

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Randolph Davis Solar LLC for a	)	
certificate of public good pursuant to 30 V.S.A.	)	
§§ 248 and 8010, authorizing installation and	)	21-2939-NMP
operation of a 500 kW (AC) photovoltaic group	)	
net-metering system in Randolph, Vermont	)	

PETITIONERS' PROPOSAL FOR DECISION AND BRIEF

This case involves an application (“Application”) filed by Randolph Davis Solar LLC (“Applicant”) with the Vermont Public Utility Commission (“Commission” or “PUC”) for a certificate of public good (“CPG”), pursuant to 30 V.S.A. §§ 248 and 8010, to install and operate a 500 kW solar net-metering system at 0 Davis Road, Randolph, Vermont (the proposed “Project”).

I. PROCEDURAL HISTORY

On August 11, 2021, the Applicant filed the Application with the Commission.

On August 18, 2021, Commission deemed the application complete.

On October 20, 2021, the Vermont Agency of Natural Resources (“ANR”) filed comments (“ANR Comments”) stating that it concurs with conditions 12, 13, 14, and 15 in the Applicant’s proposed CPG to mitigate impacts on wetlands, source protection, and deer wintering areas. ANR stated that these conditions facilitate compliance with the Vermont Wetland Rules and respond to Agency comments on the advance notice for the Project. ANR also noted that the Project site plan showed a stream surrounded by a 50-foot riparian buffer south of the proposed solar array and requested as an additional CPG condition that the Applicant maintain the buffer an undisturbed, naturally vegetated riparian zone. ANR concluded that provided these CPG conditions are included in the Project CPG, ANR found that the Project would not have undue adverse effects or warrant a hearing regarding criteria of Agency concern under 30 V.S.A. § 248(b)(5).

On October 21, 2021, the Vermont Division for Historic Preservation (“VDHP”) filed comments (“VDHP Comments”) stating that the Project will have no effect on historic sites.

On October 25, 2021, the Vermont Agency of Agriculture, Food & Markets (“AAFM”) filed comments (“AAFM Comments”) proposing certain CPG conditions to mitigate impacts on primary agricultural soils. AAFM concluded that with these conditions, the Project will not have an undue adverse effect on primary agricultural soils under 30 V.S.A. § 248(b)(5).

On October 25, 2021, the Vermont Department of Public Service (the “Department” or “DPS”) filed comments (“DPS Comments”). DPS supported the comments made by the other state agencies and requested a CPG condition requiring the Applicant to notify the Commission prior to plant operations of the actual method used to protect public safety with respect to securing Project electrical equipment.

On October 25, 2021, adjoining landowners Michael Binder and Joan Allen (referred to collectively as the “Landowners”) filed a joint motion to intervene. The Landowners raised concerns related to the Project’s conformance with the Randolph Town Plan and natural resources.

On November 8, 2021, the Department filed comments recommending that the Commission treat the Landowners’ motion as a notice of intervention under Rule 5.117(B).

On November 30, 2021, the Hearing Officer issued a procedural order requesting the Landowners to clarify whether they were requesting a hearing.

On December 14, 2021, the Landowners filed a request for evidentiary hearing and moved to stay the proceeding, informing that they had requested the Randolph Planning Commission to revoke its preferred site designation of the Project if portions of the Project are located on slopes greater than 25%.

On December 15, 2021, the Applicant filed a response to the Landowners’ motion together with a December 14, 2021 letter from the Randolph Planning Commission stating acceptance of the Applicant’s assurance that the array will be “arranged so that solar panels within the current limit of disturbance are not installed on slopes greater than 25%.”

On December 16, 2021, the Hearing Officer issued a procedural order denying Landowners’ request for stay.

On February 16, 2022, the Hearing Officer held a scheduling conference.

On February 16, 2022, the Petitioner filed a revised Project site plan (Exh. RDS MS-2 (rev 2-9-22)) per request of the Town of Randolph to move all solar panels out of slopes greater than 25%.

On February 25, 2022, the Hearing Officer issued a Scheduling Conference Order adopting the parties’ proposed procedural schedule.

On February 25, 2022, the Petitioner filed a second revised site plan to show the slope of the land (Exh. RDS MS- 2A (rev 2-9-22 with slope layer added 2-22-22)) within the Project array and access, together with letters from Petitioner’s Project engineers certifying the accuracy of the

slopes, and documents from the Randolph Planning Commission and Selectboard accepting the assurances that the array will not be constructed on slopes greater than 25% and confirming that the preferred siting designation for the Project had not been revoked. Staskus 2/25/22 supp. pf.; exhs. RDS MS-12 – MS-15.

On March 2, 2022, Landowners filed a motion to dismiss or, alternatively, a (second) motion to stay, asserting that the Project site plan failed to satisfy Rule 5.107 (C)(5)(e) regarding project drainage.

On March 10, 2022, the Hearing Officer issued a procedural order requesting Petitioner clarify whether the site plan revisions constitute a minor or major amendment under Commission Rule 5.103.

On March 16, 2022, the Petitioner responded to Landowners' motion to dismiss.

Also on March 16, 2022, the Petitioner filed a notice of minor amendment.

On March 25, 2022, the Hearing Officer conducted a site visit.

Also on March 25, 2022, the Department filed comments agreeing that Petitioner's proposed adjustment to the array layout constitutes a minor amendment under Rule 5.103.

On March 29, 2022, Landowners file a second motion to dismiss or stay (the third motion to stay). In their second motion to dismiss, Landowners asserted that Petitioner had failed to properly delineate streams and wetlands and failed to provide an accurate cross section of a typical section of the access road.

On April 4, 2022, the Hearing Officer issued a procedural order requesting additional information on slope and tree clearing.

On April 5, 2022, the Hearing Officer approved the Petitioner's request for a minor amendment of the Project.

On April 15, 2022, the Hearing Officer issued a procedural order denying Landowners' pending motions to dismiss or stay. The order also granted Landowners additional time to file their direct testimony.

On April 19, 2022, the Petitioner filed a supplemental affidavit and exhibits regarding slopes and clearing.

On May 6, 2022, Landowners submitted direct testimony and exhibits.

Also on May 6, 2022, AAFM filed prefiled testimony, which was later superseded by AAFM comments submitted on September 9, 2022.

On May 31, 2022, the Applicant filed a motion to strike portions of the Landowner testimonies and exhibits, which motion was supplemented on June 6, 2022, to reference admissions included in Landowners' discovery responses.

On June 23, 2022, the Hearing Officer issued a procedural order striking Exhibits MB-2, JA-2, 6, 7, 11, 12, and 14, and a portion of Michael Binder's testimony as inadmissible hearsay.

On June 24, 2022, the Applicant submitted rebuttal testimony and exhibits, including a further revised site plan, Exhibit RDS MS-2 (rev 6-17-22), to delineate a vernal pool on the Binder/Allen parcel, with its 100-foot buffer, and adjusted and reduced the proposed LOD to address Landowners' concerns regarding potential impacts on the vernal pool.

