

PREFERRED SITE LETTER REPORT by Joy Kenseth

This Report will show that the applicant produced a total of four site plans (A - D). The project area became larger, expanded to require deforesting the ridgeline, steeper, and closer to residents' homes with each new version of the plan. The regional planning commission and the town boards approved different versions. The viewshed analysis was based on an early version that did not encroach on the ridgeline, not the final version which extends far over the ridgeline. Norwich Solar promised to discuss changes to the plan with the town boards and then failed to do so.

APPLICANT'S LETTER TO NEIGHBORS

May 6, 2021

SITE PLAN A

Applicant's Letter dated May 6, 2021, which was sent to some abutting landowner neighbors, stated in relevant part:

Norwich Solar is assessing a site for the installation of a ground mounted community solar project off Upper Loveland Rd under the Vermont Net Metering program. In particular, we are looking at a potential installation on the 34-acre parcel behind the cell tower (shown conceptually on the next page).

...

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.

Exhibit NN-JK-14 – Applicant's May 6, 2021 Letter to Neighbors, p. 1

The conceptual plan referenced by the Applicant, which appears on the second page of the letter is reproduced below and will be referred to herein as “SITE PLAN A”, depicts the “Property boundary” as a large yellow dashed line, inside of which is a “Proposed Solar Area” outlined in blue, adjacent to a larger area outlined in a white dashed line, presumably for site clearing:

SITE PLAN A

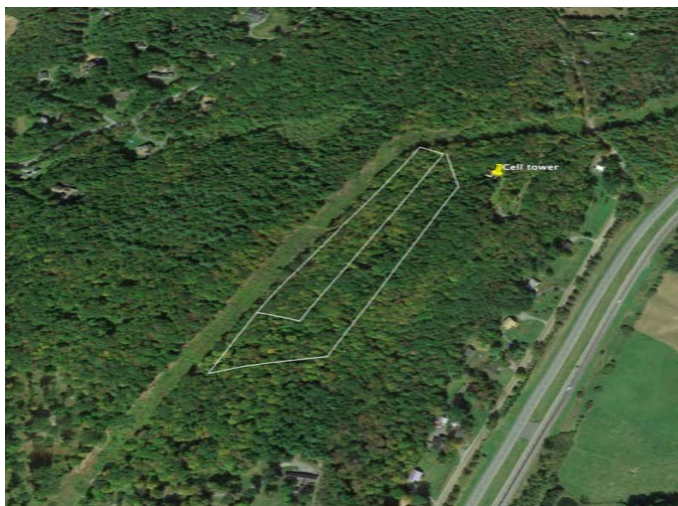


Exhibit NN-JK-14 – “SITE PLAN A” - Applicant’s May 6, 2021 Letter to Neighbors.

To better illustrate the SITE PLAN A project boundaries: the Proposed Solar Area (blue line above) and the site clearing area (white dashed line above) are superimposed as white lines on the Google Earth photo overlay below:

SITE PLAN A Overlay on Google Earth

White lines: Solar Array and Site Clearing boundaries



PREFERRED SITE LETTER REQUEST TO TOWN PLANNING COMMISSION

July 13, 2021

SITE PLAN B

The Applicant then sought a Preferred Site Letter from the Town or Norwich Planning, appearing at the July 13, 2021 Planning Commission Meeting. The Applicant's materials submitted in advance of the meeting included a site plan, herein referred to as "SITE PLAN B" depicting a slightly different shape and location for the project than conceptual SITE PLAN A:

SITE PLAN B:

Norwich Upper
Loveland Solar
Viewshed analysis



Exhibit NN-JK-15, "SITE PLAN B" / Viewshed Analysis cover page.

To better illustrate SITE PLAN B's boundaries compared with SITE PLAN A's:

SITE PLAN B's site clearing area (yellow dashed line above) is superimposed as a turquoise line on the Google Earth photo overlay which still shows SITE PLAN A's boundaries in white:

SITE PLAN A & B

Site Plan A - White lines (Solar Array and Site Clearing boundaries) Site Plan B – Turquoise lines (Site Clearing boundaries)



SITE PLAN B (Turquoise lines above) is the cover page to the document entitled, "Norwich Upper Loveland Solar Viewshed Analysis" which is Applicant's report on the non-visibility of the project, as depicted on its cover page which we are calling "SITE PLAN B", from 3 locations on Interstate 91 (Locations A, B & C) and from one location on Upper Loveland Road (Location D).

SITE PLAN B indicates that there is approximately 500 feet of screening between the Array and the neighbors. In addition, the Cover Page/Site Plan and Pages 2, 3, & 4 (which depict views A, B, & C from I-91) of the Viewshed Analysis, all state the following in their prominent page headers:

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

Exhibit NN-15, Viewshed Analysis, Pages 1-4.

Page 5 (which depicts View D from Upper Loveland Road) similarly states the following from View D – Upper Loveland Road’s perspective in its prominent page header:

“Array over the ridge behind these trees – left of transmission line corridor”

Exhibit NN-15, Viewshed Analysis, Page 5.

