

**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)

**PETITIONER’S RESPONSE TO LANDOWNERS’ OPPOSITION TO
REQUEST FOR JUDICIAL NOTICE**

NOW COMES Randolph Davis Solar LLC (“Petitioner” or “Applicant”) and responds to Mr. Binder’s and Ms. Allen’s (“Landowners”) September 5, 2023 response to Petitioner’s request that the Public Utility Commission (“Commission”) take judicial notice of Petitioner’s May 3, 2021 preferred site request email with an April 30, 2021 preliminary Site Plan that was submitted to the Town of Randolph Planning Commission and Selectboard (Exhibit RDS Judicial Notice-1), and the June 25, 2021 45-Day Advance Notice submitted in Case No 21-2211-AN (Exhibit RDS Judicial Notice-2).¹

Landowners’ response incorrectly asserts that the April 30, 2021 preliminary Site Plan that was an attachment to Petitioner’s May 3, 2021 email to Randolph Planning Commission Chair Sonny Holt, as reflected in Exhibit RDS Judicial Notice-1, is not the same April 30, 2021 preliminary Site Plan attachment that was actually sent to Mr. Holt on May 3, 2021. They claim that the image of a site plan that appears at page 155 of Exhibit MB-17 is the site plan Petitioner emailed Mr. Holt on May 3, 2021.

As Mr. Malley, who has personal knowledge, attests in his accompanying affidavit under oath, the April 30, 2021 preliminary Site Plan in Exhibit RDS Judicial Notice-1 is the same Site Plan that Mr. Malley attached to his May 3, 2021 email to Mr. Holt.² The partial black and white image of a site plan that appears at page 155 of Exhibit MB-17 appears to be an incomplete snip³ of the actual, same, and full preliminary Site Plan sent by the Applicant to Mr. Holt by email on

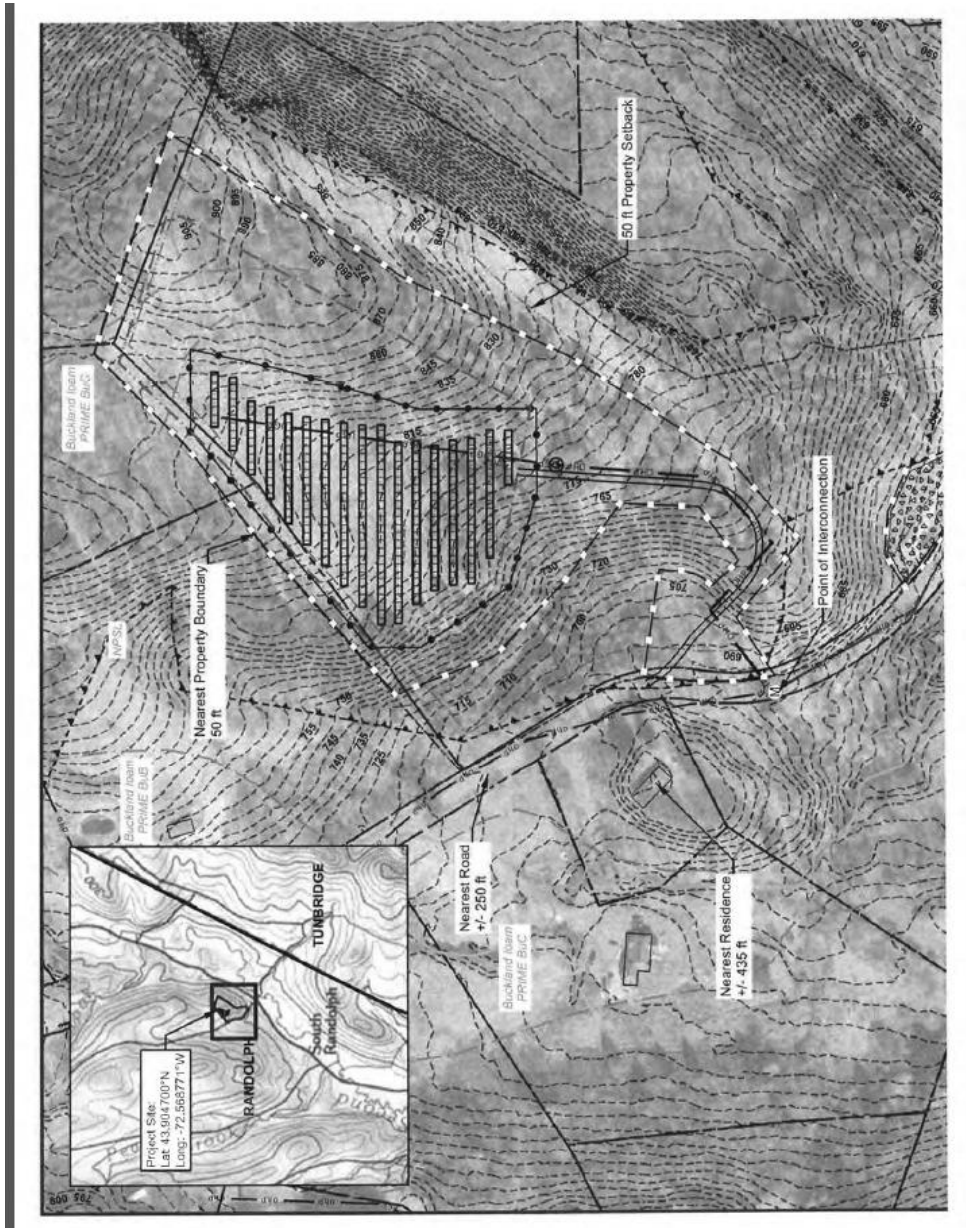
¹ Capitalized terms used herein not otherwise defined have the meaning set forth in Petitioner’s June 17, 2023 Comments on the Hearing Officer’s Proposal for Decision.