Also on June 24, 2022, ANR and DPS filed updated comments (the "ANR 6/24/22 Comments" and the "DPS 6/24/22 Comments", respectively). ANR's 6/24/22 Comments stated that it appreciated the opportunity the Commission provided for a site visit, and that after further consultation with the relevant departments and programs, it continued to find that the Project as proposed will not have undue adverse effects on the natural environment and the use of natural resources under the relevant criteria under the Agency's review enumerated in 30 V.S.A. § 248(b)(5), provided the proposed Certificate of Public Good ("CPG") incorporates the conditions outlined in the Agency's October 10[sic], 2021 comment letter. ANR stated that with respect to the issues raised in Ms. Allen's, and to a lesser extent, Mr. Binder's testimonies,

the Agency anticipates that any CPG that may be issued for the proposed Project would contain standard conditions that are consistent with most other net-metering project CPGs. Those standard conditions include – and are reflected in the Applicant's proposed CPG – a requirement that the CPG holder obtain all necessary permits and approvals prior to Project site preparation or construction. In this case, those necessary permits and approvals include securing a 3-9020 Stormwater Construction General Permit and adherence to the standards contained in the Vermont Low Risk Handbook for Erosion Prevention and Sediment Control, which the Applicant has explicitly committed to through Ms. Staskus's and Ms. Barton's testimony and supporting evidence.

ANR 6/24/22 Comments at 2-3.

The DPS 6/24/22 Comments stated that it had reviewed the revised Project, the Landowners' testimony, and the parties' discovery responses to date, and maintained it has no significant concerns with respect to the Project's impact on system stability and reliability, aesthetics, public health and safety, or compliance with setback requirements. DPS 6/24/22

Comments at 2. As to the orderly development criteria, under Section 248(b)(1), the Department stated that it views the outstanding issue primarily as a question of law and will address the matter in its brief. *Id.*

On June 28, 2022, the Intervenor filed a motion to change the schedule, requesting that the evidentiary hearing be rescheduled for a later date to allow them to review the most recent filings and to provide surrebuttal testimony, conduct discovery on the Petitioner's revised site plan and the rebuttal testimony of Dori Barton and Scott Homsted, and to file surrebuttal testimony. The Intervenor also raised the issue of whether the revised site plan constitutes an amendment to the petition.

On June 30, 2022, the Petitioner filed a request for waiver of Rule 5.108(B) and a determination that an approximately 80-foot shift to the Project's limits of disturbance ("LOD") to provide a buffer for the Landowners' vernal pool constituted a second minor amendment under Commission Rule 5.108(A).

On July 1, 2022, the Hearing Officer issued a modified schedule granting the Intervenor's request for schedule changes and additional process.

On July 7, 2022, the Petitioner filed a request to further modify the schedule. No party objected to the proposed schedule change.

On July 21, 2022, the Hearing Officer issued a procedural order further adjusting the schedule.

On July 22, 2022, AAFM filed supplemented comments, which were further revised on September 9, 2022.

On August 8, 2022, the Commission issued an order granting the second minor amendment to the Project.

On September 9, 2022, the Petitioner and the Landowners filed surrebuttal testimony.

Also on September 9, 2022, ANR, DPS, and AAFM filed supplemental comments (the "9/9/22 ANR Comments", "9/9/22 DPS Comments", and "9/9/22 AAFM Comments", respectively), which reinforced the agencies' earlier comments supporting issuance of a CPG for the Project, subject to conditions. In its supplemental comments, ANR stated that it had proposed appropriate conditions in its October 2021 comment letter and Petitioner had agreed to include those conditions in its proposed CPG. ANR also requested an additional CPG condition, as

follows: “The CPG Holder shall not disturb or impact vernal pools and their 100-foot buffer zones.” ANR 9/9/22 Comments at 1-2.

On September 12, 2022, the Petitioner filed a motion to strike certain of Landowners’ surrebuttal exhibits and testimony.

On September 25, 2022, L. Brooke Dingledine, Esq., entered a notice of limited appearance for the purpose of acting as counsel for the evidentiary hearing on behalf of Joan Allen.

On September 27, 2022, the Petitioner filed a request for clarification regarding the limited notice of appearance filed by Attorney Dingledine. The Petitioner questioned Attorney Dingledine’s limited appearance because Intervenors filed for joint intervention as a single party, and because of the significant amount of estimated combined cross examination time stated by Attorney Dingledine.

On October 31, 2022, the Hearing Officer issued an order granting in part and denying in part Petitioner’s motion to strike portions of Landowners’ surrebuttal testimony.

On November 7, 2022, the Hearing Officer issued a memorandum instructing Mr. Binder and Attorney Dingledine to coordinate their cross examination of the Petitioner’s witnesses to ensure that their questions are not duplicative.

On November 14, 2022, Intervenors filed a motion to withdraw their request for hearing.

Also on November 14, 2022, the Hearing Officer issued a procedural order cancelling the evidentiary hearing.

On December 16, 2022, ANR filed a Request for Judicial Notice of 1) the Vermont Department of Environmental Conservation’s (“DEC”) authorization of Applicant’s Notice of Intent (“NOI”) for the discharge of stormwater runoff at the proposed Project site, issued on October 25, 2022; 2) the site plan map submitted by Applicant in support of its NOI filed with DEC; and 3) the DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control which is incorporated by reference in the NOI authorization. These three documents were included with the Judicial Notice Request as Attachments 1, 2 and 3, respectively.

On January __, 2023, the Hearing Officer granted ANR’s Request for Judicial Notice.

II. CONDITIONAL WAIVER OF REVIEW UNDER CERTAIN CRITERIA FOR NET-METERING PROJECTS

Pursuant to 30 V.S.A. § 8010 and Commission Rule 5.111, the Commission has conditionally waived review of the following criteria, and no party presented any testimony that warrants rescinding any part of that waiver in this proceeding:

- 30 V.S.A. § 248(b)(2) (need);
- 30 V.S.A. § 248(b)(4) (economic benefit);
- 30 V.S.A. § 248(b)(6) (integrated plan);
- 30 V.S.A. § 248(b)(7) (electric energy plan);
- 30 V.S.A. § 248(b)(9) (waste-to-energy facilities); and
- 30 V.S.A. § 248(b)(10) (transmission facilities).

Therefore, only the criteria applicable to the system under Rule 5.111 are addressed in this Proposed Order.

III. FINDINGS

Description of the Project

1. The Project is a 500 kW AC ground-mounted solar electric generation facility sited on the host landowner's ± 20.7-acre parcel located approximately 1,500± feet north of the intersection of Davis Road and Rt. 14, in Randolph, Vermont. Staskus pf. at 4; exh. RDS MS-2 (rev. 6-17-22).

2. The land parcel is not subject to an Act 250 Land Use permit. Staskus pf. at 4.

3. The electric power will travel between the rows enclosed in code compliant conduit, below grade, connecting the panel rows, string inverters, AC combiner panel and AC disconnect, and interconnecting to three new pole-mounted transformers owned by Green Mountain Power Corporation ("GMP"), typical of transformers used throughout GMP's distribution system. A GMP line extension will connect the new pole-mounted transformers to GMP's existing distribution circuit. Staskus pf. at 6; exh. RDS MS-2 (rev. 6-17-22); exh. RDS MS-7.

