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**State of Vermont**

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*Agency of Natural Resources*

September 11, 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”)***

As requested in the Public Utility Commission (“PUC”) August 31, 2020 Order, the Agency of Natural Resources (“Agency”) offers the following reply to the Applicant’s August 21, 2020 comments. The Applicant objects to two Agency Criteria 1E/1F/1G CPG conditions requiring that the Applicant 1) install flagging along the riparian zone and wetland buffer boundaries and 2) send photos of installed flagging to confirm it is correctly placed. The Agency requested these CPG conditions in its August 18, 2020 comments.

The Applicant states, *“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).”* and *“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 Applicant refers to Section 2 of the Agency’s [\*February 2020 Low Risk Site Handbook\*](#).

**Agency Reply:**

The Agency’s Criteria 1E/1F/1G flagging condition is different from than the Agency’s Criterion 1B stormwater flagging regulations in terms of the timing of installation, the method of flagging, and the area to be flagged. Nonetheless, if the Applicant believes their stormwater flagging could be installed to also meet the requirements of the 1E/1F/1G flagging, only one line of flagging need be installed.

In accordance with Construction General Permit 3-9020 and the Low Risk Site Handbook (“Handbook”) Section 2, the Applicant must *“Before initiating any earth disturbing activities, install a perimeter fence, orange barrier tape, or flagging on stakes or trees to physically demarcate the approved limits of earth disturbance.”* The 1E/1F/1G flagging conditions reads, *“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.”*

- The 1E/1F/1G flagging must be installed prior to site preparation, that is prior to any activities including vegetation management, whereas the Handbook requires flagging only prior to *“any earth disturbing activities”*.
- The 1E/1F/1G flagging must be continuous, whereas the Handbook allows the use of intermittent stakes or tree markings.
- The 1E/1F/1G flagging must be installed *“on the Project limits”*, whereas the Handbook requires flagging to *“physically demarcate the approved limits of earth disturbance”*.

The term *“Project limits”* refers to the [Net Metering Rule 5.103 Definition at 7](#), *“Limits of Disturbance” means the boundary within which all construction, materials storage, grading, landscaping, and any other activities related to site preparation, construction, operation, maintenance, and decommissioning take place as a result of the net-metering system, including areas disturbed due to the creation or modification of access roads, utility lines, and the clearing or management of vegetation.”* The term Limits of Disturbance in the Net Metering Rule and the stormwater construction regulations are not equivalent.<sup>1</sup> The Handbook boundary is defined only by the area of construction-related earth disturbance, not including vegetation management, materials storage, or operation and maintenance of existing access road or utility infrastructure. The Handbook limits are approved by the Agency Stormwater Program upon approval of a stormwater application; this is typically after the CPG has been issued and therefore is not available during the Agency’s CPG application comment period for comparison to the Net Metering Project limits.

The Applicant states, *“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.”*

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<sup>1</sup> The term Limits of Disturbance is regularly used in the context of stormwater construction permitting to identify the area of construction-related earth disturbance as defined in [CGP 3-9020, Appendix C Definitions](#). Because the term Limits of Disturbance used in the Net Metering Rule and stormwater construction regulations may be mistakenly conflated, the Agency prefers to use the term *“Project limits”* when referring to the Net Metering Limits of Disturbance.

Agency Reply:

In the revised condition below, the Agency has removed the phrase “*At least one month*” to address the Applicant’s concern that sending photos one month prior to construction and decommissioning could cause a hardship delay. The Agency does recommend that photos are sent in time for an Agency site visit to correct flagging if the photos raise questions. The revised condition reads:

*~~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.*

The Agency notes that conditions to confirm flagging exist in CPGs for a number of solar projects. To simplify process and to preserve staff resources, the Agency recently shifted to require that applicants send photos rather than a site visit invitation.

Please do not hesitate to contact me at (802) 505-0396 or [karin.mcneill@vermont.gov](mailto:karin.mcneill@vermont.gov).

Sincerely,        /s/ Karin McNeill

Karin McNeill  
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