

**VERMONT HOUSE OF REPRESENTATIVES  
FISH, WILDLIFE AND WATER RESOURCES COMMITTEE**

**TESTIMONY OF EDWARD RYBKA  
MARCH 22, 2016**

**The Agency of Natural Resources Displays Greater Concern for Solar Developers That It Does for the Environment**

The Agency of Natural Resources (ANR) is charged with promoting the sustainable use of Vermont's natural resources, and protecting the health of Vermont's ecosystems. Within the ANR, the Fish and Wildlife Department is charged with conserving Vermont wildlife and wildlife habitats for the people of Vermont.

Unfortunately, these goals have become increasing subservient to the profit-making motives by developers of large solar projects. Although ANR has identified serious environmental concerns associated with these projects, it has yielded to developers again and again by refusing to impose any meaningful mitigation measures. Additionally, deals with developers have been negotiated in private and out of public view, with the public being informed only of the results of those negotiations after an agreement with the developer has been concluded.

**The Case of Bobolink Habitat**

ANR has listed bobolinks as a "species of concern" and has identified bobolink habitat as being threatened by several large solar projects. Yet ANR has done little or nothing to protect that habitat.

Sudbury Solar Project

In an email sent on June 16, 2015, John Austin, Land & Habitat Program Manager for the Fish & Wildlife Department, described a solar project in Sudbury that destroyed grassland bird habitat. Mitigation was limited to (1) delayed mowing on the *remaining* habitat and (2) a requirement that the developer contribute an unknown sum into a project that "that works with local farmers to implement delayed mowing practices to benefit grassland birds." These remedies are virtually worthless.

## Windsor Prison Farm Project

In that same email, Mr. Austin described efforts to get the developer to shift a 35-acre, 4.25 MW project that would have been situated “in the middle of the best habitat.” Here again, an alternative solution was “funding for delayed mowing on other lands.”

## **New Haven 20-Acre (2.2 MW) Solar Project--PSB Docket 8523**

Incredibly, ANR has permitted projects that admittedly destroy bobolink habitat, then invoked bobolink habitat as an excuse to relieve the developer of any responsibility for implementing aesthetic mitigation measures in the form of landscaping around the project. This is precisely what is happening on a 20-acre, 2.2 MW solar project proposed by Next Generation Solar off Field Days Road in New Haven.

## ANR Raises Significant Concerns Regarding Bobolink Habitat

After the project was proposed, significant bobolink habitat was discovered on the site. John Gobielle, a Fish & Game wildlife biologist, concluded that mitigation would be required in the form of 2:1 onsite or 3:1 offsite habitat conservation ratios. I.e., for the 20-acre project, this would have required preservation of 40 to 60 acres of grassland.

The 20-acre project is part of a 60-acre parcel, and the developer’s original intention was to expand the project to encompass all 60 acres. So Mr. Gobielle’s conclusion would probably have compelled the developer to place the remaining 40 acres into a conservation program. Instead, the developer backed off from the plan to expand the project. And a deal began to emerge behind closed doors.

## Clandestine Negotiations Result in the ANR MOU--The 50-Foot “Buffer Zone”

Joslyn Wischek, attorney for the developer, emailed ANR staff attorney Donald Einhorn and Deputy Secretary Trey Martin. (“Hi Don and Trey,” the email began.) Ms. Wischek objected to what she described as likely “very expensive” mitigation efforts, and noted that the developer may not have chosen the site had it known about the bobolink habitat. Ms. Wischek emphasized that the developer “has already sunk significant time and money in developing this project.”<sup>1</sup>

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<sup>1</sup> This email was not part of the record in Docket No. 8523; it was apparently produced in response to a Public Records Act request.

Between the June 16 email and September 24, ANR and the developer secretly negotiated a Memorandum of Understanding (the ANR MOU), signed on behalf of the developer by Ms. Wilschek and on behalf of the ANR by Mr. Einhorn. The ANR MOU admitted that “The Project will occupy grassland used by Bobolink for breeding and nesting habitat, effectively removing the habitat from availability for Bobolink, or other grassland birds.” Surprisingly, however, ANR completely abandoned Mr. Gobielle’s recommendations. Instead, ANR agreed to minimal mitigation measures that consisted largely of mowing restrictions on the grassland around the 20-acre project. This imposed pretty much a zero mitigation cost on the developer.

But what is truly incredible is that ANR then went a huge step further to assure that the developer would *not* have to perform *any* mitigation efforts to relieve the *aesthetic* impact of the project.<sup>2</sup> The ANR MOU required the developer to maintain a 50-foot buffer zone around the project, ostensibly to protect bobolink habitat. While the ANR MOU did not expressly forbid the planting of trees or other vegetation in this buffer zone, it was interpreted by the Department of Public Service as *forbidding any landscaping* around the project. Thus, ANR used its purported concern over bobolinks to produce a huge financial windfall to the developer.

