources in order to reduce GHG emissions and combat the global climate crisis. Because the Commission's consideration of aesthetics under Section 248 is significantly informed by overall societal benefits of the project, and in light of the important GHG reduction mandates enacted by the Vermont Legislature in 2020, the local and regional plans provisions that address these issues are significant considerations to the Commission's aesthetics analysis. Exh. NUL MS-6 at 7.

130. The Project will not be shocking or offensive to the average person. As used in Quechee, the average person means “the average member of the viewing public who would see a particular project from the vantage point of the public” and “from an objective, as opposed to subjective and neighborly, perspective.”⁴ To reach the threshold of being “shocking or offensive,” the size or scale of the project would need to be “overwhelming.”⁵ Exh. NUL MS-6 at 7.

131. The scale of the Project is not overwhelming or excessive and is largely screened from views by intervening topography and vegetation. Its low-profile presence in the landscape is compatible with its rural surroundings and will appear like other fixed-tilt, ground mounted renewable energy solar arrays commonplace in Vermont. Exh. NUL MS-6 at 7.

132. The Project will be out of sight for viewers on public travel corridors near the site (Route 5, Upper Loveland, River, and Loveland Road, I-91) and is well buffered from offsite locations because of the topography and vegetation. The Project will not diminish the scenic qualities of the area for the average person primarily because it will not be visible or readily apparent to the public or average viewer. Exh. PSD-LT-2 at 18-19.

Discussion

Based on the above findings, the Project will not have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. This conclusion is reached having applied the

⁴ *In re Petition of Rutland Renewable Energy, LLC. for a Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 Vt. 50, ¶ 22.

⁵ *Id.*

Public Utility Commission's methodology for determination of "adverse" and "undue adverse" effects on the aesthetics and scenic and natural beauty as outlined in Commission Rule 5.112, which refers to the "Quechee test" as described in the case *In re Halnon*, 174 Vt. 515 (2002)(mem.). The first step of the test is to determine whether the project would have an adverse impact on aesthetics and the scenic and natural beauty of an area because it would not be in harmony with its surroundings. Rule 5.112(A)(1). Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space. Rule 5.112(B). If the Project does not have an adverse effect on aesthetics because it is in harmony with its surroundings, then the project satisfies the aesthetics criterion.

Here, the Project design is in harmony with the area in which it is located. It is co-located adjacent to nearby utility infrastructure and utilizes the existing cell tower road for access rather than creating a new opening to the Project site from Upper Loveland Road.

The Project also satisfies the "unduly adverse" prong of *Quechee*. An adverse impact is undue only if any one of the three following questions is answered affirmatively: (a) Would the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? (b) Would the project offend the sensibilities of the average person? (c) Has the applicant failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings? Rule 5.112 (A)(2).

In order to find that a project would violate a clear, written community standard, the Commission must find that the Project is inconsistent with a provision of the applicable town or regional plan that: (1) Designates specific scenic resources in the area where the project is proposed; and (2) Provides specific guidance for project design. Rule 5.112(C)(1) & (2).

"Statements of general applicability do not qualify as clear, written community standards. For example, the general statement that "agricultural fields shall be preserved" would not qualify because the statement does not designate specific resources as scenic. The statement "the agricultural fields to the west of Maple Road are scenic resources that must be preserved" would

qualify because it designates specific resources as scenic.” Rule 5.112(C)(1). “The [Commission]’s assessment of whether a particular project will have an ‘undue’ adverse effect based on these three standards will be significantly informed by overall societal benefits of the project.” *Joint Petition of Vermont Electric Power Company, Inc., et al*, Dkt. No. 6792, Order of 7/17/2003 at 28.

The Project does not violate any clear community standards in the Norwich Town Plan. As discussed previously, Opposing Landowners suggest that the Project violates Section 3.8 of the Town Plan Energy section. For the reasons stated in the Orderly Development findings and discussion, above, Section 3.8 is not a clear community standard under Quechcc.

Historic Sites

133. Applicant’s historic sites assessment and VDHP’s assessment confirm that the Project will not result in an adverse effect on historic sites. Exh. NUL MS-6 at 10; exh. NUL MS-10.

Rare and Irreplaceable Natural Areas (“RINA”)

[10 V.S.A. § 6086(a)(8)(A)]

134. There are no Rare and Irreplaceable Natural Areas present within the Project area. Exh. NUL DB-2 at Section IX.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

135. The Project will not destroy or significantly imperil necessary wildlife habitat or any endangered species. This finding is supported by findings 136 through 143, below.

136. Criterion 8(A) defines “necessary wildlife habitat” to mean “concentrated habitat that is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life, including breeding and migratory periods.” 10 V.S.A. § 6001(12); Tr. at 92 (Barton).

137. General wildlife and general movement of wildlife in an area does not itself qualify as necessary wildlife habitat. Tr. at 92 (Barton).

138. There are no mapped VT ANR Fish and Wildlife Department white-tailed deer (*Odocoileus virginianus*) winter areas (DWA) in the Project area. The closest mapped DWA is

located approximately 1.13 miles to the west of the Project area. AE confirmed the absence of recent deer wintering activity in the small hemlock pockets in the eastern Project area. Exh. NUL DB-2 at Section X.A.

139. Opposing Landowners' environmental report conflated "necessary wildlife habitat" with "necessary wildlife." See exh. JG-2 at 7 (Section header: "*Core Habitat for Necessary Wildlife*" and "Necessary wildlife live in and utilize the project area ..."); exh. JG-2 at 8 ("Necessary wildlife are supported by a diverse ecological community ..."); exh JG-2 at 9 ("Necessary wildlife do not exist in a vacuum"); exh JG-2 at 10 ("the proposed project area also provides cover for necessary wildlife").

140. The criterion is not necessary wildlife. The criterion is necessary wildlife habitat. Tr. at 91 (Barton).

141. There is no necessary black bear habitat at the Project site. Tr. at 93-94 (Barton).

142. Necessary wildlife habitat for black bears requires presence of stands of concentrations of 15 to 25 hard mass trees species of beech and oak that have the presence of black bear claw marks; there must be the presence of 15 to 25 clawed beech or oak trees in a concentrated stand. Tr. at 93-94-98 (Barton).

143. The Project is located in a forested landscape and does not provide suitable habitat for grassland bird species. The Project will have no adverse impact on grassland bird habitat. Exh. NUL DB-2 at Section X.A.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

144. The Project will not unnecessarily or unreasonably endanger the public or quasi-public investment in any facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of, or access to any such facility, service, or lands. This finding is based upon findings 145 through 149, below.

145. Due to the limited amount of time required for installation, the Project will not adversely impact the public's use of proximate roadways. Staskus pf. at 22.

146. The Project will not result in an undue adverse impact to aesthetics. Exh. NUL MS-6.

147. The Project has been designated a Preferred Site for solar by the Town and Regional Planning Commission. Exh NUL MS-5.

148. The Project also creates a number of benefits with local, statewide, and regional significance, including supporting renewable energy development and construction related jobs, contributing to Vermont's GHG electricity sector emissions, reducing Vermont's dependence on out-of-state electricity sources, and the Renewable Energy Credits ("RECs") will be transferred to GMP to be retired. Staskus pf. at 22.

149. The Project will also benefit public investments, in that it will generate new tax revenues to the Town of Norwich and to the State of Vermont Education Fund. Staskus pf. at 22.

Public Health and Safety
[30 V.S.A. § 248(b)(5)]

150. The Project will not have any undue adverse effects on the health, safety, and welfare of the public. This finding is supported by findings 151 through 153, below.

151. Unlike fossil fuels, this solar generation project will not create waste or other emissions that would be harmful to public health and safety. Staskus pf. at 17.

152. The Project equipment and design satisfies all applicable safety codes, including NEC and NESC. The Project transformers will be compliant with GMP's specifications (Distribution Standard #T-01, 3.1, 12/13) that meet or exceed ANSI C57.12.00-2010, C57.12.20-2005, C57.12.90-2006, and all other applicable ANSI, IEEE, EEI, NEMA, and OSHA Standards. Staskus pf. at 17.

153. The Project inverters will be compliant with IEEE 1547 Standard for Interconnection and Interoperability of Distributed Resources with Associated Electrical Power Systems Interfaces (2018) and UL 1741 SA. The array equipment will be surrounded by a fence and secured by a locked gate. In the event a fence is not installed, all energized equipment will be rated for outdoor use, securely shielded, include locked enclosure covers, and otherwise compliant with NEC code "Guarding of Live Parts." Staskus pf. at 7, 17; Exh. NUL MS-4.

Primary Agricultural Soils

[30 V.S.A. § 248(b)(5)]

154. There are no Natural Resources Conservation Service (NRCS) prime agricultural designated soils within the Project area and therefore there will be no potential impact to prime agricultural soils Staskus pf. at 21; exh. NUL MS-2.

Setbacks

[30 V.S.A. § 248(s)]

155. The Project meets the 50 foot property boundary setback and the 100 foot setback from the nearby state or municipal road as measured from the edge of the traveled way. Staskus pf. at 18; exh. NUL MS-2.

CONCLUSION

Based upon the certifications of the Applicant and the findings made herein, I recommend that the Commission conclude that, subject to conditions, the Project will comply with the requirements of Commission Rule 5.100 and will promote the general good of the State.

This Proposal for Decision has not been circulated to the parties pursuant to 3 V.S.A. § 811 because it is not adverse to any party.

Hearing Officer

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission ("Commission") of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are hereby adopted. All findings proposed by parties that were not adopted in this Order are expressly rejected.

2. In accordance with the evidence and plans submitted in this proceeding, the 500 kW AC photovoltaic group net-metering system (the "Project") proposed for installation and operation by Norwich Upper Loveland Solar LLC (the "CPG Holder") at 201 Upper Loveland Road in Norwich, Vermont, will promote the general good of the State of Vermont pursuant to 30 V.S.A. §§ 248 and 8010, and a certificate of public good ("CPG") to that effect shall be issued in this matter.

3. As a condition of this Order, the CPG Holder shall comply with all terms and conditions set out in the CPG issued in conjunction with this Order.

Dated at Montpelier, Vermont this ___ day of _____ 2023.

_____) PUBLIC
_____) UTILITY COMMISSION
_____) OF VERMONT

OFFICE OF THE CLERK

FILED: _____

ATTEST: _____

Clerk of Commission

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**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 21-3587-NMP

Petition of Norwich Upper Loveland Solar, LLC for a certificate of public good, pursuant to 30 V.S.A. §§ 248 and 8010, authorizing the installation and operation of a 500 kW (AC) group net-metering solar electric generation system in Norwich, Vermont	
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VERMONT DEPARTMENT OF PUBLIC SERVICE'S INITIAL BRIEF

May 22, 2023

I. Introduction

The Vermont Department of Public Service (“Department”) hereby submits its brief regarding the petition of Norwich Upper Loveland Solar, LLC (“Petitioner”) for a certificate of public good (“CPG”) pursuant to 30 V.S.A. §§ 248 and 8010. The Petitioner seeks approval for a 500 kW group net-metered solar electric generation facility to be located at 201 Upper Loveland Road in Norwich, Vermont (the “Project”). Recognizing the concerns raised by neighboring landowners (“Intervenors”) in this case, the Department retained an expert to review the Project’s potential impacts on orderly development and aesthetics under 30 V.S.A. § 248.¹ The Department’s expert, Lucy Thayer, provided prefiled testimony and a full report describing her analysis and conclusions (the “Report”).² The Commission held an evidentiary hearing on April 28, 2023.

Based on Ms. Thayer’s findings, and after considering the evidence in the record, the Department concludes that the Project will not unduly interfere with the orderly development of the region under § 248(b)(1) and will not have an undue adverse effect on aesthetics under § 248(b)(5). These criteria are addressed in turn below.

II. Orderly Development of the Region

Under 30 V.S.A. § 248(b)(1), a CPG will not be granted unless the Commission finds that the project:

[W]ill not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative

¹ The Intervenors have also raised concerns regarding the Project’s impacts under the natural environment criteria of § 248(b)(5). The Department defers to the Vermont Agency of Natural Resources’ findings and conclusions as to any potential impacts under those criteria.

² See Exhibit PSD-LT-2 [hereinafter “Report”].

bodies, and the land conservation measures contained in the plan of any affected municipality.³

In reviewing this criterion, the Commission must give “substantial deference to the land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352.”⁴ As relevant here, the Two Rivers-Ottauquechee Regional Plan (“Regional Plan”) is afforded substantial deference: it has received an affirmative determination of energy compliance. The Norwich Town Plan (“Town Plan”) has not received an affirmative determination of energy compliance, and as such it is entitled to “due consideration” rather than substantial deference.⁵

Ms. Thayer’s Report includes an assessment of the Regional Plan and the Town Plan, evaluating the Project’s compatibility with both.⁶ The Regional Plan is broadly supportive of appropriately sited renewable energy generation facilities, and provides guidance on siting constraints as well as “prime” and “preferred” areas for development.⁷ The Regional Plan also describes prominent scenic landscapes, including ridgelines, and provides policies for development in areas of scenic value.⁸ Though the Project location is identified as a ridgeline on a Town map, Ms. Thayer’s Report provides a detailed visibility analysis and finds that the Project will not run afoul of guidance in the Regional Plan: the Project’s limited visibility “will prevent disruption of scenic views and corridors.”⁹ Overall, the Report concludes that “the Project is

³ 30 V.S.A. § 248(b)(1).

