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*Filed via ePUC*

August 21, 2020

Judith Whitney, Clerk  
Vermont Public Utility Commission  
112 State Street, 4<sup>th</sup> Floor  
Montpelier, VT 05620-2701

**Re: Petition of Norwich Turnpike Solar, LLC, Case No. 20-1655-NMP  
Response to CPG Conditions Proposed by ANR**

Dear Ms. Whitney:

On August 18, 2020, the Agency of Natural Resources (“ANR”) submitted comments with proposed certificate of public good (“CPG”) conditions for Norwich Turnpike Solar, LLC’s (“Applicant”) proposed 150 kW net-metered solar project in Norwich, Vermont (the “Project”). The Comments address pre-construction flagging to demarcate the location of riparian buffers and wetland buffers so that construction activities do not inadvertently encroach into these buffers. Specifically, ANR commented in relevant part:

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

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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 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.*

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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.

(emphasis added). While the Applicant is absolutely in agreement to ensure the protection of natural resources during site preparation, installation, maintenance involving earth disturbance,

and decommissioning, the additional flagging and photo documentation suggested by ANR prior to site preparation and construction is excessive, additionally burdensome, and unnecessary.

First, the requirement to install riparian and wetland buffer flagging prior to site preparation and construction is redundant and confusing. The Project is already designed to meet regulations under the Vermont Construction General Permit 3-9020 (stormwater). A construction stormwater discharge permit must be obtained for construction activity that results in land disturbance of an acre or more. The standard CPG condition will require compliance with that permit. Flagging is already a condition of the stormwater permit. The February 2020 low risk handbook prepared by ANR requires at Section 2, “You must physically mark the limits of construction”:

## **Section 2 The Requirements**

### **1. Demarcate Limits of Disturbance**

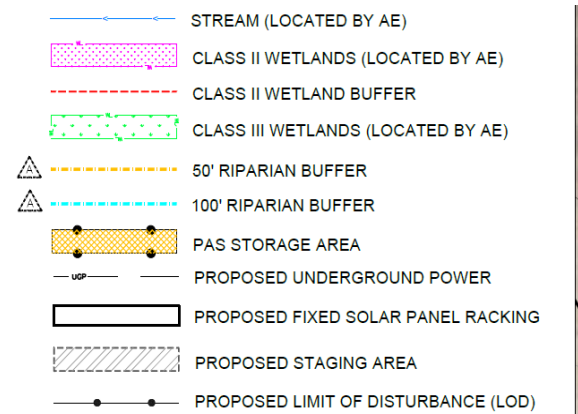
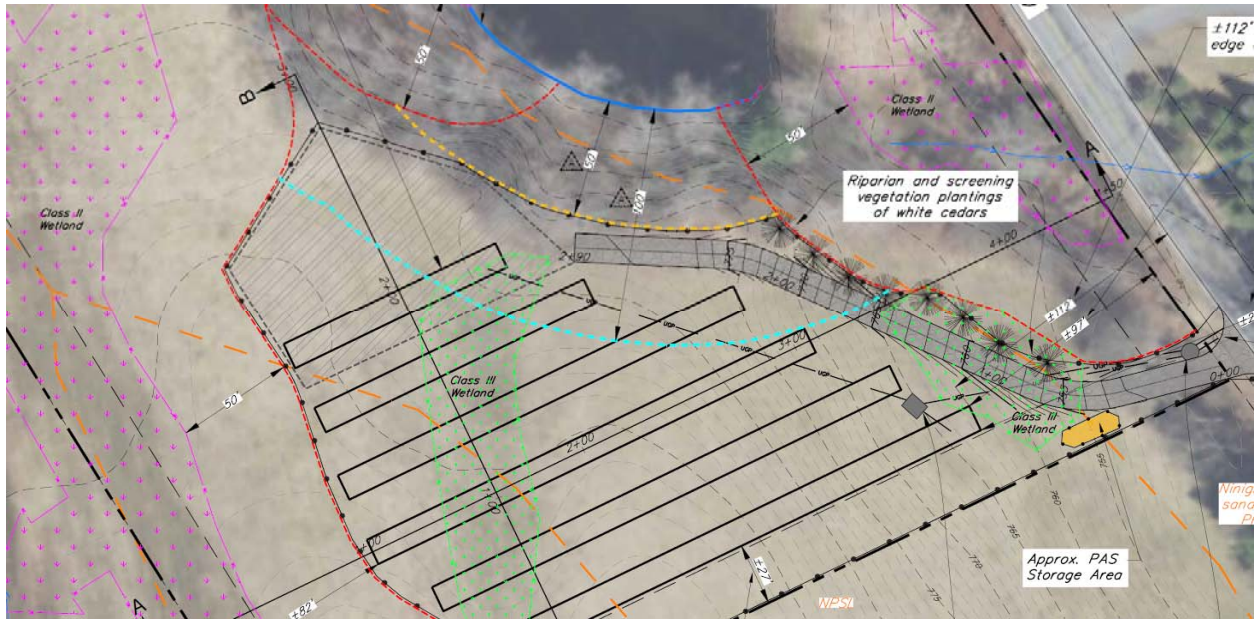
#### **Purpose:**

Delineating the site will help to: limit the area of disturbance to only what is necessary for construction, prevent unauthorized disturbance, preserve existing vegetation, and limit erosion potential on the site.

#### **Requirement:**

You must physically mark the limits of construction activity using one of the methods described below.

As clearly shown on the site plan (see insert below), the LOD (depicted by the black line with black dots) surrounding the entire Project site is also coterminous with or outside of the wetland and riparian buffers (depicted by the red and yellow dotted lines, respectively):



Because the entire LOD is required to be demarcated with a continuous line of construction flagging prior to site preparation and construction, it is redundant to mark additional flagging for the riparian/wetland buffers, particularly outside of the LOD. The suggested condition is confusing, redundant and unnecessary.

Second, the inclusion of a condition that Applicant send ANR photos of flagging one month prior to construction and decommissioning, is unprecedented, unjustified, will unduly delay construction and add unnecessary expense to the Project. Photo documentation would not reinforce the obligation to physically demarcate the resources with flagging. This action is already required under the stormwater permit and the standard CPG condition. Moreover, photos of flagging in a field will not allow one to determine if the flags were installed at the correct locations. The proposed condition has no merit.

The Vermont Supreme Court held in *In re Programmatic Changes*, 2014 VT 29, “Section 8007 of Title 30, Vermont Statutes Annotated, which is entitled ‘Small renewable energy plants; simplified procedures,’ that renewable energy plants of 2.2 MW or less are entitled to streamlined approval procedures.” *In re Programmatic Changes*, 2014 VT 29, ¶ 14. What ANR

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has proposed is not a streamlined procedure, just the opposite. It is unduly burdensome, unnecessary, and will cause undue confusion and delay. The construction period for these Projects is already constrained by many factors, including seasonal limitations. ANR has not offered any legal or practical reason to delay construction by one month for photo documentation, and the proposed condition is counter to the mandate for simplified procedures required under Section 8007.

For all of the above reasons, the Applicant respectfully asks the Commission to reject the proposed conditions for additional flagging during construction and for any advance photo documentation.

Cordially yours,

PAUL FRANK + COLLINS P.C.

A handwritten signature in black ink, appearing to read 'Kim K. Hayden', with a long horizontal flourish extending to the right.

Kimberly K. Hayden