4. The Project will include the following principal Project components:

- multiple rows of solar panels mounted on a racking system anchored to the ground¹;
- ten (10) string inverters each having a capacity of 50 kW (AC), for an aggregate nameplate capacity of 500 kW (AC);
- electrical lines enclosed in code compliant conduit, connecting the panel rows, string inverters, AC combiner panel and AC disconnect pedestal;
- three (3) 167 kVA pole-mounted transformers on a new GMP distribution pole;
- a GMP line extension to connect to the existing GMP distribution system;
- access via a gravel drive off Davis Road; and
- a wildlife fence 8-foot high, with mesh size no smaller than 6 inches by 6 inches extending from the ground level up to three feet or higher and secured by a locked gate. In the event a fence is not required, energized equipment will be rated for outdoor use, securely shielded by locked enclosure covers and otherwise compliant with NEC code “Guarding of Live Parts” or otherwise.

Staskus pf. at 7-8.

5. Installation activities and related deliveries will occur between 7:00 AM and 7:00 PM Monday through Friday, and on Saturdays from 8:00 AM to 5:00 PM, if required to meet the Project schedule. No construction activities or deliveries will occur on Sundays or on state or federal holidays. Staskus pf. at 9.

Applicable Rate Adjustors

6. The Applicant has elected to transfer the Project’s renewable energy credits (“RECs”) to GMP. Application at 4.

7. The Randolph Selectboard and Planning Commission and the Two Rivers-Ottawaquechee Regional Commission (“TRORC”) have each designated the Project location as a Preferred Site. Staskus pf. at 10; exh. RDS MS-5.

¹ The exact number and wattage will be determined at time of procurement.

8. Notwithstanding repeated objections from Landowners and Attorney Dingledine, the Randolph Planning Commission and Selectboard both determined not to rescind the Preferred Site designation, and accepted Petitioner's assurances that the array will not be constructed on slopes greater than 25%. Staskus 2/25/22 supp. pf.; exhs. RDS MS-12 – MS-15; exhs MB-14 – MB-16, MB-18, and MB-20 – MB-23.

9. In response to Mr. Binder's subsequent multiple requests that the Randolph Selectboard rescind its Preferred Siting for the Project, the Selectboard, on March 3, 2022, re-confirmed its approval and concluded that no further action will be taken. Exh. RDS MS-16 (Randolph Selectboard Minutes 2022-03-03).

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

10. The Project will not unduly interfere with the orderly development of the region. This finding is supported by findings 11 through 27, below.

11. 30 V.S.A. § 248(b)(1) requires that a project not "unduly interfere with the orderly development of the region, with *due consideration* to the recommendations of the town and regional planning commissions, town selectboards, and the land conservation measures contained in the plan of any affected municipality." 30 V.S.A. § 248.

12. Section 248(b)(1)(C) also provides that, with respect to an in-state electric generation facility, the Commission shall give substantial deference to the land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance. The TRORC has adopted an Enhanced Energy Plan, although the Town of Randolph has not. Exh. RDS MS-6 at 9; exh. RDS MS-17 (Randolph Planning Commission minutes 2019-03-11).

13. The Project footprint relative to the surrounding landscape is localized, and its low-profile and structural elements are consistent with activities occurring in the area and will appear similar to other renewable energy solar arrays commonplace in Vermont. Exh. RDS MS-6 at 6.

14. The Project will not be a dominant element in this landscape. It will be screened from public views in all directions by the undulating topography and existing vegetation. Exh. RDS MS-6 at 6.

15. The Project will not unduly interfere with any land conservation measures contained in the Randolph Town Plan or the TRORC Regional Plan. Exh. RDS MS-6 at 9-10.

16. There was no evidence offered by Landowners or any party to suggest that the Project will unduly interfere with the orderly development of the region.

17. Neither the regional nor municipal plans have designated the area as open space or conservation lands. Additionally, the Project will be fully decommissioned at the end of its useful life, and infrastructure removed. Exh. RDS MS-6 at 7.

18. The TRORC Energy Plan also promotes the region's achievement of the 2016 Comprehensive Energy Plan renewable energy targets to "[m]eet 25% of remaining energy need from renewables by 2025, 40% by 2035 and 90% by 2050" and to "[m]eet end use sector goal of 67% renewable electric by 2025." Exh RDS MS-6 at 8 (quoting the TRORC Plan, exh. RDS MS-6, Appendix B at 220).

19. The TRORC Plan states that "[t]o reach the state's renewable energy generation targets, more renewable generation will need to be developed and we believe most of this will be in the form of solar." Exh RDS MS-6 at 8 (quoting the TRORC Plan, exh. RDS MS-6, Appendix B at 225).

20. The TRORC Plan notes that the amount of renewable energy generation in the TRORC region must increase from 2015 levels by 163 MW by 2050. Exh RDS MS-6 at 8 (quoting the TRORC Plan, exh. RDS MS-6, Appendix B at 229).

21. The Energy Chapter of the Town Plan adopts as the Town's over-arching goal to "[c]onserve energy, increase efficiency, and switch fuel types to renewable sources in order to meet goals of reducing overall energy use by 35% in 2050 and have 90% of the energy supplied by renewable sources by 2050." Exh. RDS MS-6 at 7 (citing the Town Plan, exh. RDS MS-6, Appendix A at 28).

22. The Town Plan provides that:

"[t]o meet this demand, we will need generation from 26,825 -32,786 MWhs of electricity each year. We currently only generate about 9% of that. This will require a massive increase in generation, primarily from solar PV arrays."

Exh. RDS MS-6 at 7 (quoting the Town Plan, exh. RDS MS-6, Appendix A at 70).

23. The Project will further the goals of the Randolph Town Plan and the TRORC Regional Plan to encourage the development of renewable energy sources. Exh. RDS MS-6 at 7-9 and Appendices A & B.

24. Landowners contend that the Project violates a provision of the Randolph Town Plan energy siting standard that states that “[e]nergy facility development ... shall be prohibited in ... lands over 25% slope.” See exh. RDS MS-6, appendix B at 29; Binder pf. at 2.

25. The Project array is not sited on slopes exceeding 25%, and only a limited portion of the access road is situated on slopes exceeding 25%. Staskus 2/25/22 pf. at 2-3; exhs. RDS MS-2A & 2B.

26. The Town of Randolph designated the Project site as preferred for solar. Staskus 2/25/22 pf. at 3-5; exh. RDS MS-5.

27. The Randolph Planning Commission and Selectboard both determined not to rescind the Preferred Site designation, and accepted Petitioner’s assurances that the array will not be constructed on slopes greater than 25%. Moreover, both the Selectboard and Planning Commission re-visited the issue, understanding that portions of the Project site outside of the array involved slopes exceeding 25%, and chose not to rescind the Preferred Siting for the Project. Findings 8 and 9, above.

Discussion

Prior to issuing a CPG, the PUC must find that a project “will not unduly interfere with the orderly development of the region.” 30 V.S.A. § 248(b)(1). “In making this finding, the PUC is required to give ‘due consideration’ to the ‘recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of an affected municipality.’” *In re Acorn Energy Solar 2, LLC*, 2021 Vt. 3, ¶ 87 (quoting 30 V.S.A. § 248(b)(1)). “[S]ubstantial deference’ must be given to ‘land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352.’” *Id.* (quoting 30 V.S.A. § 248(b)(1)(C)).