⁴ 30 V.S.A. § 248(b)(1)(C) (“[S]ubstantial deference’ means that a land conservation measure or specific policy shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the State outweigh the application of the measure or policy.”).

⁵ See 30 V.S.A. § 248(b)(1).

⁶ See Report at 20–30; Lucy Thayer, Department of Public Service, pf. at 2–3.

⁷ Report at 28–29; see also Exh. NN-JK-10 at 242–245.

⁸ Report at 28–29; see also Exh. NN-JK-10 at 159–160.

⁹ See Report at 13-16, 29; see also Exh. PSD-LT-4.

consistent with the goals, strategies, and development standards as presented in the Regional Plan.”¹⁰

Turning to the Town Plan, the Report examines several provisions relating to land use and energy. The Report identifies that the Project is proposed in a Resource Protection Planning Area which is intended “to recognize the constraints and limitations that exist on a large portion of the land in Norwich” and “discourages further disturbance or fragmentation of . . . these lands through incremental, large-lot residential development.”¹¹ Noting that the Project is not located in a medium or high priority forest block and does not represent large-lot residential development, the Report finds that the Project will be compatible with the Resource Protection Planning Area.¹²

The energy chapter of the Town Plan provides guidance for the siting of renewable energy projects, and states that the Plan’s support for local renewable energy production must be balanced with several other policies including the protection of natural and scenic resources.¹³ In the same section, the Town Plan makes reference to the Ridgeline Protection Overlay District (“Ridgeline District”) which is a mapped District in the Town of Norwich Zoning Regulations (“Zoning Regulations”).¹⁴ The Project is proposed in the Ridgeline District, and the Town Plan excludes the area from its otherwise broad “preferred site” presumption.¹⁵ Though Ms. Thayer notes that the Project is not subject to the Zoning Regulations,¹⁶ the Report reviews provisions of the Ridgeline

¹⁰ Report at 30.

¹¹ *Id.* at 21; Exh. PSD-LT-5 at 6.

¹² *See* Report at 21, 23.

¹³ *See id.* at 25 (providing a full excerpt).

¹⁴ *See id.* at 25–26.

¹⁵ *See id.* (quoting the Town Plan at Section 3.8) (“This plan calls upon the [Commission] to issue Certificates of Public Good . . . based on the presumption that lands in Norwich meet the so-called ‘preferred site criteria’, except in areas already mapped as Ridgeline Protection Overlay Area . . .”).

¹⁶ *See* Report at 26; 24 V.S.A. § 4413(b) (“A bylaw under this chapter shall not regulate electric generation facilities, energy storage facilities, and transmission facilities regulated under 30 V.S.A. § 248. . . .”); *In re Apple Hill Solar LLC*, 2021 VT 69, ¶ 33 (“In contrast to the Act 250 context, § 248 review supplants rather than supplements local zoning regulation”).

District to provide additional context for the references to that District in the Town Plan.¹⁷ The Report finds the Project to be consistent with Town Plan's policies, and does not identify a conflict with the provisions of the Ridgeline District.¹⁸

Following a thorough review of the Regional and Town Plans, the Report concludes that the Project will not unduly interfere with the orderly development of the region.¹⁹ Ms. Thayer found that the Project would not violate any clear written standards in either plan.²⁰ The Department is not aware of any comments or recommendations in this proceeding from the Town of Norwich Selectboard, the Town of Norwich Planning Commission, or the Two Rivers-Ottawaquechee Regional Commission, though all three have signed a joint letter designating the Project location as a preferred site pursuant to Commission Rule 5.103.²¹ For the foregoing reasons, and considering Ms. Thayer's full Report and testimony, the Department concludes that the Project will not violate specific land conservation measures in the Regional Plan or the Town Plan and will not unduly interfere with the orderly development of the region.²²

III. Aesthetics

Before issuing a CPG, the Commission must also find that the Project "will not have an undue adverse effect on aesthetics" pursuant to 30 V.S.A. § 248(b)(5). As provided by Rule 5.112, the Commission applies the two-step *Quechee* test to evaluate aesthetic impacts.²³ The first step asks "whether the project would have an adverse impact on aesthetics and the scenic and natural

¹⁷ See Report at 25-27; Tr. 4/28/23 at 115 (Thayer).

¹⁸ See Report at 25-27.

¹⁹ Report at 30.

²⁰ Thayer pf. at 2-3.

²¹ Exh. NUL-MS-5; Thayer pf. at 3.

²² See 30 V.S.A. § 248(b)(1).

²³ Commission Rule 5.112.

beauty of an area because it would not be in harmony with its surroundings.”²⁴ If the answer is no, there is no adverse impact and the inquiry is at an end. If the answer is yes, step two determines whether an adverse impact is undue by asking:

- (a) Would the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area?
- (b) Would the project offend the sensibilities of the average person?
- (c) Have the applicants failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings?²⁵

If any of these are answered in the affirmative, the adverse impact is found to be undue. The Report prepared by Ms. Thayer evaluates the Project under both steps of *Quechee* test, concluding that the Project will not have an undue adverse impact.²⁶

A. Quechee Step 1

In determining whether the Project will be out of character with its surroundings such that it will have an adverse impact on aesthetics, the relevant factors include: “the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space.”²⁷ As discussed in Ms. Thayer's Report, the Project is proposed on a wooded parcel off Upper Loveland Road, adjacent to a telecommunications tower facility to the east and a cleared utility transmission corridor to the north and west.²⁸ There is also a trail running to the northwest of the Project, though the Report notes that it is not shown on the Town's trail maps. Residential lots adjoin the Project parcel, primarily along Upper Loveland

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Report at 7–19.

²⁷ See, e.g., *Petition of Morrison Custom Feeds, Inc.*, Case No. 19-2731-NMP, Order of 6/30/2020 at 16; Commission Rule 5.112(B).

²⁸ Report at 7–8.

Road, and the area is largely rural in nature: it is characterized by a mixture of forest, open fields, and low-density residential development.²⁹ The Connecticut River runs to the east of the Project, as does Interstate I-91 and U.S. Route 5.³⁰

The Report evaluates Project visibility from both public and private viewpoints, incorporating findings from a site visit conducted in April of 2022 as well as a desktop GIS analysis.³¹ As described more fully in the Report, the presence of intervening topography, elevational differences, and vegetation between the Project site and surrounding roads, travel corridors, and residences lead to a conclusion that overall visibility, if any, will be very limited.³²

With respect to public viewpoints, the Report finds that I-91 has the greatest potential for visibility – however “it is unlikely the average viewer will have views to the Project” considering the intervening vegetation and topography along with the speed and direction of travel.³³ While the proposed tree clearing for the Project is found to have the greatest potential for visual impact, “these impacts are expected to be mitigated by the vegetation to remain on the slope east of the Project and the trees to the west of the Project and utility corridor.”³⁴ As to private viewpoints, the Report finds that the solar array is not likely to be seen from nearby residences. Any potential visibility, including from residences along Upper Loveland Road, would be “highly limited” and “screened and filtered through the existing vegetation that remains.”³⁵

The Report finds that the Project will not have an adverse impact on open space, and further indicates that the Project’s design and materials are generally compatible with its surroundings

²⁹ See Report at 8; *see also* Exh. PSD-LT-3.

³⁰ Report at 5, 8.

³¹ Report at 13, 16; Exh. PSD-LT-3; Exh. PSD-LT-4.

³² See Report at 9, 13–15.

³³ See *id.* at 13.

³⁴ See *id.* at 13-15.

³⁵ See *id.* at 15.

considering its limited visibility and the presence of existing utility infrastructure in the immediate area.³⁶ The proposed tree clearing, however, at 8.2 acres, “can be considered adverse or incompatible with the site surroundings.”³⁷ Therefore, the Department concludes that the Project will have an adverse impact under step one of the *Quechee* test.

B. *Quechee* Step 2

After finding that the Project will have an adverse impact, it is appropriate to proceed to step two of the *Quechee* test and assess whether the impact is undue. The questions here are whether: (1) the project would violate a clear, written community standard, (2) the project would offend the sensibilities of the average person, or (3) the applicant failed to take generally available mitigating steps.³⁸

i. The Project will not violate a clear written community standard

As discussed above with respect to orderly development, Ms. Thayer’s Report includes an assessment of the Regional Plan and the Town Plan along with associated materials.³⁹ The Report finds that the Project will not adversely impact any specific “scenic, cultural, historic, natural, or other resources” identified in the Regional or Town Plan.⁴⁰ The Report does not identify municipal solar screening ordinances applicable to the Project, nor does it find a prohibition on tree clearing. The Project is proposed within the Ridgeline Protection Overlay District designated in the Zoning Regulations; however, the Report does not identify a violation of clear, written standards for that District.⁴¹ In sum, the Report finds and the Department concludes that the Project will not violate

³⁶ See *id.* at 11–13, 16.

³⁷ See *id.* at 12, 17.

³⁸ Commission Rule 5.112.

³⁹ See Report at 17–18, 20–30; Thayer pf. at 2–3.

⁴⁰ See *id.* at 17–18.

⁴¹ As previously discussed with respect to orderly development, Ms. Thayer notes that the Project is not subject to the Zoning Regulations themselves: the Report reviews provisions of the Ridgeline District to provide additional

a clear, written community standard intended to preserve the aesthetics or scenic and natural beauty of the area.⁴²

ii. The Project will not offend the sensibilities of the average person

A project which is found to offend the sensibilities of the average person must be “so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person.”⁴³ In making this determination, “the Commission will consider the perspective of an average person viewing the project from both adjoining residences and from public vantage points.”⁴⁴ Ms. Thayer’s Report assesses visibility from both public and private viewpoints, including from adjoining residences, and finds that the Project will not be visible or readily apparent from most relevant vantage points.⁴⁵ Any potential visibility is expected to be heavily screened and filtered by existing vegetation and topography.⁴⁶ While the Report acknowledges that aspects of the Project may be unfavorable or undesirable to some, it concludes that “the Project will not significantly diminish the scenic qualities of the area and, therefore will not be shocking or offensive to the average person.”⁴⁷ For the reasons above, the Department concludes that the Project will not offend the sensibilities of the average person.

context for references to that District in the Town Plan. *See* Report at 25-27; Tr. 4/28/23 at 115 (Thayer). At the evidentiary hearing, Ms. Thayer made a revision to the Report at page 18 to correct an inaccurate statement. Tr. 4/28/23 at 107–08 (Thayer). The corrected sentence now reads “The Project is located in the Ridgeline Overlay District which requires careful site planning on steep slopes and/or prominent ridgelines.” *Id.* at 108.

⁴² Report at 17–18, 20–30; *see also* Commission Rule 5.112(C) (describing the types of provisions that are considered clear, written community standards).

⁴³ Commission Rule 5.112(D).

⁴⁴ *Id.*

⁴⁵ *See* Report at 13–15, 18–19.

⁴⁶ *See id.*

⁴⁷ *See id.* at 19.

iii. The applicant has taken generally available mitigating steps

The Report identifies several mitigating steps taken by the Petitioner, which are evident in the Project design and proposal. The Project will: (1) be located to take advantage of natural screening, (2) retain trees which provide a buffer on the eastern slope of the site, (3) make use of existing infrastructure, (4) avoid protected natural resources, and (5) avoid the need for grading.⁴⁸ As such, the Department finds that the applicant has taken generally available mitigating steps that a reasonable person would take to improve the harmony of the Project with its surroundings. Based on the analysis above, the Department concludes that the Project satisfies step two of the *Quechee* test and therefore its adverse effect on aesthetics will not be undue.⁴⁹

IV. Conclusion

For the foregoing reasons, the Project will not unduly interfere with the orderly development of the region under § 248(b)(1) and will not have an undue adverse effect on aesthetics under § 248(b)(5). As set forth in initial comments filed on January 3, 2022, the Department has no significant concerns with respect to the remaining § 248(b) criteria traditionally subject to its review.⁵⁰ The Department therefore recommends that the Commission approve the Project.

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⁴⁸ *See id.*

⁴⁹ *See* Commission Rule 5.112; 30 V.S.A. § 248(b)(5).

⁵⁰ While the Department has no significant concerns, it continues to request that any approval include a condition requiring the Petitioner to confirm the actual methods used to safeguard electrical equipment prior to operation. *See* Department Comments at 2, filed January 3, 2022.

DATED at Montpelier, Vermont this 22nd day of May, 2023.

Respectfully Submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

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STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Norwich Upper Loveland Solar LLC)
for a certificate of public good pursuant to 30)
V.S.A. §§ 248 and 8010, authorizing installation) 21-3587-NMP
and operation of a 500 kW (AC) photovoltaic)
group net-metering system in Norwich, Vermont)

Order entered: / /2023

PETITIONER’S REPLY BRIEF

NOW COMES Norwich Upper Loveland Solar LLC (the “Petitioner” or the “Applicant”) and respectfully submits this reply brief in response to the May 22, 2023 brief submitted by intervenor parties the Goulets, Samin Kim, Jayoung Joo, Stephen Gorman, the Bensons, the Uffords, and Joy Kenseth (the “Opposing Landowners”). Petitioner agrees with and supports the brief submitted in this case by the Vermont Department of Public Service (“Department”) and comments submitted by the by the Vermont Agency of Natural Resources (“ANR”).

Capitalized terms used herein not otherwise defined have the meaning set forth in Petitioner’s May 22, 2023 Proposed Findings and Order.