The Applicant’s depiction of the array and the limits of disturbance contained in SITE PLAN B as well as the repeated representations contained in its Viewshed Analysis for each and every view analyzed, i.e. that the array would be sited, “over the ridge behind these trees” and not visible from any of Views A, B, C or D, indicates that the location of the solar project, as depicted in SITE PLAN B, was going to be sited: “over the ridge behind these trees” and would not be visible on I-91, Upper Loveland Road, or VT Rte. 5.

PLANNING COMMISSION REVIEW

July 13, 2021

The Town Planning Commission Meeting Minutes of July 13, 2021, confirm the Applicant’s presentation of the Viewshed Analysis, which accompanied SITE PLAN B:

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 [sic] photographs and viewshed analysis that demonstrated the proposed solar installation was not be visible from Upper Loveland Road, Route 5 North or I91.

Exhibit NN-16, Town PC Meeting Minutes, July 13, 2021.

SITE PLAN B and its Viewshed Analysis of the non-visibility of the project to be sited and built according to SITE PLAN B were the material facts provided by the Applicant to the Town Planning Commission and upon which the Preferred Site decision was based. Exhibit NN-15, Planning Commission Packet, July 13, 2021.

The representation of the visibility of the Proposed Site is important because of the limited review engaged in by the Town Planning Commission at the direction of and/or advice of the Planning Director Rod Francis who, according to the PC Meeting Minutes, informed the Planning Commission that it had no authority or jurisdiction to review any issue outside of “visual impact” by “road users” in the Town per the Norwich Zoning Regulations:

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 aerial [sic] photographs and viewshed analysis that demonstrated the proposed solar installation was not be visible from Upper Loveland Road, Route 5 North or I91.

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.

...

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).

Exhibit NN-16, Town PC Meeting Minutes, July 13, 2021

The Planning Commission’s meeting was video¹ recorded and transcribed and provides further details of the discussion.

PC Chair Jaci opened the discussion by framing the Planning Commission’s role:

our role as a planning commission is to review the request and make sure it conforms to our directions in the town plan, which is basically to make sure that the installation isn’t impinging on any ridgeline scenic view.

¹ <https://youtu.be/10ZLnHvi-bg>

again it's our role to decide if it's impinging on the ridgeline.

The Applicant's presentation regarding the ridgelines identified that the area falls within the ridgeline protection overlay, and "our design of the solar array is done in such a way that the array would not be visible from any public roads or houses so it's maintains the ridgeline protection viewshed."

In response to a PC member's inquiry regarding a wetlands scientist's review, the Applicant responded

The layout of our solar array might change slightly depending on the review of the wetland scientist but it's a very, it will be very minor changes based on the location, and there's areas that we already are avoiding based on our understanding of this site.

PC member Ernie asked,

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 Francis responded,

...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."

A Planning Commission member (unidentified) inquired,

Would it be appropriate for us to ask Troy to let us know what happens when you get the opinion of the wetland scientist (muffled) 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 (muffled).

Troy McBride representing Norwich Solar Technologies responded:

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...

The sole criterion reviewed by the Town Planning Commission was based on SITE PLAN B's premise that there would be no clearing of the ridgeline in the Ridgeline Overlay District and

visual impact of development as experienced by road users on town roads, state highways and the interstate (I-91), despite the Town Plan's Renewable Energy Project Siting Standards that include

- Preserving the recreational and natural value of those lands identified in the Ridgeline Protection Overlay Area and Shoreline Protection Overlay Area

Based upon the Applicant's submission of SITE PLAN B and its Viewshed Analysis of the visibility of SITE PLAN B, which stated repeatedly "Array over the ridge behind these trees – near transmission line corridor", the Town Planning Commission voted to support the project. The Planning Commission Chair framed the request for a motion, "Our responsibility here as has been described is that there is no ridgeline impact of this project. Do we have such a motion?"

As recorded in the Meeting Minutes:

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.

Exhibit NN-16, Town PC Meeting Minutes, July 13, 2021.

45-DAY ADVANCE NOTICE TO THE PUBLIC UTILITY COMMISSION

July 14, 2021

SITE PLAN C

The Applicant's Troy McBride informed the Town Planning Commission on July 13, 2021 that the Applicant would file its 45-day Advance Notice "tomorrow". On July 14, 2021, the Applicant submitted its 45-Day Advance Notice, with a significantly different Site Plan ("SITE PLAN C"), instead of SITE PLAN B. Exhibit NN-JK-17, 45-day Advance Notice Submission and "SITE PLAN C".

SITE PLAN C states that it was "Prepared on: 6/24/21 RD", 19 days prior to the Applicant's appearance at the Planning Commission meeting on July 13, 2021. Despite the Applicant's promise to "come back and present" if the area of the proposed project changed dramatically due to the wetlands analysis, and the Applicant's assurance regarding a possible change in plan that "you will not see it in the 45 day notice that will be coming out tomorrow," that the change in the plan (which was the direct result of the wetlands delineation, the primary issue with the Planning

Commission) was not disclosed to the Planning Commission. The Applicant did not return to the Planning Commission.