The substantial deference provision was added to Section 248(b)(1) as part of Act 174, the so-called “Energy Development Improvement Act.” No. 174 (2016); 24 V.S.A. § 4352. Act 174 established a new set of municipal and regional energy planning standards, which if met would allow those plans to carry greater weight in the siting process for energy generation. See <https://publicservice.vermont.gov/content/act-174-recommendations-and-determination-standards>. Here, the Town did not adopt Act 174 enhanced energy planning standards, and its

plan did not receive an affirmative determination of energy compliance. As such, the Town Plan siting standard language is entitled to due consideration only.

Section 248(b)(1)'s due consideration standard was recently explained by the Vermont Supreme Court in *In re Petition of Apple Hill Solar LLC*, 2021 VT 69:

In contrast to the Act 250 permitting context, where compliance with duly adopted local or regional plans is a prerequisite to an Act 250 permit, see 10 V.S.A. § 6086(a)(10), for purposes of § 248 review, land-conservation measures in municipal plans are entitled only to “due consideration.” 30 V.S.A. § 248(b)(1). As a consequence, *even a clear, written land-conservation measure in a municipal land-use plan does not present an insurmountable obstacle to approval of a certificate of public good under § 248.*

Id., ¶ 31 (emphasis added).

Under no framework can town plans be used under Section 248(b)(1) to prohibit solar siting. As the Court held in *Petition of Rutland Renewable Energy LLC*, 2016 VT 50, even a clearly mandated solar siting restriction is entitled to limited or no deference under § 248(b)(1) *Id.*, ¶ 36 (concurring opinion) (“the permitting process pursuant to § 248 preempts municipal zoning requirements altogether—an aspect of the statutory structure that further undermines any suggestion that the [Commission] owes deference to the Town's solar siting standards”). There, the Court held that a Rutland Town solar setback mandate was not entitled to any deference because it was in fact a *de facto* zoning standard preempted by § 248. *Id.* (citing *City of S. Burlington v. Vt. Elec. Power Co.*, 133 Vt. 438, 447-48, 344 A.2d 19, 24-25 (1975) (decision “recognizing that municipalities’ role in § 248 matters is advisory” and that § 248 “did not give ‘single municipalities the power to subvert utility projects statewide in scope and broadly entrusted to a single planning and supervisory agency’”).

Even had the Town of Randolph duly adopted an enhanced energy plan, which it did not, the Act 174 planning framework allows municipalities to identify “preferred” and “constrained” areas for solar siting. Steep slopes are not mentioned as a possible constraint under the Department of Public Service Act 174 determination standards, and they do not allow municipalities to “prohibit” energy siting. See <https://publicservice.vermont.gov/content/act-174-recommendations-and-determination-standards>.

Finally, in addition to the limited deference due to Town siting standards, § 248(b)(1) “relates to the orderly development of the region, not to a particular municipality within the

region.” *In re Petition of Rutland Renewable Energy, LLC for Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 Vt. 50, ¶ 9. Even if the Project violated a mandatory provision of the Randolph Town Plan, Landowners “failed to show how such a violation would interfere with the orderly development **of the region.**” *In re New Haven GLC Solar, LLC*, 2017 VT 72, ¶ 33, 175 A.3d 1211 (emphasis added)(“even if the project violated a mandatory provision of the town plan limiting the size of power generation facilities, which it did not, the Town had failed to show how such a violation would interfere with the orderly development of the region”). The slopes language of the Randolph Town Plan does not implicate regional impacts in any way.

For all of these reasons, the slopes language in the Randolph Town Plan does not authorize the Town to prohibit the Project or support a finding that the Project will unduly interfere with the orderly development of the region.

Municipal Screening Requirements

[30 V.S.A. § 248(b)(1)(B)]

28. The Town has not adopted screening requirements for ground-mounted solar electric generation facilities pursuant to either 24 V.S.A. §§ 2291(28) or 4414(15). Staskus pf. at 18.

Impact on System Stability and Reliability & Transmission

[30 V.S.A. § 248(b)(3) & § 248(b)(10)]

29. The Project will not have an undue adverse impact on system stability or reliability or adversely impact the transmission system. This finding is supported by findings 30 and 31, below.

30. On September 21, 2021, GMP issued a Feasibility Study for the Project. Exh. RDS MS-11.

31. The Applicant has budgeted for and will be responsible for paying for all necessary interconnection costs designated as Applicant’s responsibility in the Feasibility Study, as required by Rule 5.500. Staskus pf. at 13.

Aesthetics, Historic Sites, Air and Water Purity, the Natural Environment, the Use of Natural Resources, and Public Health and Safety

[30 V.S.A. § 248(b)(5)]

32. Subject to the conditions described below, 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, or 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), impacts on primary agricultural soils as defined in 10 V.S.A. § 6001, and greenhouse gas impacts. This finding is supported by findings 33 through 131, below.

Outstanding Resource Waters

[10 V.S.A. § 1424a(d)] and [30 V.S.A. § 248(b)(8)]

33. The Project will not affect any outstanding resource waters as defined by 10 V.S.A. § 1424a(d) because there are no outstanding resource waters at or near the Project. Exh. RDS DB-2 at Section VI.

Noise, Air & Water Purity and Greenhouse Gas Impacts

[30 V.S.A. § 248(b)(5); 10 V.S.A. § 6086(a)(1)]

34. As a renewable energy source powered by the sun, this Project will contribute to reducing greenhouse gas (“GHG”) emissions to the extent it displaces fossil-fueled generating resources. Staskus pf. at 13.

35. The Project will contribute to reducing greenhouse gas emissions. Based upon 2021 United States Environmental Protection Agency (“EPA”) equivalency numbers, the approximately 900,000 kWh/year of electricity that is expected to be generated annually by the Project equates to 638 metric tons/year of avoided CO₂ emissions. Over a 25-year period, the Project is estimated to avoid approximately 15,950 metric tons of greenhouse gases. Staskus pf. at 14 (citing <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>).

36. Importantly, the State of Vermont is part of the U.S. Climate Alliance, a coalition of states committed to upholding the commitments of the Paris Agreement to keep temperature increases below 1.5 degrees Celsius by committing to reduce collective net GHG emissions at least 50-52 percent below 2005 levels by 2030, and to collectively achieve overall net-zero GHG emissions as soon as practicable and no later than 2050. Staskus pf. at 14 (citing <http://www.usclimatealliance.org/alliance-principles>).

37. In May 2017, Governor Phil Scott and Massachusetts Governor Charles Baker jointly wrote to the US Secretary of Energy stating:

The impacts of climate change have already been felt in our states. We have seen the impacts of rising sea levels, increasingly severe flooding, heat

waves, droughts, and decline in snow cover. These impacts threaten the people of our states and put an intense burden on our economies.

Staskus pf. at 14 (citing <https://governor.vermont.gov/content/paris-climate-agreement-letter>).

