STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 17-4049-NMP

Petition of Acorn Energy Solar 2, LLC for a certificate of public good, pursuant to 30 V.S.A. §§ 248 and 8010, for a 150 kW (AC) group net-metered solar electric generation facility in Shoreham, Vermont	

Order entered: 07/26/2019

FINAL ORDER GRANTING NET-METERING CERTIFICATE OF PUBLIC GOOD

In today's Order, the Vermont Public Utility Commission adopts the findings, conclusions, and recommendations made in the Hearing Officer's proposal for decision.

PROPOSAL FOR DECISION

Contents

I. INTRODUCTION

This case involves an application ("Application") filed by Acorn Energy Solar 2 (the "Applicant") with the Vermont Public Utility Commission (the "Commission") for a certificate of public good ("CPG"), pursuant to 30 V.S.A. §§ 248 and 8010, to install and operate a 150 kW solar group net-metering system at 869 Watch Point Road in Shoreham, Vermont, which has been identified as a preferred site in letters of support by the Shoreham Select Board, the Shoreham Planning Commission, and the Addison County Regional Planning Commission (the proposed "Project").

Based on the findings made herein and subject to the conditions contained herein, I recommend that the Commission conclude that the Project complies with the requirements of Commission Rule 5.100, the Application satisfies the applicable criteria of 30 V.S.A. §§ 248 and 8010, and the Project will promote the general good of the State of Vermont.

II. PROCEDURAL HISTORY

On August 15, 2017, the Applicant filed an Application for the Project with the Commission.

Notice and copies of the application have been provided pursuant to Commission Rule 5.100. The deadline for filing comments or requesting a hearing in this matter was November 2, 2017. The deadline was extended to November 23, 2017, to allow one adjoining landowner, Tracy Perry, an opportunity to intervene and file comments.

On October 31, 2017, George and JoAnn Madison (the "Madisons"), Penny Campbell, and Ann Tanhauser filed comments. The Madisons also filed a notice of intervention as adjoining landowners.

On November 1, 2017, Bill and Meg Barnes (the "Barneses") filed comments and a notice of intervention. Therese and Timothy Holmes (the "Holmeses") also filed a notice of intervention.

On November 2, 2017, the Holmeses and the Madisons requested a hearing. Tracy Perry filed a notice of intervention. The Division for Historic Preservation ("DHP") and the Vermont Department of Public Service ("Department") filed comments.

On November 3, 2017, the Town of Shoreham Planning Commission filed a notice of intervention.

On November 22, 2017, Tracy Perry filed comments and requested a hearing.

On November 24, 2017, Tracy Perry filed additional comments.

On March 14, 2018, I issued an order granting party status to all parties that filed notices of intervention and granting hearing requests on the issues of orderly development, aesthetics, wetlands, and primary agricultural soils.

The following entities are parties to the proceeding: the Applicant; the Department; the Vermont Agency of Natural Resources ("ANR"); adjoining landowners Therese and Timothy

Holmes, George and JoAnn Madison, Bill and Meg Barnes, and Tracy Perry;[1] and the Shoreham Planning Commission.

On April 23, 2018, I convened a prehearing conference in the case and adopted the parties' agreed schedule.

From May 23, 2018, through August 20, 2018, the parties exchanged testimony and discovery requests and answers pursuant to the schedule for the proceeding.

On June 1, 2018, I conducted a site visit.

On July 23, 2018, the Applicant filed surrebuttal testimony that included proposed physical changes to the Project.

On August 3, 2018, the Intervenors filed objections to the Applicant's July 23 surrebuttal testimony and moved to dismiss the application because of the proposed changes.

On August 16, 2018, the Applicant filed an opposition to the Intervenors' motion to dismiss and withdrew the portions of its July 23, 2018, surrebuttal testimony that described the proposed physical changes.

On August 17, 2018, the Applicant filed supplemental surrebuttal testimony proposing new changes to the Project along with a motion for a minor amendment of the Project. On the same day, the Shoreham Planning Commission filed a response to the Intervenors' motion to dismiss.

On August 24, 2018, the Department filed a response to the Intervenors' motion to dismiss and the Intervenors filed a reply.

On August 29, 2018, the Intervenors filed a response opposing the Applicant's motion for a minor amendment.

On August 31, 2018, the Department and the Shoreham Planning Commission filed a response to the Applicant's motion for a minor amendment.

On September 7, 2018, I held an evidentiary hearing on the issues announced in my March 14, 2018, Order.

[1] The Holmeses, Barneses, and Madisons are jointly represented by counsel and, for the most part, jointly participated in the proceeding. Tracy Perry appeared *pro se* and participated separately. For the purposes of this proposal for decision, I refer to the Holmeses, Barneses, and Madisons collectively as the "Intervenors" when referring to their joint positions and refer to Mr. Perry separately.