² Malley 9/12/23 Affidavit at 1.

³ This “snip” or image found in Exhibit MB-17 was not prepared by Norwich Technologies or any affiliate or representative but does appear to have been taken from the Site Plan provided to Mr. Holt by email on May 3, 2021. The snip itself was clearly in the Town’s records, but it was not prepared by or sent by Petitioner.

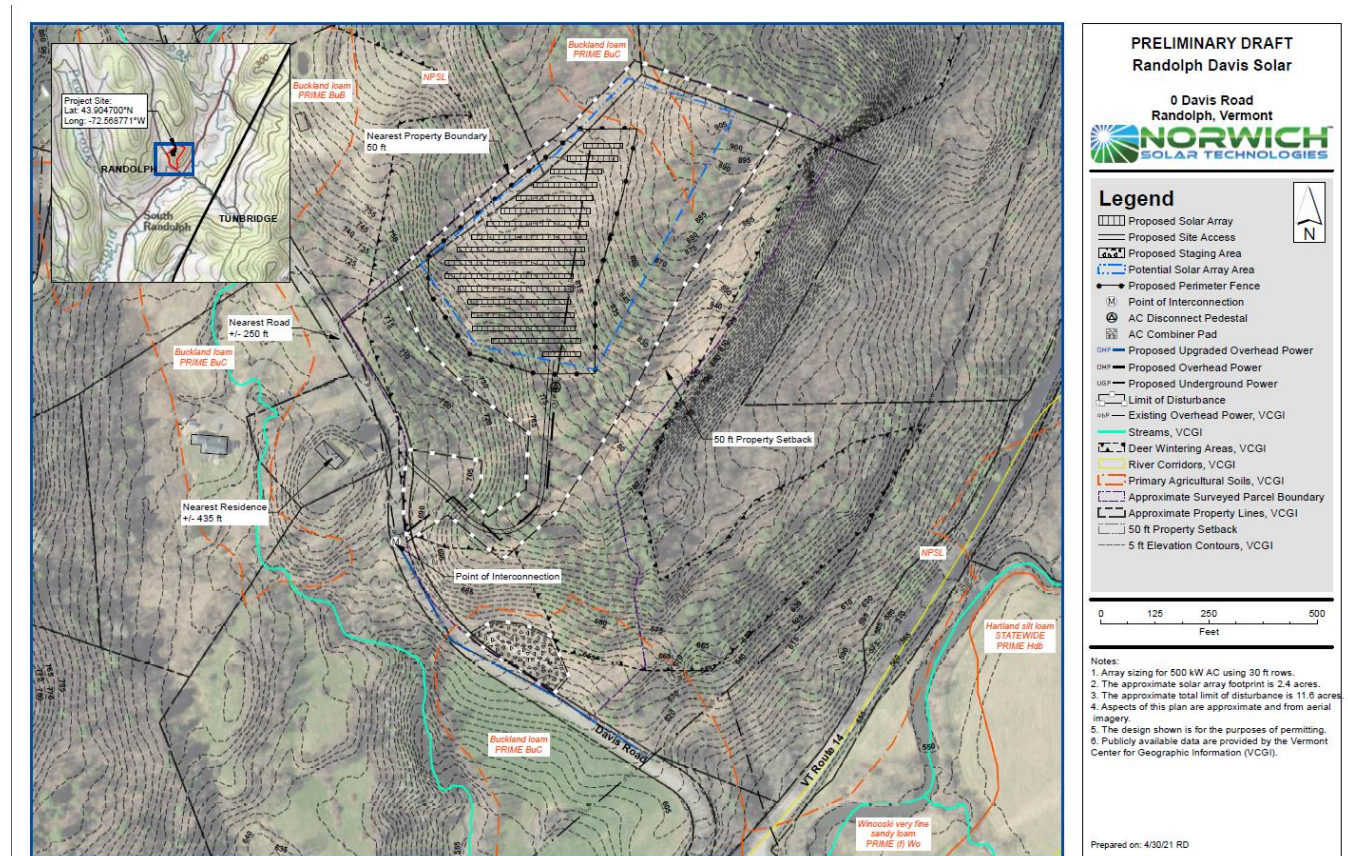
May 3, 2021. The image that appears at page 155 of Exhibit MB-17 was not prepared by the Petitioner.⁴

For the Commission's ease of reference, the image of a site plan that appears at page 155 of Exhibit MB-17 is shown, below.



⁴ Malley 9/12/23 Affidavit at 1.