I. Orderly Development of the Region
[30 V.S.A. § 248(b)(1)]

A. The Norwich Town Plan is Not Entitled to Substantial Deference Because the Town Plan Has Not Received an Affirmative Determination of Energy Compliance Under 24 V.S.A. § 4352(b)

Opposing Landowners incorrectly assert at pages 3 and 8 of their Brief that “the Norwich Town Plan is ‘a duly adopted municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352... .’” This is not correct.

Section 4352 provides in relevant part:

If the Commissioner of Public Service has issued an affirmative determination of energy compliance for a regional plan that is in effect, a municipal legislative body within the region may submit its adopted municipal plan to the regional planning commission for issuance of a determination of energy compliance. The regional planning commission shall issue an affirmative determination, signed by the chair of the regional planning commission, on finding that the municipal plan meets the requirements of subsection (c) of this section and is consistent with the regional plan.

24 V.S.A. § 4352b).

There is no evidence in the record in this case that the Town of Norwich Town Plan has a TRORC affirmative determination of energy compliance, or that the TRORC issued such an affirmative determination. In fact, the TRORC official website for approved municipal plans lists all towns within the TRORC that have receive affirmative determinations. As of May 2, 2023, the Town of Norwich is absent from that list. See Town Plan Adoption and Approval - TRORC. For ease of reference, a copy of that webpage is included with Petitioner's Rely Brief as Exhibit NUL Reply Brief-1.¹ Petitioner's petition filing was made on August 31, 2021, which is the date by which an affirmative determination of energy compliance would have been required to be in place in order for the substantial deference standard to apply in this case.

Petitioner agrees with the Department's conclusion that because the Norwich Town Plan has not received an affirmative determination of energy compliance, it is entitled to "due consideration" rather than substantial deference under 30 V.S.A. § 248(b)(1). See Department Brief at 2.

B. Opposing Landowners' Brief Does Not Establish that the Project Will Unduly Interfere with Orderly Development of the Region

1. The Norwich Town Plan Does Not Give "Highest Priority" to Protecting the Natural Environment

Finding 15 of Opposing Landowners' Brief claims that "Norwich, through its Town Plan, gives *highest priority to protecting the natural environment* and recognizes that the preservation of its beauty enhances the quality of life of its citizens." (emphasis added). However, the phrases "highest priority to protecting the natural environment" and "preservation of its beauty enhances

¹ Petitioner asks the Commission to take Judicial Notice of Exhibit NUL Reply Brief-1. "A judicially noticed fact must be one that is not subject to reasonable dispute in that it is . . . (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." V.R.E. 201(b). Petitioner submits that Exhibit NUL Reply Brief-1 is not subject to reasonable dispute in that it is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. V.R.E. 201(b). Section 810(4) of the Vermont Administrative Procedures Act, as incorporated by Commission Rule 2.216(A), provides that "[n]otice may be taken of judicially cognizable facts" by an agency. Furthermore, Vermont Rule of Evidence 201(d), as incorporated by 3 V.S.A. § 810(1) and Commission Rule 2.216(A), directs that an agency "shall take judicial notice if requested by a party and supplied with the necessary information." Judicial notice may be taken at any stage of a proceeding. V.R.E. 201(f).

the quality of life of its citizens” do not even appear in the Town Plan. The claim by Opposing Landowners that the Town Plan gives “highest priority” to these considerations is unsupported.

Even if the Town Plan did give highest priority to protecting natural resources, mitigation measures such as this Project to reduce greenhouse gas emissions and the damage to the natural environment caused by climate change, constitute affirmative action to protect natural resources.

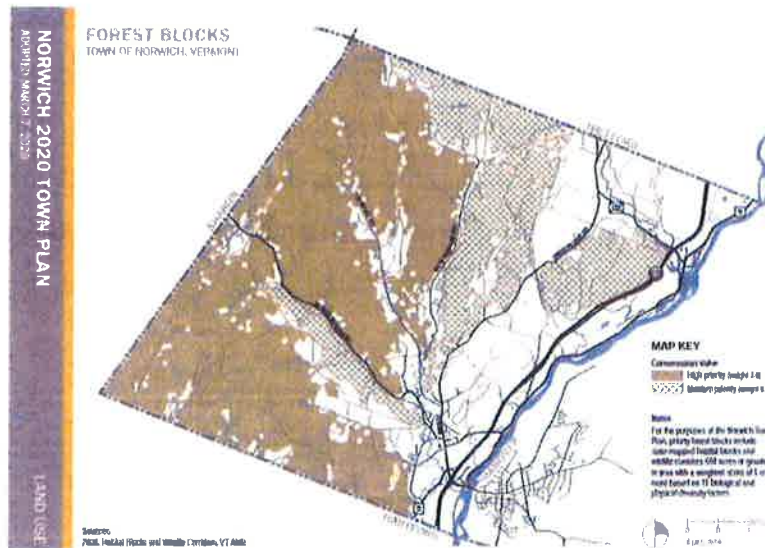
Opposing Landowners' Brief goes on to recite generalized policy statements in the Town Plan Land Use section, such as:

- “Guide development away from priority forest blocks ...”;
- “Guide development away from visually prominent locations on ridgelines and hills as viewed from public vantage points ...”;
- “Guide development away from steep slopes and require appropriate erosion control and stormwater management practices to protect water quality and avoid increased downstream flooding ...”;
- “Steep Slopes are poorly suited to development ...”.

Opposing Landowner Brief at 4.

As discussed below, the Project is consistent with the above generalized considerations. Even if it were not, these considerations have not been shown to have any adverse impact on the *region* under Section 248(b)(1), which is an applicable standard requirement under Section 248(b)(1). *See In re Petition of Rutland Renewable Energy, LLC for Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 Vt. 50, ¶ 9 (30 V.S.A. § 248(b)(1) “relates to the orderly development of the region, not to a particular municipality within the region”).

The Project is consistent with the municipal guidance discussed above. It is not located in a priority forest block. The ANR Atlas designates the forest block ranking at this site at 4 out of 10, and as such is not a priority or high priority forest block. Barton reb. pf. at 7. The Project also is not within a high or medium priority forest block under the Town Plan, as illustrated in the Town Plan Land Use/Forest Blocks map (Exhibit NN-JK-6 at 18), inserted below:



Barton reb. pf. at 9.

The Project is not located on a visually prominent location on a ridgeline or hill as viewed from public vantage points. The Project will not be visible from nearby local roads, travel corridors, trails, or accessible nearby locations, including residences, because it is sited up a steep slope from roads to the east and blocked by vegetation and topography in other directions. With the nature of the surrounding topography, existing vegetation, and low height of the panels, the mass of the Project is mitigated for offsite observers and is compatible with the land use and density patterns in the vicinity. Exh. PSD-LT-2 at 12.

The Project will not be a dominant element in this landscape and is proposed between other utility infrastructure including the high voltage transmission line and a communications tower. It will be screened from public views by remaining onsite vegetation and the varying topography. Exh. NUL MS-6 at 7.

As the array was designed, Petitioner limited the area of clearing on the east side of the site to retain the canopy of existing tall vegetation to minimize views of the array, which will be behind the ridge. Tr. at 74-5, 210-11 (Staskus). The tree clearing from the eastern edge of the array to the east of the array is 35 feet. The difference in the elevation from where the Petitioner will cut trees along the eastern ridge of the slope and the solar array is approximately 60 to 65 feet. As such, the canopy of the trees downslope that will be retained hides the side of the hill as

well as the eastern side of the array. Tr. at 78-79 (Staskus). Many of the trees along the slope east of the array are 60 to approximately 90 feet tall. Exh NN-JK-2 at 7 (“Many of the trees in this area and in the upper half of the slope range in height from 60’ to approximately 90’’); Tr. at 79 (Staskus). By cutting only the trees down the slope enough so that the canopy remains to cover the ridgeline, Petitioner will minimize visibility of the ridgeline. Tr. at 79-80 (Staskus).

Consistent with the Town’s guidance regarding minimization of soil erosion, the Petitioner sited the location of the array from steep slopes. While some clearing will occur on steep slopes, the Project will not cause undue soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results. Project installation will be performed in accordance with the Vermont Standards and Specifications for Erosion Prevention and Sediment Control (2020), the Department of Environmental Conservation Construction General Permit #9543-9020 Notice to Proceed as a “Low Risk” project, issued December 27, 2022, and the Vermont Low Risk Handbook for Erosion Prevention and Sediment Control dated February, 2020 (the “Low Risk Handbook”). Staskus reb. pf. at 8-9; exhs. NUL MS-17 and MS-18. As part of the Project permitting, Petitioner’s licensed civil engineers prepared the erosion prevention and sediment control (“EPSC”) design and details necessary for the construction of the Project. Homsted reb. pf. at 2. Sheet two of Exhibit NUL MS-2 includes the EPSC options available to be employed during construction to prevent erosion and keep sediment from leaving the site and reaching receiving waters. These measures include perimeter controls such as silt fence and Silt Soxx. *Id.* These practices will be installed downslope of all disturbed areas to prevent sediment from leaving the site. *Id.* at 4. Various mulching materials and rates will be used to limit the amount of concurrent ground disturbance at any one time, and to provide temporary ground stabilization while vegetation is established. *Id.* at 4. These practices conform with the Vermont regulatory standards for erosion prevention and sediment control. *Id.*

2. **The Opposing Landowners Provide Only Conclusory Assertions Regarding the TRORC Regional Plan Without a Single Supporting Fact Regarding Purported Adverse Impacts from the Project**

There is no evidence in this case that the Project will have adverse impacts on the orderly development of the TRORC region. In addition, Opposing Landowners’ Brief regarding orderly

development of the region is devoid of a single statement of fact concerning the Project or how it purportedly unduly interferes with any planning policy in the TRORC Regional Plan. *See* Opposing Landowner Brief at Findings 17-35. Opposing Landowners' serial recitation of the TRORC Plan provisions in a vacuum do not constitute findings of fact that establish the Project unduly interferes with the TRORC region.

The evidence in this case supports the conclusion that the Project will not have an adverse regional impact. On a regional basis, the Project's impacts are localized and minimal. The array has a low profile in the landscape and the character and components of the array and associated equipment are visually consistent with similar solar projects seen throughout Vermont. Exh. NUL MS-6 at 9. When evaluated on the local and regional level, the scale of the Project can be considered appropriate. Exh. PSD-LT-2 at 12. The Project area, ± 8.2 acres, is also comparable to nearby fields and clearings, and will be sited above/higher in elevation than the nearby travel corridors. *Id.* From the perspective of land use, the scale of the Project is appropriate for the surroundings. The Project is collocated next to other large utility infrastructure, including a commercial cell tower and an electric utility transmission line in a 150-foot cleared utility corridor. *Id.*

The evidence demonstrates that the Project is consistent with the goals and policies of the TRORC Regional Plan, and the TRORC designated the Project site as preferred for solar. Petitioner's Brief at 10.

3. **The Project's Location Within Designated Zoning Districts Does Not Result in the Project Unduly Interfering with the Region**

Opposing Landowners also assert that the Project will unduly interfere with orderly development of the region, claiming that the site is in an area designated as part of the Town Ridgeline Protection Overlay District ("RPO") and Resource Protection Planning Area ("RPPA") zoning districts. Opposing Landowners' Brief at 5-9. Opposing Landowners' over-reliance on the RPO and RPPA zoning districts is mis-placed.

As to the RPPA, the Opposing Landowners note that the Town Zoning Regulations "discourage[] further disturbance or fragmentation of the remaining undeveloped portions of these lands through incremental large-lot residential development" and that "high and medium

priority forest blocks have been mapped and can form a basis for future decision-making.” Opposing Landowners’ Brief at 5. As already discussed, the Project site is not within a Town mapped high or medium priority forest block. Moreover, the Project is not a “large-lot residential development.” Nothing in the RPPA Zoning District Regulations prohibits placement of this solar Project in the RPPA. Further, as discussed below, zoning of renewable energy siting is preempted.

As to the RPO, Opposing Landowners note that Section 3.8 of the Town Plan, “calls upon” the PUC to issue a CPG for projects between 15 kW and 500 kW “based on the presumption that lands in Norwich meet the so-called ‘preferred site criteria’, except in areas already mapped as Ridgeline Protection Overlay Area” Opposing Landowners’ Brief at 6. Opposing Landowners suggest that this isolated excerpt, together with the RPO Zoning Regulations (which are not expressly incorporated by reference), preclude the siting of this Project in the RPO. Opposing Landowners’ Brief at 6-9.

Petitioner’s Brief addresses this point in detail. In contrast to Section 3.8 of the Town Plan, Section 3.2.h, which establishes the presumption for the preferred site locations, provides:

For solar generation projects sized from 15kW to 500kW the presumption is that all of Norwich meets the Public Utility Commission definition of ‘preferred site’, notwithstanding the existing areas of local concern including the Ridgeline Protection Overlay Area, Shoreline Protection Overlay Area and the historic village district as identified in the Norwich Land Use Regulations.

Exh. NUL JK-6 at 22 (emphasis added).

Opposing Landowners’ undue emphasis on Section 3.8 is mis-placed. First, 3.8 directs when the Town should “call upon” the PUC to issue a CPG for solar projects between 15 kW and 500 kW. However, Section 3.8 does not express a standard or policy calling upon the PUC to deny a CPG based on a location that is within the RPO. There is no stated prohibition of allowing a solar array in the RPO. See Exh. NN-JK-6 at 22, 28.

