

**STATE OF VERMONT  
PUBLIC UTILITY COMMISSION**

Petition of Norwich Upper Loveland Solar, LLC )  
for a certificate of public good, pursuant to ) **Case No. 21-3587-NMP**  
30 V.S.A. §§ 248 and 8010, authorizing the )  
installation and operation of a 500 kW (AC) )  
group net-metering solar electric generation )  
system in Norwich, Vermont )

**NEIGHBORS / INTERVENORS'  
MOTION TO DISMISS THE PETITION and  
MOTION FOR SANCTIONS**

**NOW COME** Neighbors/Intervenors Dan & Jenn Goulet, Samin Kim & Jayoung Joo, Stephen Gorman, John & Heather Benson, Laurence & Shelley Ufford, and Joy Kenseth (collectively "Neighbors/Intervenors"), by and through their attorney L. Brooke Dingedine, Esq. of the firm Valsangiacomo, Detora & McQuesten, P.C., on a limited appearance as provided in the undersigned's Notice of Attorney Limited Attorney Appearance filed on even date herewith, and hereby respectfully request that the Public Utility Commission DISMISS the Petition of Norwich Upper Loveland Solar, LLC and impose SANCTIONS against the Applicant/Petitioner, as the project's Preferred Site Letter approvals were acquired through the use of false and/or material misleading information, resulting in the perpetration of a fraud upon this Tribunal.

In support of such motions, Neighbors/Intervenors submit the following facts and memorandum of law for the Commission's consideration and investigation:

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## I. INTRODUCTION

Norwich Upper Loveland Solar LLC (“Applicant”), filed an Application, pursuant to 30 V.S.A. §§ 248 & 8010 and Public Utility Commission (“PUC”) Rule 5.107, requesting the Commission to issue a Certificate of Public Good (“CPG”) authorizing the construction and operation of a 500 kW (AC) photovoltaic group net-metering system to be located in Norwich, Vermont (the “Project”). The Applicant, Norwich Upper Loveland Solar LLC retained the services of Norwich Solar Technologies, Inc. (“Norwich Solar”) to develop, construct, and operate the Project on land owned by “38 Acres, LLC”. Norwich Solar is a developer, designer, builder, and operator of solar energy facilities and projects. Martha Staskus, Chief Development Officer of Norwich Solar, made the application to the PUC. See **Exhibit 8**, Petition, dated August 31, 2021, p. 1.

## II. APPLICANT’S “BAIT & SWITCH” SITE PLANS

### A. 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).

...

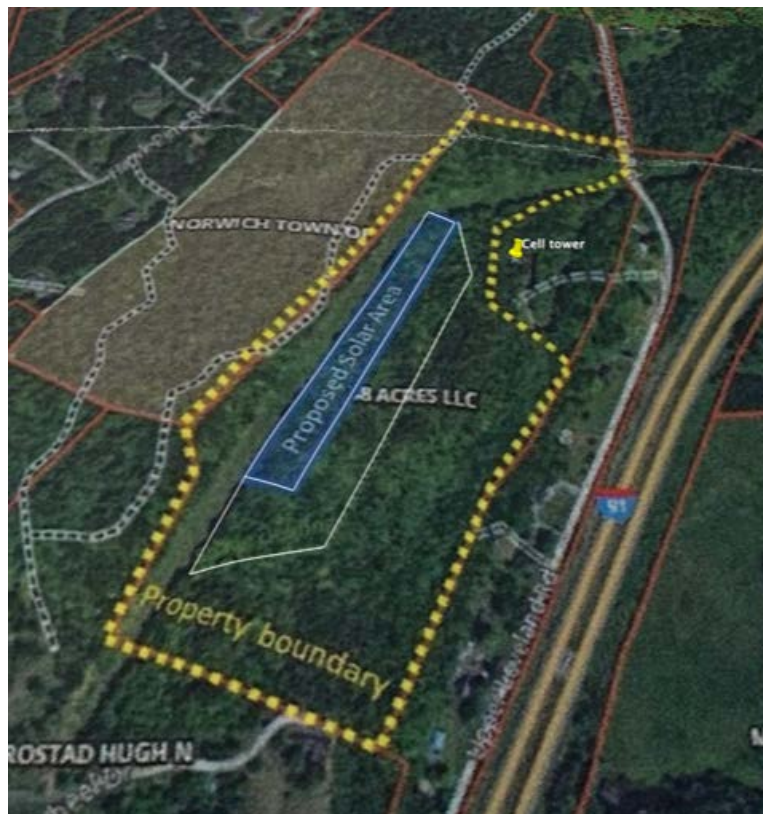
The 500 kW (AC) Norwich Upper Loveland Solar array will occupy approximately two to three acres, and be a low-profile installation typical of solar electric generation installations of its type and size. The panels will be mounted on fixed-tilt, supporting racks. The racks are designed to support the 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.**

See **Exhibit NN-1** – Applicant’s May 6, 2021 Letter to Neighbors, p. 1 (bold and underlined emphasis supplied).

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**



See **Exhibit NN-1 – “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



**B. 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



See Exhibit NN-2, “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)



It is critical to note that SITE PLAN B (Turquoise lines above) is actually 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).

Of significant importance, 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”**

See **Exhibit NN-2**, Viewshed Analysis, Pages 1-4.

Moreover 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”**

See **Exhibit NN-2**, Viewshed Analysis, Page 5.

Given 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, it is reasonable to conclude that the location of the solar project, as depicted in SITE PLAN B, was in fact, 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.

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 I-91.

See **Exhibit NN-3**, Town PC Meeting Minutes, July 13, 2021.

Thus, it is indisputable, that SITE PLAN B and its Viewshed Analysis of the non-visibility of the project if it were 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. See **Exhibit NN-2**, Planning Commission Packet, July 13, 2021.

The representation of the visibility of the Proposed Site is of paramount importance 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 arial [sic] photographs and viewshed analysis that demonstrated the proposed solar installation was not be visible from Upper Loveland Road, Route 5 North or I-91.

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).

See **Exhibit NN-3**, Town PC Meeting Minutes, July 13, 2021 (underlined emphasis supplied).