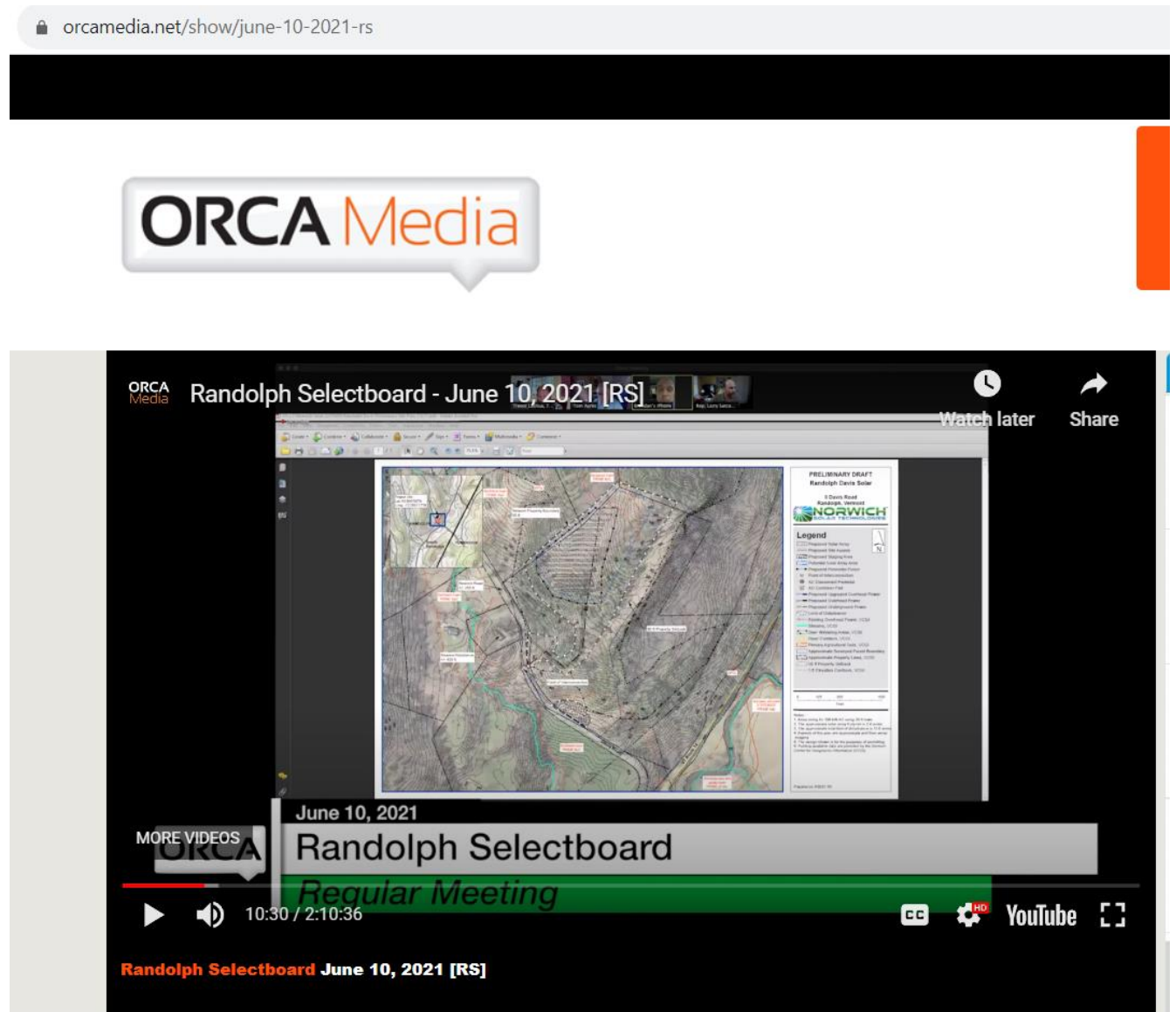
The April 30, 2021 Site Plan that is part of Exhibit RDS Judicial Notice-1 is shown below:



A comparison of the two plans above reveals that the image that appears in Exhibit MB-17 came from the April 30, 2021 preliminary Site Plan emailed by Petitioner on May 3, 2021. It was not switched and substituted for the image in Exhibit MB-17, a document Petitioner neither prepared nor sent to the Town.⁵ Landowners' accusations of falsification of the evidence are based upon pure speculation that is both incorrect and improper. The video of the June 10, 2021 Selectboard meeting, Exhibit MB-21, is further evidence that the April 30, 2021 preliminary Site Plan included in Exhibit RDS Judicial Notice-1, was provided to the Town. The Site Plan,

⁵ Malley 9/12/23 Affidavit at 1-2

which is shown in the below screenshot from Exhibit MB-21, was put on the screen by the Town at approximately minute 10:30 and stayed on the screen for approximately 4 to 5 minutes.



As shown in the screenshot from that video, the preliminary Site Plan was in color, not the black and white image in Exhibit MB-17, and is clearly the same preliminary Site Plan that is included in Exhibit RDS Judicial Notice-1. The Landowners were present by video and actively

participated in that meeting, and so knew or should have known that this was the same preliminary April 30, 2021 Site Plan provided for preferred siting by the Applicant.

Landowners' September 5, 2023 filing also again raises the issue of the Project limit of disturbance ("LOD"). It is unclear how these claims are in any way relevant to the request for judicial notice currently pending. Further, as Landowners themselves have pointed out in their filing, the notes to the April 30, 2021 preliminary Site Plan reference a total limit of disturbance of approximately 11.6 acres. As already stated by Petitioner in its Request for Judicial Notice and at the August 23, 2023 oral argument, the April 30, 2021 preliminary Site Plan was also included in the June 21, 2021 45-Day Notice, Exhibit Judicial Notice-2. The 45-Day Notice letter states that the LOD is approximately 11 acres. This establishes that the Planning Commission had the acreage of the LOD when they met in December 2021 and voted not to rescind preferred siting.