38. In 2020, the Vermont Legislature passed the Global Warming Solutions Act, adopting legislative findings that emphasize the need for more action:

A climate emergency threatens our communities, State, and region and poses a significant threat to human health and safety, infrastructure, biodiversity, our common environment, and our economy.

According to the IPCC and the World Bank, a failure to substantially reduce emissions over the next ten years will require even more substantial reductions later and will increase the costs of decarbonization. Delaying necessary policy action to address the climate crisis risks significant economic damage to Vermont.

By implementing climate mitigation, adaptation, and resilience strategies, Vermont will also position its economy to benefit and thrive from the global transition to carbon neutrality and national and international efforts to address the crisis.

According to the Vermont Agency of Natural Resources, the adverse impacts of climate change in Vermont include an increase in the severity and frequency of extreme weather events, a rise in vector-borne diseases including Lyme disease, more frequent cyanobacteria blooms, adverse impacts to forest and agricultural soils, forest and crop damage, shorter and irregular sugaring seasons, a reduction in seasonal snow cover, and variable and rising average temperatures that result in uncertain and less snowfall.

Staskus pf. at 15 (quoting Act No. 153 (2020), § 2 (Legislative Findings)).

39. The 2016 Comprehensive Energy Plan (“CEP”) recognized these concerns and expressly endorsed the build-out of community scale solar distributed generation as a mitigation strategy to combat climate change:

Renewable generation technologies deployed on a small scale are currently more expensive than other sources of electricity. Even so, these smaller---scale renewable projects offer great potential, given the need for zero---and low---emission energy supply; for long---term affordability and price stability, as helped by the low---cost or no---cost fuels required to generate most forms of renewable electricity; for energy security and stability; and

for a diverse resource mix, along with the expressed preferences of Vermonters for greater use of renewable resources, especially distributed and community----scale resources. Fostering small----scale and distributed renewable energy is an objective of the CEP.

Staskus pf. at 16 (quoting CEP at 243)

40. Any limited air emissions or greenhouse gas emissions associated with installation will be primarily from any fossil-fueled vehicles and equipment used for deliveries, worker transportation, and installation activities. The emissions will be typical of small construction projects, will be short-term, and will not be adverse. Throughout its operation, the Project will generate no air pollution, with the exception of minimal vehicle emissions associated with periodic site and equipment maintenance visits. Staskus pf. at 13.

41. The Project will not cause undue noise. The combined impact of all noise-emitting equipment from the nearest residence is 22.9 dBA. Staskus pf. at 13; Exh. RDS MS-8.

42. During the limited installation period sounds typical of construction equipment will be generated by the light installation activities. Staskus pf. at 13.

Water Pollution

[10 V.S.A. § 6086(a)(1)]

43. The Project will not result in undue water pollution. This finding is supported by findings 44 through 94, below.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

44. The Project is located in a headwater as it is located within a watershed with a drainage area less than 20 square miles and is characterized by steep slopes. Exh. RDS DB-2 at Section IV.

45. The Project will have no adverse impact on headwater areas. Exh. RDS DB-2 at Section IV.

46. Consistent with Petitioner's testimony in this case, on October 25, 2022, the Project obtained Authorization to Discharge under Construction General Permit 3-9020 as a Low Risk Construction Activity. ANR Attachment 1; Homsted reb. pf. at 2-3; Staskus pf. at 19; exh. RDS DB-2 at Section IV.

47. Project installation will be performed in accordance with the *Vermont Low Risk Handbook for Erosion Prevention and Sediment Control* and *Vermont Standards & Specifications*

for Erosion and Prevention and Sediment Control, 2020. Exh. MS-2, Sheet 2; ANR Attachment 3; Homsted reb. pf. at 3; exh. RDS DB-2 at Section IV.

48. The Project grounds, including space between the solar panel rows, will remain vegetated and maintained. Staskus pf. at 9; exh. RDS DB-2 at Section IV.

49. The Project will not involve the disposal of wastes and will not involve the injection of waste materials or any harmful toxic substances into groundwater or wells. In addition, the Project will use three GMP pole-mounted transformers that will utilize mineral oil. Staskus pf. at 9, 18; exh. RDS DB-2 at Section IV.

50. The proposed Project will not result in a reduction of the quality of ground or surface waters in the area. Exh. RDS DB-2 at Section IV.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

51. The Project will meet all applicable Vermont Department of Health and Vermont Department of Environmental Conservation regulations regarding the disposal of wastes and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Staskus pf. at 18.

52. There are no onsite sanitary wastewater systems, and therefore no associated injection of sanitary wastewater into the ground. Staskus pf. at 18.

Water Conservation & Burden on Existing Water Supply

[10 V.S.A. § 6086(a)(1)(C) & § 6086(a)(2) & (3)]

53. The Project itself will not utilize water. Use of water will be limited to what is necessary to control dust during installation and to promote germination of seed. Staskus pf. at 19.

54. The Project will not unreasonably burden existing water supply. Staskus pf. at 19.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

55. The proposed Project is not located within a flood hazard area, floodway or a floodway fringe and will not restrict or divert the flow of floodwaters or significantly increase the peak discharge of a river or stream within or downstream from the Project, or endanger health, safety, or welfare of the public or of riparian owners during flooding. Exh. RDS DB-2 at Section V.

Streams**[10 V.S.A. § 6086(a)(1)(E)]**

56. The Project will whenever feasible where development is on or adjacent to the banks of a stream, maintain the natural condition for the stream, and will not endanger the health, safety, or welfare of the public or adjoining landowners, and will not adversely impact any streams. This finding is supported by findings 57 through 66, below.

57. In addition to a remote review of the USGS topographic map, Vermont Hydrography Dataset (streams, rivers, and waterbodies), and LiDAR derived topography, Arrowwood Environmental conducted site investigations on June 24 and July 23, 2021. Barton pf. at 2; exh. RDS DB-2 at Section VI.

58. Arrowwood Environmental mapped all the streams within the Project area. There are no surface waters, including streams, within the Project LOD. Barton pf. at 2; exh. RDS DB-2 at Section VI; exh. RDS MS-2 (rev 7-13-22); Barton reb. pf. at 4.

59. The closest stream to the Project LOD is an unnamed tributary located ~75' southwest of the Project. Exh. RDS DB-2 at Section VI and Figure 1; exh. RDS MS-2 (rev 7-13-22).

60. A stream is defined in ANR's *Guidance for Agency Act 250 and Section 248 Comments Regarding Riparian Buffers* as:

The full length and width, including the bed and banks, of any watercourse, including, but not limited to, bodies named creek, brook, river, branch, and kill. A stream has a channel that periodically or continuously contains moving water, has a defined bed, and has banks that serve to confine water at low to moderate flows. Streams include intermittent streams that have a defined channel and evidence of sediment transport, even if such streams does not have surface water flow throughout the year and/or throughout the channel. For the purpose of this guidance, constructed drainageways including water bars, swales, and roadside ditches, are not considered streams.

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

61. There is no evidence of a second stream within or adjacent to the project LOD, including within the extended wetland mapping along Davis Road. Exh. RDS DB-1; Barton reb. pf. at 4.