Also, Section 3.8 of the Town Plan should not be read in isolation. Importantly, Section 1.4 of the Plan, which instructs how to interpret and apply the Plan (particularly in a regulatory framework), provides in relevant part:

“The Norwich Town Plan conveys a vision for thoughtful stewardship of rich cultural and natural resources, a commitment to address the climate crisis and fostering housing development that is appropriate in scale and responsive to community needs. ...

When using this plan for a regulatory purpose, the objectives, policies and actions found throughout must be considered in context as part of a whole rather than individual statements meant to stand alone. Norwich (like any community) has competing objectives that must be weighed carefully when applied on an individual basis. This plan is a guide for such decisions.”

Exh. NN-JK-2 at Section 1.4 (emphasis added).

Moreover, the Town's Zoning District Regulations, regardless of whether they may be incorporated by reference into the Town Plan, have no force and effect of law as to the siting solar electric generation facilities. The Town is expressly prohibited under the Vermont Planning and Development Act, 24 V.S.A. Chapter 117 (the “Act”), from regulating solar electric generation facilities, such as this Project, which are regulated by the PUC under 30 V.S.A. § 248 or § 8011. Section 4413 of the Act, titled: “Limitations on municipal bylaws”, provides in relevant part:

(b) A bylaw under this chapter shall not regulate electric generation facilities, energy storage facilities, and transmission facilities regulated under 30 V.S.A. § 248 or subject to regulation under 30 V.S.A. § 8011.

(g) Notwithstanding any provision of law to the contrary, a bylaw adopted under this chapter shall not:

(1) Regulate the installation, operation, and maintenance, on a flat roof of an otherwise complying structure, of a solar energy device that heats water or space or generates electricity. ...

(2) Prohibit or have the effect of prohibiting the installation of solar collectors not exempted from regulation under subdivision (1) of this subsection, clotheslines, or other energy devices based on renewable resources.

24 V.S.A. §4413(b) & (g)(emphasis added). *See also* 24 VSA 2291a (“[n]otwithstanding any provision of law to the contrary, no municipality, by ordinance, resolution, or other enactment, shall prohibit or have the effect of prohibiting the installation of solar collectors, clotheslines, or

other energy devices based on renewable resources"). The Vermont Supreme Court has unequivocally held that "*the permitting process pursuant to § 248 preempts municipal zoning requirements altogether—an aspect of the statutory structure that further undermines any suggestion that the [Commission] owes deference to [a] Town's solar siting standards*"; *Petition of Rutland Renewable Energy LLC*, 2016 VT 50, ¶ 36 (concurring opinion)(emphasis added). Such back-door attempts to impose prohibited *de facto* zoning standards to solar siting by reference in a Town Plan is prohibited. *Id.* Opposing Landowners' Brief omits to address this controlling law.

Finally, even if the RPO Zoning Regulations were to apply to this Project, the Project satisfies the two-part test under that Regulation; namely, the Project will have no or limited visibility from public roads, and forest cover will be maintained adjacent to the array and along the ridgeline. *See* Exh. NN-JK-5 at 29; exh. PSD-LT-2 at 25-27; tr. 74-75, 210-211 (Staskus).

II. Aesthetics **[30 V.S.A. § 248(b)(5)]**

A. There is no Clear Community Standard in the Norwich Town Plan to Protect the Natural and Scenic Value of the Upper Loveland Road Neighborhood or the Project Site

Opposing Landowners' Brief at page 23 states that "[t]he natural and scenic beauty of the [Norwich Upper Loveland Road] neighborhood results almost exclusively from the varied topography and the variety of trees on the ridgelines and slopes." Yet, Norwich Upper Loveland Road is not designated as "scenic" in the Norwich Town Plan, nor do Opposing Landowners claim that it is. Neither the Norwich Town Plan nor the TRORC Regional Plan identify the Project site as needing special protection for aesthetics or scenic or natural beauty. Exh. NUL MS-6 at 8; exh. PSD-LT-2 at 18. The Project area does not have particular scenic values. Exh. PSD-LT-2 at 10. The Town Plan does note that Route 5 is part of the Connecticut River Scenic Byway, described as "a popular bicycle route" in the Town Plan. The Project will not be visible from Route 5, so the Project will not impact this scenic resource. *Id.*

Opposing Landowners' Brief also claims that "[t]he Norwich Town Plan language is specific in nature, is specifically applicable to the Facility site, seeks to conserve scenic resources by identifying specific actionable requirements, and thus constitutes a clear, written community

standard.” Opposing Landowners’ Brief at 38. The Town Plan language is neither specific to the Project site, nor does it constitute a clear community standard.

Under the Commission’s net-metering rule, in order to find that a project would violate a clear, written community standard, the Commission must find that the Project is inconsistent with a provision of the applicable town or regional plan that: “(1) Designates specific scenic resources in the area where the project is proposed”; and “(2) Provides specific guidance for project design.” Rule 5.112(C)(1) & (2). As Commission Rule 5.112(C)(1) instructs:

“Statements of general applicability do not qualify as clear, written community standards. For example, the general statement that “agricultural fields shall be preserved” would not qualify because the statement does not designate specific resources as scenic. The statement “the agricultural fields to the west of Maple Road are scenic resources that must be preserved” would qualify because it designates specific resources as scenic.”

Rule 5.112(C)(1).

The only Town Plan provision for solar siting that mentions protecting “scenic resources” appears at page 28, and provides:

“This plan supports renewable energy production in Norwich. For this policy to continue with broad community support it must be balanced with this plan’s policies related to:
> Protecting natural resources, environmental quality, scenic resources and rural character.”

Exh. NN-JK-6 at 28. This statement in the Town Plan is not, as Opposing Landowners claim, “specifically applicable to the Facility site.” It does not even mention the Project site.

The broad reference to protecting scenic resources that appears at page 28 of the Norwich Town Plan, without any mention of the Project site or Upper Loveland Road, is the very kind general statement that would not qualify as a clear community standard under Rule 5.112(C). *See also In re Petition of Rutland Renewable Energy, LLC. for a Certificate of Public Good Pursuant to 30 V.S.A. § 248, 2016 Vt. 50, ¶ 19* (to constitute a clear community standard under Quechee, a town or regional plan provision *must ‘identif[y] the area of th[e] project for special protection to protect aesthetics or scenic beauty’*”(emphasis added).

The Vermont Supreme Court’s decision in the *In re Rinkers* case that is cited at length in Opposing Landowners’ Brief at pages 36-38, is also instructive. On appeal, the Court upheld the

lower court's determination that generalized language in a town plan to protect rural and natural skylines, could not operate as a clear community standard under *Quechee* to create an absolute prohibition of development that may disrupt a skyline:

Neighbors argue that the final phrase of the goal section presented the court with a clear community standard to protect "a rural and natural skyline." Even assuming that this phrase was sufficiently "clear" for consideration under the *Quechee* test, neighbors' reading of the standard is too broad and is contradicted by the Plan as a whole. If considered a clear community standard, "[m]aintaining . . . a rural and natural skyline" would effectively preclude the construction of any nonrural structure that disrupted the skyline, including any telecommunications antennas or towers. As the Environmental Court recognized, "the Town Plan states a policy balancing the Town's need for modern telecommunications facilities and the inherent intrusiveness of towers in the landscape by promoting co-location and allowing taller tower structures to achieve co-location." Adopting neighbors' reading of the Plan to create an absolute prohibition on disruptions to the rural skyline would contradict the Plan's clearly stated policy favoring some telecommunications towers which must necessarily reach above the tree-and ridge-lines. The court properly concluded the project would not violate a clear standard.

In re Rinkers, Inc., 2011 VT 78, ¶ 10. A similar analysis and conclusion apply here.

B. Opposing Landowners Have Not Offered Evidence that Establishes the Project Will Cause Wind Throw

The Opposing Landowners' aesthetics findings 60 through 68 make assertions regarding the potential for wind throw along the forest ridge, citing Ms. Kenseth's aesthetics report. Yet, Ms. Kenseth is not an expert on wind throw, and the materials recited in her report (NN-JK-2) at page 11 are based solely on hearsay materials consisting of an email from a purported forester and several research articles. These documents were not offered or admitted into the record, the qualifications of the authors were not established, Ms. Kenseth is not herself an expert on wind throw, and therefore the statements deserve little or no weight.

C. The Town Plan Does Not Give "Highest Priority" to Protecting Natural Resources

Finding 90 again repeats the statement made at Finding 15 that the Town Plan gives "highest priority" to protecting natural resources and "recognizes that the preservation of its beauty enhances the quality of life of its citizens". These statements are not made in the Town

Plan and therefore the claims are not supported. Even if the statements were in the Town Plan, mitigation measures such as this Project that will reduce greenhouse gas emissions and the damage to the natural environment cause by climate change, are affirmative actions to protect the natural resources.

D. Ms. Staskus' Aesthetics Report is Not Biased

Finding 129 states that Ms. Staskus has never found an undue adverse effect resulting from the solar projects on which she has testified. As Ms. Staskus testified in this case, that is because “[w]e would not bring that project to the commission if there is an undue adverse impact. That's one of our fatal flaw analysis steps that we go through.” Tr. at 32 (Staskus). Opposing Landowners' apparent attempt to suggest that Ms. Staskus' report is outcome-biased is not persuasive.

E. Opposing Landowners' Finding 165 is Unsupported

Finding 165 cites to the Norwich Town Plan for the generalized proposition that “infrastructure losses due to flooding and erosion from severe storms is best resolved by avoiding continued development in these areas.” No page number is provided for this citation. Town Plan language at Section 2.2.e, page 5 of the Town Plan states: “2-2.e Guide development away from steep slopes and require appropriate erosion control and stormwater management practices to protect water quality and avoid increased downstream flooding.” This generalized policy statement does not qualify as a clear community standard, nor is it evidence that the Project will result in undue erosion or flooding. Petitioner's experts have demonstrated that the Project will not result in undue soil erosion or flooding, and Project has secured authorization from ANR's Stormwater Division to proceed as a Low Risk project. Please refer to the Soil Erosion section of Petitioner's Brief.

III. Greenhouse Gases
[30 V.S.A. § 248(b)(5)]

A. The Statements Made in Opposing Landowners' Finding 178 Were Stricken

Finding 178 recites a statement from Exhibit NN-SG-2 that was stricken by the Hearing Officer's February 9, 2023 order. The statement has been redacted, and therefore is improperly included in Opposing Landowners' Brief.

B. Mr. Gorman's Claims About the Avoided Carbon Emissions from the Project Are Inaccurate

Finding 181 claims (relying on evidence provided by Mr. Gorman) that the Project will turn the 8.2 acres to be cleared from a carbon sink to a carbon source. This is factually inaccurate. The Project will contribute to reducing greenhouse gas emissions. Based upon 2021 US EPA equivalency numbers, the approximately 900,000 kWh/year of electricity that is expected to be generated annually by the Project equates to 638 metric tons/year of avoided CO₂ emissions. Over a 25-year period, the Project is estimated to avoid approximately 15,950 metric tons of greenhouse gases. Staskus pf. At 13 (citing <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>). Mr. Gorman submitted a report prepared by himself addressing forest value and carbon costs associated with the Project, in which he claimed: "[O]ne acre of Vermont forest absorbs the carbon dioxide emissions of 62 automobiles each year. The 8.2+ acres that will be cut to make room for the Upper Loveland Road solar project absorb the annual emissions of 514 automobiles each year." Exh. NN-SG-2 at 17. Mr. Gorman admitted that he has not prepared a lifecycle greenhouse gas emissions calculation for this Project or for any solar project. Martin reb. Pf. At 4; exhs. NUL GM-7 and GM-8.

The carbon calculations offered by Mr. Gorman were shown to be significantly inaccurate. Martin reb. Pf. At 2-3. The Vermont 2021 Forest Carbon Inventory correctly reports that the amount of carbon that an average acre of VT forest sequesters is 1.3 MT CO₂e, not 293 MT CO₂e cited by Mr. Gorman. Martin reb. Pf. At 3; exh. NUL GM-4. Based on the corrected carbon accounting information provided by the State, the 8.2+ acres of forest to be cleared for the Project would sequester the equivalent greenhouse gas emissions of approximately 2.2 average automobiles annually, not the 514 reported by Mr. Gorman. Martin reb. pf. at 3.

Finally, an analysis was prepared on behalf of Opposing Landowners by Ms. Goulet which tallied the greenhouse gasses emitted during all stages of the Upper Loveland solar array's lifecycle, including forest carbon storage, site preparation, manufacture, installation, and operation. The total carbon footprint of the Upper Loveland solar array, including consideration of trees cleared for the array, is estimated to be one quarter of its avoided emissions, 4,200 metric tons of carbon dioxide equivalents. Goulet reb. pf. at 3. In other words, there is a greater GHG emissions reduction achieved by installing and operating the solar array, even with the 8.2 acres of forest clearing, than there would be simply leaving the existing forest intact.

IV. Necessary Wildlife Habitat
[30 V.S.A. § 248(b)(5)]

Findings 167 and 168 of Opposing Landowners' Brief assert that photographs provided by Ms. Goulet establish that there is necessary wildlife habitat for black bear at the Project site. This evidence is insufficient and does not demonstrate the presence of necessary wildlife habitat for black bears.