Both of these exhibits are directly relevant to the Commission's deliberations regarding the Hearing Officer's Proposal for Decision. Judicial notice of Exhibit RDS Judicial Notice-1 is also necessary to correct inaccurate allegations made at oral argument by Attorney Dingleline, and in Landowners' September 5, 2023 filing. At oral argument, Attorney Dingleline alleged that what was "originally" presented by the Petitioner to the Town Planning Commission for preferred siting made significant misrepresentations about the Town Plan:

"I want to start at the beginning. And the beginning is *what representation was made originally by Norwich Solar Technologies to the Town of Randolph planning commission. The town plan was represented as being fully complied with by this application. There was actual quotations from the town plan, the energy -- renewable energy siting section. But unfortunately, the developer decided to provide only a portion of the town plan. The specific prohibition section was omitted from the presentation to the planning commission.* When Mr. Binder brought that up later *after the letter was provided* and sent and accepted by Norwich Solar Technologies, the planning commission convened a meeting, had this on their agenda, discussed it, and during that meeting they said: Holy cow. We didn't even look at our town plan. *So in the first instance there was a significant misrepresentation of the town plan to the town planning commission.*

8/23/23 Tr. at 29-30 (Dingleline)(emphasis added).

Attorney Dingleline failed to cite to the source for her claims regarding conformance with the Town Plan or quotations from the Town Plan. As stated in Mr. Binder's Exhibit MB-

14, there was no audio or video recording made of the June 1, 2021 Randolph Planning Commission meeting. The statements made by Attorney Dingleline are not noted in the minutes of the June 1, 2021 Planning Commission meeting, Exhibit MB-4.

Mr. Malley's May 3, 2021 email to the Planning Commission Chairman that attached an April 30, 2021 preliminary Site Plan for the Project, together with a document describing preferred siting generally, titled "Overview of Preferred Siting in Vermont for Solar Projects" (the "Overview document")⁶, are the only documents provided by Petitioner to the Planning Commission at the beginning of the preferred siting process.⁷ Neither the May 3, 2021 email or the Overview document contain any quotes from the Town Plan or address conformance with the Town Plan.⁸

Finally, Landowners raise a number of additional reasons urging the Commission to decline to take judicial notice of Exhibit RDS Judicial Notice-1. They assert that the request is untimely. Judicial notice may be taken at any stage of a proceeding. V.R.E. 201(f). They also assert that the exhibit has not been authenticated. Mr. Malley's sworn affidavit satisfies the authentication requirements of V.R.E. 901, to the extent just authentication is required for a judicially noticed fact. Finally, Landowners "dispute" Exhibit RDS Judicial Notice-1, but the source of their dispute is inaccurate speculation. The document satisfies the requirements for judicial notice under V.R.E. 201.⁹ Vermont Rule of Evidence 201(d), as incorporated by 3 V.S.A. § 810(1) and Commission Rule 2.216(A), directs that an agency "*shall take judicial notice if requested by a party and supplied with the necessary information*" (emphasis added).

⁶ The Overview document appears at pages 151-153 of Exhibit MB-17.

⁷ Malley 9/12/23 Affidavit at 1.

⁸ Malley 9/12/23 Affidavit at 2.

⁹ "A judicially noticed fact must be one that is not subject to reasonable dispute in that it is . . . (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." V.R.E. 201(b). Petitioner submits that Exhibits RDS Judicial Notice -1 and -2 are not subject to reasonable dispute in that it is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. V.R.E. 201(b). They are public documents held by the Town of Randolph. Section 810(4) of the Vermont Administrative Procedures Act, as incorporated by Commission Rule 2.216(A), provides that "[n]otice may be taken of judicially cognizable facts" by an agency.

Petitioner respectfully asks the Commission to take judicial notice of Exhibits RDS
Judicial Notice-1 and -2 for a full and accurate record, and to correct that inaccurate claims that
have been made by Landowners.

DATED at Burlington, Vermont this 12th day of September, 2023.

Randolph Davis Solar LLC

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