Consequently, the sole criterion reviewed by the Town Planning Commission was visibility of the project from I-89 and Upper Loveland Road, despite the Town Plan's Renewable Energy Project Siting Standards which state as follows:

### **Renewable Energy Project Siting Standards**

This plan supports renewable energy production in Norwich. For this policy to continue with broad community support it must be balanced with this plan's policies related to:

- Protecting natural resources, environmental quality, scenic resources and rural character
- Maintaining viable farms and the working lands needed to sustain them
- Focusing development in those areas of town already served by existing public infrastructure
- Preserving cultural resources within Norwich village
- **Preserving the recreational and natural value of those lands identified in the Ridgeline Protection Overlay Area and Shoreline Protection Overlay Area**

- Increasing the supply, diversity and affordability of housing in Norwich

This plan calls upon the Public Utility Commission to issue Certificates of Public Good for projects between 15 kW and 500 kW based on the presumption that lands in Norwich meet the so-called 'preferred site criteria', **except in areas already mapped as Ridgeline Protection Overlay Area**, the Shoreline Protection Overlay Area, and the designated village center. Renewable energy projects in Norwich are further conditioned on the following standards:

- For individual or group net metered renewable energy projects, the property owner must take reasonable measures to site and/ or screen the installations to **minimize any visual or noise impacts beyond the property line, particularly on sites where there are neighboring homes in close proximity.**
- Projects larger than 150 kW must meet existing standards for setbacks, site design (landscaping, screening, lighting, **stormwater**, etc.) as laid out in the Norwich Zoning and Subdivision Regulations.<sup>1</sup>

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<sup>1</sup> The Norwich Zoning and Subdivision Regulations' **Section 5.08 Ridgeline Protection Review** lays out the standards for review of projects proposed for the Ridgeline Protection Overlay Area which require that "Proposed development shall comply with the standards in Table 2.9 (F) & (G)."

**Table 2.9 Ridgeline Protection Overlay (RPO) District** states in relevant part:

(G) **Supplemental District Standards.** New structures within the RPO District shall comply with the following:

(1) Forest Cover. On wooded sites, forest cover shall be maintained or established adjacent to proposed structures to interrupt the facade of buildings, provide a forested backdrop to structures, and/or soften the visual impact of new development as viewed from public roads. The Development Review Board shall consider the location of proposed structures relative to existing vegetation, and may require additional planting and/or limit the amount of clearing adjacent to proposed development to provide screening and maintain a forested backdrop. A tree cutting, landscaping and/or forest management plan may be required to ensure that ridges and hill tops remain wooded, and to ensure that trees remain standing immediately adjacent to buildings to visually interrupt facades and reduce reflective glare, as viewed from off site. Such a plan shall address specific measures to be taken to ensure the survival and, if necessary, replacement of designated trees during or after site development and the installation of all site improvements.

See **Exhibit NN-9**, Norwich Town Plan, adopted March 7, 2020 (bold and underlined emphasis supplied).

Despite the explicit language in the Town Plan's Renewable Energy Project Siting Standards, which calls for a balancing of the Town's policies of encouraging renewable energy development with "[p]rotecting natural resources, environmental quality, scenic resources and rural character" and "[p]reserving the recreational and natural value of those lands identified in the Ridgeline Protection Overlay Area", as well as meeting existing standards for site design including stormwater and the Supplemental District Standards designed to "ensure that ridges and hill tops remain wooded", the Planning Commission followed the Planning Director's direction and confined its review *solely* to the "visual impact of development as experienced by road users on town roads, state highways and the interstate (I-91)". Hence, why the Applicant's misrepresentations regarding the location of the proposed project and its visibility are so critically important and why the Town and Regional approvals, therefore, are so fundamentally flawed. If the sole criterion for approval was confined to the visual impact by road users in the Town, and the visual analysis was based upon a significantly different site plan (SITE PLAN B), then any decision based on that significantly different site plan, is necessarily flawed and utterly erroneous.

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(2) Placement of Structures. **New structures** shall be as minimally visible from public roads as possible given site conditions and topography, and **shall not stand in contrast to the surrounding landscape patterns and features, serve as a visual focal point, or be visible from multiple points along a road, for an extensive distance along a road segment, and/or which is highly visible from several vantage points within one mile of the development site.**

...

See **Exhibit NN-10**, Norwich Zoning Regulations.

The Town Planning Commission Minutes also recorded the following representation by the Applicant about the future submission of the 45-day Advance Notice:

McBride said that the 45-day notice will likely be released before the end of the week allowing the Town and residents to comment on the project direct to the PUC.

See **Exhibit NN-3**, Town PC Meeting Minutes, July 13, 2021.

Therefore, 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 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.

See **Exhibit NN-3**, Town PC Meeting Minutes, July 13, 2021.

**C. 45-Day Advance Notice to the Public Utility Commission**

**July 14, 2021**

**“SITE PLAN C”**

While the Applicant's Troy McBride informed the Town Planning Commission that the Applicant would likely file its 45-day Advance Notice before the end of the week, what Mr. McBride failed to disclose to the Planning Commission was that the very next day, July 14, 2021, Applicant would submit its 45-Day Advance Notice, with a significantly different Site Plan (“SITE PLAN C”), instead of SITE PLAN B, which it was presenting to the Planning Commission for