#### Citing the ANR MOU, DPS Abandons Its Own Expert’s Conclusions

This position of the Department of Public Service was embodied in a Memorandum of Understanding (the DPS MOU) entered into on November 20 by Next Generation’s attorney (Ms. Wilschek) and Jeannie Oliver, a DPS staff attorney. Like the ANR MOU, the DPS MOU was negotiated in secret with no input from the Intervenors. It was also entered into before much of the evidence had been submitted in the PSB proceeding and before the January 21-22, 2016, hearing on the proceeding.

Before the DPS MOU was signed, both the developer and the Intervenors hired experts to assess the aesthetic impacts of the project. DPS hired its own expert, Jean Vissering, to prepare an aesthetics report. In her report, Ms. Vissering stated that she had originally recommended landscaping along a portion of the project boundaries, but apparently had to abandon that recommendation. As she admitted in her report and in her subsequent testimony at the January 21 hearing, the issue of bobolink habitat made this

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<sup>2</sup> It is important to know that between the date of the June 16 email and the September 24 ANR MOU, several neighboring landowners and the Town of New Haven intervened in the PSB proceeding. The Intervenors requested that, if the project were approved, the PSB mandate aesthetic mitigation in the form of landscaping around the project.

“a very frustrating project for me.” Nevertheless, Ms. Vissering’s report recommended a post-construction site visit to determine the necessity of landscaping around the project. The DPS MOU flatly rejected this on the ground that a post-construction site visit would be futile in view of the fact that ANR barred any landscaping.

### **Trees Interferes with Bobolink Habitat, But a 20-Acre Solar Array Does Not?**

Amazing--20 acres are removed from bobolink habitat, for which the developer has no palpable mitigation responsibility, and it is the *proposed landscaping around the project* that becomes the target of supposed wildlife concerns! The developer scores twice--first in not having to mitigate the loss of habitat, and then in not having to landscape around the project to mitigate the project’s aesthetic impact.

If bobolink habitat is so *important*, the 20-acre solar project should be rejected. If bobolink habitat is so *unimportant* as to permit a 20-acre solar project, then landscaping should be permitted around the project.

The 50-foot buffer itself is absurd. It means nesting bobolinks will never be more than 25 feet from a potential source of disturbance. The area is frequented by foxes, coyotes, feral cats and weasels. The rustling noise of nesting bobolinks will easily carry across 25 feet, and a predator can traverse 25 feet in a matter of seconds. The result is that the bobolinks will be annihilated or--more likely--will not nest there at all.

Also, the project employs panels that rotate on an axis and thus will produce noise. And there will be necessary maintenance of the project. These will certainly disturb nesting bobolinks only 25 feet away.

I raised these concerns in the brief that I filed with the Public Service Board, and specifically requested the Board not to approve the ANR MOU and the DPS MOU. Interestingly, neither the ANR nor the DPS responded to my concerns. (In fact, the ANR never filed any briefs in the proceeding.)

### **What Happened Here?**

ANR raised serious concerns about the loss of 20 acres of prime bobolink habitat. This implicated significant costs to the developer, and the developer protested. In the meantime, neighboring landowners and the Town of New Haven intervened, raising the issue of potential landscaping. In a few short months, ANR’s concerns over bobolink

habitat evaporated. It and DPS secretly negotiated deals that freed the developer of not only any real responsibility for the lost habitat, but also of any obligations to landscape around the project. ANR was clearly far more concerned about cost to the developer than loss of bobolink habitat.

The ANR MOU and the DPS MOU reek of impropriety. They were negotiated in secret and display an undue "coziness" between solar developers and the governmental agencies that are supposed to regulate them.<sup>3</sup>

The New Haven project is not unusual. In 2015, the Center for Public Integrity gave Vermont an overall grade of D- in terms of openness of government. The categories of Public Access to Information, Executive Accountability, State Civil Service Management, and Ethics Enforcement Agencies each received a grade of F.

### **What the Committee Should Do**

With respect to the 20-acre New Haven project, the Committee should:

- Exercise any authority it has to kill the project; or, alternatively,
- Write to the PSB to recommend that it (1) deny approval of the ANR MOU and the DPS MOU and (2) require both ANR and DPS to re-evaluate the impact of the project on bobolink habitat with an eye toward either rejecting the project to preserve bobolink habitat or permitting landscaping around the project to mitigate its aesthetic impact.

More importantly, the Committee should exercise its oversight of ANR to compel ANR to redirect its focus upon preserving the environment. ANR (and DPS, for that matter) appears far more concerned with developer profits than with wildlife preservation.

Edward Rybka  
1254 Twitchell Hill Road  
New Haven, Vermont 05472  
edrybkavt@gmail.com

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<sup>3</sup> In fact, DPS adamantly resisted my efforts to call Ms. Oliver as a witness at the proceeding to answer questions about the DPS MOU, citing attorney-client privilege, confidentiality of settlements, etc. DPS would not answer my question whether DPS considered--or even read--the Intervenors' testimony.