Criterion 8(A) defines "necessary wildlife habitat" to mean "concentrated habitat that is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life, including breeding and migratory periods." 10 V.S.A. § 6001(12); Tr. at 92 (Barton). The applicable standard for determining necessary habitat for black bears requires presence of stands of concentrations of 15 to 25 hard mass trees species of beech and oak that have the presence of black bear claw mark. Tr. at 93-94-98 (Barton)(reciting Act 250 standards and ANR guidance). The photographs presented by Ms. Goulet did not show bear claw marks on any hard mass trees. *Id.* There is no necessary black bear habitat at the Project site. Tr. at 93-94 (Barton).

Similarly, photographs introduced by Ms. Goulet evidencing deer movement in the area do not establish that the site is necessary wildlife habitat for deer wintering. General wildlife and general movement of wildlife in an area does not itself qualify as necessary wildlife habitat. Tr. at 92, 98 (Barton).

V. Preferred Siting

Relying on Ms. Kenseth's Exhibit NN-JK-21 (Preferred Site Letter Report), Landowners' Brief asserts that Petitioner represented to the Town Planning Commission that "the project would be *invisible*, not on the final version which denudes the ridgeline and the steep slopes directly behind the Neighbors' homes." Opposing Landowners' Brief at 55 (emphasis added). No citation to this statement was provided.

Petitioner was unable to find any reference in documents provided by Petitioner to the Town that claim the Project would be "invisible." Neither Exhibit JK-8 (Opposing Landowners' Transcription of the 7/13/21 Planning Commission Preferred Site Meeting) or Exhibit NN-JK-21 (Opposing Landowners' Preferred Sites Letter Report) include statements by Petitioner's representatives that claim the array would be "invisible." Instead, Exhibit NN-JK-21 states that Petitioner advised the Planning Commission in July, 2021 that "the array would be sited ... 'over the ridge behind these trees' and would not be visible on I-91, Upper Loveland Road, or VT Rte. 5." Exh. NN-JK-21 at 5. These statements are still accurate. As Attorney Dingleline herself conceded at the evidentiary hearing in this case when cross-examining Ms. Staskus, the array location did not shift over the ridgeline:

- Q. Yeah. You're saying -- you said you pushed it north. But it also came east over the ridge.
A. It got fatter.
Q. *And now it spills over the top of the ridge right behind my clients' property; right?*
A. *The array itself does not. It stays in the valley of those two ridges that are in --*
Q. *Yup. Yup. I agree.* But it's -- where you're going to be cutting the trees it's a major problem. ...

Tr. at 74-75 (colloquy between Attorney Dingleline and Ms. Staskus)(emphasis added). As noted above at pages 4-5, above, Ms. Staskus' testimony at the evidentiary hearing demonstrated that the canopy of the trees remaining after clearing for the Project will be of sufficient height to protect views of the ridgeline and array from the locations noted (I-91, Upper Loveland Road, or VT Rte. 5).

Finding 201 recites from the Opposing Landowners' transcription of the Planning Commission's July 13, 2021 preferred sites meeting, where Petitioner was advised that "if the area of impact for the proposed project changes *dramatically* as a consequence of the wetland scientist's input, then the applicant's obligated to come back to the planning commission and notify them of those changes." Exh. NN-JK-8 at 18 (emphasis added). The discussion section of the Brief then asserts: "The evidentiary record does not contain any agendas or minutes of the Norwich Planning Commission where Norwich Technologies returned as promised to review any significant changes to the impact on the Ridgeline Overlay District because Norwich Technologies did not return" Opposing Landowners' Brief at 59. This claim is inaccurate, because, as discussed below, Petitioner did in fact notify the Town of the shift in the array by email on August 23, 2021, following results of Arrowood Environmental's environmental inventory work. Opposing Landowners knew or should have known this before asserting misrepresentation claims, since Town counsel has confirmed that the August 23, 2021 email was provided to the neighbors on or about April 1, 2022 in response to a Public Records Act request served on the Town by the Gormans.

The following excerpt from the transcription of the July 13, 2021 Planning Commission is provided below in order to provide a more complete description of the statements made:

Rod Francis:

In response to that, sorry Troy, I'll give you a shot, *if the characterization of the site of disturbance would change dramatically as a consequence of the wetland mapping, then the obligation would be on the applicant to come back before the planning commission and seek, and indicate that there's been a significant revision to the area of impact, and then obtain permission, you know, obtain the letter of support from the planning commission subsequent to the changes to the project.* So, the assumption here is that the characterization of the project area is continuing, is moving forward. If that changes, then so also does the letter of support.

PC member. Jeff Goodrich:

I actually have a question. So how would the, what's the process there, so if you know, what is the point of intervention, who decides, for example, if the changes that get made in response to a wetland, a scientist's assessment rises to the level of having it come back to the planning commission and seeking a new letter...

Troy McBride of Norwich Solar

That's a good question, Jeff. I guess I give two answers to that. One is a, *if you wanted to add a little language to the preferred siting letter, we've had other planning commissions do things like that, where they just add a sentence or something based on a specific request. So that's an option. The other is, as a stakeholder in the, when the full application comes along, you could say as a group you could evaluate it and say this does not meet what we said was a preferred site, that they have changed the layout extensively based on something that they did not present to us. The PUC would take that extremely seriously if you were... obviously (laughs) I would, because our reputation is extremely important to us, plus we want to do the right thing, but if, if you saw that during that full application that you thought that we had changed the layout in a manner that changed the outcome, or would, was misrepresented over what was presented here, then that would be another opportunity to present that.*

Jackie, Chair of Planning Commission

This is Jackie. If I could take a stab at this, okay? A motion that would read "the planning commission recommends to the select board a letter of support be provided to Norwich Technologies for the proposed solar generation project at Upper Loveland Road subject to wetlands review that doesn't require movement of the project. Is that?

Rod Francis

No you can't do that because it's outside the scope of your review.

Jackie

Okay

Rod

Okay so I think Troy's tried to be helpful and say at the point where the Select Board drafts a letter, the letter could identify that some members of the commission and the select board had concerns with regard to the extent of what unmapped wetlands and what impact that may have on the final project and then as Troy pointed out with the 45 day notice there will be another opportunity to review the project and then the point where it goes before the Public Utility Commission which will be after the wetland scientist has characterized the site, if the proposed area of impact is dramatically different from what we've been provided with, for review here, then I would flag that and draw that to your attention and I would draw it to Troy's attention and then the letter, the letter of support could either be withdrawn or modified to reflect the planning commission and the select board's concern with the changed nature of the project.

Jackie

Okay so I misunderstood then, that this caveat, if you will, would appear in a cover letter, not in the motion.

Rod
Correct.

Jackie
All right, I misunderstood.

PC member Jeff Goodrich
So like Troy said I see caveats like this in motions in other places so I think we can do that.

Rod
He didn't say in motions, he said in the letter.

PC member Jeff
Jackie was making a motion I thought so if I may finish my statement before being interrupted, so sitting here I'm not advocating that we address the wetland question in a motion. Even though I abstain and others may vote for this, that's fine, but I just want to state for the record that it's possible to include wetland considerations that may very well affect the things that are of concern.

Ernie
I just have a question. I'm not clear on what happens if after the wetland scientist comes, let's pretend, just for the sake of discussion because I have no idea if this is gonna happen or not, if they determine that the site as it's been presented to us today is not suitable, it has to be changed or something like that, what happens then if we, since we're voting today, what happens, what's the consequences for our vote?

Rod
I think I've already tried to explain this a couple of different ways. So *if the site, if the area of impact for the proposed project changes dramatically as a consequence of the wetland scientist's input, then the applicant's obligated to come back to the planning commission and notify them of those changes. If they don't, or if they overlook that, then we have the ability at the 45 day notice point to review the materials that they submit, and then we subsequently have the ability to review the material that they submit to the Public Utility Commission for Certificate of Public Good. So two, setting aside the good will of the applicant, we have two regulatory moments where we can voice our concern about what's being reviewed by the Public Utility Commission is not what we reviewed. And as Troy pointed out that would be taken very seriously.*

Unknown PC

Would it be appropriate for us to ask Troy to let us know what happens when you get the opinion of the wetland scientist (unclear) after that affects the view considerations? Seems like a common courtesy rather than just having to sort of make an assumption about whether or not it's a big deal or not, if you'd just let us know that would at least trigger for us the opportunity to come and take another look at it in terms of you needed to move it (unclear).

Troy

So I'm very happy to come back and present and will send you the data through the, we can send the data directly to Rod when we have it. I do want to note that you will not see it in the 45 day notice, that will be coming out tomorrow, um, based on some, the timing of various PUC deadlines but you will see it in the full application and we will have it before we submit the full application and can send it to you before we submit the full application by sending it to Rod. And we're happy to come as well before the planning commission if you have the bandwidth.

Jackie

Thank you Troy. Any other comments or questions before a motion? So motion that we're looking for here is the planning commission recommends to the select board a letter of support be provided to Norwich Technologies for their proposed solar generation project on Upper Loveland Road. *Our responsibility here as has been described is that there is no ridgeline impact on this project.* Do we have such a motion?

Melissa

I'll move

Ernie

Second

Jackie

Roll call. Melissa aye. Brian aye for me as well. Jeff LeBell aye. Lia? Aye. Jeff Goodrich. I abstain. Jackie is an aye. And Ernie is an aye. Thank you Ernie. So thank you Troy. Appreciate your time tonight and we can move on to our next item on the agenda. Okay?

Troy

Thank you very much.

Exh. NN-JK-8 at 16-18 (emphasis added).

This record makes clear that Petitioner's representative was completely forthcoming about noticing the Town that the Project array may shift as a result of the full wetlands review being prepared for the petition filing and specifically stated that it would not be in the 45 day notice that was coming out *the next day*, offered that the Town could qualify its preferred site letter to retain the ability to reconsider the matter, and noted that the Town also would have the opportunity to re-evaluate at the time the petition was filed if it so chose.

As represented by Petitioner at the July 13, 2021 Planning Commission meeting, on August 23, 2021, the Petitioner did in fact report back to Planning Commission staff member Mr. Francis by email, after the environmental assessment was completed, to inform the Town of the change in the Project layout. *See Exhibit NUL Reply Brief-2.* The email states in relevant part:

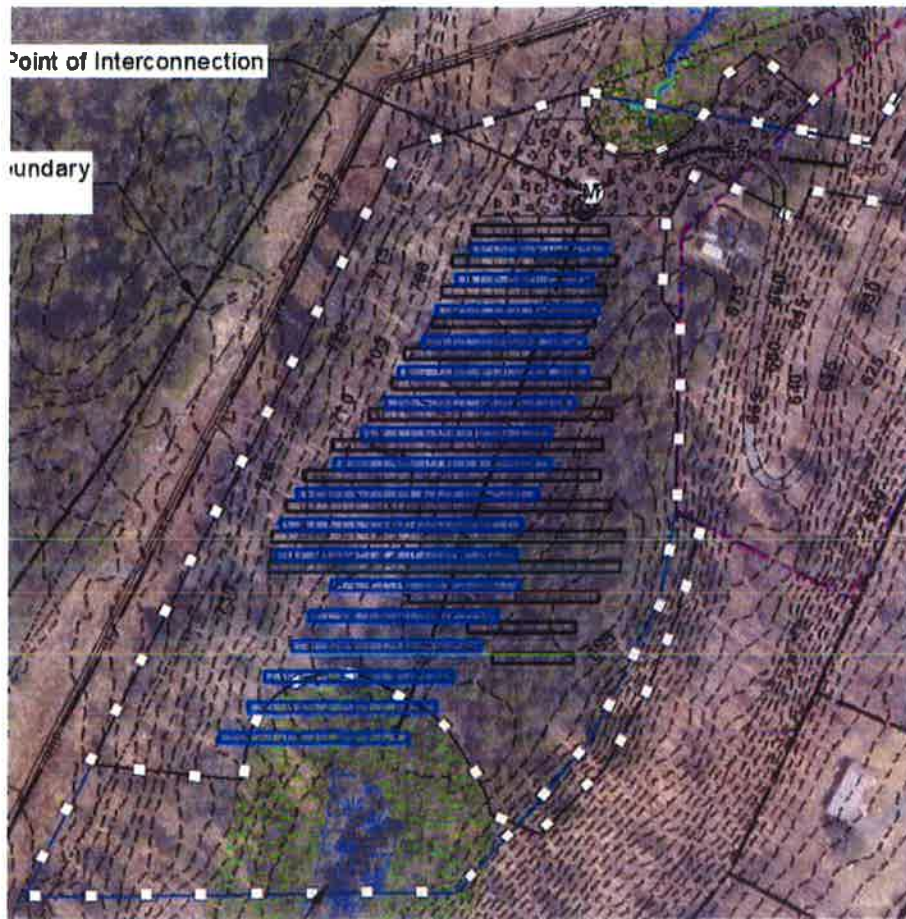
We have the environmental review on Norwich Upper Loveland and are attaching it here for your and the Planning Commission's reference. As we discussed, there is one area that is wet and was determined to be a likely vernal pool. We will observe a 100 foot buffer from that area. There is also a small stream in the north portion of the parcel, we will observe a 50 foot buffer from that area.

The two features don't change our proposed solar project much -- there is a small amount of squishing -- one feature is to the north and one to the south.

We will provide more information in the full filing. We don't see any impact on the visual analysis -- but are confirming the visual analysis as part of the full application. You should see the full application in the next week or so.



Above is the environmental map from Arrowwood Environmental and below is a sketch showing the proposed "squishing" of the solar array (black) vs presented at the Planning Commission (blue).