On September 28, 2018, the Applicant, the Department, the Shoreham Planning Commission, and the Intervenors filed post-hearing briefs.

On October 12, 2018, the Applicant, the Department, the Shoreham Planning Commission, and the Intervenors filed reply briefs.

No other comments were filed.

The prefiled testimony and exhibits in this proceeding were entered into the evidentiary record at the evidentiary hearing on September 7, 2017.[2] Exhibit "Represented Intervenors Cross B" was also admitted during the evidentiary hearing.

I also propose to admit DHP's November 2, 2017, comments and request for a CPG condition; the email from L. Welts, ANR, to G. Freeman, dated 3/19/19, regarding tree clearing for the Project, included as an attachment to the letter from B. Marks to J. Whitney, filed in ePUC on 3/22/19; and the letter from A. Lougee, Addison County Regional Planning Commission, to J. Whitney, filed 9/6/18. Any objections to the admission of these exhibits should be included with the parties' comments on this proposal for decision.

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

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

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

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

[2] Tr. 9/7/18 at 7, 33; 17-4049-NMP Combined Testimony List for Technical Hearing, filed 9/6/18; Revised Joint List of Testimony and Exhibits, filed 9/6/18.

IV. SUMMARY OF PUBLIC COMMENTS

Tracy Perry, an adjoining landowner to the Project site, filed a comment raising concerns that he had been omitted from the list of persons receiving notice of the Project and requesting an extension of time to review the Application and determine whether he desired to file additional information. Mr. Perry's comment attached a copy of the comments that he submitted in a previous application for a project at the same location.[3] Mr. Perry ultimately intervened in the case.

Ann Tanhauser and Penny Campbell filed comments opposing the Project location. The comments included several attachments describing the scenic qualities and recreational activities in the Shoreham area that might be affected by the Project and discussed aesthetics and the requirements of the Shoreham Town Plan ("Town Plan"). Ms. Campbell's comments included photographs of the Project site from her property.

V. PRELIMINARY ISSUES

A. Required Application Information

The Intervenors argue that the original Project Application is deficient or lacks sufficient information to issue a CPG and ask that the Application be dismissed.[4] The Intervenors' arguments are based on the filing requirements for net-metering applications established by statute or by the Commission's rules. For the reasons explained below, I recommend that the Commission conclude that the arguments advanced by the Intervenors do not warrant dismissal of the Application.

[3] The prior project was CPG #NM-7099, application of Acorn Energy Cooperative for a certificate of public good for an interconnected net-metered 150 kW photovoltaic power system in Shoreham, Vermont. The application was dismissed without prejudice on June 27, 2016, due to Green Mountain Power Corporation reaching its 15 percent net-metering cap under 30 V.S.A. § 219a (h)(1)(a) (repealed Jan. 1, 2017).

[4] Many of these arguments are also raised in the Intervenors' Response in Opp. to Motion for Minor Amendment, filed 8/29/18, the resolution of which was deferred until after the evidentiary hearing. Order of 9/5/18 at 5.

1. Mitigation Plans, Aesthetic Testimony, and Elevation Drawings

The Intervenors argue that the Application should be dismissed because the Applicant has not submitted an aesthetic mitigation plan, testimony, or mitigation drawings that are sufficient to address aesthetic mitigation requirements under 30 V.S.A. § 248(b)(5).[5]

Commission Rule 5.800 requires mitigation plans that "include any generally available mitigating steps that a petitioner proposes to take to improve the harmony of the proposed facility with its surroundings, consistent with 30 V.S.A. § 248(b)(5)." Rule 5.800 also explains that a "final aesthetic mitigation plan shall consist of a site plan that depicts in detail the facility and all aesthetic mitigation as approved by the Commission." The Applicant's site plan includes the proposed aesthetic mitigation for the Project, which is an accepted format under Rule 5.800.[6]

The Intervenors also criticize the elevation drawings provided in Exhibit JM-3 because they show a cross-section of the array rather than an edge view. The cross-section drawings, the Intervenors argue, do not depict a view of the array that will actually be visible to a person viewing the Project.[7]

The Intervenors have not identified any requirement of Rule 5.107(C)(6) with which Exhibit JM-3 does not comply. Rule 5.107(C)(6) requires "two elevation drawings of the proposed structures drawn at right angles to each other" but does not specify that the elevation drawings must be of the edges of the proposed project. Exhibit JM-3 includes two sectional elevation drawings at right angles to each other. Section A-A depicts the height of the proposed soil storage berms relative to the solar panels and section B-B depicts the height of the Project relative to the surrounding trees as they presently exist. I conclude that the drawings submitted by the Applicant satisfy the requirements of Rule 5.107(C)(6).