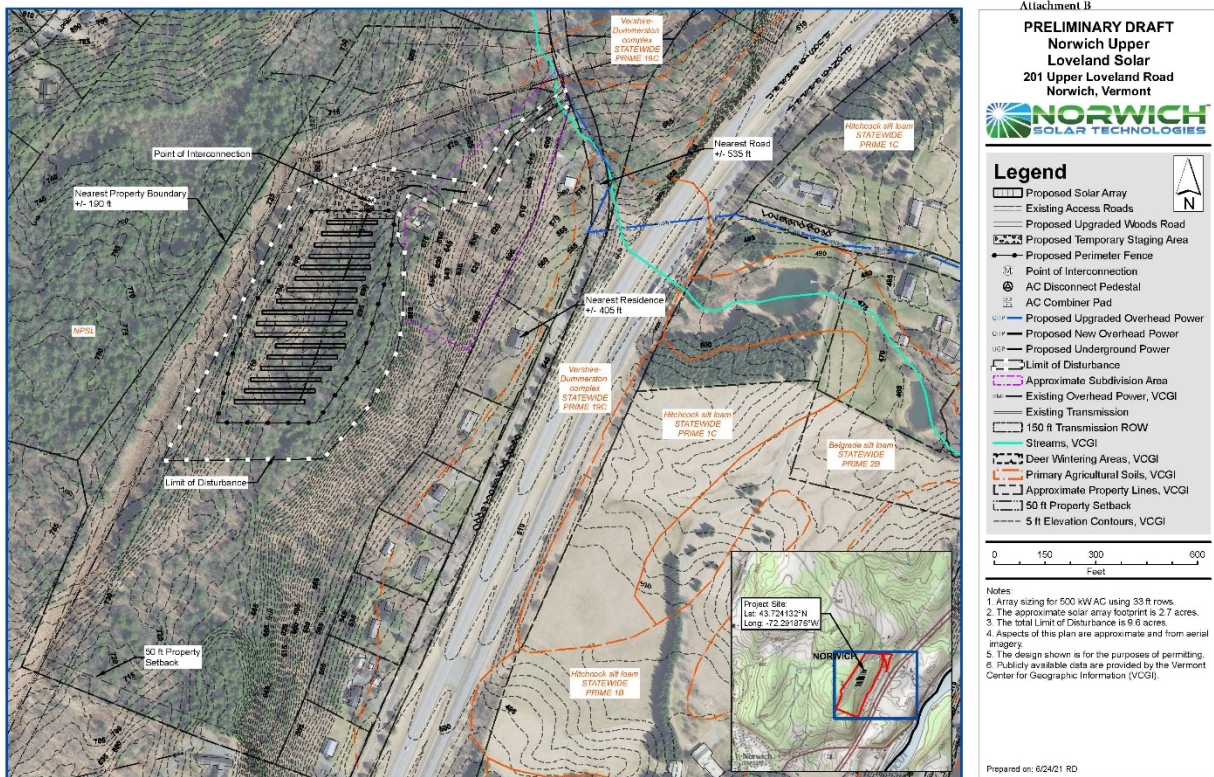
Preferred Site approval. *See Exhibit NN-4*, 45-day Advance Notice Submission and “SITE PLAN C”.

Moreover, 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**, yet it was not disclosed to the Planning Commission? Instead, the Applicant requested and obtained Preferred Site approval from the Town Planning Commission based upon SITE PLAN B and its Viewshed Analysis which repeatedly represented the location as: “**Array over the ridge behind these trees – near transmission line corridor**” and not visible.

The timing bears repeating: The Applicant presented SITE PLAN B to the Town Planning Commission on July 13, 2021. Less than 24 hours later, on July 14, 2021, the Applicant submitted SITE PLAN C with its 45-day Advance Notice to the PUC. SITE PLAN C bears a preparation date: “Prepared on: 6/24/21 RD”. *See Exhibit NN-4*, 45-day Advance Notice materials.

Most importantly, Applicant’s 45-Day Advance Notice SITE PLAN C, is a *significantly different* site plan which has depicted the array occupying 2.7 acres but shows the limits of disturbance at a whopping 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**



See **Exhibit NN-4**, 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 9.7 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



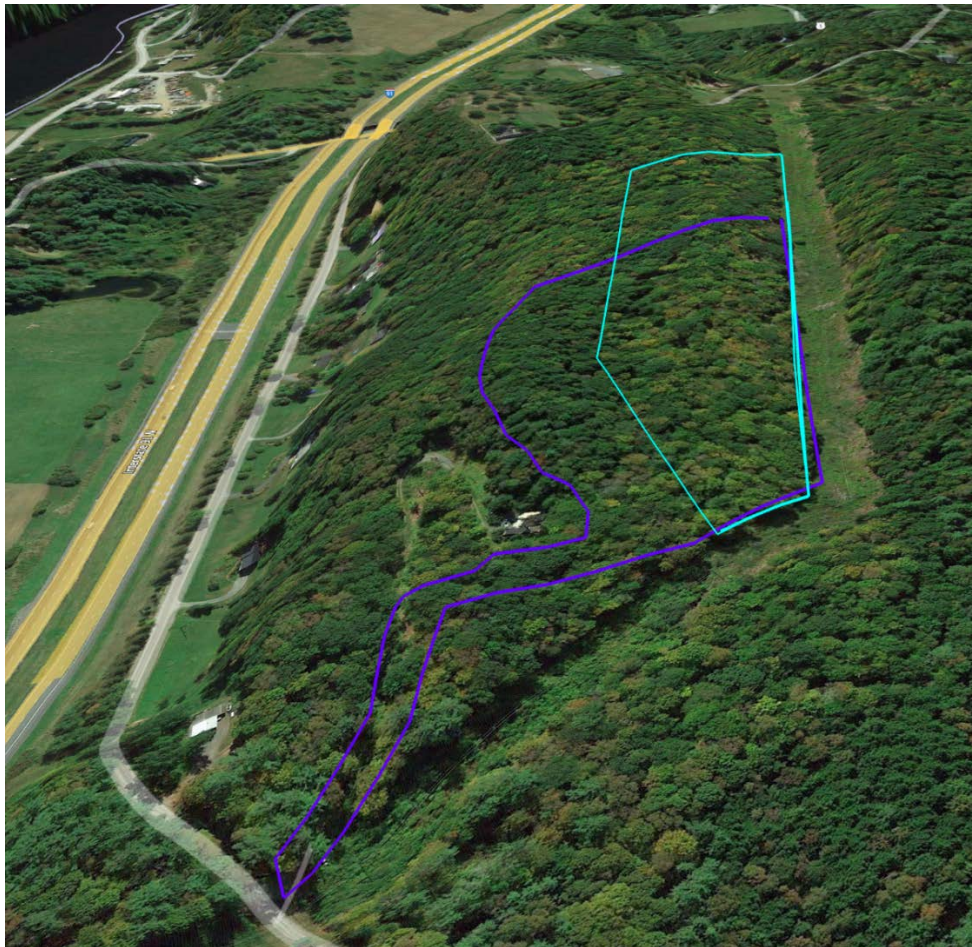
See **Exhibit NN-1, 2 & 3**, Site Plans A, B & C.