Applicant's 45-Day Advance Notice SITE PLAN C, is a significantly different site plan depicting the array occupying 2.7 acres, the limits of disturbance at 9.6 acres while moving the eastern boundary of the project site approximately 95 feet east, placing it only 405 feet from the nearest residence instead of maintaining SITE PLAN B's 500 feet of buffer.

SITE PLAN C

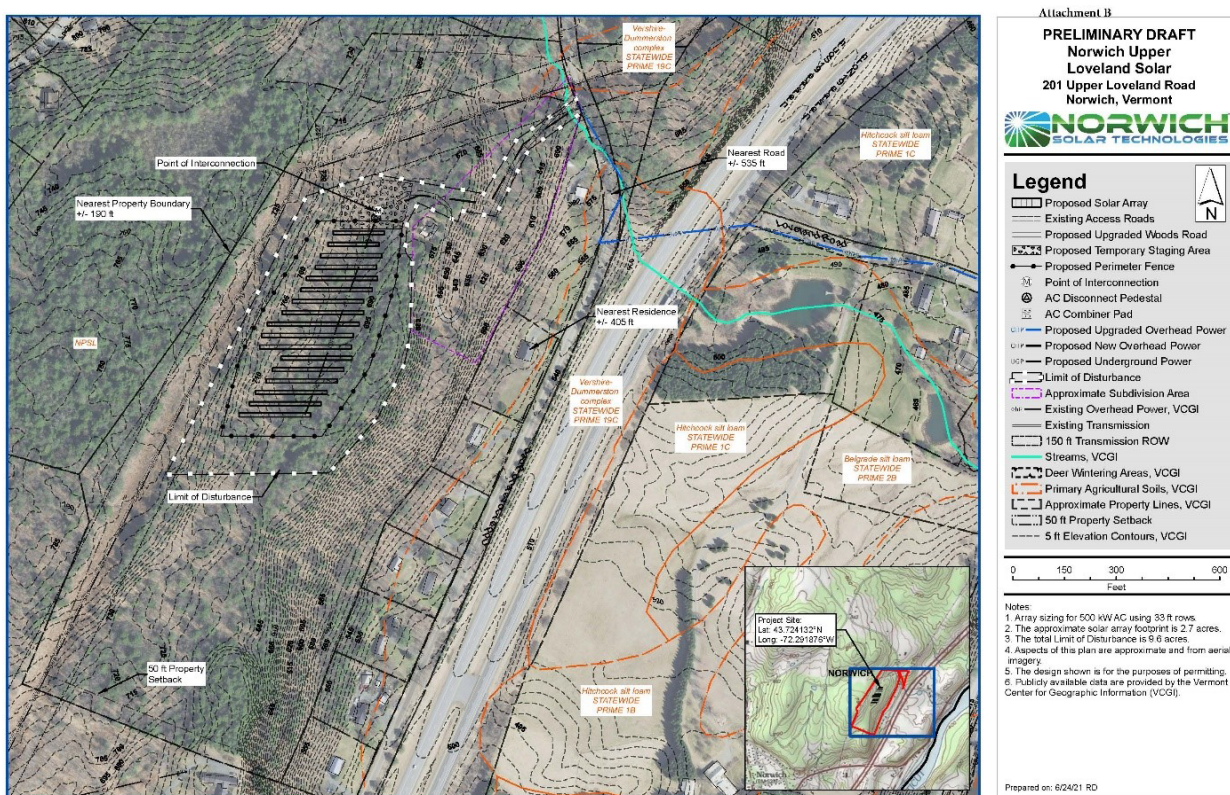


Exhibit NN-JK-17, 45-day Advance Notice materials, Site Plan.

The significantly different SITE PLAN C, shows the nearest residence as 405 feet away (a 95 foot change from SITE PLAN B), which new location is no longer “. . . over the ridge behind these trees – near transmission line corridor”. It is instead, on the steep slopes of the east side of the ridge, no longer behind “these trees” that are now part of the 9.6 acres of forest that will be cleared.

To better illustrate this change, SITE PLAN C's "Limits of Disturbance" is added in purple to the Google Earth overlay of SITE PLANS A, B and C below:

SITE PLANS A, B & C

Site Plan A - White lines
Site Plan B – Turquoise lines
Site Plan C – Purple lines



Exhibit NN-14, 15 & 17 Site Plans A, B & C.

To gain a better topographical perspective of the significant difference between the Preferred Site Letter's SITE PLAN B vs. the 45-day Advance Notice's SITE PLAN C, the following overlay is reversed in direction, viewing the Site from the North looking Southward. Note that SITE PLAN C's "Limits of Disturbance" is outlined in purple versus SITE PLAN B's Clearing Area which is outlined in turquoise:

SITE PLAN B v. SITE PLAN C

Site Plan B – Turquoise lines

Site Plan C – Purple lines

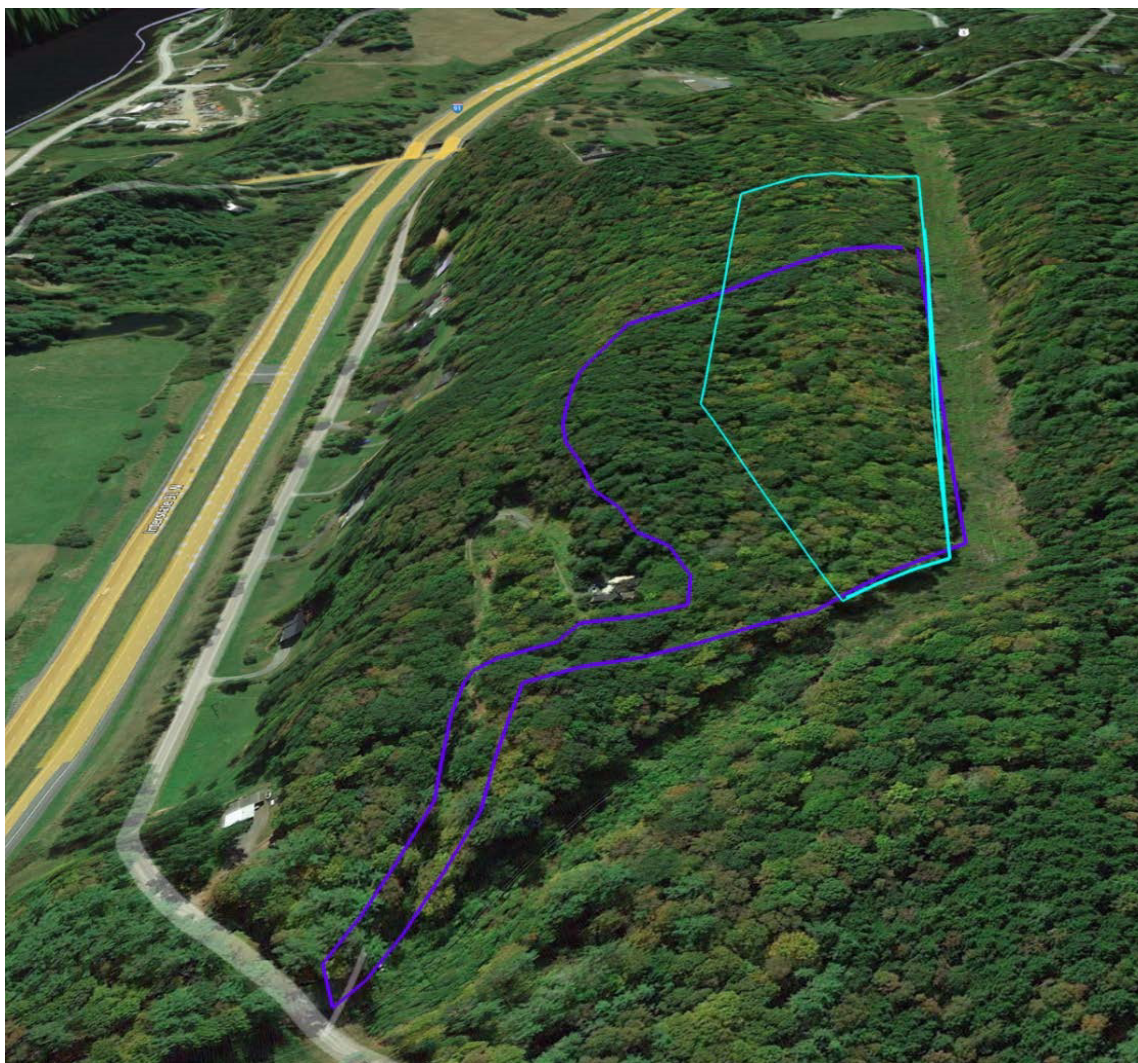


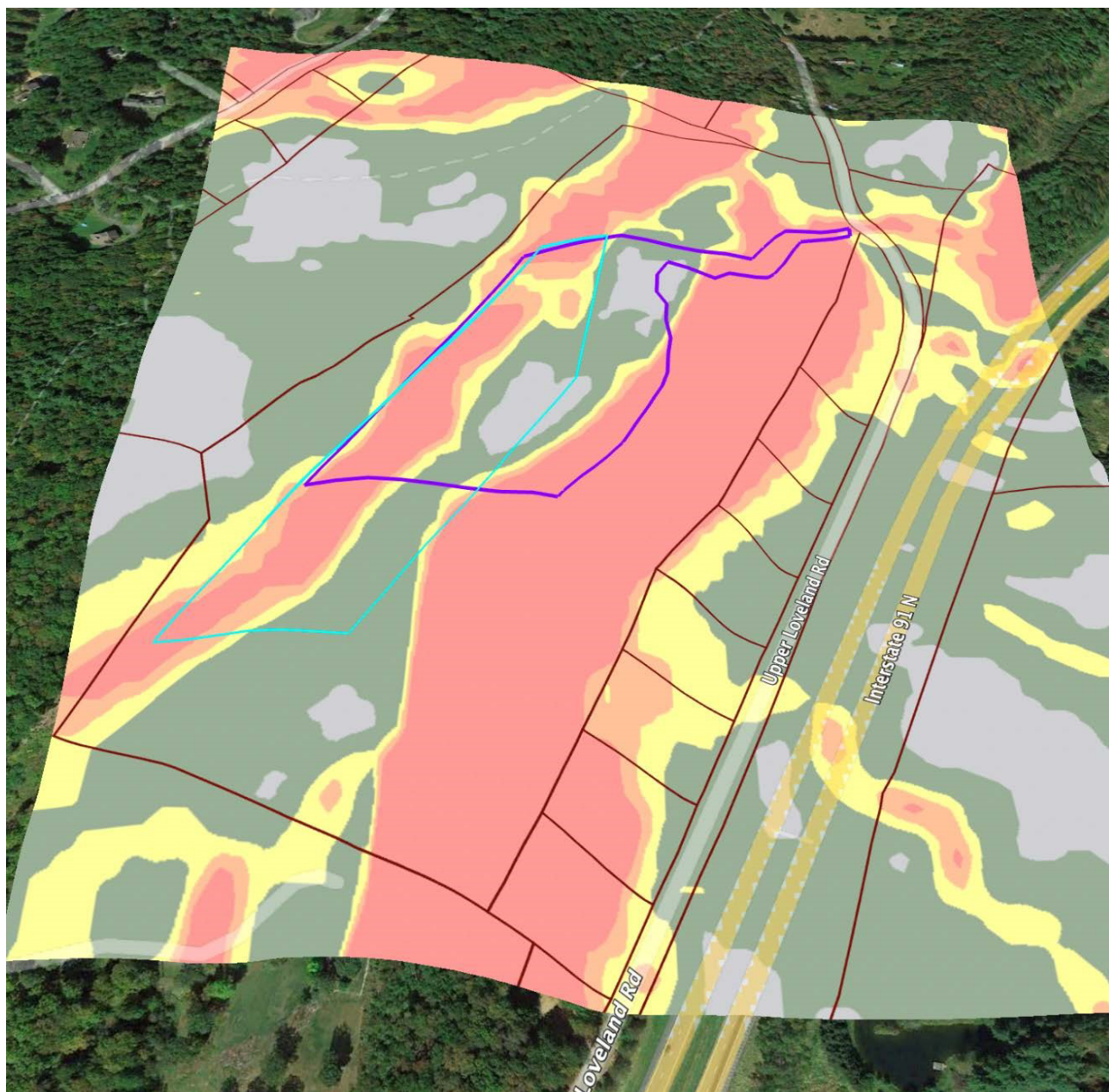
Exhibit NN-JK-15 & 17, Site Plans B & C.

When Site Plans B & C's boundaries are superimposed on the VT ANR Atlas Steep Slopes Mapping, which was contained in the Town Planning Commission's packet (See NN-2), we see the extent of the significant relocation of the project site into the RED steep slopes area (greater than 25% grade) on the eastern side of the ridge:

SITE PLAN B v. SITE PLAN C

SITE PLAN B (turquoise lines)

SITE PLAN C (purple lines)



NORWICH SELECT BOARD REQUEST FOR PREFERRED SITE LETTER

August 11, 2021

SITE PLAN B & VIEWSHED ANALYSIS and SITE PLAN C

Next the Applicant sought the Preferred Site Letter approval from the Town Selectboard by submitting SITE PLAN B and the Viewshed Analysis which reported on visibility of the project, *as depicted in* SITE PLAN B. Again and as noted above, SITE PLAN B, which is the cover page of the Viewshed Analysis, states: “Array over the ridge behind these trees – near transmission line corridor”. Exhibit NN-JK-15, Viewshed Analysis/Site Plan and Exhibit NN-JK-20, Selectboard Packet. Also included in the packet were two other sites plans: SITE PLAN A (sent to the neighbors May 6, 2021), and, added to the very end of the packet, was the Advance Notice with SITE PLAN C as the very last page.

As can be seen in the video² of the meeting the Select Board did not conduct a visual review of the meeting packet materials.