62. The Petitioner's proposed 50-foot riparian buffer along the stream identified by Arrowwood Environmental is consistent with ANR's *Guidance for Agency Act 250 and Section 248 Comments Regarding Riparian Buffers*. ANR 10/20/21 Comments at 2.

63. The Project will not result in any clearing of forest vegetation within the riparian buffer zone (as measured 50' from top of bank/top of slope/edge of wetland) of stream resources. Exh. RDS DB-2 at Section VI; exh. RDS MS-2 (rev 6-17-22).

64. ANR requested the Commission to include the following CPG condition requiring maintenance of an undisturbed, naturally vegetated riparian zone along the identified stream, consistent with the above-mentioned guidance:

"The CPG Holder shall maintain an undisturbed, naturally vegetated riparian zone along the stream southwest of the proposed solar array and shown on the approved site plan. The riparian zone shall be measured inland, perpendicular to, and horizontally 50 feet from the stream's top of bank or, in areas where a wetland is contiguous to the stream, from the upland edge of the delineated wetland, and shall extend 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."

ANR 10/20/21 Comment at 2.

65. ANR concluded that "[p]rovided the CPG is conditioned as requested above, the Agency finds the Project will not have undue adverse effects or warrant a hearing" regarding streams. ANR 10/20/22 Comments at 2.

66. The Petitioner has agreed to this proposed condition.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

67. The Project is not located on a shoreline river, lake, pond, or reservoir. Exh. RDS DB-2 at Section VII.

68. The closest shoreline to the Project is that of the White River ~600' to the southeast of the Project area. Allen pf. at 6.

69. The Project area is not along the river and therefore will not result in any clearing of forest vegetation along the shores of the White River. Exh. RDS DB-2 at Section VII.

Wetlands**[10 V.S.A. § 6086(a)(1)(G)]**

70. The Project will not violate the rules of the Secretary of Natural Resources, as adopted under chapter 37 of Title 10, Vermont Statutes Annotated, relating to significant wetlands. This finding is supported by findings 71 through 75, below.

71. Arrowwood Environmental's wetland assessment involved both a remote review of available maps (including Vermont Significant Wetland Inventory Maps and the US Department of Agriculture Natural Resources Conservation Service Soil Survey) and a field inventory component conducted on June 24, 2021. The protocols put forth in the US Army Corp of Engineers Wetlands Delineation Manual (2009 Regional Supplement for the Northcentral and Northeast Region) were employed for delineating wetlands as required by and in accordance with Section 3.2 of the Vermont Wetland Rules. Exh. RDS DB-2 at Section VIII; Barton reb. pf. at 4.

72. Field review confirmed the presence of presumed Class 2 wetlands to the southwest of the Project area, as well as a vernal pool on the Landowners' parcel northwest of the Project array. Exh. RDS DB-2 at Section VIII; Barton reb. pf. at 4, 5; exh. RDS MS-2 (rev 7-13-22).

73. The Vermont Wetland Rules establish a minimum 50' protective buffer for Class 2 wetlands. The Vermont Wetland Rules specify a 100' buffer for Class 1 wetlands, and do not require a larger buffer for vernal pools, which are Class 2 wetlands. The Vermont Department of Fish and Wildlife has determined that a 100' buffer is appropriate for vernal pools. Barton reb. pf. at 5; ANR 9/9/22 Comments at 1.

74. The Project has been designed to avoid impacts within the two Class 2 wetlands and their respective buffers. Barton reb. pf. at 5.

75. ANR concurs with Petitioner's environmental expert that subject to the conditions proposed by Petitioner and ANR, the Project will not result in an undue adverse effect under Section 248(b)(5) with respect to wetland resources. ANR 6/24/22 Comments at 1.

Soil Erosion**[10 V.S.A. § 6086(a)(4)]**

76. The Project will not cause undue soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results. This finding is supported by findings 77 through 94, below.

77. Total limit of disturbance (“LOD”) from installation activities for purposes of the stormwater Construction General Permit will be approximately 11.6± acres. Staskus reb. pf. at 2; exh. RDS MS-2 (rev 7-13-22).

78. The applicable regulations and standards for erosion prevention and sediment control for the Project include the Department of Environmental Conservation (“DEC”) Construction General Permit (“CGP”) 3-9020, issued February 19, 2020, effective May 19, 2020, and the *Vermont Low Risk Handbook for Erosion Prevention and Sediment Control* dated February 2020. Homsted reb. pf. at 3; Attachments 1 and 2 to ANR Request for Judicial Notice.

79. The permitting requirements for projects authorized under this general permit depend upon the risk of having a discharge of stormwater from the construction site. There are two risk categories authorized by the CGP: Low Risk and Moderate Risk. Projects that pose a higher risk are ineligible to use the general permit and must file an application for an Individual Permit. Homsted reb. pf. at 3.

80. The Project qualifies as a Low Risk CGP project and, consistent with Petitioner’s testimony, Petitioner was issued Authorization to Discharge under General Permit 3-9020 on October 22, 2025. Homsted reb. pf. at 4; Attachments 1 and 2 to ANR Request for Judicial Notice.

81. The Authorization to Discharge includes requirements to mitigate against undue soil erosion and discharge of sediment from the construction site, including the construction practices required under the *Low Risk Site Handbook for Erosion Prevention and Sediment Control*. Attachments 1 and 2 to ANR Request for Judicial Notice.

82. As part of the revised site plan, Krebs & Lansing, Vermont certified civil engineers, prepared the erosion prevention and sediment control (“EPSC”) design and details necessary for the construction of the Project. The Project erosion control measures outlined in Sheet C-103 of Exhibit RDS MS-2 (rev 7-13-22), include an extensive variety of EPSC options available to be employed throughout the Project area during construction to prevent erosion and keep sediment from leaving the site and reaching receiving waters. Homsted reb pf. at 2.

83. These measures include perimeter controls such as silt fence and Silt Soxx, which will be installed downslope of all disturbed areas to prevent sediment from leaving the site. A stabilized construction entrance and gravel staging area will prevent construction vehicles from tracking sediment onto adjacent roads. Various mulching materials and rates will be used to limit

the amount of concurrent ground disturbance at any one time, and to provide temporary ground stabilization while vegetation is established. Homsted reb. pf. at 2-3.

84. The Project access drive will be levelized, stabilized and top-dressed with coarse gravel. See access drive notes and graphic at Exh. RDS MS-2 (rev 6-17-22).

85. These practices conform with the Vermont regulatory standards for erosion prevention and sediment control, which include the *Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control* and the *Vermont Standards and Specifications for Erosion Prevention and Sediment Control*, which the Petitioner has explicitly committed to conform with. Staskus pf. at 19; Homsted reb. pf. at 3; ANR 6/24/22 Comments at 2; Attachments 1 and 2 to ANR Request for Judicial Notice.

86. In addition, the solar array has been reconfigured to avoid steep slopes as shown on the current Site Plan. Homsted reb. pf. at 4; exh. RDS MS-2A and 2B; exh. RDS MS-2 (rev 6-17-22).