Exh. NUL Reply Brief-2.² The communication proves that the Petitioner was in fact forthcoming in advising the Town of the Project shift when the environmental report was available.

There was no misrepresentation of material fact, as Opposing Landowners claim at page 55 of their Brief. And, in fact, Petitioner did go back to the Town, despite Opposing Landowners' claim at page 54 of their Brief to the contrary. A comparison of the actual schematic of the Project layout provided by Petitioner to the Planning Commission for the July 13, 2021 meeting, and the 45-day Preliminary Draft site plan mailed on July 14, 2021, also

² For the reasons stated in footnote 1, supra, Petitioner submits that this communication is entitled to Judicial Notice.

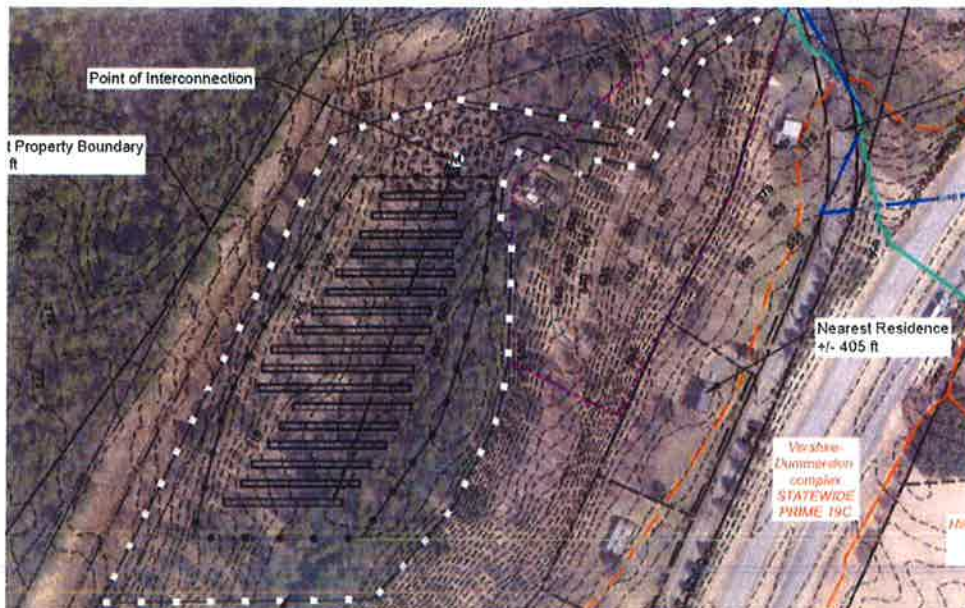
refutes Opposing Landowners' claims that the Petitioner had and withheld a plan that showed the Project shift due to the vernal pool. Below is the schematic provided by Petitioner for the July 13, 2021, meeting, which is included in Opposing Landowners' Exhibit NN-JK-15 (Norwich PC 5/13/21 Agenda Packet). This is what Opposing Landowners have termed "Plan B" in Exhibit NN-JK-21. *See* Opposing Landowners' Brief at 57. Note, this schematic is a graphic illustration of location, not an engineering site plan showing the rows of panels.

**Norwich Upper
Loveland Solar
Viewshed analysis**

Array over the ridge behind these trees – near transmission line corridor

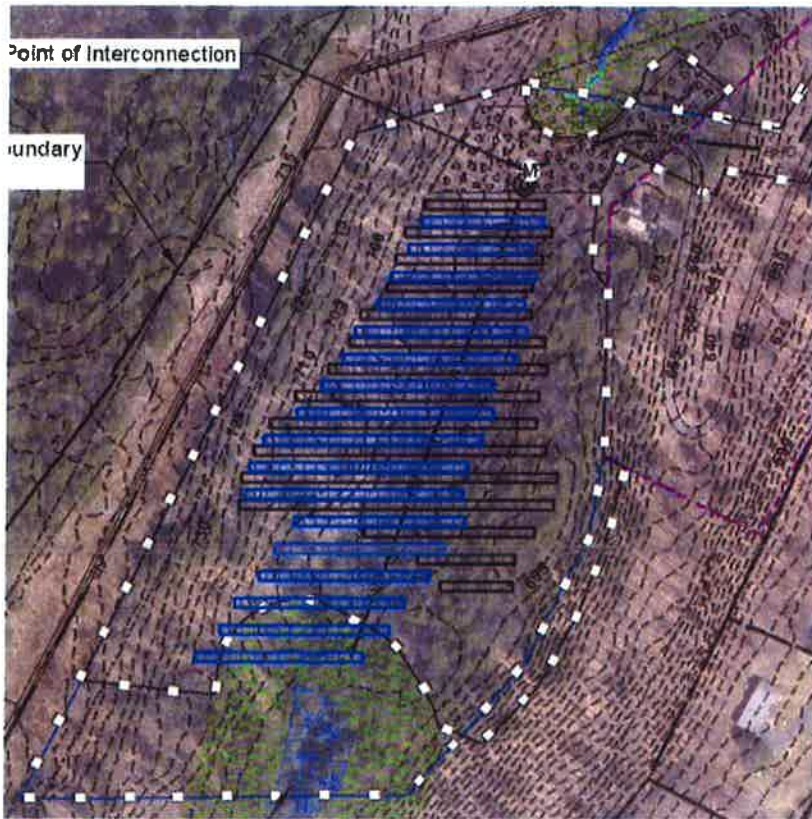


The Preliminary Draft site plan sent with the 45-day filing on July 14, 2021, what Opposing Landowners term "Plan C", is shown below and was admitted into evidence as Opposing Landowners' Exhibit NN-JK-17. It contains seventeen rows of panels, and like Site Plan B, is not squished north and east to avoid the vernal pool.



Exh. NN-JK-17.

The 45-day Preliminary Draft site plan does not, as Opposing Landowners claim at page 57 of their Brief, reflect a dramatic shift of the array as a result of the final wetlands delineation. The general shape and location is the same as the schematic provided to the Planning Commission. In contrast, the site plan comparison sent by Petitioner to the Town on August 23, 2021, does reflect the shift in the array north and east, and reflects fewer rows of panels:



Exh. NUL Reply Brief-2.

The shift in the Project did not rise to the level of constituting “dramatic” or significant Project changes, and this process occurs frequently in development of projects. *See* tr. at 73 (Staskus)(“I would say they are not far different. They are located in the northern end of the property on the east side of the transmission corridor, on the east and south of the transmission corridor”); Tr. at 103(Barton)(“shifting 175 feet really does not strike me, in my work, as significant. .. shifting a project 100, 175 feet is not unusual. Given that when we are talking about buffers to significant natural resources can be as great as a hundred feet, shifting a project 100, 175 feet is not unusual”).

Further, as noticed by Petitioner at the July, 2021 Planning Commission meeting, the Town Planning Commission and Selectboard were provided the entire 45-day notice and petition filings, and had the opportunity to comment and intervene in the Commission proceeding, but

did not. Even more significant, the Selectboard re-visited its Preferred Siting Letter provided for this case in a very lengthy meeting held on February 23, 2022, and again chose not to take further action.


Petitioner has acted in good faith and did not knowingly or intentionally provide inaccurate information at any time in this process.

VI. Request for Relief

Wherefore, Petitioner respectfully requests that the Commission deny Opposing Landowners' request for dismissal, adopt Petitioner's Proposed findings and briefs, and promptly issue a certificate of public good for the Project.

DATED at Burlington, Vermont this 5th day of June, 2023.

Norwich Upper Loveland Solar LLC

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STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-3587-NMP

Petition of Norwich Upper Loveland Solar, LLC for a certificate of public good, pursuant to 30 V.S.A. §§ 248 and 8010, authorizing the installation and operation of a 500 kW (AC) group net-metering solar electric generation system in Norwich, Vermont	
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VERMONT DEPARTMENT OF PUBLIC SERVICE’S REPLY BRIEF

For the reasons discussed in its initial brief, the Vermont Department of Public Service (“Department”) maintains that the 500 kW solar net-metering facility (“Project”) proposed by Norwich Upper Loveland Solar, LLC (“Petitioner”) complies with the criteria under 30 V.S.A. §§ 248(b)(1) and (5) relating to orderly development and aesthetics. The Department submits this reply brief to address certain contentions of the Neighbor Intervenors (“Neighbors”) as to those criteria.

I. Orderly Development of the Region

The Neighbors’ brief argues that the Project will unduly interfere with the orderly development of the region under § 248(b)(1), asserting: (a) the Project would violate land conservation measures in the Norwich Town Plan (“Town Plan”) and the Two Rivers-Ottauquechee Regional Plan (“Regional Plan”), and (b) the Project would violate the Town of Norwich Zoning Regulations (“Zoning Regulations”). Those issues are addressed below, but as a preliminary matter: the Neighbors state that the Town Plan “is a duly adopted municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352” and is

therefore entitled to substantial deference.¹ That is inconsistent with the Department's current understanding and the findings of the Department's expert.²

a. Municipal and Regional Plans

The Neighbors point to numerous sections of the Town Plan and the Regional Plan to support the contention that the Project would violate land conservation measures within the meaning of § 248(b)(1).³ However, the Neighbors' brief provides no explanation as to how the various provisions apply in this context. Land conservation measures must evince a specific policy directed towards land conservation; general policy statements in plans that apply indiscriminately throughout the municipality do not qualify.⁴ Likewise, broad and aspirational provisions without mandatory language or specific standards applicable to a project are not given regulatory force.⁵ The Town and Regional Plan sections cited by the Neighbors do not appear to set forth specific limits or prohibitions applicable to the Project.⁶ To the extent that these provisions can be considered as land conservation measures, the Department has not identified any violations.⁷

¹ Neighbors' Brief at 3, 8, filed May 22, 2023.

² See Exhibit PSD-LT-2 at 20.

³ See Neighbors' Brief at 3–6, 11–20; *In re Acorn Energy Solar 2, LLC*, 2021 VT 3, ¶ 92, 214 Vt. 73 (2021) (indicating that under § 248(b)(1), the Commission need only consider aspects of town plans which qualify as land conservation measures).

⁴ See *Petition of Vermont Electric Power Company, Inc.*, Docket 6860, Order at 201-202 (Jan. 25, 2005) (taking guidance from the Vermont Supreme Court's precedent on Act 250's Criterion 10, and stating: "non-specific provisions of municipal plans should not carry more weight in applying Section 248(b)(1) than in applying Criterion 10 of Act 250"); see also *In re John A. Russell Corp.*, 2003 VT 93, ¶ 19, 838 A.2d 906, 913 (Vt. 2003).

⁵ See, e.g., *In re Apple Hill Solar LLC*, 2021 VT 69, ¶ 40, 215 Vt. 523 (2021) (quoting *In re Chaves Act 250 Permit Reconsider*, 2014 VT 5, ¶ 41, 195 Vt. 467) ("The language relied on by neighbors is broad and nonregulatory, espousing general policies about maintaining features, protecting valuable areas, and minimizing impacts, but contains no specific requirements that are legally enforceable."). Though in that instance the *Apple Hill* Court was discussing clear written community standards for purposes of analysis under § 248(b)(5), it noted: "For the same reasons that the general goal of protecting the rural character of the land . . . is not a clear, written community standard . . . it does not qualify as a 'land conservation measure'— a phrase that suggests more than a general statement of principles." *Apple Hill*, 2021 VT 69, ¶ 43, 215 Vt. 523 (2021). By contrast, the Court found that clear, specific language stating "Development . . . cannot be sited in prominently visible locations on hillsides" was a cognizable land conservation measure. See *id.* at ¶ 45 (emphasis added).

⁶ See Neighbors' Brief at 3–6, 11–20. References to the Zoning Regulations are discussed in the next section.

⁷ See Exhibit PSD-LT-2 at 20–26, 28–30.

b. Zoning Regulations

In addition to language of the relevant plans, the Neighbors argue that the Project violates land conservation measures in the local Zoning Regulations.⁸ The Zoning Regulations are not contained in the Town Plan, and while “state and local regulatory review coexist” in other contexts, projects proposed under § 248 are exempt from zoning requirements.⁹ As such, the Zoning Regulations do not apply as land conservation measures. Nonetheless, the Neighbors suggest that provisions specific to the Ridgeline Protection Overlay District (“RPO”) should be considered because they are incorporated into the Town Plan.¹⁰ Of the three places where the RPO is mentioned in the plan, two relate to preferred site designations¹¹ while the third speaks broadly to “preserving the recreational and natural value” of the area.¹² The Town Plan does not purport to incorporate the bylaws associated with the RPO. Even assuming that the RPO standards could be considered as land conservation measures, the Department has not identified any provisions which the Project would violate.¹³

II. Aesthetics

As to aesthetics, the Neighbors’ brief contends that the Project will have an undue adverse effect under § 248(b)(5), raising issues related to (a) visibility, (b) distinctions between aesthetics

⁸ Neighbors’ Brief at 6–10.

⁹ See *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 18, 202 Vt. 59 (2016); 24 V.S.A. § 4413(b) (“A bylaw under this chapter shall not regulate electric generation facilities . . . regulated under 30 V.S.A. § 248. . . .”); *In re Apple Hill Solar LLC*, 2021 VT 69, ¶ 33, 215 Vt. 523 (2021) (citing *Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 18) (“In contrast to the Act 250 context, § 248 review supplants rather than supplements local zoning regulation”); see also *Petition of Rutland Renewable Energy, LLC*, Docket No. 8188, Order of 3/11/15 at 47, 86 (stating that “projects reviewed under Section 248 are exempt from zoning bylaws”) (*aff’d*, 2016 VT 50).