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



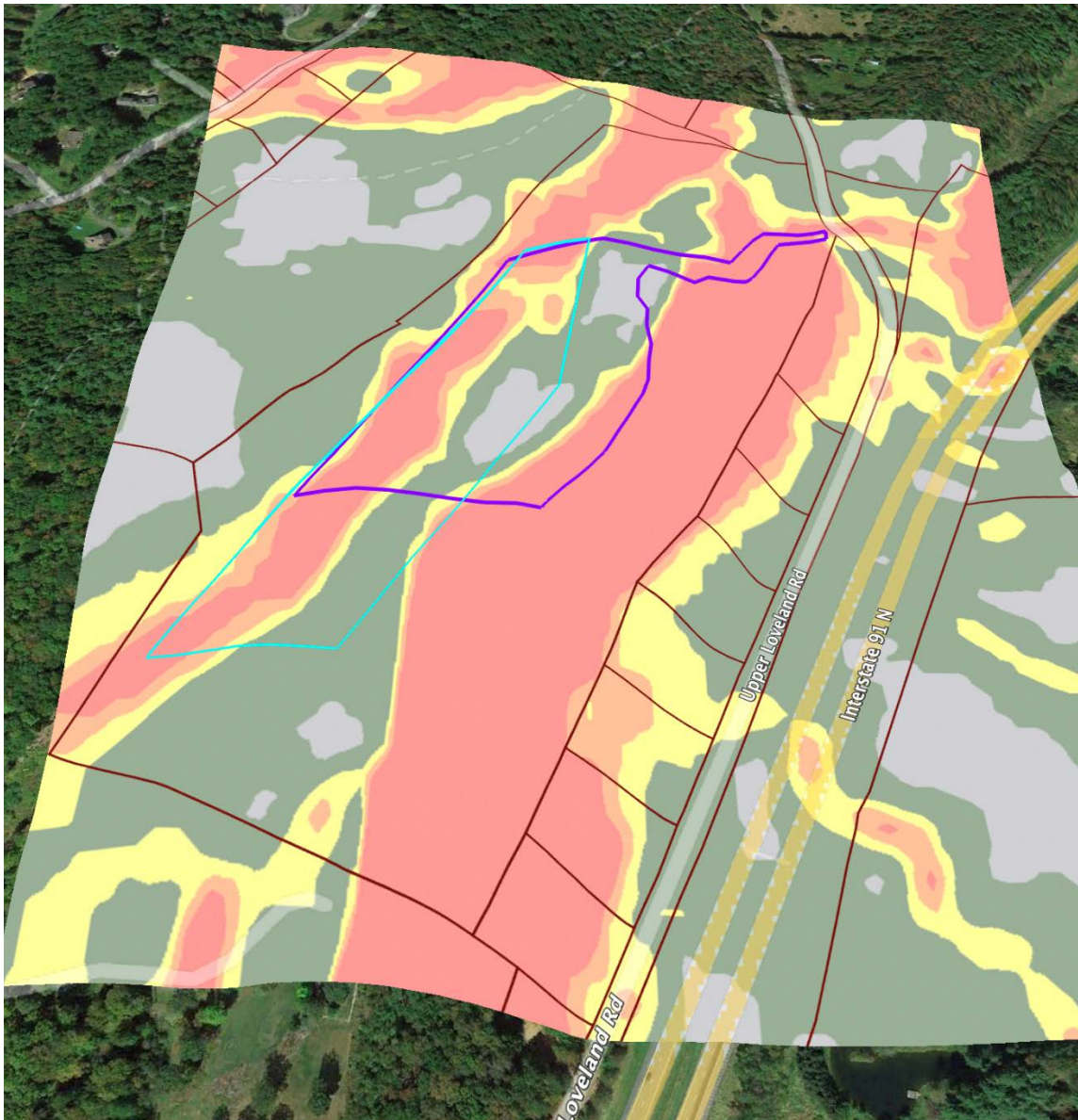
See **Exhibit NN-2 & 3**, Site Plans B & C.

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)



**D. Submission to the Town of Norwich Selectboard for a Preferred Site Letter –**

**August 14, 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”. See **Exhibit NN-2**, Viewshed Analysis/Site Plan and **Exhibit NN-4**, 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.

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 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).**

See **Exhibit NN-6** - Selectboard Meeting Minutes, August 11, 2021 (underlined emphasis supplied).

Thus, 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." Therefore, it is apparent, that the Selectboard accepted the Planning Commission's recommendation, which was based solely upon SITE PLAN B and its Viewshed Analysis, not SITE PLAN C. Thus, the Selectboard Decision is just as infirmed as the Planning Commission's Decision, because it is based upon false information from a significantly different and inapplicable Viewshed Analysis.

**E. 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 (in bold) 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.**

See **Exhibit NN-7** - Regional Planning Commission packet, August 23, 2021 (bold in the original, underlined emphasis supplied).

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

Notably, 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."**

See **Exhibit NN-7** - Regional Planning Commission packet, August 23, 2021 (bold in the original, underlined emphasis supplied). However, no mention was made by the Applicant that the Site Plans had changed since securing the Preferred Site approval from the Town Planning Commission. As a result, the Preferred Site Letter is based upon a fraudulent misrepresentation of the Project to the Town Boards as well as to the Regional Planning Commission.

**F. Applicant's Petition to the Public Utility Commission for a CPG –**

**Aug. 31, 2021**

**“SITE PLAN D”**

Finally, after fraudulently obtaining a Preferred Site Letter from the Town Boards and the Regional Planning Commission with its “Bait and Switch” Site Plans, the Applicant created and filed yet *another significantly different plan* with the Public Utility Commission with its Petition for a CPG, which we will call “SITE PLAN D”.

