



**State of Vermont  
Public Utility Commission**

MEMORANDUM

To: Owners of Land Adjoining Proposed Chelsea Solar LLC Project  
From: Holly R. Anderson, Deputy Clerk of the Commission *HRA*  
Re: PUC Case No. 17-5024-PET – Chelsea Solar LLC, 2.0 MW Section 248 solar project  
Date: April 9, 2018

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Chelsea Solar LLC has filed a petition for a certificate of public good, pursuant to 30 V.S.A. § 248, authorizing a proposed 2.0 MW solar electric generation facility to be located on a portion of a 27.3-acre undeveloped parcel of land located on Willow Road in Bennington. The Public Utility Commission ("Commission") is reviewing the petition in Case No. 17-5024-PET.

**You are receiving these materials because the petitioner identified you as an “adjoining landowner” to the proposed project. Owners of land adjoining the proposed project and other members of the public interested in this proceeding will have the opportunity to provide input to the Commission regarding the proposed project at a public hearing to be held at 7:00 P.M. on Tuesday, April 17, 2018, at the Bennington Hampton Inn Conference Room, 51 Hannaford Square, Bennington, VT 05201.<sup>1</sup>**

The public is also encouraged to submit written comments on the project via the Commission’s electronic filing system (known as ePUC) at [epuc.vermont.gov](http://epuc.vermont.gov), or via regular mail. Public comments play an important role by raising new issues or offering perspectives that the Commission should consider and then may ask parties to address, although the public comments themselves do not become part of the evidentiary record.<sup>2</sup>

In addition, all public documents in the case can be viewed using ePUC. Furthermore, individuals and organizations can “subscribe” to the case if they are interested in receiving email notifications when parties file documents or the Commission issues documents in the case. Information about how to use ePUC and how to subscribe to a case is available on the Commission’s website at <http://puc.vermont.gov/epuc-information>.

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<sup>1</sup> A copy of the notice for the April 17, 2018, public hearing is enclosed.

<sup>2</sup> Under Vermont law, the Commission’s decision must be based upon the evidence presented by formal parties during the evidentiary hearings.

If you wish to participate actively as a party in the proceeding, you must first file a motion to intervene as a party in this case. In its motion to intervene, a potential party must demonstrate that it has a substantial interest that may be adversely affected by the outcome of the case and must otherwise comply with the requirements of Commission Rule 2.209. If the Commission grants a motion to intervene, the intervening party will have the same obligations and rights as the other parties and will be subject to the Commission's procedural rules. An intervenor may provide testimony and participate in the evidentiary hearings and may be subject to discovery and to cross-examination on any testimony it provides. The responsibilities and rights of individuals or groups that appear pro se (without the assistance of counsel) are mostly the same as would apply to an attorney in the proceeding. Potential intervenors should be aware that there are costs involved in being a party in a proceeding such as this, both in time and money.<sup>3</sup>

This is the last notice that you will receive regarding this proceeding unless you either (i) file a motion to intervene that is granted by the Commission or (ii) subscribe to the case.

For further information regarding intervention and providing public comments, please see the attached description of typical procedural steps in Section 248 cases and the Public Participation section of the Commission's website at <http://puc.vermont.gov/public-participation>. More information about each underlined term in the attached description of typical procedural steps is available in the Glossary of Terms on the Commission's website at <http://puc.vermont.gov/public-participation/frequently-asked-questions/glossary-terms>.

Please feel free to contact me if you have any questions. You can reach the Clerk of the Public Utility Commission at 802-828-2358, or you can e-mail the Clerk at: [puc.clerk@vermont.gov](mailto:puc.clerk@vermont.gov).

Enclosures (3)

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<sup>3</sup> These costs include providing copies of any filings with the Commission to all parties in the case who are participating in paper, as required by Commission rules.

