

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Randolph Davis Road Solar LLC for a
Certificate of public good, pursuant to 30
V.S.A. §§ 248 and 8010, authorizing the
Installation and operation of a 500kW group
Net-metered solar electric generation system in
Randolph, Vermont

Case No. 21-2939-NMP

SURREBUTTAL TESTIMONY OF JOAN ALLEN

September 9, 2022

Exhibits:

- JA-20 U.S. Fish & Wildlife Service Birds of Conservation Concern 2021
- JA-21 Vanishing: More than 1 in 4 Birds Has Disappeared in the Last 50 Years, Cornell Ornithology
- JA-22 Petitioner's Response to Second Set of Information Requests
- JA-23 *A Mapping and Conservation Guide*, Vermont Fish & Wildlife Department 2018

Summary of Surrebuttal Testimony

Joan Allen is an abutting landowner to the site of the proposed solar Energy Facility Development. She Rebut's Testimony of Dori Barton.

SURREBUTTAL TESTIMONY OF JOAN ALLEN

Q1. Please state your name, address, and occupation.

A1. Joan Allen, 1953 Davis Rd, Randolph Center, Vermont 05061

I am a conservation consultant.

Q2. Have you previously testified before the Public Utility Commission (PUC) or in other judicial or administrative proceedings?

A2. Yes. I have submitted Prefiled and Rebuttal Testimony in this Case.

Q3. What is the purpose of your testimony?

A3. The purpose of this Testimony is to rebut testimony of Dori Barton.

Q4. Ms. Barton wrote in her rebuttal testimony:

“There are wetlands and a vernal pool outside of the Project limits that have been protected by standard buffer distances.”

Is she correct?

A4. Her claim that the wetlands are “protected by standard buffer distances” is not correct. As stated in previous testimony, a 50 ft. riparian buffer is inadequate protection because of the extreme steepness of the slopes above the wetlands, streams, and seeps. The VT Forests, Parks, & Recreation’s Acceptable Management Practices (“AMP’s) for logging jobs mandates a minimum buffer of 90 ft. on slopes of 21-30%, 110 ft. for slopes of 31-40%, and an additional 20 ft. for each 10% increase in slope above 40%. It makes no sense that the developer intends to log AND clear land in a buffer zone where logging alone is not permitted.

1 **Q5.** Ms. Barton wrote in her rebuttal testimony:

2 “The bird species that Ms. Allen lists utilize numerous habitat conditions and none of
3 the bird species she mentions are rare or uncommon, nor is the habitat necessary
4 wildlife habitat or RINA.”

5 Is she correct?

6 **A5.** Ms. Barton is correct that current records on bird species don’t list those species as rare or
7 uncommon. She is incorrect in assuming those records are up to date and reflect the current
8 status of those species. Migratory bird species that use the property during the breeding season
9 will no longer be present on the property because the habitat will have been removed or
10 significantly degraded by the proposed project. As discussed in previously-submitted testimony,
11 numerous migratory bird species, currently listed as “common” in the state’s databases, are
12 experiencing significant population declines. These declines are well-documented in the
13 literature by experts who have been conducting research over the last two or more decades (for
14 examples see Exhibits JA-20 and JA-21). A significant cause of these declines is the degradation
15 and destruction of the habitat they need for nesting, foraging, feeding their young, and avoiding
16 predation.

17 **Q6.** Ms. Barton wrote in her rebuttal testimony:

18 “The ANR habitat block mapping and BioFinder are not regulatory tools and do not
19 have regulatory standards associated with them. Nevertheless, the mapped habitat block
20 at the Project location is only ranked 4 out of a possible 10. The proposed Project is at
21 the edge of the far southern end of the block and does not significantly fragment the
22 block or encroach into the existing contiguous forested habitat at the site. Furthermore,
23 and contrary to Ms. Allen’s testimony, the ANR BioFinder has not identified any

1 Community and Species Scale or Landscape Scale components of Highest or Priority
2 for the area of the habitat block on the subject property or within the Project limits.”

3 How do you respond?

4 **A6.** Habitat blocks do not need to be of the highest quality for them to be needed and used by
5 the local populations of wide-ranging species. Especially in fragmented landscapes, these blocks
6 are important at the local and subregional level, and provide landscape connections to adjacent
7 high quality habitat and core areas. The destruction and degradation of this habitat isn’t justified
8 for 2.5 acres of solar panels. The Petitioner’s parcel provides connectivity to a large block
9 containing core habitat across Davis Rd. and to a 4,610 acre habitat block with a large core area
10 across Route 14.

11 **Q7.** Ms. Barton wrote in her rebuttal testimony:

12 “There is no wetland in the area of the log landing. Arrowwood mapped all the
13 wetlands within the Project area based on the protocols put forth in the United States
14 Army Corps of Engineer’s Wetlands Delineation Manual, as required by and in
15 accordance with Section 3.2 of the Vermont Wetland Rules.”