87. While steep slopes exist on portions of the access drive, with these slopes the Project still scores “Low Risk” in terms of State of Vermont Construction General Permit 3-9020. Homsted reb. pf. at 4.

88. The Low Risk Handbook expressly addresses construction of access drives on steep slopes, and the appropriate measures to stabilize them, as illustrated by this excerpt:

Riprap: A layer of stone designed to protect and stabilize areas subject to erosion.



Attachment 2 to ANR Request for Judicial Notice at 18.

89. The EPSC measures to be employed at the Project site per Exhibit RDS MS-2 (rev 6-17-22), which have been approved on many projects by ANR, will avoid undue erosion and stormwater impacts. Homsted reb. pf. at 2.

90. Landowners raised concerns regarding the potential for increased stormwater runoff on the Second Branch of the White River, approximately 600 feet from the site. The implementation of EPSC measures during Project installation as described above, along with the existing vegetated buffers between the site and the Second Branch will prevent sediment from leaving the site and impacting the receiving water. All disturbed areas must be completely stabilized with vegetation, stone, mulch, stump grindings or gravel prior to completion of the Project. Homsted reb. pf. at 5-6; Attachments 1 and 2 to ANR Request for Judicial Notice.

91. Krebs & Lansing has worked on dozens of sites that required State of Vermont Construction Stormwater Permits since the program was implemented in 2003. It is their experience that the measures implemented on sites to be in compliance with these permits are effective at preventing erosion and preventing sediment laden stormwater from leaving the site. Homsted reb. pf. at 6.

92. Landowners did not provide expert testimony from a qualified engineer to support their theories about the potential for undue erosion, and they admitted that they themselves are not qualified experts on the topic and have never prepared an EPSC plan or a stormwater permit application. Exhibits RDS MS-19 – MS-25.

93. As noted by ANR in its comments, the Project CPG will include standard CPG conditions to obtain required permits to protect natural resources, including securing Authorization under Construction General Permit 3-9020 (which Petitioner has in fact obtained), and adherence to the standards contained in the *Low Risk Site Handbook for Erosion Prevention and Sediment Control*, which Petitioner has explicitly committed to undertake and which is also a requirement of its Authorization under General Permit 3-9020. ANR 6/24/22 Comments at 2; Attachment 1 to ANR Request for Judicial Notice.

94. The EPSC measures to be implemented at the Project site will prevent unreasonable soil erosion. Homsted reb. pf. at 6.

Discussion

As ANR's comments correctly point out, the Project's compliance with the Agency's Authorization under the Construction General Permit 3-9020, which incorporates by reference the

Low Risk Site Handbook for Erosion Prevention and Sediment Control, contains detailed practices that must be implemented during construction. Compliance with Petitioner's General Permit 3-9020 Authorization is a standard CPG condition that will prevent unreasonable soil erosion and demonstrates that the Project will not result in an undue adverse impact on the natural environment or natural resources under 30 V.S.A. §248(b)(5). This approach was recently confirmed by Commissioner Roisman during the June 13, 2022 evidentiary hearing in *Application of Michael Hespos for a certificate of public good for a 34.2 kW wind electric power system in Readsboro, Vermont*, Case No. 20-3422-NM. There, a landowner raised concerns that construction of a wind project and associated access road would cause unreasonable soil erosion and stormwater runoff, and attempted to cross-examine the Applicant's witness on these issues. Commissioner Roisman explained that the Commission defers to the ANR stormwater permitting process and then conditions a CPG on permits issued by the Agency as demonstration that Criterion 248(b)(5) has been satisfied:

“CHAIR ROISMAN: Ms. Ruebesam, excuse me, Ms. Ruebesam. I think we went over this issue in the previous hearing. If you have a concern about whether or not Mr. Hespos's wind turbine, either the road to it or the existence of it on the site now proposed for it, may have an impact in terms of water or runoff or storm damage, this is an issue that you should be pursuing with the Agency of Natural Resources. The commission as a normal part of all Certificates of Public Good require an Applicant to have the required permits.

At this point you have not explained why it's not a matter that will be addressed in the permitting process in front of the Agency of Natural Resources. If you have some argument to suggest that that's not going to happen, that it's outside the scope of their jurisdiction, then we would address it. But for the moment, our normal process would leave these kind of issues to ANR. Once they have decided those issues, we would be requiring the Applicant to comply with it.

Application of Michael Hespos, Case No. 20-3422-NM, Tr. 6/13/22 at 13-15.

Transportation

[10 V.S.A. § 6086(a)(5)]

95. There will be no long-term transportation impacts, and only short-term, periodic traffic impacts due to deliveries of Project equipment to the site during installation. Staskus pf. at 20.

96. Such deliveries will use existing roads with vehicles that commonly use public roads. No oversized or overweight trucks or permits are necessary. Staskus pf. at 20.

Educational Services
[10 V.S.A. § 6086(a)(6)]

97. The Project will not place an unreasonable burden on the ability of a municipality to provide educational services because the Project will not require or affect educational services. Staskus pf. at 20.

Municipal Services
[10 V.S.A. § 6086(a)(7)]

98. The Project will not place an unreasonable burden on the ability of the affected municipality to provide municipal or government services. Use of municipal roads to transport equipment and materials will be limited in duration and similar to many other small-scale projects. Staskus pf. at 20.

Aesthetics, Historic Sites, and Rare and Irreplaceable Natural Areas
[10 V.S.A. § 6086(a)(8)]

99. The Project will not have an undue adverse impact on aesthetics or on the scenic or natural beauty of the area, nor will the Project have an undue adverse effect on historic sites or rare and irreplaceable natural areas. This finding is supported by findings 100 through 110, below.

Aesthetics

100. The Project will not result in an adverse impact to aesthetics. This finding is supported by findings 101 through 108, below.

101. “[T]he Quechee test did not guarantee that the aesthetic qualities of an area would not change.”²

102. Through careful site selection, the array is compatible with its surroundings. The Project footprint relative to the surrounding landscape is localized, and its low-profile and structural elements are consistent with activities occurring in the area and will appear similar to other renewable energy solar arrays commonplace in Vermont. Exh. RDS MS-6 at 6.

103. The Project will be set back 256± feet from Davis Road, the nearest public road, and will be approximately 75± feet above road level. Views along Davis Road will be limited, if at all, due to intervening vegetation, changes in topography and the changing orientation of the traveled way. Exh. RDS MS-6 at 6.

² *In re Amended Petition of UPC Wind*, 2009 VT 19, ¶ 27.

104. The Project will not be a dominant element in this landscape. It will be screened from public views in all directions by the undulating topography and existing vegetation. This siting provides reasonable mitigation, reducing the Project's potential visual impact. Exh. RDS MS-6 at 6.

105. The project does not violate any clearly written community standard to preserve the aesthetics or scenic, natural beauty of the area. To constitute a clear community standard under *Quechee*, a town or regional plan provision must "identif[y] the area of th[e] project for special protection to protect aesthetics or scenic beauty."³ Neither the Randolph Town Plan nor the TRORC Regional Plan identify the area of this Project for special protection to protect aesthetics or scenic beauty. Exh. RDS MS-6 at 7.