¹⁰ Neighbor’s Brief at 9.

¹¹ Preferred site status in this case is through a joint letter of support under Commission Rule 5.103. See Exhibit NUL-MS-5; Thayer pf. at 3.

¹² See Exhibit NN-JK-6 at 22, 28; Exhibit PSD-LT-2 at 25–26.

¹³ See Exhibit PSD-LT-2 at 26–27 (noting that “the Project is not subject to local zoning regulations,” and that “it does not appear the Project is inconsistent with the regulations”); Exhibit NN-JK-5 at 28–29 (setting standards which generally relate to visibility from public roads). The Neighbors’ brief also cites to Regulations Section 3.13(A)(1)(f)(ii), which is a general zoning standard, not a District standard. See Exhibit NN-JK-5 at 43–44.

and scenic and natural beauty, (c) perceived shortcomings in the Department's evidence, and (d) clear, written community standards. These are addressed below.

a. Visibility

The Neighbors propose numerous findings which suggest that the Project will have a significant visual impact as viewed from surrounding locations.¹⁴ The Department does not agree, for the reasons set forth in its initial brief and exhibits.¹⁵ Of particular note, the Neighbors overstate the impacts of proposed tree clearing as well as the potential visibility from a parcel referred to as "the Schmidt Bog town forest."¹⁶ As to clearing, the Neighbors suggest that removing trees on the upper portion of the slope to the east of the Project will create a "bare/treeless space below it on the slope [which] will be dramatically visible from Upper Loveland Rd., Interstate 91, and Loveland Rd."¹⁷ This is directly contradicted by the findings of the Department's expert, Ms. Thayer.¹⁸

The Neighbors also suggest that "the solar array will be fully visible from trails and other vantage points" within the "Schmidt Bog" area.¹⁹ The trail referenced by the Neighbors is not recognized on the Town's trail maps or in the Town Plan more generally, and the parcel does not appear to be designated as a town forest.²⁰ Regardless, Ms. Thayer's Report and associated exhibits demonstrate that (1) overall visibility of the array is expected to be very limited due to intervening topography and vegetation, and (2) any visibility is expected to be heavily filtered.²¹

¹⁴ See Neighbors' Brief at 24–28.

¹⁵ See Exhibit PSD-LT-2 at 7–19.

¹⁶ See Neighbor's Brief at 27.

¹⁷ *Id.*

¹⁸ See Exhibit PSD-LT-2 at 13–16, 19 (finding that there will be "little to no visibility" from public roads).

¹⁹ Neighbors' Brief at 34.

²⁰ See Exhibit PSD-LT-2 at 8; Exhibit NN-JK-6.

²¹ See Exhibit PSD-LT-2; Exhibit PSD-LT-4 (viewshed map). The Neighbors' aesthetics report includes a photo as Figure 14, which is identified as "View of site from town forest." See Exhibit NN-JK-2. It is worth noting that the photo appears to be showing a view from the utility transmission corridor, which is on the property hosting the Project

b. Scenic and Natural Beauty

Citing to the *Rinker's* decisions of the Vermont Superior Court, Environmental Division (“Environmental Division”), the Neighbors’ brief asserts that aesthetics is a separate and distinct criterion from scenic and natural beauty in the Act 250 context.²² While the thrust of the argument as to *Rinker's* is not entirely clear, the Department does not agree that these decisions establish an alternative standard for analysis of aesthetics under § 248(b)(5). The decisions of the Environmental Division with respect to Act 250 are not binding on the Commission’s analysis under § 248 or § 248a, but more importantly, the relevant precedent for both Act 250 and Title 30 confirms that the *Quechee* test encompasses aesthetics and scenic, natural beauty to determine compliance with the applicable criteria.²³ Ms. Thayer’s Report correctly notes and considers the relevant factors under both steps of the *Quechee* test, including a thorough visibility analysis and assessment of the characteristics and qualities of the surrounding landscape.²⁴

and is not part of the town-owned parcel. See Exhibits NN-JK-2, NUL-MS-2 (site plan), PSD-LT-4; Tr. 4/28/23 at 203 (Staskus) (“The transmission corridor is on this property”).

²² See Neighbors’ Brief at 36–38; *In re Rinker's, Inc.*, No. 302-12-08 Vtec (Vt. Env'tl. Ct. Aug. 19, 2009); *In re Rinker's, Inc.*, No. 302-12-08 Vtec (Vt. Env'tl. Ct. Sep. 17, 2009).

²³ For example, *In re Eastview at Middlebury* states:

Criterion 8 mandates that . . . the development ‘will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.’ 10 V.S.A. § 6086(a)(8). To guide its analysis . . . the court should employ a two-pronged approach, the so-called Quechee test, whereby it determines if the proposed project will have an adverse aesthetic impact, and if so, it considers whether the adverse impact would be undue.

In re Eastview at Middlebury, Inc., 2009 VT 98, ¶ 20, 187 Vt. 208 (2009) (quotations omitted); see also *In re Halnon*, 174 Vt. 514, 515 (2002) (outlining “the proper Quechee test for determining whether a project will have an undue adverse effect on the aesthetics or scenic and natural beauty of an area”); *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 14, 202 Vt. 59 (2016) (noting that the first question under the Quechee test is “whether the project will have an adverse effect on scenic and natural beauty in the area”); *In re VTel Wireless Inc.*, 2015 VT 135, ¶ 13, 201 Vt. 1 (2015); *In re Verizon Wireless Barton Act 250 Permit*, No. 2011-204, 2012 WL 1979299, at *2 (Vt. May 1, 2012) (quoting *Halnon*, 174 Vt. 514 (2002)) (“[A] determination must first be made as to whether a project will have an adverse impact on aesthetics and the scenic and natural beauty of an area because it would not be in harmony with its surroundings.”).

²⁴ See Exhibit PSD-LT-2 at 6–19.

c. Ms. Thayer's Report

The Neighbors suggest that Ms. Thayer's Report does not provide sufficient information to evaluate the Project's aesthetic impacts. They contend that under step 1 of the *Quechee* test, Ms. Thayer fails to "observe that the project area is surrounded overwhelmingly by forest," and does not adequately consider the Project's suitability or compatibility with the forest.²⁵ The Department does not agree with Neighbors' characterization of the Project as "overwhelmingly" surrounded by forest.²⁶ However, the Report does recognize that "the host parcel is primarily wooded" and "the surrounding area land uses mostly consist of wooded lands and forested areas with residential development of parcels less than 25 acres."²⁷

While the Neighbors may not agree, Ms. Thayer found that a significant aspect of the overall context for the Project includes existing transmission and telecommunications infrastructure in the immediate vicinity.²⁸ Given Ms. Thayer's thorough discussion of the Project's surroundings, visibility, design and materials, interaction with natural features and landforms, the characteristics of vegetation on the site, and the infrastructure immediately adjacent to the Project, the Report provides more than sufficient information and analysis to inform a determination as to whether the Project will have an adverse impact.²⁹ Indeed, the Report states that the Project could be found to have an adverse impact under step 1 of the *Quechee* test, and the Department concludes that it will.³⁰

²⁵ See Neighbors' Brief at 31–34.

²⁶ See, e.g., PSD-LT-2 at 7–13 and Image 2 (noting that the surroundings include forested areas, open fields, residential development, Interstate 91 and other roads, a cell tower, and a utility transmission corridor among other things).

²⁷ See *id.* at 8–9 and Image 3.

²⁸ See *id.* at 11–13.

²⁹ See *id.* at 7–17.

³⁰ See *id.* at 12, 17 ("One area that could be considered as less compatible is the proposed tree clearing of 8.2 acres, especially when compared to an already cleared or partially cleared site."). The Neighbors' brief also suggests that

d. Community Standards

Under step 2 of the *Quechee* test, the Neighbors assert that the Project will violate clear written community standards in the Town Plan, Regional Plan, and Zoning Regulations. It appears that the same provisions put forward as land conservation measures are considered as community standards in this section of the Neighbors' brief.³¹ To find that a project would violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area, "the Commission must find that the Project is inconsistent with a provision of the applicable town or regional plan that: (1) Designates specific scenic resources in the area where the project is proposed (2) Provides specific guidance for project design."³² "Statements of general applicability do not qualify," nor do standards which "do[] not state with specificity what type of development is permitted."³³

For largely the same reasons as discussed above under § 248(b)(1), the Department submits that the Project will not violate any clear, written community standards under § 248(b)(5).³⁴ Insofar as the Neighbors contend that the Zoning Regulations constitute enforceable community standards in this context, or that the regulations for the RPO are incorporated into the Town Plan, these arguments run contrary to the Commission's clear precedent "that zoning bylaws are not an appropriate source for clear, written community standards."³⁵ Finally, even assuming

Ms. Thayer did not consider the visual impacts of the tree clearing from perspectives east of the Project. This is simply inaccurate. *See id.* at 13–15 (discussing visibility, including the impacts of tree clearing).

³¹ *See* Neighbors' Brief at 38.

³² Commission Rule 5.112(C).

³³ *See id.* Rule 5.112(C) provides examples of the specificity required, noting that these statements would qualify: "the agricultural fields to the west of Maple Road are scenic resources that must be preserved" and "only dwellings, forestry, and agriculture are permitted within the Maple Road scenic protection area." *Id.*

³⁴ *See supra* pp. 2–3; *see also* Exhibit PSD-LT-2 at 17 (finding that "the Project does not violate any clear, written community standard intended to preserve the aesthetics or scenic beauty of the area.).

³⁵ *Petition of Rutland Renewable Energy, LLC*, Docket No. 8188, Order of 3/11/15 at 86 (discussing the statutory exemption from zoning and finding certain local standards inapplicable as "*de facto*" zoning regulations") (*aff'd*, 2016 VT 50).

that regulations for the RPO could be considered as community standards, the Department has not identified any violations.³⁶

III. Conclusion

For the foregoing reasons, and those described its initial brief, the Department maintains that the Project will not unduly interfere with the orderly development of the region under § 248(b)(1) and will not have an undue adverse effect on aesthetics under § 248(b)(5).

DATED at Montpelier, Vermont this 5th day of June, 2023.

Respectfully Submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

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cc: ePUC Service List

³⁶ See Exhibit PSD-LT-2 at 26–27.

Exhibit M – EXCERPTS FROM 7/13/21 PC MEETING

The following excerpt from the Neighbor's transcription of the July 13, 2021 Planning Commission meeting was filed as evidence in the PUC case as Exhibit NN-JK-8, and is provided below in order to provide a more complete description of the statements made:

Rod Francis:

Ernie

I just have a question. I'm not clear on what happens if after the wetland scientist comes, let's pretend, just for the sake of discussion because I have no idea if this is gonna happen or not, if they determine that the site as it's been presented to us today is not suitable, it has to be changed or something like that, what happens then if we, since we're voting today, what happens, what's the consequences for our vote?

Rod

I think I've already tried to explain this a couple of different ways. So if the site, if the area of impact for the proposed project changes dramatically as a consequences of the wetland scientist's input, then the applicant's obligated to come back to the planning commission and notify them of those changes. If they don't, or if they overlook that, then we have the ability at the 45 day notice point to review the materials that they submit, and then we subsequently have the ability to review the material that they submit to the Public Utility Commission for Certificate of Public Good. So two, setting aside the good will of the applicant, we have two regulatory moments where we can voice our concern about what's being reviewed by the Public Utility Commission is not what we reviewed. And as Troy pointed out that would be taken very seriously.

Unknown PC

Would it be appropriate for us to ask Troy to let us know what happens when you get the opinion of the wetland scientist (unclear) after that affects the view considerations? Seems like a common courtesy rather than just having to sort of make an assumption about whether or not it's a big deal or not, if you'd just let us know that would at least trigger for us the opportunity to come and take another look at it in terms of you needed to move it (unclear).

Troy

So I'm very happy to come back and present and will send you the data through the, we can send the data directly to Rod when we have it. I do want to note that you will not see it in the 45 day notice, that will be coming out tomorrow, um, based on some, the timing of various PUC deadlines but you will see it in the full application and we

will have it before we submit the full application and can send it to you before we submit the full application by sending it to Rod. And we're happy to come as well before the planning commission if you have the bandwidth.

Jackie

Thank you Troy. Any other comments or questions before a motion? So motion that we're looking for here is the planning commission recommends to the select board a letter of support be provided to Norwich Technologies for their proposed solar generation project on Upper Loveland Road. Our responsibility here as has been described is that there is no ridgeline impact on this project. Do we have such a motion?

Melissa

I'll move

Ernie

Second

Jackie

Roll call. Melissa aye. Brian aye for me as well. Jeff LeBell aye. Lia? Aye. Jeff Goodrich. I abstain. Jackie is an aye. And Ernie is an aye. Thank you Ernie. So thank you Troy. Appreciate your time tonight and we can move on to our next item on the agenda. Okay?

Troy

Thank you very much.

Exh. NN-JK-8 at 17-18 (emphasis added)(attached to this letter).

AGENDA ITEM #5

Craft job description

Job Title: Zoning Administrator (ZA)

Department: Planning and Zoning

1. JOB SUMMARY

- 1.1 Understanding and interpreting Town ordinances and regulations.
- 1.2 Assists the Development Review Board (DRB) with understanding and reviewing land use applications.
- 1.3 Assists applicants with understanding Town ordinances and regulations and land use application requirements.
- 1.4 Assists the Planning Commission with its legislative responsibilities.