**From:** Austin, John M  
**Sent:** Tuesday, June 16, 2015 4:03 PM  
**To:** Royar, Kim; Porter, Louis  
**Cc:** Scott, Mark; Gjessing, Catherine  
**Subject:** RE: Docket 8523 (Next Generation Solar Farm 2.2 MW)-Bobolink Mitigation Question

Kim and Louis,

Here is some background that might be helpful in sorting this one out. Recall that we have addressed concerns about solar projects proposed in grassland bird habitat with 3 projects over the past year. The first is one in the town of Sudbury that we discussed with you. In that case, we have a cooperative developer who appreciates our concerns and wants to do what's necessary to minimize impacts. After discussing various options with Dr. Allan Strong and Toby Alexander from NRCS, we decided to not change the configuration of the project (there wasn't enough room to do on-site mitigation) and instead have the developer pay into Dr. Strong's project that works with local farmers to implement delayed mowing practices to benefit grassland birds. In addition, they agreed to manage the remaining habitat on site with delayed mowing. We discussed this project with the Commissioner about a year ago and we all agreed that the benefits of this project were that we could establish the idea of grassland bird habitat being important, but not necessarily cement a mitigation process.

The second project was at the Berlin airport where John Buck had concerns about upland sandpiper habitat with a solar project. We asked for surveys to confirm presence or absence. I believe the surveys were to be conducted this spring. Upland sandpiper is state listed as endangered and at this point there are very few breeding pairs left in Vermont. If we haven't confirmed it yet, I strongly suspect it is no longer present at the Berlin site.

The third project is the Windsor Prison Farm where a solar developer wants to develop some of the land owned by the state and that would ultimately come to our Department. In that case, we worked cooperatively with the developer to explain our concerns and adjust the siting of the project. We discussed funding for delayed mowing on other lands, but nothing firm has been established at this point. In that case, the emphasis has been getting them to site it properly.

John Gobeille raised this project during our habitat team meeting last week and asked for guidance. He explained that the proposed site is excellent grassland bird habitat and had many pairs of bobolinks when he visited the site. I don't know what his conversation with the developer was like on site, but I'll check with him. Apparently they proposed to install solar panels in the middle of the best habitat. The team suggested that John try to get them to shift the project to one side of the field or another to minimize loss of the best interior grassland habitat. We also suggested he explore delayed mowing with them, either onsite or offsite.

It appears we may be moving a bit too fast at this point. We took the opportunity with the Sudbury project because we were working with a cooperative developer and we could softly explore the issue. The same is true for the Windsor Prison Farm. The Berlin project is different as it involves a listed species.

We have completed a proposal for Commissioner Porter that explains the background of grassland bird populations in Vermont, habitat trends, and what we recommend for addressing this. After we review it with Mark Scott, we will move to the next step of discussing it with Commissioner Porter and anyone else who should be involved.

I surely don't want to put John G or anyone else in a compromised position, as I know you don't as well. If we are moving too quickly I'm okay with backing off a bit. The one thing that resonates with me from the email below is that the fair and appropriate process is to give advanced notice that we are now protecting these habitats. I've discussed with most of you the idea that if and when you are all comfortable moving forward with some concept of grassland habitat protection, our next step will be to meet with the solar developers and explain our concerns and proposed approach for addressing them. Keep in mind that to be fair, we wouldn't restrict this protection to solar energy projects, but any regulated development that would impact significant grassland bird habitat.

Hope this helps. I look forward to discussing this very soon. If you would like to discuss how to deal with this current project I'm happy to do so at your convenience.

John

John M. Austin, CWB  
Lands & Habitat Program Manager  
Vermont Fish & Wildlife Department  
5 Perry Street, Suite 40  
Barre, VT 05641  
802-476-0197

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**From:** Royar, Kim  
**Sent:** Tuesday, June 16, 2015 8:16 AM  
**To:** Austin, John M  
**Cc:** Porter, Louis  
**Subject:** FW: Docket 8523 (Next Generation Solar Farm 2.2 MW)-Bobolink Mitigation Question

John/Louis: Should we discuss an approach? Kim

**From:** Martin, Trey  
**Sent:** Tuesday, June 16, 2015 7:06 AM  
**To:** Royar, Kim; Porter, Louis  
**Subject:** Fwd: Docket 8523 (Next Generation Solar Farm 2.2 MW)-Bobolink Mitigation Question

Fyi

Received this last night and will ask Billy / Jen to coordinate with your team to respond.

Trey

Sent from [Outlook](#)

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From: Joslyn L. Wilschek <[jwilschek@primmer.com](mailto:jwilschek@primmer.com)>  
Sent: Monday, June 15, 2015 5:21 PM  
Subject: Docket 8523 (Next Generation Solar Farm 2.2 MW)-Bobolink Mitigation Question  
To: Martin, Trey <[trey.martin@state.vt.us](mailto:trey.martin@state.vt.us)>, Einhorn, Donald <[donald.einhorn@state.vt.us](mailto:donald.einhorn@state.vt.us)>  
Cc: Nathaniel Vandal ([nvandal@greenpeaksolar.com](mailto:nvandal@greenpeaksolar.com)) <[nvandal@greenpeaksolar.com](mailto:nvandal@greenpeaksolar.com)>

Hi Don and Trey, I am writing with regard to the Next Generation Solar Farm, LLC petition for a certificate of public good for the construction of a 2.2 MW solar photovoltaic SPEED project in New Haven, VT. As you may be aware, the Petitioner's environmental expert found that the project area contained suitable grassland and field habitat for the state protected upland sand piper. The Petitioner and John Gobielle from the Department of Fish and Wildlife (F&W) visited the site on June 4.