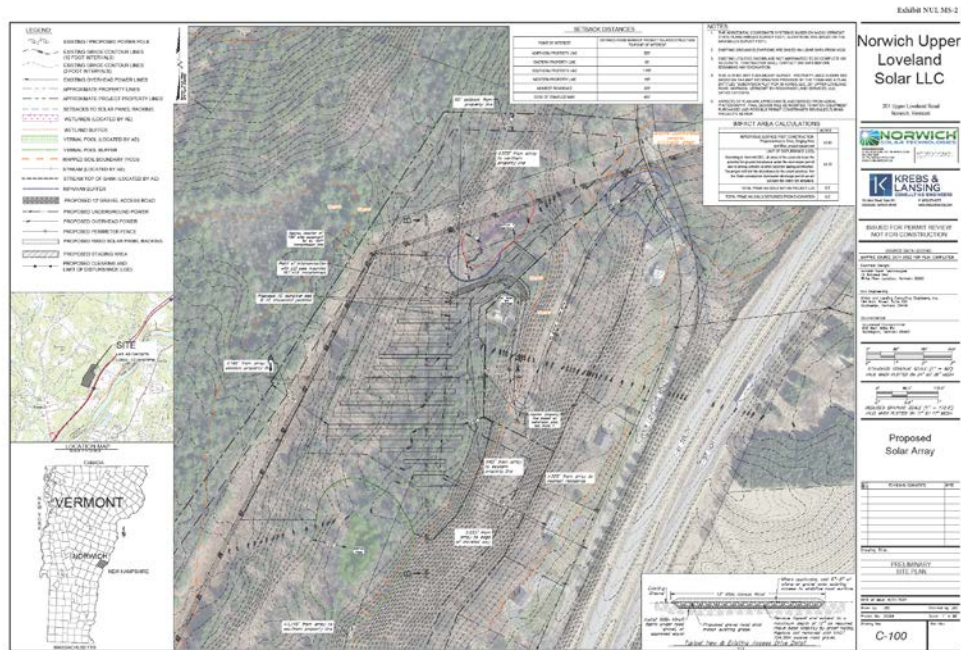
SITE PLAN D was created August 27, 2021, four (4) days after obtaining approval from the Regional Planning Commission with SITE PLAN C and a Preferred Site approval from the Town based upon SITE PLAN B.

Note that 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 a mere “325+/- feet” from the array. This massive 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 and

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

File with Petition on August 31, 2021



See **Exhibit NN-8** - Petition for CPG.

Comparing SITE PLANs B, C and D, the distance between the Array and the closest neighbor has significantly changed from:

SITE PLAN B (Preferred Site Letter): “approximately **500 feet**”

SITE PLAN C (Advance Notice): “**405 feet**”

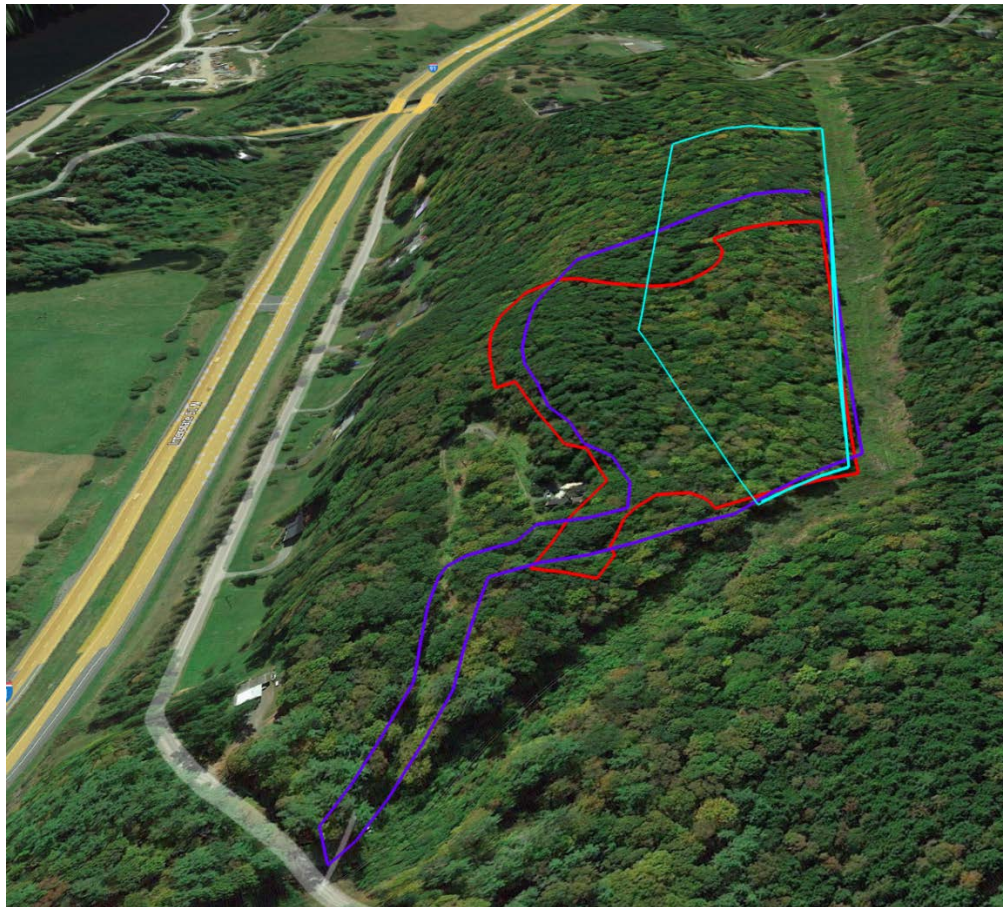
SITE PLAN D (Petition): “**325+/- feet**”

While the significant distances involved in this relocated project site alone demonstrate the vastly different site plans, of critical importance is that SITE PLAN D’s relocation cannot be truthfully characterized as: “Array over the ridge behind these trees” because the 175 foot eastern

boundary shift has fundamentally altered the location of the array from “not visible” and “over the ridge behind these trees” to “limited visibility” because it is now sited on top of and down the east slope of the ridge, while the buffer trees, which now are encompassed in the 9.7 acre site-clearing area, will be removed.

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)