The Intervenors also argue that the aesthetics evidence submitted by the Applicant is insufficient because of a lack of "photo simulations, photomontages, mock-ups, artist renderings, or any other materials" that show views of the Project with the proposed mitigation.[8] The sufficiency of the Applicant's aesthetics evidence is discussed below.[9] While photo simulations

---

[5] Post-Hearing Brief of Intervenors Holmes, Barnes and Madison ("Intervenor Br.") at 26, 81-82.
[6] *See* Exh. JM-2 (8/15/2017) (preliminary); exh. JM-2 (8/17/18).
[7] Intervenor Br. at 29.
[8] Intervenor Br. at 30.
[9] *See* findings 54-64.

that include proposed mitigation can be useful evidence for analyzing the aesthetic impact of a Project, the Commission's rules do not require them.[10] The Intervenors could have presented their own simulation photographs to show that the proposed mitigation was inadequate but did not do so.[11]

I recommend that the Commission conclude that the Application materials and evidence submitted during the proceeding satisfy the requirements of Commission Rules 5.107(C)(6) and 5.800. To ensure compliance with the proposed aesthetic mitigation described in Exhibit JM-2 (8/17/18), I also recommend that the Commission include its standard conditions related to aesthetic mitigation plans in any CPG that issues.

2. Limits of Disturbance, Drainage Plans, and Impact on Vegetation and Primary Agricultural Soils

The Intervenors argue that the Application should be dismissed because the Applicant has failed to provide a plan for draining surface or sub-surface water and erosion controls as required by Commission Rule 5.107(C)(5).[12]

Rule 5.107(C)(5) requires "[d]etailed plans for any drainage of surface and/or sub-surface water." Pursuant to this requirement, no plan is required if no drainage of surface or sub-surface water is proposed. The Applicant has not submitted a drainage plan because it is not proposing additional drainage infrastructure for the Project. The Applicant has addressed drainage-related issues, including how it will protect the Class III wetlands and prevent erosion on the Project site during construction.[13] The Applicant has also explained that an existing culvert under the access road will remain in place.[14] Because no additional drainage infrastructure is proposed, I find that these disclosures are sufficient for the requirements of Rule 5.107(C)(5).

---

[10] *See, e.g.*, Commission Rule 5.107(C)(7) ("The testimony and exhibits must contain sufficient facts to support a positive finding by the Commission under each of the applicable Section 248 criteria."); Rule 5.804(E) ("The final aesthetic mitigation plan shall consist of a site plan….").

[11] The record does include a partial photo simulation provided by the Intervenors, although the simulation does not include the mitigation proposed by the Applicant at that time. Exh. ML-02 at 25 (filed before the Applicant's 8/17/18 changes adding soil storage berms).

[12] Intervenor Br. at 31.

[13] Prefiled supplemental surrebuttal testimony of Karina Dailey, Applicant ("Dailey") (8/17/18) at 2; prefiled supplemental surrebuttal testimony of Jeremy Matosky, Applicant ("Matosky") at 5-6; tr. 9/7/18 at 68 (Matosky); exh. JM-6 (8/17/18).

[14] Exh. JM-2 (8/17/18); tr. 9/7/18 at 55 (Matosky).

The Intervenors also argue that the Applicant has failed to provide an accurate calculation of the limits of disturbance associated with the Project.[15] According to the Intervenors, the Applicant's revised site plan and description of the primary agricultural soil storage berms do not account for storing the primary agricultural soils that will be removed as part of the construction of the access road or the staging area for the Project.[16]

The revised site plan discloses a total disturbed area of 1.71 acres, including the "driveway/misc," array, and soil berms, along with the square footage to be seeded and mulched.[17] Neither the revised site map nor the prefiled testimony that accompanied it indicates that any soil will be removed in connection with the construction of the access road.[18] The Applicant also stated in its post-hearing reply brief that no soils will be removed for these areas.[19] ANR is a party to the proceeding, attended the evidentiary hearing, and has not raised any concerns regarding the construction stormwater permit that the Applicant has obtained for the Project or the amount of disturbed area disclosed on the site plan.[20]

The Intervenors' argument that the Applicant has not accurately disclosed the limits of disturbance is based on the testimony of two of the Applicant's witnesses, who agreed during cross-examination that approximately 500 cubic yards of primary agricultural soils would be removed during the construction of the access road.[21] This cross-examination relied on information provided by the Applicant during discovery that stated that the Applicant would be removing 533 cubic yards of loam in connection with the access road construction.[22] This information and the Applicant's testimony are inconsistent with the Applicant's revised site plan and the Applicant's representations in its reply brief, which states that the road will be constructed on "essentially what is in place now" and that "no soils will be moved from the site

---

[15] Intervenor Br. at 15, 33.