112 State Street  
4<sup>th</sup> Floor  
Montpelier, VT 05620-2701  
TEL: 802-828-2358



TTY/TDD (VT: 800-253-0191)  
FAX: 802-828-3351  
E-mail: [puc.clerk@vermont.gov](mailto:puc.clerk@vermont.gov)  
Internet: <http://puc.vermont.gov>

**State of Vermont  
Public Utility Commission**

April 5, 2018

**NOTICE OF HEARING**

You are hereby notified that a Hearing Officer of the Vermont Public Utility Commission, Michael Tousley, Staff Attorney, will hold a **PUBLIC HEARING**, pursuant to 30 V.S.A. Sections 8, 10, and 248, in PUC Case No. 17-5024-PET –

Petition of Chelsea Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of publicgood authorizing the installation and operation of the “Chelsea Solar Project,” a 2.0 MW solar electric generation facility located off Willow Road in Bennington, Vermont. –

on Tuesday, **April 17, 2018**, commencing at **7:00 P.M.**, at the Bennington Hampton Inn Conference Room, First Floor, 51 Hannaford Square, Bennington, Vermont.

Prior to the 7:00 P.M. public hearing, the Vermont Department of Public Service will host a presentation at **6:00 P.M.** by Chelsea Solar LLC during which time the developer will describe the project and be available to answer questions about project details.

VERMONT PUBLIC UTILITY COMMISSION

By:

A handwritten signature in cursive script that reads "Judith C. Whitney".

Judith C. Whitney  
Clerk of the Commission

112 State Street  
4<sup>th</sup> Floor  
Montpelier, VT 05620-2701  
TEL: 802-828-2358



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**State of Vermont  
Public Utility Commission**

MEMORANDUM

To: Parties in PUC Case No. 17-5024-PET

From: Holly R. Anderson, Deputy Clerk of the Commission *HRA*

Re: Site Visit

Date: April 6, 2018

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This memorandum confirms that Vermont Public Utility Commission Hearing Officer Michael Tousley, Staff Attorney, will conduct a **Site Visit** in this proceeding on **Tuesday, April 17, 2018, at 4:00 P.M.** Parties are hereby requested to meet at 557 Apple Hill Road, Bennington, VT 05201, promptly at 4:00 P.M. This meeting location will allow easier access for a large group of vehicles. There will be signage put up on the route.

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 17-5024-PET

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Petition of Chelsea Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of the “Chelsea Solar Project,” a 2.0 MW solar electric generation facility on Willow Road in Bennington, Vermont	
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Order entered: 03/21/2018

**PREHEARING CONFERENCE ORDER**

**I. INTRODUCTION**

On March 2, 2018, Chelsea Solar LLC (“Chelsea” or the “Petitioner”) and the Vermont Department of Public Service (“DPS” or the Department”) each filed proposed schedules for this proceeding (respectively, the “Chelsea Schedule” and the “DPS Schedule”). In its filing, the Department represented that the Vermont Agency of Natural Resources and the Town of Bennington agreed to the DPS Schedule. In this Order, I issue a schedule for this proceeding.

**II. BACKGROUND AND DISCUSSION**

On March 7, 2018, I held a prehearing conference in this matter. Appearances were entered by Traci Leibowitz, Esq.,<sup>1</sup> for the Department; Donald Einhorn, Esq., for the Vermont Agency of Natural Resources; Merrill E. Bent, Esq., for the Town of Bennington; and Annette Smith, for Vermonters for a Clean Environment; Libby Harris, *pro se*;<sup>2</sup> and Michael Melone, Esq., and Kimberly K. Hayden, Esq., for the Petitioner.

I then discussed the proposed schedules filed by the Department and Chelsea with the parties. The DPS Schedule included a full litigation schedule with two rounds of discovery for the parties and concluded with an evidentiary hearing on September 18, 2018. The Chelsea schedule was shorter, allowed for a single round of discovery, and ended with an evidentiary

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<sup>1</sup> From the bench, I ruled that a *pro hac vice* motion filed by the Department was moot because Attorney Leibowitz had recently been admitted to the Vermont bar. Tr. 3/7/18 at 4 (Tousley).

<sup>2</sup> During the prehearing conference, Chelsea stipulated that it did not object to the intervention of Ms. Harris, and I granted her permissive intervention from the bench. *Id.*

hearing on April 20, 2018. The Chelsea Schedule was premised on achieving a projected December 3, 2018, commissioning deadline for the project.