16 How do you respond?

17 **A7.** I disagree. The landing is small and has been damaged by an earlier logging job.
18 Nevertheless it is possibly a wet meadow. I have found three obligate wetland indicator plants -
19 Soft Rush, Wool Grass, and Common Cattail on the landing. I also found two facultative
20 wetland indicator plants - Red-osier dogwood and Silky dogwood on the landing. In order to
21 confirm that this is a wetland, soils and hydrologic studies are needed, but my motion to compel
22 the Petitioner to allow access for my wetland expert was denied.

1 **Q8.** Ms. Barton wrote in her rebuttal testimony:

2 “On May 11, 2022, subsequent to the Project site visit, we delineated the vernal pool on
3 Ms. Allen’s property, and also extended the mapping of our original wetland
4 delineation of the Class 2 wetland along Davis Road to the west of the Project. Please
5 refer to the revised Site Plan, Exhibit RDS MS-2 (rev. 6-17-22). As a result of the
6 extended wetland mapping, the project Limits of Disturbance were shifted to avoid
7 impacts within the 50’ buffer of the Class 2 wetland along Davis Road and to avoid
8 impacts within the 100’ buffer of the vernal pool.”

9 How do you respond?

10 **A8.** While I appreciate that Ms. Barton acknowledges the need to expand the original Class 2
11 wetland designation, as I have stated in previous testimony, the vernal pool will not be
12 sufficiently protected by the “standard buffer distances” of 100 ft. Fauna that rely on vernal
13 pools require a minimum buffer of 500 to 660 ft. of continuous undisturbed forest.

14 **Q9.** Ms. Barton wrote in her rebuttal testimony:

15 “Arrowwood mapped all the streams within the project area as presented in our report.
16 There is not a second stream within or adjacent to the project Limits of Disturbance,
17 including within the extended wetland mapping along Davis Road.”

18 Do you agree?

19 **A9.** I disagree. There is a second stream located on the property, outside the LOD. It drains the
20 small pond on the abutting Mueller property, enters the wetland, and joins the first identified
21 stream. Contour lines on the LiDAR topographic map clearly show the swale draining the
22 Mueller pond, and it was viewed by participants on the March 25, 2022 site visit.

1 **Q10.** In Ms. Barton’s Response to Intervenor’s Second Set of Information Requests, (Exhibit
2 JA-22) she states:

3 “A riparian wildlife road crossing has been identified in BioFinder approximately 2,000
4 ft to the north of the project area on Davis Road. The presence of existing development
5 on the west side of Davis Road, directly across from the proposed project, degrades the
6 quality of this location for wildlife movement. The existing movement patterns of area
7 wildlife between the two mentioned habitat blocks and across Davis Road will not be
8 adversely impacted by the Project.”

9 What is your response?

10 **A10.** Ms. Barton relies on a single source, the ANR BioFinder, for her denial. While it is a
11 useful planning tool for some circumstances, BioFinder data, is largely derived from remote
12 mapping, and cannot be relied upon to provide accurate on the ground and up-to-date
13 information, particularly for sites with significance at the local and sub-regional scale. As the
14 BioFinder publication “Mapping Vermont’s Natural Heritage” (Exhibit JA-23), written as a guide
15 for municipal and regional planners, states:

16 “As you look at this map, you can imagine zooming in from previous maps to examine
17 the details of your local landscape, even analyzing layers at the level of an individual
18 parcel. Of course, while data are accurate at a local scale, they aren’t comprehensive.
19 For example, a mark depicting a rare species is spatially accurate, but the absence of a
20 rare species marker is not a definite sign that there are no rare species present. **Because**
21 **the entire state has never been inventoried for all rare species, there are inevitably**
22 **omissions from the database. This is true for most of the data displayed on this**
23 **map. Local inventory information could greatly enhance a community’s**
24 **knowledge of community- and species-scale resources.”** (emphasis added)

1 The BioFinder “riparian road crossing approximately 2,000 ft. to the north” that Ms. Barton
2 references is on the northern boundary of my property. A note on the online BioFinder map
3 states that this site was “mapped by computer modeling”, and is in fact inaccurate. It is not a
4 suitable crossing site for anything except deer.

5 I have had multiple, direct observations of wildlife species using the Petitioner’s property as a
6 connector between habitat blocks. In each instance, the crossing has been from the property in
7 the general vicinity of the landing, across Davis Rd. to the upper pasture of the farm located
8 below on Route 14. Whenever possible, wide-ranging mammals choose to cross where there is
9 good natural cover and a relatively gentle slope along the road frontage. After crossing the road,
10 wildlife likely travel via the forested stream corridor across the pasture, across Route 14 and the
11 Second Branch floodplain, and reach the 4,610 acre forested habitat block that extends up the
12 ridge into Tunbridge. Another likely destination is the 688 acre habitat block across Davis Rd.

13 The “existing development on the west side of Davis Road” which Ms. Barton states is “directly
14 across from the proposed project” is in fact approximately 650 ft. away. It is a small trailer home
15 situated on a forested knoll, which wildlife on the move can easily avoid.

16 **Q11.** Does this conclude your Surrebuttal Testimony?

17 **A11.** Yes.