[16] *Id.* at 14-17, 33.

[17] Exh. JM-2 (8/17/18).

[18] *See id.* The "Typical Gravel Drive" inset shows "undisturbed subgrade of compacted fill."

[19] Acorn Energy Solar 2 LLC Reply Brief ("Applicant Reply Br.") at 3-4.

[20] If the Applicant's permit is no longer applicable due to the Project changes, the Commission's standard CPG conditions requires the Applicant to obtain all necessary permits "[p]rior to commencing site preparation or construction of the Project." *See also* exh. JM-7.

[21] Tr. 9/7/18 at 30 (Behn), 60 (Matosky).

[22] *Id.* at 60 (Matosky)("Q: In response to our discovery request Intervenors' petition question 1-80 you stated you would be stripping 533 cubic yards of loam off the driveway; is that correct? A: Okay. That sounds accurate."). *See also* Applicant Discovery Response to Represented Intervenors' First Set of Discovery Questions at 83, Q.Represented Intervenors: Petitioner.1-80 (filed 6/6/18).

as a result of access road construction."[23] The Applicant did not address the inconsistent testimony of its witness or its discovery response in its reply brief.

Although the Applicant has given inconsistent information regarding the construction of the access road, the Applicant has represented that the information on the site plan is correct and that it will not be removing any soils in connection with the construction of the access road or the construction staging area.[24] I recommend that the Commission conclude that the disclosures in the Applicant's revised site plans satisfy the requirements of Commission Rule 5.107(C)(5) and 30 V.S.A. § 248(a)(4)(J). To resolve the inconsistency in the Applicant's testimony, I recommend that the Commission also include a condition in any CPG that issues specifying that the construction of the Project and the areas of disturbance shall be in accordance with the final site plan submitted in this case (exh. JM-2) rather than any testimony provided.

3. Construction Traffic

The Intervenors argue that the Application should be dismissed because the Applicant's prefiled testimony includes an inaccurate description of the traffic and noise that will occur during the construction of the Project.[25] As the Intervenors explain, the Application only describes traffic impacts due to the delivery of materials during construction, but does not address any of the traffic associated with removing excavated material from the Project site that the Applicant described at the evidentiary hearing.[26]

The filing requirements in Commission Rule 5.107(C)(7) state that an Application must include "sufficient facts to support a positive finding" under the Section 248 criteria. Section 248(b)(5) requires the Commission to consider whether a project will "cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed."[27]

Pursuant to Commission Rule 5.107(D), the Commission conducts a preliminary review of applications for administrative completeness when filed pursuant to Commission Rule 5.107(D), including a review of whether an application sufficiently addresses the substantive

[23] Applicant Reply Br. at 3-4.
[24] *Id.*
[25] Intervenor Br. at 35.
[26] *See* tr. 9/7/18 at 29-31.
[27] *See* 30 V.S.A. § 248(b)(5); 10 V.S.A. § 6086(a)(5).

criteria of Section 248.[28] Commission Rule 5.107(D) also explains that an application can be complete enough to process but still require more information before a CPG issues.[29] If more information about a project is required, the Commission's rules allow for further development of the record by the Commission or by others through intervention and discovery.[30]

Pursuant to these rules, the Holmeses intervened in the case and identified a gap in the Application's description of how the Applicant would handle materials excavated from the Project site. The Holmeses requested a hearing on the issue under the primary agricultural soils criteria, which I granted.[31]

The discovery and hearing process in this case successfully developed the record regarding the Applicant's plan for handling excavated material on the Project site. The Applicant disclosed for the first time in its rebuttal testimony in August of 2018 that it would remove approximately 392 cubic yards of material from the Project site and store primary agricultural soils on site.[32] At the hearing, the Applicant's witnesses explained that removing material from the Project site would also result in an increase in the traffic to and from the Project site beyond what was described in the prefiled testimony filed with the Application.[33]

Although the description of construction traffic in the original Application was inaccurate, that description has been supplemented by the additional testimony and evidence developed during the proceeding and is considered below in connection with the transportation criterion.[34] Because the evidentiary record now includes a correct description of the traffic impacts associated with the Project and that description has been included in the evaluation of the Section 248 criteria below, I recommend that the Commission not dismiss the Application as requested by the Intervenors.

---

[28] *See, e.g.*, Memorandum re: Notice of Complete Petition, issued 9/26/17.