The Town of Norwich Selectboard Minutes indicate that Selectboard Member questions regarding impacts to wildlife were responded to similarly by the Planning Director Rod Francis who advised that “the Town lacks jurisdiction to consider habitat and lacks authority to evaluate the project on wildlife habitat grounds.” The Selectboard then voted simply “to accept the recommendation of the Planning Commission and provide a letter of support, as drafted by the Planning Direct, to Norwich Technologies for their proposed solar generation project on Upper Loveland Road.” The Minutes on this issue, state in their entirety:

5. Proposed Solar Generation Project on Upper Loveland Road from Norwich Solar Technologies. Arnold introduced the topic. Calloway asked about wildlife habitat connectivity and said she’d like to have input from the VT Agency of Natural Resources (ANR) on that issue. Calloway also asked who will benefit monetarily from this project. Rod Francis [Planning Director] said that the ANR is a party to this application and has an obligation to analyze it and provide comment. Francis said the town lacks jurisdiction to consider habitat and lacks authority to evaluate the project on wildlife habitat grounds. Troy McBride of Norwich Solar spoke about the project and said his company has consulted with experts about environmental concerns. McBride said that Norwich Solar as developer brings federal tax dollars into the state via federal tax credits and provides lower energy costs to individuals , nonprofit entities, and local businesses. Calloway expressed further concern about this project’s impact on wildlife. Layton said she appreciated the applicant’s attention to the ridgeline concerns for the proposed project. Layton moved (2nd

² <https://youtu.be/eyBI5Gw3WWc>

Gere) to accept the recommendation of the Planning Commission and provide a letter of support, as drafted by the Planning Direct, to Norwich Technologies for their proposed solar generation project on Upper Loveland Road. Motion approved (4 yes; Calloway- no).

