



State of Vermont

Karin McNeill
Office of Planning
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901
Ph: (802) 505-0396

Agency of Natural Resources

August 18, 2020

Via ePUC
Judith Whitney, Clerk
Vermont Public Utility Commission
112 State St., Drawer 20
Montpelier, VT 05620-2701

Docket 20-1655-NMP:

Petition of Norwich Turnpike Solar, LLC (“Applicant”) for a Certificate of Public Good (“CPG”) Pursuant to 30 V.S.A. §§ 248 and 8010, authorizing installation and operation of a 150 kW (AC) Photovoltaic Group Net-Metering System at 645 Turnpike Road, Norwich, Vermont (“Project”)

The Agency of Natural Resources (“Agency”) offers the following comments and requests CPG conditions under Section 248(b)(5), Criteria 1E/1F, and 1G in response to the application and the revised site plan *Exhibit MS-2* filed on August 14, 2020.

Standard of Review

Section 248(b)(5) states that the PUC shall not issue a certificate of public good unless it finds that 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, and the 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) and greenhouse gas impacts.”¹ The material contained in the application reveals that the Project has the potential to cause undue adverse effects under specific criteria. Potential undue adverse effects are discussed below.

Criterion 1E: Streams

Criterion 1F: Shorelines

Under Criterion 1(E) & 1(F), the Agency reviews projects for conformance with the Agency’s [Guidance for Agency Act 250 and Section 248 Comments Regarding Riparian Buffers](#)²

¹ 30 V.S.A. § 248(b)(5).

² Guidance for Agency Act 250 and Section 248 Comments Regarding Riparian Buffers, <http://anr.vermont.gov/sites/anr/files/co/planning/documents/guidance/Guidance%20for%20Agency%20Act%20250%20and%20Section%20248%20Comments%20Regarding%20Riparian%20Buffers.pdf>

(“Guidance”). In accordance with the Guidance, the stream riparian zone north of the access is measured 50-feet from the upland edge of the contiguous wetland and continues to the water’s edge. The pond riparian zone in the north portion of the Project is measured 100-feet from the pond mean water level, *Guidance at 3*.

To maintain water quality and habitat needs and functions, the Agency requires CPG conditions stating the Project would leave the stream riparian zone and the inner 50 feet of the pond riparian zone undisturbed.³ The Project proposes impacts in the outer 50 feet of the pond riparian zone from the array, fencing, access, and related Project activities including vegetation management.⁴ To mitigate these impacts, the revised site plan indicates white cedars would be planted north of the access. The species and planting methods must follow the Agency’s [*Planting Guidance for the Revegetation of Riparian Areas in Vermont \(2016\)*](#)⁵.

To prevent inadvertent encroachment into jurisdictional natural resources, the Agency requires flagging on the Project limits to be installed near the undisturbed riparian zones boundaries during Project activities involving ground disturbance. The Agency requires photos of installed flagging.

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

The CPG Holder shall maintain an undisturbed, naturally vegetated riparian zone along the pond north of the Project array and stream north of the Project access, except for impacts represented in Exhibit MS-2 Site Plan within the outer 50 feet of the pond riparian zone and for the removal of non-native invasive plants given prior written approval by the Agency of Natural Resources. Riparian zone mitigation plantings shall be planted during the growing season following construction.

The stream riparian zone shall be measured inland, perpendicular to and horizontally 50-feet from the upland edge of the wetland, and extends to the water’s edge at base flow conditions. The pond riparian zone shall be measured inland, perpendicular to and horizontally 100-feet from the pond mean water level 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 or Class II wetlands buffer zone boundaries, prior to site preparation and construction, maintenance involving earth

³ The stream riparian zone boundary along the access road is equivalent to the wetland buffer boundary shown as a red line on the revised site plan. The undisturbed pond riparian zone boundary is shown as a yellow line on the revised site plan.

⁴ The disturbed pond riparian zone lies between the yellow line and the light blue line on the revised site plan.

⁵

<https://anr.vermont.gov/sites/anr/files/co/planning/documents/guidance/Planting%20Guidance%20for%20Riparian%20Areas%20VT%202016.pdf>

disturbance, and decommissioning, the CPG Holder shall install a continuous line of visible flagging on the Project limits identifying the undisturbed riparian zones, wetlands, and buffers as protected areas.

At least one month prior to commencement of site preparation/construction and decommissioning, the CPG Holder shall send photos to the Agency of Natural Resources to demonstrate that wetland and riparian zone flagging is correctly placed.

Because flagging is required under Criteria 1E/1F and 1G, the flagging condition is represented once above.

Criterion 1G: Wetlands

The Project has the potential to cause an undue adverse effect on wetlands under Criterion 1G if the CPG conditions requested below are not implemented. The revised site plan indicates jurisdictional Class II wetlands and buffers northeast of the array by the pond and north of the access. The Agency Wetlands Program confirmed the delineations. Under Criterion 1(G), the Agency's Wetlands Program reviews projects for conformance with the [Vermont Wetland Rules](#)⁶ ("VWR"). Any disturbance within Class II wetlands and 50-foot buffers zones must comply with the Allowed Use standards or an authorized Vermont Wetland Permit. The Wetlands Program has confirmed that Project impacts remain outside the wetlands buffer zone and the Project would not require a Vermont Wetland Permit.

To prevent inadvertent encroachment into jurisdictional natural resources, the Agency requires flagging on the Project limits to be installed near wetland buffer boundaries during Project activities involving ground disturbance. The Agency requires photos of installed flagging.

The CPG conditions below are required to ensure compliance with Criterion 1G:

The Project shall avoid impacts to Class II wetlands and 50-foot wetlands buffer zones, or the CPG Holder shall obtain and comply with the provisions of a Vermont Wetlands Permit for any activity that is not an Allowed Use designated in Section 6 of the [Vermont Wetland Rules](#)⁷.

Because flagging is required under Criteria 1E/1F and 1G, the flagging condition is represented once under the Criteria 1E/1F section above.

If the CPG Holder complies with the conditions requested above, the proposed Project would not raise significant issues with regard to Section 248(b)(5). The Agency reserves its right to request a hearing if the Applicant does not agree to the conditions above or if these conditions are not included in the CPG.

⁶ Vermont Wetland Rules, <https://dec.vermont.gov/content/vermont-wetland-rules>

⁷ Vermont Wetland Rules, <https://dec.vermont.gov/content/vermont-wetland-rules>

Thank you for the opportunity to comment on the application. Please do not hesitate to contact me at (802) 505-0396 or karin.mcneill@vermont.gov.

Sincerely, /s/ Karin McNeill

Karin McNeill
Regulatory Policy Analyst, Agency of Natural Resources