[29] Commission Rule 5.107(D) ("A determination that an application is administratively complete enough to process is not a legal determination regarding the sufficiency of the information included on the application.").

[30] Commission Rules 2.209, 2.214, 5.117, 5.118, and 5.119.

[31] *See* Order of 3/14/18 at 13 ("The Applicant has not explained what it will do with any prime agricultural soil that is excavated during construction . . . .").

[32] Matosky supp. surreb. pf. at 3-4. Mr. Matosky testified that the details of the soil storage plan had not been determined at the time the application was filed. Tr. 9/7/18 at 65-66 (Matosky).

[33] Tr. 9/7/18 at 29-31 (Behn), 52 (Matosky).

[34] *See* findings 49-51.

4. Decommissioning Plan and Act 250 Information

The Intervenors argue that the Application should be dismissed because the Applicant did not provide a decommissioning plan for the Project or Act 250 information regarding the Project site.[35]

Commission Rule 5.107(C)(12) does not require a decommissioning plan for projects of this size. Commission Rule 5.900 also applies and requires facilities to be removed once they are no longer in service and the site to be restored to its pre-installation condition to the greatest extent practicable.[36] This requirement will be incorporated into any CPG that issues, and the Applicant has stated that it agrees with the condition.[37]

Commission Rule 5.107 also requires the Application to include the number of any Act 250 Land Use Permit applicable to the host parcel and the approved site plan, as well as a document describing whether the proposed project will interfere with any Act 250 permit conditions "[i]f the host parcel is subject to an Act 250 Land Use Permit."[38] The Applicant has confirmed that the Project site is not subject to an Act 250 permit so no Act 250 number, site plan, or confirmation document is required by Commission Rule 5.107(C)(5).[39]

I recommend that the Commission conclude that the Applicant has provided all information required by the Commission's rules regarding decommissioning and Act 250 permit conditions.

5. Identity of Host Landowner

The Intervenors argue that the Application fails to identify the host landowner for the Project site.[40] Commission Rule 5.107(C)(2) requires applications to include the name and address of the legal owner of the property where a project is proposed.

The Application materials correctly identified Edwina Ho as the host landowner as required by Rule 5.107(C)(2), but included a lease agreement for the Project site identifying as grantors John Reynolds and Edwina Ho.[41] The Holmeses noted the inconsistency in their

---

[35] Intervenor Br. at 39.
[36] Commission Rule 5.904(A).
[37] *See* Section VII.
[38] Commission Rule 5.107(C)(2), (C)(5)(j), and (C)(13).
[39] *See* letter confirming no Act 250 permit, filed in ePUC on 9/14/18; tr. 9/7/18 at 219.
[40] Intervenor Br. at 40-41.
[41] *See* Prefiled testimony of Nils Behn, Applicant, ("Behn") at 4; exh. NB-7.

request for a hearing and I directed the Applicant to provide updated information for the host landowner.[42] The Applicant confirmed by letter that the information provided in its original prefiled testimony is correct and that the host landowner is Edwina Ho.[43]

I recommend that the Commission conclude that the Application satisfied the requirements of Commission Rule 5.107(C)(2) as originally filed.

6. Greenhouse Gas Emissions

The Intervenors argue that the case should be dismissed because the increased truck traffic associated with removing excavated material from the Project site will result in more greenhouse gas emissions than represented by the Applicant in the Application.[44] As discussed above in section V.A.3, the discovery process and hearing in this case developed the evidentiary record regarding the additional truck traffic required for construction. The impacts due to the additional traffic, including the impacts on greenhouse gas emissions, are considered below in connection with the air pollution and greenhouse gas emissions criterion.[45]

B. Proposed Amendment

The Applicant filed surrebuttal testimony on July 23, 2018, that included proposed changes to the Project layout. The Intervenors filed a motion to dismiss the Application in its entirety on the grounds that the proposed changes were a major amendment of the Application, which required the Applicant to withdraw and refile the Application under Commission Rule 5.108(B).[46] In response, the Applicant withdrew its proposed changes and filed revised proposed changes and a motion for a minor amendment on August 17, 2018.