106. Moreover, the Project will further the goals of each plan to encourage the development of renewable energy sources in order to reduce greenhouse gas ("GHG") emissions and combat the global climate crisis. Because the Commission's consideration of aesthetics under Section 248 is significantly informed by overall societal benefits of the project, and in light of the important GHG reduction mandates enacted by the Vermont Legislature in 2020, the local and regional plan provisions that address these issues are significant considerations to the Commission's aesthetics analysis. Exh. RDS MS-6 at 7.

107. The Project will not be shocking or offensive to the average person. As used in *Quechee*, the average person means "the average member of the viewing public who would see a particular project from the vantage point of the public" and "from an objective, as opposed to subjective and neighborly, perspective."⁴ To reach the threshold of being "shocking or offensive," the size or scale of the project would need to be "overwhelming."⁵

108. The scale of the Project is not overwhelming or excessive and is largely screened from views by intervening topography and vegetation. Its low-profile presence in the landscape is compatible with its rural surroundings and will appear like other fixed-tilt, ground mounted renewable energy solar arrays commonplace in Vermont. Exh. RDS MS-6 at 7.

³ *In re Petition of Rutland Renewable Energy, LLC. for a Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 Vt. 50, ¶ 19.

⁴ *In re Petition of Rutland Renewable Energy, LLC. for a Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 Vt. 50, ¶ 22.

⁵ *Id.*

Historic Sites

109. Applicant's historic sites assessment and the Vermont Division for Historic Preservation's ("VDHP") assessment confirm that the Project will not result in an adverse effect on historic sites. Exh. RDS MS-6 at 10; exh. RDS MS-10.

Rare and Irreplaceable Natural Areas ("RINA")

110. There are no Rare and Irreplaceable Natural Areas present within the Project area. Exh. RDS DB-2 at Section IX.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

111. The Project will not destroy or significantly imperil necessary wildlife habitat or any endangered species. This finding is supported by findings 112 through 118, below.

112. The Vermont Fish and Wildlife Department has mapped the Project area as white-tailed deer wintering area ("DWA"). Mr. Noel Dodge from the Vermont Fish and Wildlife Department conducted a site visit on July 29, 2021. At this site visit it was determined that the Project site does not provide deer wintering habitat. Exh. RDS DB-2 at Section X.A.

113. The Applicant has agreed to certain conditions requested by ANR, as set forth in the proposed CPG, for site preparation, construction, maintenance, and decommissioning. Staskus pf. at 12; exh. RDS DB-2 at Section X.A.

114. Ms. Allen testified that the project will have an adverse impact on black bear habitat because she has seen signs of black bears on and around the Project parcel, including a wetland adjacent to Davis Road. Allen reb. pf. at 4.

115. Criterion 8(A), which addresses necessary wildlife habitat, requires a determination (1) that the habitat constitutes "necessary wildlife habitat"; and (2) if so, that the Project "will destroy or significantly imperil" such habitat. A "necessary wildlife habitat" means concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species of wildlife. 10 V.S.A. § 6001(12). The type of concentrated and identifiable habitat that would be decisive to the survival of black bears species would include stands of beech and oak trees, and spring feeding wetlands. There are no beech or oak stands in the Project LOD, nor has Ms. Allen suggested there are. Barton surr. pf. at 1-2.

116. The single stump shown in Exhibit JA-19 is not reflective of a “concentrated” habitat. The wetland near Davis Road discussed by Ms. Allen is outside of the LOD and will not be “destroyed” or “significantly imperiled” by the Project. In fact, the wetland will not be impacted at all. To the extent black bears visit that wetland, they will continue to have access after the solar array is installed. Barton surr. pf. at 2.

117. The project review and assessment conducted by Arrowwood Environmental establishes that the Project will not destroy or imperil rare, threatened, or endangered (“RTE”) species. Exh. RDS DB-2, Section X.B.

118. None of the bird species or mammals listed in Ms. Allen’s testimony as being present on the Project site are RTE or even uncommon species. The species listed are common on the Vermont landscape, including in forests and agricultural settings in proximity to human development. The listed species are likely to be intermittently present on the property with or without the proposed Project. Barton surr. pf. at 3.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

119. The Project will not unnecessarily or unreasonably endanger the public or quasi-public investment in any facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public’s use or enjoyment of, or access to any such facility, service, or lands. This finding is based upon findings 120 through 124, below.

120. Due to the limited amount of time required for installation, the Project will not adversely impact the public’s use of proximate roadways. Staskus pf. at 22.

121. The Project will not result in an undue adverse impact to aesthetics. Exh. RDS MS-6.

122. The Project has been designated a Preferred Site for solar. Exh RDS MS-5.

123. The Project creates a number of benefits with local, statewide, and regional significance, including supporting renewable energy development and construction related jobs, contributing to Vermont’s GHG electricity sector emissions, reducing Vermont’s dependence on out-of-state electricity sources, and the Renewable Energy Credits (“RECs”) will be transferred to GMP to be retired. Staskus pf. at 22.

124. The Project will also benefit public investments, in that it will generate new tax revenues to the Town of Randolph and to the State of Vermont Education Fund. Staskus pf. at 22.

Public Health and Safety**[30 V.S.A. § 248(b)(5)]**

125. The Project will not have any undue adverse effects on the health, safety, and welfare of the public. This finding is supported by findings 126 through 128, below.

126. Unlike fossil fuels, this solar generation project will not create waste or other emissions that would be harmful to public health and safety. Staskus pf. at 17.

127. The Project equipment and design satisfies all applicable safety codes, including NEC and NESC. The Project transformers will be compliant with GMP's specifications (Distribution Standard #T-01, 3.1, 12/13) that meet or exceed ANSI C57.12.00-2010, C57.12.20-2005, C57.12.90-2006, and all other applicable ANSI, IEEE, EEI, NEMA, and OSHA Standards. Staskus pf. at 17.

128. The Project inverters will be compliant with IEEE 1547 Standard for Interconnection and Interoperability of Distributed Resources with Associated Electrical Power Systems Interfaces (2018) and UL 1741 SA. Further, all energized equipment will be rated for outdoor use, securely shielded, include locked enclosure covers, and be otherwise compliant with NEC code "Guarding of Live Parts." Staskus pf. at 17; Exh. RDS MS-4.

Primary Agricultural Soils**[30 V.S.A. § 248(b)(5)]**

129. Approximately 1.80± acres of primary agricultural soils ("PAS") are within the LOD, of which 0.10± acre will be disturbed by excavation of underground power or access. Exh. RDS MS-2 (rev 7-13-22).

130. PAS disturbed will be stockpiled on site. Upon decommissioning, Project infrastructure will be removed and the PAS returned. Staskus pf. at 21.

131. AAFM supports issuance of a CPG for the Project provided that the CPG be conditioned on certain measures to mitigate impacts to PAS. AAFM 9/9/22 Comments.

Setbacks**[30 V.S.A. § 248(s)]**

132. The Project meets the 50-foot property boundary setback and the 100-foot setback from the nearby state or municipal road as measured from the edge of the traveled way. Staskus pf. at 18; exh. RDS MS-2.

Dated at Burlington, Vermont, this 12th day of January, 2023.

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