On March 9, 2018, the Department and Chelsea each filed briefs with the Commission in support of their proposed schedules (respectively, the “DPS Brief” and “Chelsea Brief”). Chelsea requested that if an extended schedule is ordered “the Commission also extend the commissioning deadline so that Chelsea has at least five decent weather months (i.e., the months of April to October) between the date of a final order and the commissioning deadline, as part of the scheduling order.”<sup>3</sup>

On March 15, 2018, the Commission extended the commissioning deadline in Chelsea’s standard-offer contract to August 31, 2019, rather than December 3, 2018.<sup>4</sup>

The extension of the standard-offer contract’s commissioning deadline nearly nine months beyond the projected December 3, 2018, date is consistent with Chelsea’s request, obviates the need for the expedited schedule requested in the Chelsea Schedule, and allows for a full review of the petition with participation by all the parties as sought by the Department.<sup>5</sup> The schedule issued below will also allow the parties to address two threshold legal issues brought out by Chelsea in its brief, that is, the questions of which Town Plan is applicable and the impact that issue preclusion may have on the review of the petition.<sup>6</sup>

### **III. SCHEDULE**

Based on the proposed schedules, the discussion at the prehearing conference, and the briefs of the parties, I adopt the following schedule for this matter:

<b>Date</b>	<b>Event</b>
March 30, 2018	Non-Petitioner parties file briefs in response to Petitioner’s threshold legal issues re the Town Plan and issue preclusion
April 6, 2018	Petitioner replies to the non-Petitioner parties re threshold legal issues
TBD in the Week of April 9, 2018	Site Visit, Information Session, and Public Hearing

<sup>3</sup> Chelsea Brief at 12.

<sup>4</sup> *Petition of Chelsea Solar, LLC for relief from standard-offer contract milestone*, case no. 17-4695-PET, Order of 3/15/18.

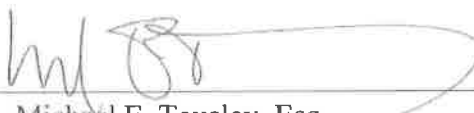
<sup>5</sup> DPS Brief at 2.

<sup>6</sup> Chelsea Brief at 9-11.

April 16, 2018	Motions to intervene due
April 23, 2018	Responses to motion to intervene due
April 27, 2018	Deadline for Round I discovery on Petitioner by statutory parties
April 30, 2018	Deadline for Round I discovery on Petitioner by intervenors
May 11, 2018	Deadline for Petitioner to respond to Round I discovery by statutory parties
May 18, 2018	Deadline for Petitioners to respond to Round I discovery by intervenors'
June 1, 2018	Deadline for Round II discovery on Petitioner by all parties
June 13, 2018	Deadline for Petitioner to respond to Round II discovery by all parties
<i>If matter is uncontested</i>	
June 22, 2018	Petitioner files stipulations, if any
July 2, 2018 at 9:30 A.M.	Evidentiary Hearing
July 13, 2018	Petitioner files proposed findings of fact and order
<i>If matter is contested</i>	
June 22, 2018	Non-petitioner parties file direct testimony
June 29, 2018	Deadline for discovery by Petitioner on non-Petitioner parties
July 20, 2018	Deadline for non-Petitioner parties to respond to discovery
July 27, 2018	Petitioner files rebuttal testimony
August 10, 2018	Non-petitioner parties file discovery on Petitioner's rebuttal
August 17, 2018	Deadline for Petitioner to respond to discovery
August 31, 2018	Non-Petitioner parties file sur-rebuttal
September 13, 2018	Evidentiary Hearing
September 28, 2018	Parties file post-hearing briefs with proposed findings of fact and order
October 12, 2018	Parties file post-hearing reply briefs

**SO ORDERED.**

Dated at Montpelier, Vermont, this 21st day of March, 2018.