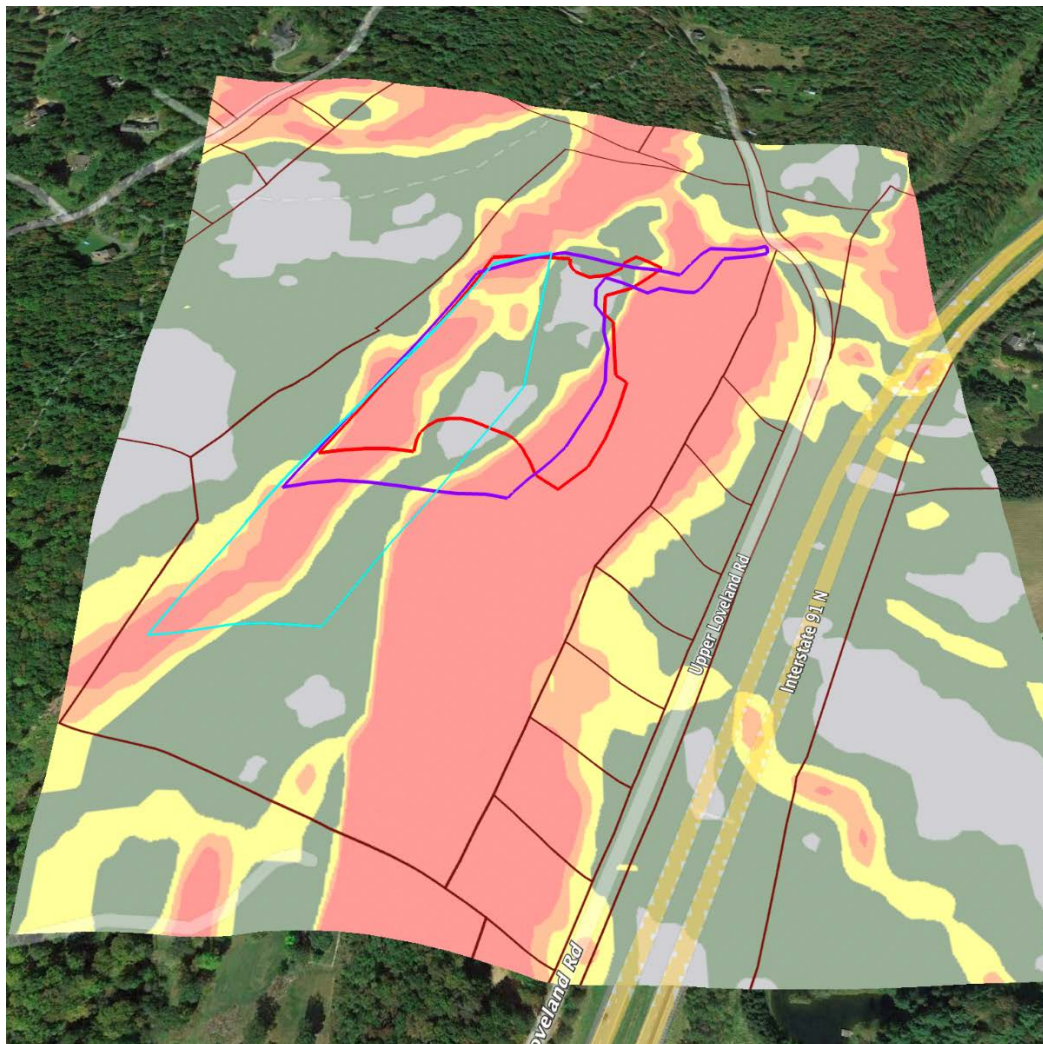
Note how the project location has once again moved further to the east over the top of the ridge and down the eastern slopes of the ridge instead of “over the ridge behind these trees –



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)



It is clear from the comparison of the serial Site Plans that 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 totally 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 of the top of the ridge and the eastern steep slopes of the ridge, will obviously cause undue adverse impacts to aesthetics (not to mention stormwater among other issues), which the Applicant failed to even identify no less address.

This photograph is taken from the east towards the west and depicts the Ridgeline and abutting neighbors’ homes from Loveland Rd property. Joy Kenseth’s home is left of center in the photo above, but the house is blocked by the bush in the mid-ground of the photograph:



This photograph is a closer view of Joy Kenseth's home, which is sited directly below the ridge (as are other Intervenor's homes):



Note the steep slopes behind Ms. Keneth's home and the conifers which are located on the top of the ridge and down the eastern slope which can be seen through the deciduous trees immediately behind her house. The conifers are the trees that will be clear cut according to SITE PLAN D's Limits of Disturbance.

Moreover, this photograph taken from Hanover, New Hampshire towards the west depicts the entire protected ridgeline:



Here is Neighbors/Intervenor's simulation of the view from neighboring Hanover, New Hampshire if the SITE PLAN D project proposal is allowed to be relocated to the top of the ridge and down the eastern steep slopes of the ridge:



As a result, new SITE PLAN D, which defies and 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 and significantly affect stormwater impacts to the abutting neighbors' properties who reside immediately below the ridge.<sup>2</sup>

Consequently, it is clear from the 3-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 false or materially misleading information that the

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<sup>2</sup> 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.

project would be invisible and would be sited on the western side of the ridge, which is simply no longer true.

Therefore, the Applicant's Petition should be dismissed because the Preferred Site Letter was obtained through material misrepresentation of fact in procuring the Town Planning Commission, Selectboard and Regional Planning Commission's approvals. Such a practice cannot be tolerated by the Commission and constitutes a fundamental flaw in the threshold permission required to apply for the Net Metering project. Thus, the Neighbors/Intervenors respectfully request that the Commission deem the Application incomplete and Applicant's Petition should be Dismissed and/or treated as Withdrawn pursuant to VT PUC Rule 5.107(B)(4).<sup>3</sup>

## **V. APPLICANT'S PETITION FOR A CPG**

### **A. Procedural History**

1. On August 31, 2021, the Applicant filed an application for the Project. Concurrently, the Applicant filed a motion requesting that the Commission waive Commission Rule 5.107(C)(10)(a) in order to deem the application administratively complete even though it did not include a letter from Green Mountain Power Corporation ("GMP"), the interconnecting utility, confirming that the Project could be safely interconnected to its system. On September 8, 2021, Commission staff issued a memo determining that the August 31 application was incomplete because, in addition to not containing the letter from GMP required by Rule 5.107(c)(10)(A), the application did not contain a "document describing whether the construction of the proposed net-metering system will interfere with the satisfaction of any condition contained in the Act 250 Land Use Permit" as required by Commission Rule 5.107(C)(13).
2. On September 22, 2021, the Applicant filed an affidavit affirming that the Project would not interfere with any conditions of the host parcel's Land Use Permit. After the signature line of the affidavit, and without a separate motion or heading, the Applicant appended legal arguments to this affidavit contending that the documents filed as part of its initial August 31, 2021, filing were sufficient to satisfy the requirement of 5.107(C)(13), and, in

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<sup>3</sup> 5.107(B)(4) states: Timing of Advance Submission and Application. If, within 180 days of the date of the advance submission, the applicant has not filed a complete application for the project that fully complies with the filing requirements of this Rule, the submission will be treated as withdrawn without further action required by the Commission. VT PUC Rule 5.107 (B)(4).

the alternative, requesting that the Commission grant a waiver of 5.107(C)(13) for the purpose of finding the application administratively complete as of August 31, 2021.