The revised changes proposed by the Applicant relocate two mitigation maple trees to a location approximately 100 to 150 feet to the north at the request of the host landowner to avoid farm operations.[47] The proposed changes also add soil storage berms for primary agricultural soils along the western edge of the Project as well as under the rows of solar panels.[48] The soil

[42] Holmes Request for a Technical Hearing, filed 11/02/17, at 3-4; Order of 3/14/18 at 6.
[43] *See* Letter from B. Marks to J. Whitney filed April 27, 2018.
[44] Intervenor Br. at 41.
[45] *See* findings 27-29.
[46] Motion to Dismiss filed 8/3/18.
[47] Tr. 9/7/18 at 89 (Oxender); Prefiled supplemental surrebuttal testimony of Benjamin Oxender, Applicant (8/17/18) at 2-3; Behn supp. surreb. pf. (8/17/18) at 2.
[48] *Compare* exh. JM-2 (8/15/17), *with* exh. JM-2 (8/17/18). *See also* Matosky supp. surreb. pf. (8/17/18) at 3.

storage berm along the western edge moves the western edge of the Project by approximately 40 feet.[49] The rows of solar panels are also slightly wider and compressed within the existing Project footprint, which would increase the setback from the southern property boundary by 50 feet and reduce the area to be excavated.[50]

The Intervenors oppose the Applicant's motion for a minor amendment, arguing that the proposed changes are still a major amendment and that the Applicant must withdraw and refile the Application.[51] According to the Intervenors, the proposed relocation of two maple trees will change the limits of disturbance by more than 50 feet, which they argue is a major amendment under Commission Rule 5.103.[52] The Intervenors also argue that the proposed Project changes will result in additional changes to the limits of disturbance that have not been disclosed by the Applicant.[53]

The Applicant responds that the proposed changes are a minor amendment. The Applicant explains that there will be no undisclosed changes to the limits of disturbance associated with the temporary access road and construction staging area.[54] The Applicant also argues that the amendment should be viewed as minor because it does not change the nature of the Project despite the proposed relocation of the maple trees by more than 50 feet.[55] If the Commission disagrees, the Applicant requests a post-CPG planting plan requirement rather than dismissal as an appropriate resolution.

The Department agrees with the Applicant that the amendment should be viewed as a minor amendment. The Department explains that the relocation of the maple trees affects the aesthetic mitigation plan but does not change the boundary of the construction area, and the addition of the soil storage berms moves the limits of disturbance less than 50 feet.[56]

I recommend that the Commission conclude that the changes proposed by the Applicant are a minor amendment.

---

[49] Matosky supp. surreb. pf. (8/17/18) at 4; exh. JM-2 (8/17/18).
[50] Matosky supp. surreb. pf. (8/17/18) at 4; exh. JM-2 (8/17/18).
[51] *See* Intervenors' Response in Opp. to Motion for Minor Amendment, filed 8/29/18.
[52] Intervenor Br. at 11-13.
[53] *Id.* at 13.
[54] Applicant Reply Br. at 3-5.
[55] *Id.* at 7.
[56] Department's Br. at 4-5; Department's Response to Motion for Minor Amendment, filed August 31, 2018.

The Intervenors' argument about unspecified or undisclosed changes to the Project are based on an assumption that the Applicant will be excavating primary agricultural soils in connection with the construction of the access road and staging area.[57] As discussed above, this assumption is incorrect, and the Applicant will not be excavating any soil in connection with the access road and construction staging area.[58]

For the rest of the proposed changes, Commission Rule 5.103 defines major and minor amendments as follows:

> "Amendment" means one or more of the following changes to the physical plans or design of a net-metering system. An amendment is either "major" or "minor":
>
> (1) The following changes constitute a "major" amendment:
>
> (a) increasing the nameplate capacity of the net-metering system by more than 5% or reducing the nameplate capacity of the net-metering system by more than 60%;
>
> (b) moving the limits of disturbance by more than 50 feet;
>
> (c) changing the fuel source of the net-metering system; or
>
> (d) any other change that the Commission, in its discretion, determines is likely to have a significant impact under one or more of the criteria of Section 248 applicable to the net-metering system.
>
> (2) The following changes constitute a "minor" amendment:
>
> (a) proposing additional aesthetic mitigation; or
>
> (b) any other change to the physical plans or design of the system that is not a major amendment.

The soil storage berms and adjustment of the array rows move the limits of disturbance of the Project by less than 50 feet.[59] The storage berms also provide additional aesthetic mitigation for views of the Project from the west, offsetting some of the limited mitigation that the maple trees would have provided if left in the original proposed location.[60] The new proposed location

[57] Intervenor Br. at 13-16.
[58] *See* Section V.A.2.
[59] Matosky supp. surreb. pf. at 4; finding 62.
[60] Exh. MB-4; tr. 9/7/18 at 90 (Oxender); exh. ML-02 at 29.

of the two maple trees will provide limited additional aesthetic mitigation for views from the north, but the trees will be more than 50 feet from their original location.[61]