  
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Michael E. Tousley, Esq.  
Hearing Officer

OFFICE OF THE CLERK

Filed: March 21, 2018

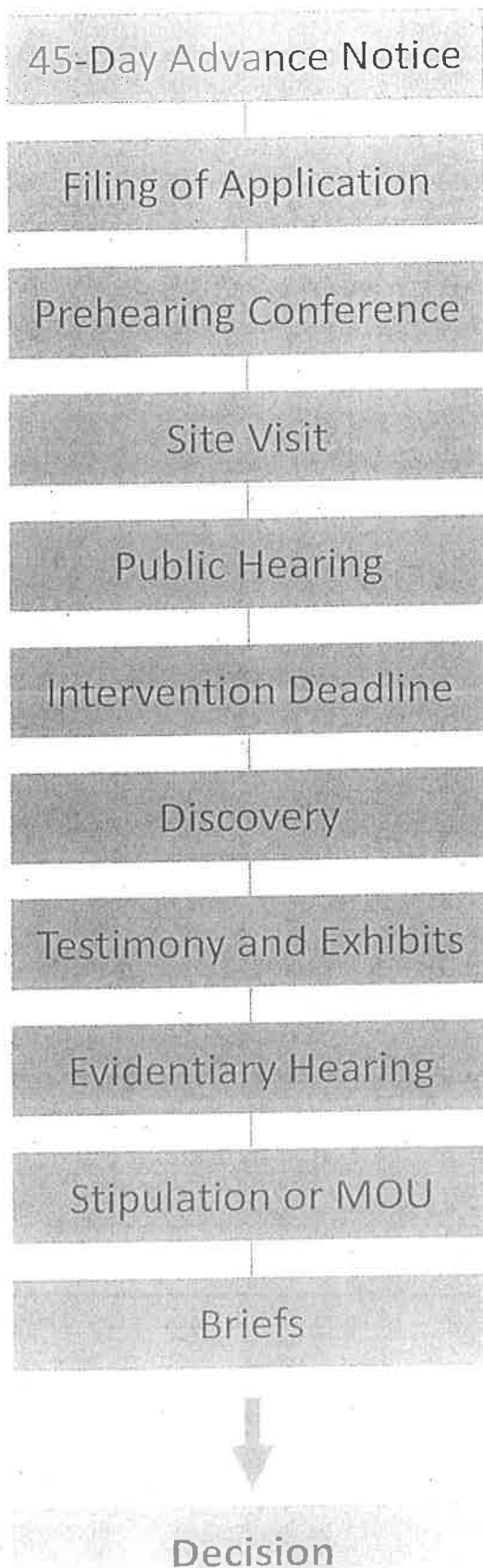
Attest: Justith C. Whitney  
Clerk of the Commission

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: [puc.clerk@vermont.gov](mailto:puc.clerk@vermont.gov))*



# Section 248

## Typical Procedural Steps



### Introduction.

Section 248 is a Vermont law that requires an approval from the Board before beginning site preparation or construction of:

- electric transmission facilities (e.g., a substation or large utility line),
- electric generation facilities (e.g., a power plant, or a solar or wind facility), and
- certain gas pipelines and associated infrastructure.

Section 248 also requires Board approval for some long-term contracts for purchasing power from outside Vermont and for some investments in transmission and generation facilities outside Vermont.

This document is a summary of the procedural steps and opportunities for public participation when the Board reviews a Section 248 case. Underlined text will link you to more information about that step in the glossary or to an external website.

*This document is a general guide for the public. It should not be relied upon for reviewing the applicable statutory and regulatory requirements for such projects. Every project is unique, and this general guide cannot anticipate or explain all issues that may arise in a case. For specific guidance, please refer to the applicable statutes, rules, legal precedent, and legal advice. Please feel free to contact the Clerk of the Board if you have questions about the information in this document.*

*Not all steps in the flow chart will be conducted in every case. The order of steps can vary depending on the specific case.*

# 248 Process

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## How to Participate.

There are two ways to participate in the 248 process: as a party to a case and as a member of the public.

- Parties may provide testimony and participate in evidentiary hearings. All parties must follow the Board's procedural rules, and are subject to the rules governing discovery and cross-examination. Board proceedings are also governed by the Vermont Rules of Civil Procedure and the Vermont Rules of Evidence. A member of the public can request to be a party to a case, also referred to as intervention, and may be represented by an attorney or self-represented (also referred to as appearing "pro se").
- Members of the public may speak at public hearings and send the Board written comments. They may attend prehearing conferences and evidentiary hearings to observe but they may not participate in the proceedings.