3. While not required to by rule, the Commission decided to consider the legal arguments appended to the end of the Martha Staskus September 22, 2021, affidavit as (1) a motion to reconsider Commission staff's September 8, 2021, determination that the application was incomplete because it did not include a statement of consistency with the Land Use Permit, and (2) a motion for a waiver of 5.107(13) in the event that the Commission declined to reconsider Commission staff's incompleteness determination.
4. In ruling on Norwich Solar's motions, the Commission explained:

The Commission has broad authority to waive the application of a rule in order to prevent unnecessary hardship or delay, in order to prevent injustice, or for other good cause. The Applicant has framed potential hardship in terms of an effect on greenhouse gas emissions. However, the Applicant has not represented that the ordinary operation of our rules would result in the Project not moving forward. The only result is a difference in the net-metering incentives that the Project would receive. Therefore, it is not clear how failure to grant the requested waiver would have any effect on greenhouse gas emissions.

The Commission understands that if a waiver is not granted, the Project will not receive pre-September 1 net-metering incentives, which will have a negative financial impact on the Applicant. The Commission has established that a change affecting the compensation a Project will receive is *one* factor that *can*, combined with other factors, amount to good cause to grant a waiver. As part of previous decisions to grant a waiver when a rate change is imminent, the Commission has relied on the fact that circumstances outside of an applicant's control prevented the applicant from filing a complete application before the change occurred. Here, the Applicant's decision to file the application without a description of whether the Project would interfere with the satisfaction of any Land Use Permit conditions was entirely within the Applicant's control. [FN 9] Therefore, we do not find good cause to grant a waiver. The Applicant's motion for waiver of 5.107(C)(13) is denied.

5. The Commission also stated in Footnote 9 the following:

As the Commission has stated on numerous occasions, the best practice is to file net-metering applications more than five business days before any significant deadline so that an applicant may have an opportunity to cure any defects in its filing before such deadline.

Here, the Applicant filed the application one day before the deadline.

Case No. 21-3587-NMP, Order Denying Motion for Reconsideration and Denying Requests for Waivers of Commission Rules 5.107(C)(10)(A) and (13), dated 10/15/2021, pages 6-7 (underlined emphasis supplied, footnotes omitted, except FN 9).

The prior procedural history illuminates the probable motivation for the Applicant's failure to submit true and accurate Site Plans to the Town Planning Commission and Selectboard and to the Regional Planning Commission, or to have returned to those Boards/Commissions for a subsequent approval if the project changed this significantly before submission of the Petition to the PUC. It appears that Norwich Solar was trying to get its Petition filed by September 1, 2021, to be able to take advantage of higher Net Metering Incentives, which ironically, they failed to qualify for anyway, based upon their other failures to submit a complete Petition with all application materials, which could not be cured because the Petition was filed on the last day before the deadline.

**B. Applicant's Petition for a CPG - Site Plan D - August 31, 2021**

Applicant's Petition with new SITE PLAN D, which was produced on August 27, 2021, provided the following representations under oath by Norwich Solar's Chief Development Officer Martha Staskus<sup>4</sup> which were filed with the Commission by Norwich Solar's counsel Kim Hayden, Esq.:

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<sup>4</sup> (7) . . . Any witness sponsoring an exhibit or testimony must file a notarized affidavit stating that the information provided is accurate to the best of the witness's knowledge. All exhibits must be sponsored by a witness. The witness must further attest to having personal knowledge to be able to testify as to the validity of the information contained in the exhibit or testimony.

**Rule 5.107(C)(5) & (6) Project Description, Site Plans, & Elevations**

In accordance with Commission Rule 5.107(C)(5) & (6), a Project description with the detailed description of equipment and improvements listed in Rule 5.107(C)(5)(a)-(i), is provided in the Prefiled Testimony of Martha Staskus, Chief Development Officer of Norwich Solar, together with site plan details (including elevation drawings and GIS map) as exhibits NUL MS-2 (Site Plan), and NUL MS-3 (Elevation Drawings).

Equipment specifications, including the proposed finish of the equipment, are included in Exhibit NUL MS-4.

**Rule 5.107(C)(7) & Rule 5.111(B): Testimony, Exhibits, Proposed Findings, and Proposed CPG**

In accordance with Rule 5.107(C) and Rule 5.111(B), the Applicant offers prefiled testimony and exhibits of Ms. Martha Staskus and Ms. Dori Barton. The testimonies are accompanied by signed and sworn affidavits as required by Rule 5.107(C)(7).

The Prefiled Testimony of Martha Staskus describes the Project and schedule, and addresses the following applicable statutory and Commission rules and criteria:

- **project description**
- **preferred site status (Rule 5.103(6))**
- Rule 5.107 advance notice and comments
- 45-day advance notice & response to comments provided (Rule 5.107(C)(4) & (11))
- system stability and reliability (30 V.S.A. § 248(b)(3); Rule 5.107(C)(10))
- aesthetics (30 VSA § 248(b)(5); Rules 5.111(B) and 5.112))
- ...

Ms. Staskus sponsors the following exhibits:

- Exhibit NUL MS-1 Curriculum Vitae of Martha Staskus
- **Exhibit NUL MS-2 Project Site Plan**
- Exhibit NUL MS-3 Elevations
- Exhibit NUL MS-4 Equipment Specifications
- **Exhibit NUL MS-5 Preferred Site Designation Letters**



- Exhibit NUL MS-6 Orderly Development, Aesthetics and Historic Sites Assessment  
...

See **Exhibit NN-8** - Norwich Upper Loveland Solar LLC's Application for a CPG dated August 31, 2021, pgs. 2-3 (bold/underlined emphasis supplied).

Therefore, according to the Petition materials filed under oath by Norwich Solar's Martha Staskus, the Applicant presented new SITE PLAN D with the Petition, showing the solar panels themselves located as only 325+/- feet from the nearest neighbor **and the limits of disturbance coming down the steep slopes of the east side of the ridge, where obviously the trees will be cleared.** Yet, Ms. Staskus also submitted, under oath with the same Petition, the Preferred Site Letter which was procured with the representation of SITE PLAN B's location of the "**Array over the ridge behind these trees – near transmission line corridor**" showing approximately 500 feet of buffer from the nearest neighbor. Thus, the submission of SITE PLAN D with a Preferred Site Letter acquired through the representation of SITE PLAN B, is a misrepresentation of material fact by Norwich Solar Technologies and has perpetrated a fraud upon the Commission. Consequently, the Commission should wholly disregard the Preferred Site Letter and deem the Application incomplete and/or treat it as withdrawn pursuant to PUC Rule 5.107(B)(4).