During the site visit, and consistent with VHB's observations, no upland sand piper were seen at the project. Also consistent, a Vermont bird species of concern, bobolinks were observed. Due to the presence of bobolinks, Mr. Gobielle concluded that the project area represented "grassland habitat" and stated that mitigation would be required, either in the form of 2:1 onsite or 3:1 offsite habitat conservation ratios. Because the bobolink is not listed as an RTE Species, it appears that Mr. Gobielle is concluding that the Project area is "necessary wildlife habitat" for the bobolink. Bobolink is listed as a Species of Concern, and is ranked S5B corresponding to "Common (Secure): Widespread and Abundant."  
<http://www.vtfishandwildlife.com/common/pages/DisplayFile.aspx?itemId=229825>

In response to the Petitioner's request for more information, Mr. Gobielle said that F&W is "still working" on the guidelines, that they are "under review by the administration", and was unable to provide any information for the Petitioner to determine the cost of offsite mitigation. I have discussed this with the Petitioner's environmental consultant, and not surprisingly, they are unaware of any prior determination of "necessary wildlife habitat" for the bobolink, nor were they aware of any informal guidance from F&W.

In the absence of any published guidelines or communication to the development community, there was absolutely no way for the Petitioner to anticipate these requests from F&W. If the Petitioner had known that such mitigation was a requirement, it may not have chosen this site as the cost of the proposed mitigation is likely to be very expensive, and the Petitioner has already sunk significant time and money in developing this project. While it is essential that ANR work diligently to protect the State's natural resources, it is not reasonable to expect that the Petitioner adhere to these types of unanticipated and undocumented requests which are based on no ANR rule or guidance document.

Lastly, this is a significant departure from how grassland habitat has been treated in prior Section 248 Petitions. As recently as December, 2014, the ANR agreed to time of year construction restrictions for a solar photovoltaic project which was found to contain grassland habitat suitable for the upland sand piper.  
<http://psb.vermont.gov/sites/psb/files/orders/2014/2014-12/NMP5330%20Order.pdf> at page 17. The Petitioner is more than willing to work with ANR to agree to reasonable measures which could have been expected, however they cannot agree to take on significant expense for requests from ANR which could not have been anticipated.

Requiring this solar company to adhere to incomplete/non-published guidelines seems similar to the situation that arose in the VEC South Hero solar project where ANR staff wanted ANR to follow vernal pool restrictions that were not yet communicated to the solar developer nor existed in any ANR guideline. I understand that ANR decided in that instance to not apply the vernal pool envelope to projects if and until ANR rolls out that program. I believe the same approach should apply to the request for this project to implement 2:1 onsite/3-1 off-site mitigation for the bobolink. I would appreciate your thoughts on this issue and I also wanted to loop Trey in for his thoughts. Sorry for the long e-mail and if it makes more sense to arrange a

call I can make myself available.

# PRIMMER

Joslyn L. Wilschek, Esq.

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**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

PSB Docket No. 8523

Petition of Next Generation Solar Farm, LLC )  
For a Certificate of Public Good Pursuant to )  
30 V.S.A. § 248, authorizing the construction )  
of a 2.2 MW photovoltaic electric generation )  
facility off of Field Days Road in New Haven, )  
Vermont )

**MEMORANDUM OF UNDERSTANDING BETWEEN  
NEXT GENERATION SOLAR FARM, LLC, and  
THE VERMONT AGENCY OF NATURAL RESOURCES**

With respect to the above referenced petition, Next Generation Solar Farm, LLC (the “Petitioner”), and the Vermont Agency of Natural Resources (“ANR”) (collectively “Parties”) hereby agree and stipulate as follows:

WHEREAS, on May 8, 2015, Petitioner filed a petition, prefiled testimony, and exhibits seeking approval under 30 V.S.A. § 248 authorizing the construction of a 2.2 MW photovoltaic electric generation facility off Field Days Road in New Haven, Vermont (the “Project”);

WHEREAS ANR has investigated this matter, a prehearing conference, site visit, and a public hearing have been held, and discovery has been completed.

NOW THEREFORE the Parties agree as follows:

1. There is no issue as to any material fact, provided this Memorandum of Understanding (MOU) is approved by the Board.
2. The testimony and exhibits attached to Petitioner’s petition should be admitted into the record along with the conditions contained in this MOU, which conditions shall supersede any inconsistent testimony and exhibits.