The proposed changes are not likely to have a significant impact under any of the applicable criteria of Section 248 compared to the original Application. The aesthetics of the Project are largely unchanged. Views from the west continue to be mitigated primarily by distance while views from the north benefit slightly from the addition of maple trees.[62] The Shoreham Select Board, the Shoreham Planning Commission, and the regional planning commission all continue to support the Project.[63] The soil storage berms will increase the impacts to primary agricultural soils slightly due to the compaction of the area on which the berms will sit but the berms will not affect the class III wetland in the Project area.[64] The proposed changes do not affect the Construction General Permit obtained for the Project and reduce the area that needs to be excavated for the Project.[65]

I conclude that none of the proposed changes fall within the definition of a major amendment with the exception of the relocated maple trees. Moving the limits of disturbance by more than 50 feet is defined as a major amendment and the trees will be moved more than 100 feet. However, the new location of the trees will also provide additional mitigation to views from the north, and proposing additional aesthetic mitigation is defined as a minor amendment. The relocation of the maple trees therefore also falls within the definition of a minor amendment.

I recommend that the Commission treat the relocated maple trees as a minor amendment because of the additional mitigating benefit that they provide and because the change is not likely to have a significant impact on any other Section 248 criteria. Treating the proposed changes as a minor amendment under these circumstances resolves any conflict in the definitions in a way that will encourage applicants to propose additional aesthetic mitigation measures during the application process. This approach is also consistent with the Commission's aesthetic

[61] Finding 63.
[62] Finding 62-63.
[63] *See* Letter from A. Lougee, Addison County Regional Planning Commission, to J. Whitney, filed 9/6/18; finding 15.
[64] Matosky supp. surreb. pf. (8/17/18) at 4; Dailey supp. surreb. pf. (8/17/18) at 2; tr. 9/7/18 at 68 (Matosky).
[65] Matosky supp. surreb. pf. (8/17/18) at 3-5; exh. JM-7.

mitigation rule, which contemplates evolving mitigation plans over the course of the CPG application process.[66]

The cases cited by the Intervenors do not require a different conclusion. Instead, the cases involved requests to change projects with issued CPGs without requiring an amendment under the controlling procedures at the time.[67] The Commission denied the requests, recognizing that permitting the parties to change projects without following the amendment procedures could affect the findings on which the parties' CPGs were issued. Here, the Applicant has filed a motion for an amendment with supporting testimony and evidence and is not seeking to avoid the amendment procedures of Rule 5.108. Also, no CPG has issued, allowing full consideration of the impact of the proposed amendment on the Section 248 criteria. For these reasons, I recommend that the Commission grant the Applicant's motion for a minor amendment.[68]

VI. FINDINGS

Pursuant to 30 V.S.A. § 8(c), and based on the record and evidence before me, I present the following proposed findings of fact to the Commission.

Description of the Project

1. The Project is a 150 kW (AC) ground-mounted, group net-metered solar generation facility to be located at 869 Watch Point Road in Shoreham, Vermont. Behn pf. at 2-3.

2. The area leased for the Project is approximately 2.8 acres with a total construction area of approximately 2.2 acres. Behn pf. at 4; exh. JM-2 (8/17/18).

3. The Project will disturb approximately 1.7 acres, including the Project footprint and an access road extending from an existing private driveway belonging to the property owner. The disturbed area will also include storage berms of varying heights for primary agricultural

[66] Commission Rule 5.800 (discussing "proposed" and "final" mitigation plans).

[67] *Request of Bethel Mills Electric LLC,* Docket 8844, Order of 4/13/17 at 6, 8; *Request of NT Sharon Management, LLC*, Case No. 18-1569-PET, Order of 6/21/18 at 2-3; *Petition of Londonderry Solar, LLC*, Case No. 18-2974-PET, Order of 9/5/18 at 2.

[68] The Applicant represents that it has provided its motion for a minor amendment and all accompanying materials to all persons and entities who were entitled to receive a copy of the original application as required by Commission Rule 5.108(A). Letter from B. Marks to J. Whitney, filed August 17, 2018. Only the Intervenors and the Department provided responses to the Applicant's motion within the 10-day period for filing comments or objections to proposed minor amendments.

soils disturbed during the grading of the Project area and areas of seeding and mulching. Matosky supp. surreb. pf. (8/17/18) at 3-4, 5; exh. JM-2 (8/17/18); exh. JM-3 (8/17/18).

4. The soil storage berms will store approximately 2,438 cubic yards of primary agricultural soil on the Project site. Two larger berms will run along the western edge of the Project site and will have a maximum depth of approximately eight feet. Smaller berms will run east-west between the rows of solar panels. Matosky supp. surreb. pf. (8/17/18) at 3, 5; exh. JM-2 (8/17/18); exh. JM-3 (8/17/18); exh. JM-9 (8/17/18).