**Advance Notice.** At least 45 days before filing a Section 248 petition with the Board, an applicant must provide advance notice of the proposed project to the municipal and regional planning commissions and the municipal legislative bodies in the town where the project will be located. Comments on the project can be submitted to the Board based on the information provided in the advance notice.

If the proposed project consists of relocating transmission facilities (i.e., power lines), then a 21-day advance notice is required.

**Filing a Petition.** When an applicant files a Section 248 application (also called a "petition") with the Board, it must provide notice to the adjoining landowners that the application is being submitted to the Board.

The petition filed with the Board is accompanied by testimony and exhibits. The Board will review the petition for completeness and assign a case number. This case number should be included in all correspondence and questions regarding the case.

**Prehearing Conference.** The purpose of a prehearing conference is to discuss procedural details and to set the schedule leading to an evidentiary hearing and briefing in the case. Prehearing conferences are open to the public. After the prehearing conference, the Board will issue an order summarizing the results of the prehearing conference, which generally includes a schedule for the next steps in the case (scheduling order).

**Site Visit.** The Board may conduct one or more visits to the property where the proposed project is to be located. Site visits help the Board and others to better understand the proposed project and the issues that the proposed project may present. Observations and facts from the site visit are not considered as evidence unless the Board or a party specifically enters them into the evidentiary record.

**Public Comments and Public Hearing.** Members of the public can file comments in Section 248 proceedings before the Board. Public comments can be submitted at any time in a Section 248 proceeding. However, public comments are most useful if they are submitted prior to the evidentiary hearing so that the Board, hearing officer, and parties to the case can ask questions about issues raised in the comments. Additionally, if public comments are to be accompanied by a request to be a party to the case (see intervention, below), they must be submitted by the deadline for intervention established in the schedule for the proceeding.

In a Section 248 proceeding, the Board will also hold a public hearing to provide members of the public an opportunity to comment on the case. The public hearing is typically held in the evening at a location in the town where a project is proposed. Comments at a public hearing (or written comments submitted at a different time) can serve to raise issues that the Board and parties should consider during the case. However, because speakers at a public hearing are not commenting under oath and are not subject to cross-examination or questioning by the parties in the case, their testimony cannot be treated as evidence in the case.

Public hearings for Section 248 cases are announced on the Board's website and published in local newspapers.

**Intervention.** A request to be a party to a 248 case, also referred to as intervention, must be filed with the Board within the time-frame indicated in the Board's scheduling order that is issued following the prehearing conference. Often, this deadline is after the public hearing to provide an opportunity to learn about the project at the public hearing prior to deciding to request intervention. A request to intervene must be made by following standard procedures for filing a motion to intervene; for more information about these procedures, please see the explanation under intervention in the glossary.

**Discovery.** The discovery process takes place prior to an evidentiary hearing and allows the parties to the case to exchange information to get a better understanding of what facts they agree on and disagree about. Information produced in discovery is not evidence, unless the Board admits it into evidence during the evidentiary hearing. Only the parties to the case are permitted to participate in discovery.

Parties to a case must follow standard procedures for discovery; for more information on these procedures, please see the explanation under discovery in the glossary.

**Testimony and Exhibits.** The parties to a case prepare testimony and exhibits that support their position on whether the proposed project complies with the Section 248 review criteria. The applicant includes prefiled testimony and exhibits with the application. The applicant may also file supplemental prefiled testimony to address issues that come up before the evidentiary hearing.

Other parties to a case have the opportunity to file testimony and exhibits prior to the evidentiary hearing. If filed, a party must provide a copy to all other parties in the case. The deadline for filing testimony and exhibits is usually set in the scheduling order issued by the Board after the prehearing conference.

**Evidentiary Hearing.** An evidentiary hearing is convened for all Section 248 applications. While the public is welcome to attend and observe an evidentiary hearing, only the parties are permitted to participate in the hearing. Members of the public can become active parties to a case by intervening following the process described above.