3. The following conditions set forth below shall be incorporated into any Order and CPG issued by the Board.

a. Construction, operation, and maintenance of the proposed Project shall be in accordance with the plans and evidence as submitted in this proceeding, and with the terms and conditions set forth in this MOU. Any material deviation from the plans and evidence as submitted in this proceeding or a substantial change to the Project shall require approval by the Board.

b. The Project will occupy grassland used by Bobolink for breeding and nesting habitat, effectively removing the habitat from availability for Bobolink, or other grassland birds. To help moderate for the displacement of the Bobolink, the Petitioner shall perform the following for the life of the Project. Both the land within the Project fencing, as well as an approximately 8 acre portion of the Property, which is located outside of the Project fence and is depicted on Exhibit A to this MOU as grassland habitat, shall be managed in accordance with the following:

i. Both areas, excepting those locations identified in iv. below, shall be mowed no more than once per year, and shall not go un-mowed for more than five years.

ii. Mowing shall not take place before August 1 in any year.

iii. Minimum mower height shall be set in the range of 4 to 6 inches.

iv. There shall be no mowing within streams or Class II wetlands, or their associated 50-foot buffers.

- c. The Petitioner shall provide ANR with written certification that the Project has been built outside of the Class II wetlands, streams and their associated 50-foot buffers within 60 days of the commissioning date of the Project. The 50-foot buffers shall remain undisturbed. The term “undisturbed” means the absence of activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; driving upon; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing and mowing. Prior to any Project construction or decommissioning activities, the Petitioner shall install a continuous line of flagging tape along the buffer area boundaries and signage to identify the buffer areas as a protected area during construction and decommissioning activities.
- d. The Petitioner shall not cut or clear any individual trees, shrubs or other low-growing woody vegetation within 50 feet of the Vermont-threatened plant species colony indicated on the Natural Resource Map (NGSF-AC-3) and on Exhibit A to this MOU.
- e. The Petitioner shall provide ANR with the following Project “as-built” information within 60 days of the commissioning date of the Project to assist the Agency with compiling and analyzing greenhouse gas impacts:
- i. Solar panel manufacturer and model;
  - ii. Solar panel cell technology (e.g. mono-Si, multi-Si, CdTe, etc.);
  - iii. Rated solar panel output (in watts);
  - iv. Number of solar panels installed;
  - v. Array mounting type (fixed, 1-axis tracking, 2-axis tracking, ground, roof, other);

- vi. For fixed or 1-axis tracking, panel orientation and mounting angle;
  - vii. Rack system manufacturer and model;
  - viii. Rack system components, including the number of aluminum rails, steel mounting posts, etc.;
  - ix. Number and type of any other mounting components (e.g. concrete ballasts and foundation blocks);
  - x. Manufacturer, model and number of inverters;
  - xi. Manufacturer, model and number of transformers;
  - xii. Mass of concrete used (for ballasts, foundations, mounting pads, etc.);
  - xiii. Percent of Portland cement composition of concrete;
  - xiv. Description, quantity and source of any recycled materials used (e.g., recycled content concrete, recycled aluminum racking, etc.);
  - xv. Amount (length) and gauge of wiring used for project;
  - xvi. Components for connection to grid (circuit boxes, circuit breaker panels, metering equipment, etc.);
  - xvii. Distance (e.g., truck miles traveled) for transport of system components to site; and
  - xviii. Distance to grid connection.
- f. By January 30 of each year, ANR may request that Petitioner provide an annual report for the previous calendar year of operations to ANR. The annual report shall contain the information set out below, which will be used to assist the Agency with compiling and analyzing greenhouse gas impacts. Petitioner will have 60 days from the date of ANR's request to supply the information. Should ANR not request the information set out below by January 30, Petitioner will not have any obligation to provide an annual report from the previous year of operations. The information to be provided includes the following:
- i. Electric generation in kWh for the prior year, broken down by month; and
  - ii. Any information about the replacement of PV panels, inverters, transformers, or a complete racking system. In instances of failure and replacement of equipment (e.g. PV panels, inverters, etc.), Petitioner shall provide descriptions of both the failed and replacement components at the same level of detail as required by the "as-built" reporting requirements of condition e, above. This provision does not require Petitioner to provide information about de minimis

replacement of system components (e.g., replacement of racking system hardware), or information regarding regular maintenance activities.