Exhibit NN-JK-18 - Selectboard Meeting Minutes, August 11, 2021.

The Selectboard's approval was simply to accept the recommendation of the Planning Commission to approve the project which was based upon SITE PLAN B and its Viewshed Analysis, and upon Planning Director Rod Francis's continued direction or advice, not to consider any impacts to wildlife habitat connectivity because the "town lacks jurisdiction to consider habitat and lacks authority to evaluate the project on wildlife habitat grounds." The Selectboard accepted the Planning Commission's recommendation based solely upon SITE PLAN B and its Viewshed Analysis, not SITE PLAN C. Thus, the Selectboard Decision was just as infirmed as the Planning Commission's Decision, because it is based upon a significantly different and inapplicable Viewshed Analysis.

APPLICANT'S SUBMISSION TO THE REGIONAL PLANNING COMMISSION

August 23, 2021

Next, the Applicant sought the Preferred Site Letter from the Regional Planning Commission by submitting SITE PLAN C only, with the following Applicant's representations regarding Municipal letters of support from the Selectboard and Planning Commission:

2. Municipal letters of support from SB and PC, or in TP mapped preferred site?

PC & SB voted to support Preferred Site.

If site does not have both, TRORC will NOT issue a Preferred Site Letter of Support.

7/13/21 Awaiting signed letter from the Boards.

The nearest public road is town road, Upper Loveland Road, which passes adjacent to US RT 5, and interstate 91 to the east. Site access to the project will be off the existing cell tower access drive. There will be vegetation clearing in the array area and trimming for shade management. There will be limited visibility of the array, due to remaining mature vegetation and rolling terrain in the surrounding area. There are no dwellings within 100 meters.

Exhibit NN-JK-19 - Regional Planning Commission packet, August 23, 2021.

It does not appear that the Regional Planning Commission was sent SITE PLAN B or its Viewshed Analysis, which is the plan that was approved for a Preferred Site Letter by the Town Planning Commission (and the Selectboard, which adopted the Planning Commission's recommendation). Consequently, the Preferred Site Letter approval of the Town Planning Commission, the Selectboard and the Regional Planning Commission, are based upon different site plans.

Applicant's submission to the Regional Planning Commission has altered its representation regarding visibility of the project from SITE PLAN B's Viewshed Analysis' "not visible" to:

"There will be limited visibility of the array, due to remaining mature vegetation and rolling terrain in the surrounding area.
There are no dwellings within 100 meters."

Exhibit NN-JK-19 - Regional Planning Commission packet, August 23, 2021

No mention was made by the Applicant that the Site Plans had changed since securing the Preferred Site approval from the Town Planning Commission.

APPLICANT'S PETITION TO THE PUBLIC UTILITY COMMISSION FOR A CPG

Aug. 31, 2021

SITE PLAN D

After obtaining a Preferred Site Letter from the Town Boards and the Regional Planning Commission with Site Plans B and C, the Applicant created and filed another significantly different plan with the Public Utility Commission with its Petition for a CPG, which we will call "SITE PLAN D".

SITE PLAN D was created August 27, 2021, four (4) days after obtaining approval from the Regional Planning Commission with SITE PLAN C and a Preferred Site approval from the Town based upon SITE PLAN B.

This newest SITE PLAN D, significantly moved the project site eastward again another 80 feet (for a total of 175 feet), so that the closest neighbor is now 325+/- feet from the array. This movement of the eastern boundary of the project site eastward causes the project to be relocated onto the top of and down the eastern slopes of the ridge, in direct contradiction to the Applicant's representations to the Town Planning Commission that the site would be hidden: "Array over the ridge behind these trees". That statement is no longer true. SITE PLAN D is a fundamentally different project than what was approved as a Preferred Site by the Town according to SITE PLAN B or SITE PLAN C.