An evidentiary hearing may be conducted by the full Board, two Board members, or a hearing officer.

Parties to a case must follow the procedures for evidentiary hearings; for more information about these procedures, please see the explanation under evidentiary hearing in the glossary.

**Stipulation or Memorandum of Understanding.** Two or more parties may agree to a settlement, also called a stipulation or memorandum of understanding (MOU), that resolves some or all of the disputed issues in a case. Settlements can be entered into at any point in a case and may be submitted to the Board before or after the evidentiary hearing.

**Briefs.** The parties (and friends-of-the-court) will have an opportunity to file briefs after the evidentiary hearing. A brief is a written document that presents a party's legal and factual arguments for consideration by the Board.

If you are not a party but would like an opportunity to tell the Board how you think the evidence and law should be applied in the case, you can make a request to file a friend-of-the-court brief.

**Decision.** Once the evidentiary hearing is done and briefs have been filed, the Board will issue a decision in the form of a final order. If an evidentiary hearing is held by a hearing officer, a proposal for decision will be issued by the hearing officer that recommends an outcome to the Board. The parties to the case will have the opportunity to file written comments on the proposal for decision and ask for oral argument before the Board.

The Board will consider the hearing officer's proposal for decision, the parties' comments, and any arguments made at oral argument. The Board may accept, reject, or modify the proposal for decision. In so doing, the Board will issue a final order deciding the case. If the decision is to approve the project, the final order will be accompanied by a certificate of public good.

If the evidentiary hearing is held by the Board itself, no proposal for decision will be issued. Instead, the Board will issue a final order following review of the parties' briefs.

Final Board orders are subject to motions for reconsideration under the Rules of Civil Procedure. Any final decision by the Board may be appealed to the Vermont Supreme Court.

PUC Case No. 17-5024-PET – ADJOINING LANDOWNERS SERVICE LIST

Adjoining Landowners:

Vermont Agency of Transportation  
One National Life Drive  
Montpelier, VT 05633

Vermont Information Centers Division  
134 State Street  
Montpelier, VT 05633

Apple Hill Association, Inc.  
109 Apple Hill Road  
Bennington, VT 05201

Earl Senecal  
207 Randall Avenue  
Norwich, NY 13815

Thomas Cushman  
P.O. Box 55  
Bennington, VT 05201

Libby Harris  
531 Apple Hill Road  
Bennington, VT 05201

James Robb  
307 Apple Hill Road  
Bennington, VT 05201

Howard Commander  
P.O. Box 635  
New Lebanon, NY 12125

David Sholes  
c/o Peter Lawrence, Esq.  
520 Main Street  
Bennington, VT 05201

State of Vermont  
One National Life Drive  
Montpelier, VT 05633

Judith Klein  
12 Chase Court  
Delmar, NY 12054

Richard Carroll  
150 Cortland Lane  
Bennington, VT 05201

David & Nancy Hollister  
655 Willow Road  
Bennington, VT 05201

PLH, LLC  
222 South 9th Street, #1600  
Minneapolis, MN 55402

Marcus & Laura Jones  
637 Harwood Hill Road  
Bennington, VT 05201

Chiti LLC  
15526 East Powers Drive  
Centennial, CO 80015

Titan Propane LLC  
P.O. Box 858  
Valley Forge, PA 19482

Shires Media Partnership Inc  
407 Harwood Hill Road  
Bennington, VT 05201

Orchard Apartments LLC  
748 Main Street  
Bennington, VT 05201

Applegate Apartments LP  
250 Applegate Drive  
Bennington, VT 05201

Ellen Millington  
P.O. Box 612  
Shaftsbury, VT 05262

Ruth Walbridge & Roger Gates  
830 Orchard Road  
Bennington, VT 05201

David Defelice  
P.O. Box 4453  
Bennington, VT 05201

Debra Hill  
734 Orchard Road  
Bennington, VT 05201

Laurence & Linda Lemaire  
544 Orchard Road  
Bennington, VT 05201

Bennington-Rutland Opportunity Council Inc.  
45 Union Street  
Rutland, VT 05701

Bennington School District  
246 South Stream Road  
Bennington, VT 05201