### **C. False or Misleading Information – Legal Standard for Sanctions**

The Public Utility Commission has explained:

Commission precedent states that "trust and transparency are essential for effective regulation" and that presentation of false or misleading information and the failure to apprise the Commission of material information in a timely manner are sanctionable offenses under 30 V.S.A. § 30.

*Investigation Pursuant to 30 V.S.A. §§30 & 209 into Alleged Violation of Newbury GLC Solar, LLC's Certificate of Pub. Good Issued in Case #17-4721-Nmp.*, No. 19-0734-INV, 2019 WL 3731798, at \*4–5 (Aug. 1, 2019)<sup>5</sup> In turn, Vermont law provides that an entity that commits a violation within the Commission's jurisdiction “shall be required to pay a civil penalty ... after notice and opportunity for a hearing.”<sup>6</sup>

In the present case, Norwich Solar withheld material information from the Commission and engaged in a serial “bait and switch” of site plans that it used to acquire a Preferred Site Letter in order to file a Petition with the PUC, apparently to beat a September 1, 2021 deadline for Net Metering Incentives. Thus, the Petitioner sought favorable regulatory action based on information that Norwich Solar knew to be inaccurate when it was submitted and which Norwich Solar had a duty to correct. No other conclusion can be reached given the timing of the Site Plans and approvals and the fact that no such correction has been made in the nine months since the submittal of the false information under penalties of perjury speaks volumes.

Based on the foregoing, Norwich Solar's failure to correct material information that it knew was inaccurate before requesting favorable regulatory action from the Commission on its

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<sup>5</sup> *Investigation Pursuant to 30 V.S.A. §§30 & 209 into Alleged Violation of Newbury GLC Solar, LLC's Certificate of Pub. Good Issued in Case #17-4721-Nmp.*, No. 19-0734-INV, 2019 WL 3731798, at \*4–5 (Aug. 1, 2019)(citing Investigation pursuant to 30 V.S.A. §§ 30 and 209 and Public Utility Commission Rule 5.110(D) into the accuracy of information supplied on an application for an interconnected group net-metered photovoltaic electric power system in *Ferrisburgh, Vermont filed by Beach Properties, Inc., d/b/a Basin Harbor Club*, Docket No. 8692, Order of 3/23/17 at 6-7 (The applicant failed to exercise due diligence and included false information in its application); and citing *Investigation into alleged violation by Vermont Gas Systems, Inc., of Public Service Board Rule 5.409*, Docket No. 8328, Order of 7/31/2015 at 2 (VGS knowingly waited nearly six months to disclose a cost estimate increase greater than 20% and was fined \$100,000)).

<sup>6</sup> *Id.* (citing 30 V.S.A. § 30(a)(1)).

application for a CPG, constitutes a violation for which the Commission should assess a penalty on Norwich Solar under 30 V.S.A. § 30.

The Commission may impose a civil penalty of not more than \$40,000 per violation that is not a continuing violation.<sup>7</sup> In determining the amount of the violation the Commission may consider eight factors:

- (1) the extent that the violation harmed or might have harmed the public health, safety, or welfare, the environment, the reliability of utility service, or the other interests of utility customers;
- (2) whether the respondent knew or had reason to know the violation existed and whether the violation was intentional;
- (3) the economic benefit, if any, that could have been anticipated from an intentional or knowing violation;
- (4) the length of time that the violation existed;
- (5) the deterrent effect of the penalty;
- (6) the economic resources of the respondent;
- (7) the respondent's record of compliance; and
- (8) any other aggravating or mitigating circumstance.<sup>8</sup>

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<sup>7</sup> 30 V.S.A. § 30(b).

<sup>8</sup> 30 V.S.A. § 30(c).

**D. Conclusion**

In summary, the Applicant's Preferred Site Letter approvals were procured for a project as depicted in SITE PLAN B and its Viewshed Analysis even though Site Plan C had been prepared 19 days prior to the Planning Commission's review and was submitted to the PUC with the Advance Notice, the day after the PC voted to support the issuance of the Preferred Site Letter.

Applicant then filed for a Petition for a CPG for a fundamentally different project depicted in SITE PLAN D. The differences between the plans are startling as the eastern boundary of the project has been relocated 175 feet east, and is no longer on the other side of the ridge, but has moved onto the steep eastern slopes of the ridge located immediately behind the Neighbors' homes. Therefore, the Applicant's use of a Preferred Site Letter based upon SITE PLAN B in filing its Petition for a CPG with significantly different SITE PLAN D constitutes a misrepresentation of material facts to the Public Utility Commission. Thus, the Petition was allowed to go forward, based upon false pretenses unknown by the Commission.

Vermont's Public Utility regulatory system requires Applicants' truthful representations of fact under oath and subject to the pains and penalties of perjury. The Applicant's serial site plan "Bait & Switch" practice disregarded that standard, apparently to gain a financial incentive. Such behavior threatens the integrity of the regulatory process and simply cannot be allowed by this Commission. It is therefore essential that the Commission Sanction Norwich Solar Technologies, Inc. to deter it from repeating such dishonest behavior in the future and to communicate and confirm to the regulated community as well as to the citizens and communities of this state, that such actions will not be tolerated.

**WHEREFORE**, Neighbors/Intervenors respectfully request that the Commission deem the Application Incomplete and Dismiss the Petition and/or treat it as Withdrawn pursuant to PUC Rule 5.107(B)(4). Furthermore, Neighbors/Intervenors respectfully request that the Commission open an Investigation into the matter and impose Sanctions against Norwich Solar Technologies, Inc. to deter such conduct in the future and to uphold the integrity of the public utility regulatory system in Vermont.

**DATED** at Randolph, County of Orange and State of Vermont this 31<sup>st</sup> day of May, 2022.

**Dan & Jenn Goulet, Samin Kim & Jayoung Joo,  
Stephen Gorman, John & Heather Benson,  
Laurence & Shelley Ufford, and Joy Kenseth,**  
*Neighbors/Intervenors*

*/s/ L. Brooke Dingledine*  
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