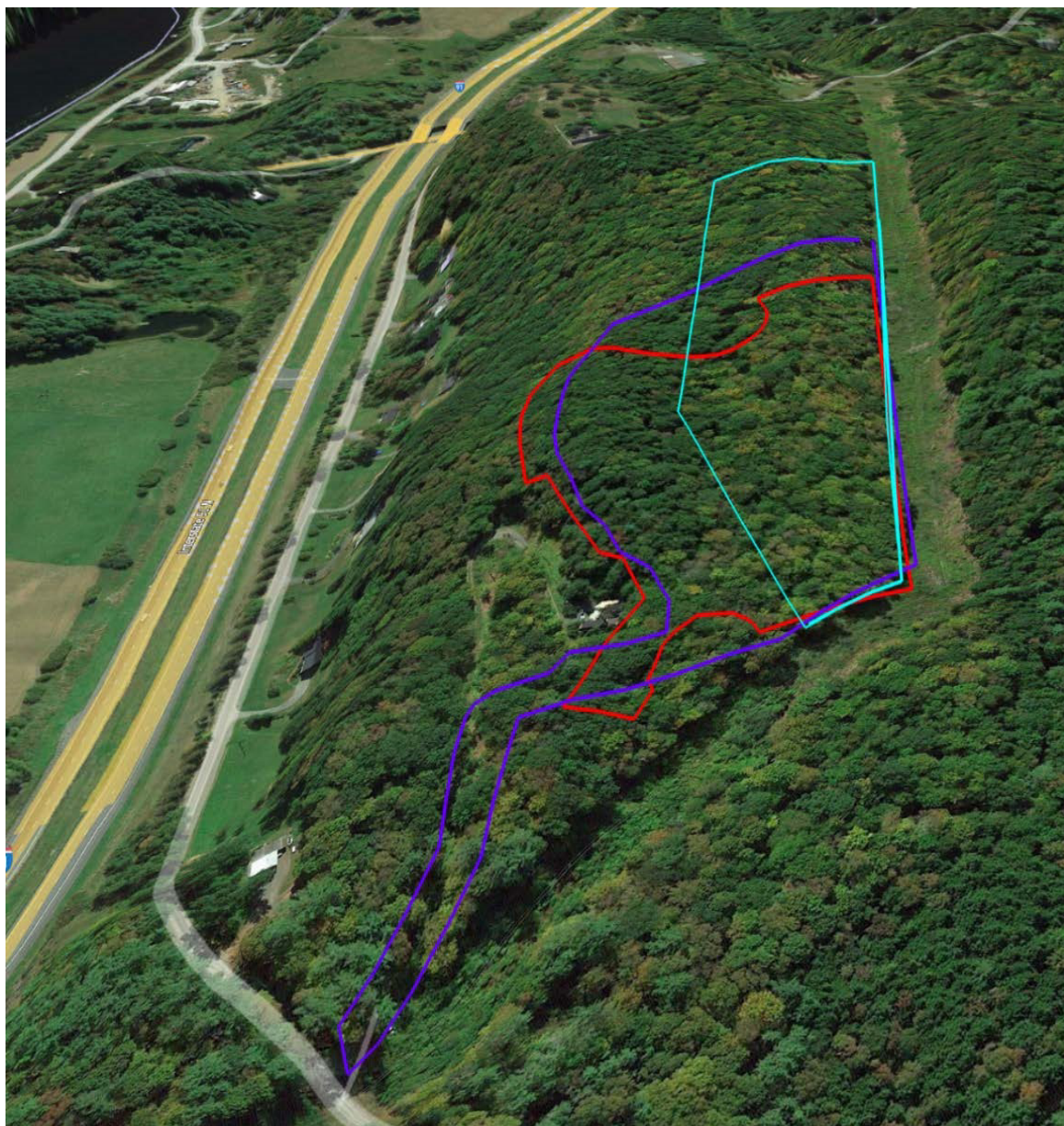
SITE PLAN D

To gain a better topographical perspective of the significant differences between the three site plans, SITE PLAN D has been added in red to the North looking Southward overlay:

SITE PLAN B (turquoise lines)

SITE PLAN C (purple lines)

SITE PLAN D (red lines)