- g. Should ANR not request the information in ¶ 3(f), above, in any two consecutive years after Project commissioning, Petitioner's reporting obligations for all subsequent years shall automatically cease.
  - h. ANR and Petitioner, by mutual agreement, may cancel Petitioner's reporting obligations set out at ¶ 3(f) at any time.
4. The Parties, in accordance with 3 V.S.A. § 811, hereby waive the opportunity to file exceptions and present briefs and oral arguments with respect to a proposal for decision to be issued in this case, provided that the proposal for decision is consistent with this MOU. This MOU is expressly conditioned upon the Board's acceptance of all of its provisions, without material change or condition. If the Board does not accept the MOU in its entirety, the MOU shall, at the option of any party, be deemed to be null and void and without effect, and shall not constitute any part of the record in this proceeding and shall not be used for any other purpose. In the event any material modification or change is made to the MOU and a party exercises its option to void the MOU, each Party shall be placed in the position that it enjoyed in this proceeding before entering into the MOU.
  5. Nothing in this MOU shall bind the Parties to take or refrain from taking any position on any issue not addressed herein, including any issue raised by any other party to this docket, or in any future docket.
  6. The Parties agree that this MOU shall not be construed by any party or tribunal as having precedential impact on any future proceedings involving the parties,

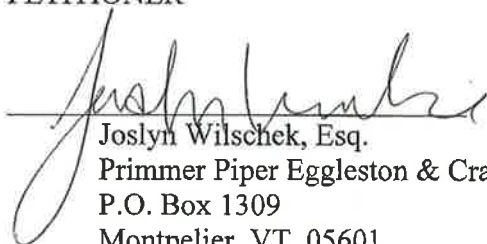
except as necessary to implement this MOU or to enforce an order of the Board resulting from this MOU.

7. This MOU is governed by Vermont law and any disputes under this MOU shall be decided by the Board.

Dated at Montpelier, Vermont, this 27 day of September, 2015.

PRIMMER PIPER EGGLESTON & CRAMER PC for  
PETITIONER

By:

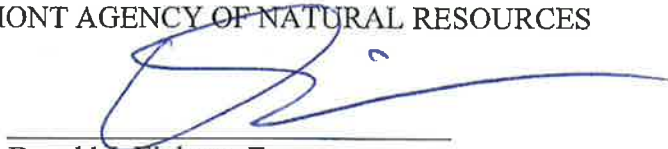


Joslyn Wilschek, Esq.  
Primmer Piper Eggleston & Cramer PC  
P.O. Box 1309  
Montpelier, VT 05601  
802-223-2102

Dated at Montpelier, Vermont, this 24<sup>th</sup> day of September, 2015.