2. MAJOR DUTIES

- 2.1 The ZA's primary function includes understanding and interpreting Town ordinances and regulations to process administrative applications and to assist the DRB with understanding and reviewing land use applications including working with applicants, offering staff review comments, assisting the DRB during project review, assisting with the public notice and administrative requirements of land use applications, assisting the DRB with public and deliberative review sessions including preparation of meeting minutes with testimony and findings following deliberative sessions, development of notices of decision, and memorializing permit applications once approved or denied.
- 2.2 ZA functions include enforcement responsibilities pursuant to Town ordinances and regulations.
- 2.3 ZA functions will include professional and courteous engagement of the public and volunteer board members at all times.
- 2.4 As time allows, the ZA will also assist the Planning Commission (PC) with its legislative responsibilities including municipal plan updates, zoning and subdivision regulation revisions, and assistance with coordinating collaborative efforts the PC may pursue such as Two Rivers-Ottawquechee Regional Commission (TRORC) input, pursuit of grant funding, and engagement of consultants.
- 2.5 As time allows, the ZA will perform other duties assigned by the Town Manager.

3. KNOWLEDGE **DESIRED FOR** THE POSITION

- 3.1 Knowledge of and experience with the law related to land use permits, ordinances, regulations, and the responsibilities and roles of lay-boards.
- 3.2 Knowledge of and experience with interpreting land use regulations, reviewing land use applications, assisting with land use application review, and addressing both administrative and enforcement land use matters.
- 3.3 Knowledge of and experience with Regional Planning Commissions (RPCs) and Regional Development Corporations (RDCs).
- 3.4 Knowledge of and experience with grant writing and administration.
- 3.5 Knowledge of and experience with digital engagement including document publication and in-person and remote meeting assistance. ArcGIS and GIS skills are also desirable with the understanding that TRORC and VCGI provide significant resources in this regard.
- 3.6 The ability to courteously communicate at all times and provide accurate written summaries and documents.

4. SUPERVISORY CONTROLS

- 4.1 The ZA's primary function is to assist with land use applications as required by the law and the DRB including enforcement.
- 4.2 The ZA will support the PC with its lawful responsibilities as time allows.
- 4.3 The ZA will report to the Town Manager and perform additional duties that may

be assigned by the Town Manager as time allows.

5. GUIDELINES

- 5.1 The ZA's conduct shall comport with the legislative requirements of the position and support the legislative requirements of lay boards.
- 5.2 Town policies, ordinances, and regulations shall direct the ZA's actions.
- 5.3 The ZA shall support Town Manager requirements for staff participation in the administration of the day-to-day operations of the Town.

6. COMPLEXITY/SCOPE OF WORK

- 6.1 The ZA must understand current Town ordinances, regulations, and policies to inform all aspects of engaging the public, land use applications, lay board requirements, and enforcement needs including coordination with the Town Manager when legal assistance may be required.
- 6.2 The ZA's primary responsibility includes addressing land use applications that require guidance to applicants and detailed communication with DRB members who are serving in a volunteer role to understand, review, and vote on materials submitted for each application. This is a complex requirement that requires seeking input and guidance from others (such as regulators; architects; engineers; system analysts for traffic, light, and noise; environmental scientists; real estate professionals; economic specialists; etc.) to help the DRB understand the details associated with each application in the context of existing ordinances and regulations.
- 6.3 As time allows, the ZA will assist the PC with its responsibilities to update the municipal plan, ordinances, regulations, and policies.
- 6.4 As time allows, the ZA will assist the Town Manager with other duties needed to support the day-to-day functions of the Town.

7. CONTACTS

- 7.1 The ZA will report to the Town Manager for employment responsibilities.
- 7.2 The ZA will coordinate with the DRB for all non-administrative land use applications.
- 7.3 The ZA will assist and inform all land use applicants.
- 7.4 The ZA will coordinate with the PC to assist the PC with the execution of its legislative responsibilities.
- 7.5 The ZA will engage members of the public with courtesy.
- 7.6 The ZA will transparently engage others involved in land use including, but not limited to, legislative and regulatory interests outside the Town, RPCs, RDCs, public and private regional organizations involved in land use, other land use professionals, adjacent municipalities, and other parties affecting land use in the Town.
- 7.7 The ZA will need to work with other staff members for planning, budgeting, and permitting needs (such as the Public Works Department for driveway permitting, all departments for long-term capital improvement planning, and all departments for Town Plan and other regulatory implications).

8. PHYSICAL DEMANDS/WORK ENVIRONMENT

- 8.1 The ZA must use the Town's digital system to perform daily duties and work with the Town Manager to upgrade existing systems.
- 8.2 The ZA must be available for public outreach for land use concerns and applications by means of office hours in Tracy Hall, notifications of availability, and timely responses for individual interactions.
- 8.3 The ZA will need to conduct site visits, interact with people outside the Town, and maintain technical knowledge, which will require skills and abilities in myriad temperature and weather conditions for travel and participation.

9. SUPERVISORY AND MANAGEMENT RESPONSIBILITY

- 9.1 This position has supervisory responsibility for a Planning Assistant.
- 9.2 This position is responsible to the Town Manager for employment.

9.3 This position is subject to the law and Town policies.

10. **MINIMUM QUALIFICATIONS**

10.1 Licensure, degrees, and/or past job positions related to land use applications, municipal project review, and documentation related to land use permits.

10.2 Verbal and written communication skills in person and digitally.

10.3 Town employment requirements such as a driver's license, background check, etc.

AGENDA ITEM #8

NORWICH PLANNING COMMISSION

Tuesday, June 27, 2023, 6:30pm

DRAFT MINUTES

Members Present: Ernie Ciccotelli, Vince Crow, Jeff Goodrich, Stuart Richards, Jaan Laaspere, Bob Pape, Kris Clement

Public: Jeff Lubell, Cheryl Lindberg, Mary Gorman, Joel Stettenheim, Troy McBride

Meeting Opened: 6:32 pm

1. Approve Agenda:

Goodrich moved, seconded by Richards to approve Agenda.

Goodrich stated he would like to add a discussion on receiving correspondence to Item 5A.

Richards stated he would like to move a discussion on receiving correspondence to the beginning of the agenda, as well as discuss the role of the PC in reviewing projects now, not delay to a later meeting.

Clement supported the discussion of statutory authority of the PC historically and moving forward.

The group reached consensus to add item 5A.

Motion passed 6-1 (Ciccotelli, Crow, Goodrich, Laaspere, Pape, and Clement- Yes; Richards -No)

2. Public Comment:

Mary Gorman stated that the PC should give more notice of agenda items. Richards agreed.

Joel Stettenheim, the President of Norwich Solar, introduced himself.

Troy McBride, the CTO of Norwich Solar, introduced himself.

3. Commission Housekeeping:

a. New Member welcome

The chair welcomed new PC members Kris Clement and Bob Pape

b. PC Methods, OML, mutual respect, Robert's Rules, working groups, OML summary

Laaspere stated the PC sets policies and uses staff to implement those policies, but the PC is in the driver's seat. The goal of the PC is to exceed open meeting law requirements and to encourage public participation. He will implement Robert's Rules of Order for the meeting but also allow the discussion to keep moving. Laaspere also stated that the PC will need to work in parallel and small groups to complete the work that needs to be done.

Richards stated that the SB's practice is posting the agenda 5 days prior to allow time to review. He also stated the SB sets a deadline for correspondence.

Laaspere recommended that the PC send agendas and packets 5 days prior to a meeting.

Clement stated that the agenda can be sent through the list serve, and that there is another email list available to the PC.

Cheryl Lindberg stated that the Board of Listers posted their agenda on the list serve with link to the town website along with a paper agenda in front of Tracy Hall and the town post office.

The group had consensus to set the deadline for submission of correspondence as Wednesday at noon before a Tuesday PC meeting, along with the deadline for the packet and agenda to be posted by the end of the day Thursday prior to a Tuesday meeting. It will be posted on the List Serve and at Tracy Hall

Goodrich stated that correspondence can still be submitted after that time with the assumption that might not have been thoroughly reviewed due to time restrictions.

4. Chair Report:

- a. Laaspere stated that the PC meet in the future using a hybrid meeting.
- b. Laaspere stated the that here have not been any new applicants for planning director position.

Goodrich stated that the PC used to be involved with the hiring of a new planning director until the town manager system. He went on to volunteer to help the town manager regarding future hirings.

Ciccotelli stated that according to the statute, it is the duty of the PC to bring names of applicants to the SB. He also stated that the name Planning Director is inaccurate for the position and that it should be changed to Zoning Administrator.

- c. Goodrich recommended reviewing the job description at future a meeting and discussing it with the chair of the SB.

Richards agreed and would prefer to find local interim candidates from the community.

- d. Planning and Zoning Files

Laaspere stated that the lap used by the interim Zoning Administrator is accessible and that Pam Mullen is generating a list of categories of Rod Frances's files. He opened discussion of which files would be needs and what to look for.

Richards requested a copy of the letter from 2021 regarding the Solar Project

Clement stated how useful the E911 parcel maps can be and suggested that Mullen could summarize resources for new PC members.

5. AHSC Memo – New Boston Rd Grant:

Lubell stated that the memo was an update addressing concerns raised by the SB regarding the development of public town land for potential affordable housing. The memo includes the AHSC recommendation that the town apply for a \$60,000 planning grant through the Vermont Community Development Program to investigate the feasibility of development of the New Boston Rd site. The town would be responsible for 10% (\$6,000). He encouraged that the PC forward the memo to the SB and endorse it.

Goodrich moved, seconded by Crow, to advance memo to the SB.

Richards stated that he thinks that \$60,000 is too much to assess the site and it can be done for less. Recommended digging test holes and small investigations first.

Clement stated that since the SB had concerns, the PC should discuss it further. There is no need to rush the decision.

Lubell stated that the AHSC has not rushed this decision and that there is a need to gather more information. He continued stating that the grant will cover surveying and associated costs and that this is the most cost-effective direction for the town, having to contribute \$6,000.

Clement stated that once all the restrictions were accounted for there may only be 5 acres left for development and questioned whether it was worth it for a small number of units.

Lubell stated that Kyle Katz had calculated that the site could support about 12-15 units.

Laaspere recommended that PC forward the memo to include a list of concerns.

Goodrich amended his motion to include considerations of visual impact, cell tower and fall zone cost, landfill, wastewater, and social and environmental justice.

Motion passed 6-1 (Ciccotelli, Crow, Goodrich, Laaspere, Pape, and Clement- Yes; Richards -No)

Laaspere stated that members of the PC can submit specific written concerns to the SB for the next meeting.

6. Agenda Priorities – 6 Month Plan:

Goodrich recommended that the PC study the Town Plan, TRORC Regional Plan and the town Land Use Regulations. He continued stating that there should be a focus on the role of the PC, the role of the DRB and finding gaps in the LUR. He recommended setting future agenda items for working groups and flood considerations. (CRS)

Ciccotelli stated that there is lots of work to be done regarding the Land Use Regulations and that's because we have to deal with the conflicts, ambiguities, and loopholes in our regulations.

Clement stated that the language in the town plan can cause problems and needs to be updated to more specific language.

Ciccotelli stated that there are guidelines for word replacement in courts and legislative councils. There are new standards for drafting legislation and regulations, and that words like shall and other lawyer talk are being eliminated in favor of plain language.

Clement recommended that PUD should be discussed.

Laaspere recommended to set an agenda item to discuss the preferred solar designation of the Upper Loveland solar project.

Clement stated the PC should confer with a lawyer to help determine what can be done by the PC.

Richards stated he conferred with a lawyer and was told the PC has the power to review the designation. Richards read from the STATE OF VERMONT PUBLIC UTILITY COMMISSION Case No. 21-2939-NMP.

“I recommend that the Commission hold that Commission Rule 5.103 does not prohibit a municipality or the Commission from reviewing the validity of a letter of support before a CPG is issued. The purpose of the preferred-site letter is to allow towns to steer development to areas where the town supports development. Therefore, a municipality should be able to reconsider a letter, provided this decision is not made for arbitrary or discriminatory reasons. To hold otherwise would encourage developers to refrain from disclosing unfavorable information to municipalities when they request a preferred-site letter, knowing that a decision could not be rescinded. Similarly, the Commission must be able to review the validity of a preferred-site letter, including the accuracy of the representations leading up to the issuance of the letter.”

Goodrich recommended that the PC should reach out to TRORC and can revisit the issue separate from the legal elements. He also recommended the PC reach out to the SB to hear out what their legal advice has been, which was met with consensus.

Richards and Ciccotelli recommended adding evaluation of the PC’s ability to make changes to the preferred site letter the next meeting’s agenda.

7. Approve minutes:

Goodrich moved, seconded by Richards, to approve 6/13 minutes with corrections.

Motion passed 5-0 (Pape and Clement abstain)

Goodrich moved, seconded by Richards, to approve 5/9 minutes with corrections.

Motion passed 4-0 (Laaspere, Pape and Clement abstain)

8. Public Comment:

N/A

9. Future Meeting Schedule, and Agenda:

Next meeting 7/11/23 – Hybrid meeting at Tracy Hall and Zoom

10. Adjourn:

Richards moved, seconded by Goodrich, to adjourn the meeting at 8:38PM

Motion passed 7-0

Future Meeting:

July 11, 2023