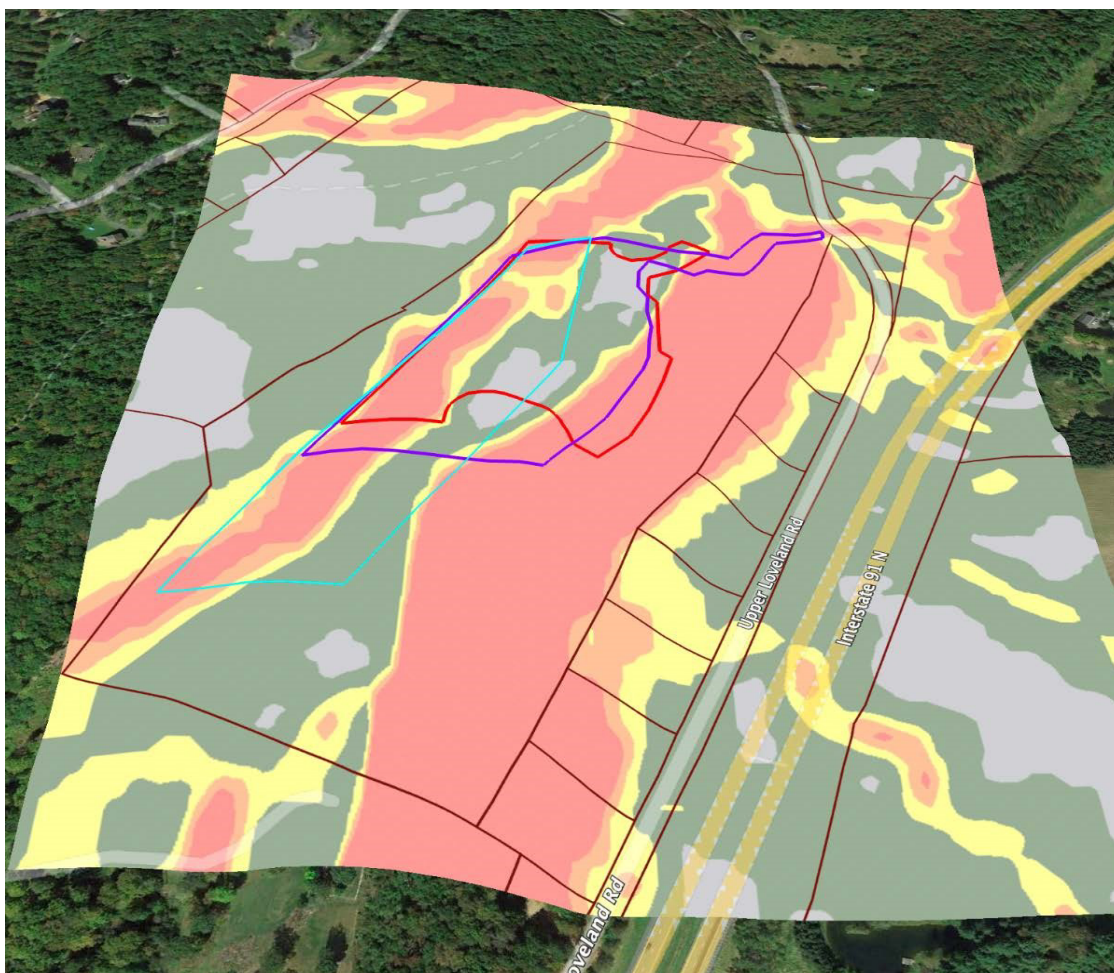
The project location has once again moved further to the east over the top of the ridge and down the eastern slopes of the ridge instead of “over the ridge behind these trees – near transmission line corridor”, as represented by the Applicant in obtaining the Preferred Site Letter.

When the serial Site Plans' boundaries are superimposed on the VT ANR Atlas Steep Slopes Mapping, which was contained in the Town Planning Commission's packet (See NN-2), SITE PLANS B, C and D's boundaries show the extent of the significant relocation of the project site into the RED steep slopes area (greater than 25% grade) on the eastern side of the ridge:

SITE PLAN B (turquoise lines)

SITE PLAN C (purple lines)

SITE PLAN D (red lines)



The Applicant procured its Preferred Site Letter by submitting SITE PLAN B (turquoise lines) and its Viewshed Analysis ("Array over the ridge behind these trees – near transmission line corridor") instead of the actual project's SITE PLAN D (red lines above), which now depicts the array in a different location: on the east side of the ridge on steep slopes immediately behind the neighbors' homes.

Thus, the visibility of SITE PLAN D, which requires clearcutting the top of the ridge and the eastern steep slopes of the ridge, changes the details relevant to the Planning Commission's review, and will obviously cause undue adverse impacts to aesthetics, which the Applicant failed to identify and less address.

This photograph is taken from a home on Loveland Road looking from the east towards the west and depicts the Ridgeline.



SITE PLAN D contradicts the Applicant's representations that the project is "not visible" or even that it will have "limited visibility" as the relocation of the project to the steep eastern slopes of the ridge immediately behind the Neighbors' homes will fundamentally alter the view of the project from the east.³

Consequently, it is clear from the three-Site Plan overlay of the Applicant's serial site plans onto ANR's Steep Slopes Atlas layer that the Preferred Site Letter approval is invalid because that approval was based upon SITE PLAN B's now-irrelevant information that the project would be invisible and would be sited on the western side of the ridge. This is no longer true.

Therefore, the Applicant's reliance on the Preferred Site Letter that enabled the filing of the Petition should be given no weight in this proceeding because the Preferred Site Letter was obtained through irrelevant facts in procuring the Town Planning Commission, Selectboard and Regional Planning Commission's approvals.

The entire basis of this 500 kW net-metered solar project to move forward to review relied on the issuance of the Preferred Site Letter based on a different site plan, the promise to return to the Planning Commission if the site plan changed due to wetlands, the failure to return as promised, and the assurance on the day of issuance of the Preferred Site letter by the Planning Commission that any change in the site plan would not be evident in the Advance Notice, when in fact a different site plan that accommodated the wetlands review was in the Advance Notice.

³ It should also be noted that the Applicant's representation that the nearest neighbor is now 325+/- feet from the "array" is a measurement from the nearest solar panel only, not from the limits of disturbance, which are considerably closer than 325 feet to the nearest neighbor.

TIMELINE

May 6, 2021 - "SITE PLAN A" - Applicant's Letter to Neighbors

July 13, 2021 - "SITE PLAN B & Viewshed Analysis" – Preferred Site Letter Request to Town Planning Commission

July 14, 2021 - "SITE PLAN C" - 45-Day Advance Notice to PUC

August 14, 2021 – Preferred Site Letter Request to Selectboard

August 23, 2021 - Preferred Site Letter Request to Regional PC

August 31, 2021 – "SITE PLAN D" - Applicant's Petition to the PUC