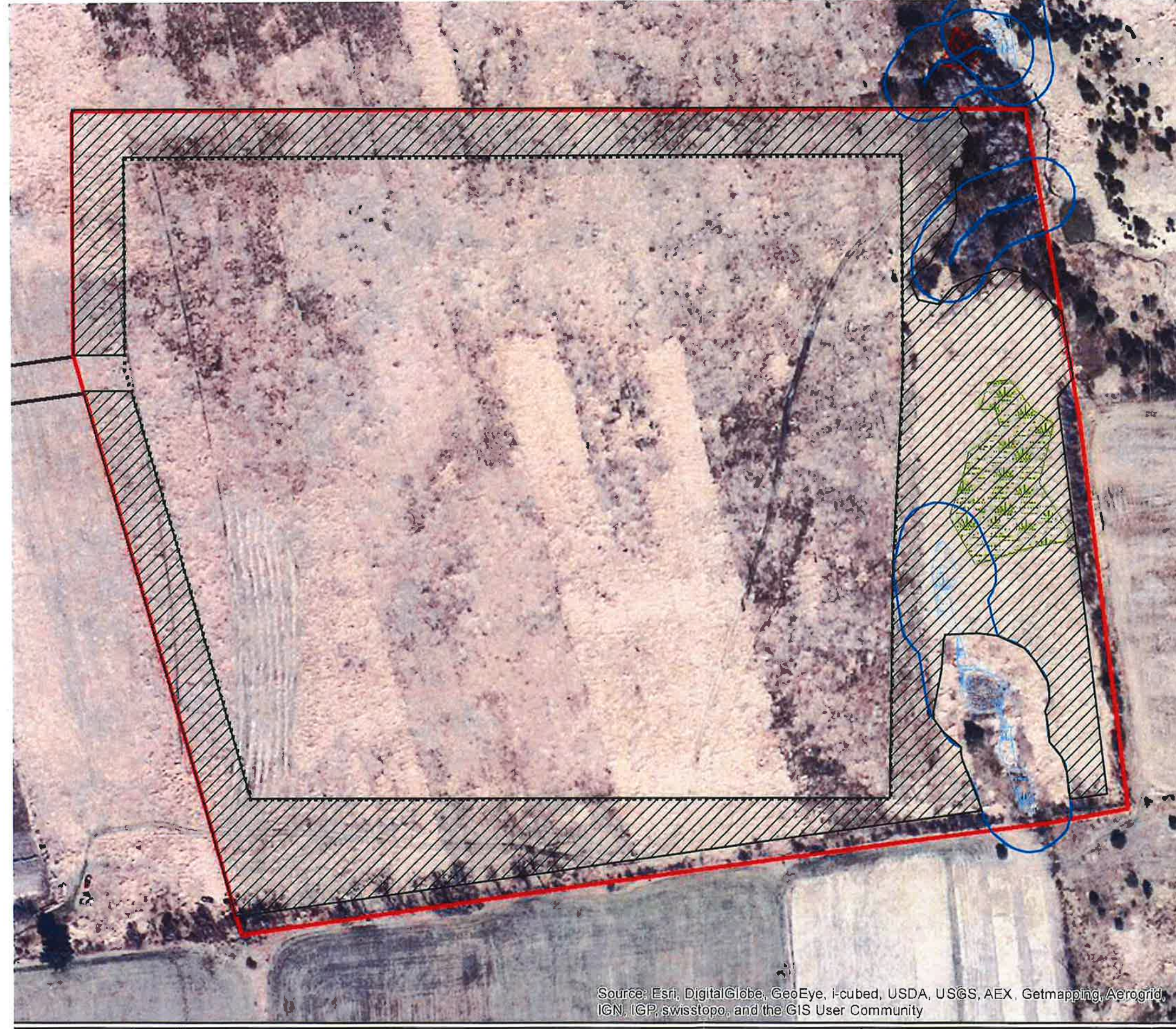
VERMONT AGENCY OF NATURAL RESOURCES

By:



Donald J. Einhorn, Esq.  
Vermont Agency of Natural Resources  
1 National Life Drive, Davis 2  
Montpelier, VT 05602

**Next Generation Solar Farm  
 ANR MOU Exhibit A**



-  Managed Area
-  Wetland & Stream 50' Buff
-  Class II Wetlands
-  Class III Wetlands
-  Streams
-  Threatened Species Colony
-  Option Parcel
-  Proposed Project Fence
-  50' Access Easement

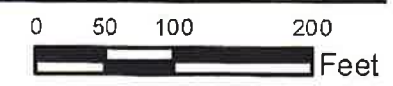


Sources: Esri, DeLorme, NAVTEQ, USGS, Intermap, iPC, NRCAN, Esri Japan, METI, Esri China(Hong

Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

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With respect to the above referenced petition, Next Generation Solar Farm, LLC (the “Petitioner”), and the Vermont Department of Public Service (“DPS”) (collectively “Parties”) hereby agree and stipulate as follows:

WHEREAS, on May 8, 2015, Petitioner filed a petition, prefiled testimony, and exhibits seeking approval under 30 V.S.A. § 248 authorizing the construction of a 2.2 MW photovoltaic electric generation facility off Field Days Road in New Haven, Vermont (the “Project”);

WHEREAS DPS has investigated this matter, a prehearing conference, site visit, and a public hearing have been held, and discovery has been completed;

WHEREAS DPS retained the services of Jean Vissering, Landscape Architect, to review and assess the Project’s potential aesthetic impacts. Jean Vissering has significant professional experience in assessing aesthetic impacts and has provided testimony in numerous Public Service Board proceedings, including solar projects;

WHEREAS Jean Vissering reviewed the Petitioner’s aesthetic report and other relevant documents, and visited the site and surrounding area on July 29, 2015;



WHEREAS Jean Vissering prepared prefiled testimony and exhibits which recommended additional aesthetic mitigation measures;

WHEREAS, subsequent to DPS filing Jean Vissering's prefiled testimony with the Board, DPS and the Petitioner engaged in settlement discussions regarding the Project, in consultation with the Vermont Agency of Natural Resources, and the Petitioner has agreed to implement a number of additional aesthetic mitigation measures as set out in this MOU.

WHEREAS DPS has reviewed the Fast Track Screening Analysis for the Project which was issued by Green Mountain Power ("GMP") in June, 2014, and the Supplemental Review for the Fast Track Analysis for the Project which was issued by GMP in April, 2015, and revised in August, 2015. The Project did not pass all Fast Track screening criteria, however, the Supplemental Review concludes that a Facilities Study is not required and that the Project will have no adverse impacts on the safety and reliability of the GMP system provided certain modifications outlined in the Supplemental Review are followed.

NOW THEREFORE the Parties agree as follows:

1. There is no issue between the Parties as to any material fact, provided this Memorandum of Understanding (MOU) is approved by the Board.
2. The testimony and exhibits attached to Petitioner's petition and the testimony and exhibits of Jean Vissering should be admitted into the record along with this MOU.
3. Construction, operation, and maintenance of the proposed Project shall be in accordance with the plans and evidence as submitted in this proceeding, and with

the terms and conditions set forth in this MOU. Any material deviation from the plans and evidence as submitted in this proceeding or a substantial change to the Project shall require approval by the Board.

4. With respect to the Project's potential aesthetic impacts:
  - a. The Parties agree that the proposed Project would result in an adverse aesthetic impact under the Quechee test.
  - b. The Parties agree that the Project does not violate a clear written community standard in the New Haven Town Plan dated March 2011. The Scenic Resources section (page 22) identified Ethan Allen Highway (Route 17) as one of three "scenic corridors" in New Haven. The Parties were unable to find other documents describing these scenic corridors in any more detail. As the Plan's recommendations for these scenic corridors are neither specific, nor detailed, nor mandatory, the Parties concur that the Town Plan does not contain a clear written community standard.
  - c. The Parties agree that the Project will be noticeable and to some extent incongruous, but it would not rise to the level of "offensive" given the Project's significant setbacks and the mitigation measures outlined and agreed to in this MOU.
  - d. The Parties agree that the proposed Project will not result in undue adverse aesthetic impacts so long as the following conditions are met and such conditions are incorporated into a final order and certificate of public good:

- i. Roadside Hedgerow: The existing roadside hedgerow to the west of the Project is an important consideration in the context of aesthetic mitigation and should be left intact to the greatest extent possible. The Parties acknowledge, however, that this hedgerow is outside the Project area over which the Petitioner has site control. The Petitioner shall exercise care to maintain this existing hedgerow along Field Days Road during construction and operations. The Petitioner shall utilize the existing farm road access and shall minimize vegetation clearing to the minimum required to safely construct the Project.
- ii. Road Equipment: To the extent possible, all roadside equipment such as distribution poles, distribution transformers, distribution meters and associated equipment should be set back from Field Days Road and located behind the existing roadside hedgerow discussed at 4.d.i. above and consolidated to avoid visual clutter. The Petitioner shall use best efforts to screen any low equipment, such as the main power transformer, or switchgear.
- iii. Inverter Equipment: The Project inverters shall be a dark color, preferably a dark gray, so they are consistent with the dark color of the panels. Site preparation should ensure that the inverters are kept at as low a grade as possible.
- iv. Southern Hedgerow: The Petitioner shall leave the hedgerow along the southern property boundary intact and allow it to further develop and grow by maintaining an unmowed edge at least 15 feet wide (measured

from the property boundary and to the north of the existing hedgerow).

The Petitioner shall not remove any existing or future trees, shrubs, or other vegetation from the hedgerow unless it poses a danger to the Project. The Petitioner has site control over this hedgerow.

- e. Jean Vissering's prefiled testimony recommended that a post construction site visit be conducted to determine whether additional landscape mitigation along the northern property boundary would be appropriate. Ms. Vissering's testimony acknowledged that any additional plantings must not interfere with bird habitat or agricultural operations as outlined in the memorandum of understanding between the Petitioner and the Agency of Natural Resources (ANR MOU). The Parties agree that based on the ANR MOU, no mitigation plantings shall be performed within the Project fencing or within an approximately 8 acre portion of the Project area which is located outside of the Project fence and is depicted on Exhibit A to the ANR MOU as the "managed area." In addition, paragraph 3d of the ANR MOU sets forth ANR's goal to protect bobolink habitat. To ensure that goal is met, ANR will not permit the Petitioner to install landscaping on the northern boundary of the legal parcel on which the Project will be situated. As a consequence, the DPS and the Petitioner agree that additional landscape mitigation along the northern boundary is not a reasonable mitigation measure for this Project, and the Parties agree that a post construction site visit for the purpose of determining the appropriateness of additional landscape mitigation along the northern property boundary is not necessary.

5. With respect to system stability and reliability the Parties agree that:
  - a. The Project will have no adverse impacts on systems stability and reliability.
  - b. The Parties agree that it is appropriate, for the record, that the Petitioner procure a statement from GMP explaining why a System Impact Study was not required despite the failure of the Fast Track screening. The Petitioner agrees to file this information with the Board prior to commencing construction of the Project.
6. The Parties have made specific compromises to reach this MOU. This MOU is expressly conditioned upon the Board's acceptance of all of its provisions, without material change or condition. If the Board does not accept the MOU substantially in its entirety, the MOU shall, at the option of any party, be deemed to be null and void and without effect, and shall not constitute any part of the record in this proceeding and shall not be used for any other purpose. In the event any material modification or change is made to the MOU and a party exercises its option to void the MOU, each Party shall be placed in the position that it enjoyed in this proceeding before entering into the MOU.
7. Nothing in this MOU shall bind the Parties to take or refrain from taking any position on any issue not addressed herein, including any issue raised by any other party to this docket, or in any future docket.
8. The Parties agree that this MOU shall not be construed by any party or tribunal as having precedential impact on any future proceedings involving the parties,

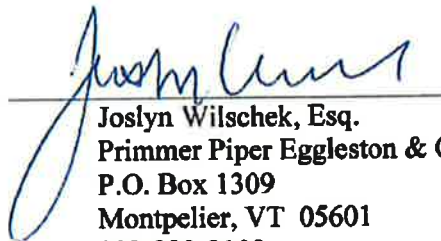
except as necessary to implement this MOU or to enforce an order of the Board resulting from this MOU.

9. This MOU is governed by Vermont law and any disputes under this MOU shall be decided by the Board.

Dated at Montpelier, Vermont, this 20<sup>th</sup> day of November, 2015.

PRIMMER PIPER EGGLESTON & CRAMER PC for  
PETITIONER


By:

  
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P.O. Box 1309  
Montpelier, VT 05601  
802-223-2102

Dated at Montpelier, Vermont, this 20<sup>th</sup> day of November, 2015.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By:

  
\_\_\_\_\_  
Jeannie Oliver, Esq.  
Vermont Department of Public Service  
112 State Street  
Montpelier, VT 05602