5. The Project will require the removal of four large maple trees. Behn pf. at 5; exh. JM-2 (8/17/18).

6. Approximately 392 cubic yards of overburden soils (non-prime) will be removed from the site during construction. The Applicant has stated that the site is not appropriate for solar development with its current grade. Matosky supp. surreb. pf. (8/17/18) at 3; tr. 9/7/18 at 31 (Behn); 50-51, 54 (Matosky).

7. The Project components include: (a) approximately eight rows of fixed-tilt ground-mounted solar panels; (b) string inverters for an aggregate nameplate capacity of 150 kW (AC); (c) three pole-mounted transformers mounted on a new utility pole; (d) underground electrical lines enclosed in conduit between the Project and the new utility pole; and (e) overhead power lines connecting the new utility pole to an existing utility pole approximately 120 feet to the north of the Project on the same parcel. Prefiled testimony of Alan Gould, Applicant ("Gould") pf. at 2-3; Matosky supp. surreb. pf. (8/17/18) at 4; exh. JM-2 (8/17/18).

8. Project-related sound levels from the inverters and transformers are approximately 20 dBA at the nearest residence and approximately 33 dBA at the nearest property line according to a noise analysis performed by the Applicant. Matosky pf. at 8; exh. JM-2 (8/17/18); exh. JM-8.

9. The Project will be accessed by a temporary gravel access road approximately 500 feet in length and 15 feet wide extending from the existing private driveway The existing private driveway connects to Watch Point Road. The temporary gravel access road will be removed when construction is completed. Matosky pf. at 4, 5; exh. JM-2 (8/17/18).

Discussion

The Applicant has not proposed any restrictions on the hours of construction for the Project. The Commission, as a matter of practice, restricts construction activities for Section 248

projects to the hours between 7:00 A.M. and 7:00 P.M. Monday through Friday and between 8:00 A.M. and 5:00 P.M. on Saturdays, with no construction allowed on state or federal holidays or Sundays. I recommend that the Commission adopt these restrictions on the hours of construction for the Project consistent with past Commission practice to ensure that no undue adverse effect occurs with respect to sound.

Applicable Rate Adjustors

10. The Applicant has elected to transfer the Project's renewable energy credits ("RECs") to Green Mountain Power Corporation. Behn pf. at 7.

11. The Project will be located on a site identified in letters of support from the Shoreham Select Board, the Shoreham Planning Commission, and the Addison County Regional Planning Commission. Behn pf. at 4; exh. NB-2.

Discussion

The Intervenors dispute the validity of the joint letter of support from the Shoreham Select Board and the Shoreham Planning Commission that the Applicant relies on for preferred site status.[69] According to the Intervenors, the letter of support does not confer preferred site status because the preferred site definition in Commission Rule 5.103 did not exist at the time that the letter was signed.

The Shoreham Select Board and Planning Commission signed the letter on February 22, 2017, which is before the date that the definition "preferred site" included locations identified in letters of support from municipal legislative bodies and municipal and regional planning commissions.[70] Although the preferred site definition was not in effect when the letter of support was signed by the Shoreham Select Board and Planning Commission, the language had been published in the final proposed rule and the Shoreham Planning Commission was aware of the change.[71] The Shoreham Select Board and the Shoreham Planning Commission also reaffirmed their support of the Project location after the effective date of Rule 5.103 and the

[69] Intervenor Br. at 67-68.

[70] Exh. NB-2 (signed 2/22/17 by the chairs of the Shoreham Planning Commission and the Shoreham Select Board); Commission Rule 5.103 (defining "preferred sites" effective 7/1/17).

[71] *See* Final Proposed Rule 16P-062, filed with the Vermont Secretary of State on January 20, 2017; Exh. JBH-02, Attachment G (minutes from 2/16/17 meeting of the Shoreham Planning Commission noting a "change in the rules" regarding preferred sites).

definition of preferred sites.[72] For these reasons, I recommend that the Commission find that the letters of support from the Shoreham Select Board and the Shoreham Planning Commission are sufficient for preferred site status.

Pursuant to Commission Rule 5.127(C)(2), because the Project is less than or equal to 150 kW and is located on a "preferred site," a siting adjustor of plus one cent per kilowatt hour shall apply to all energy generated by the net-metering system for 10 years from the date the system is commissioned.

Because the Applicant has elected to transfer the ownership of the RECs generated by the net-metering system, the Project is entitled to receive a REC adjustor of plus three cents per kilowatt hour for 10 years from the date the system is commissioned, pursuant to Commission Rule 5.127(B).

The siting and REC adjustors will be stated in the Project's CPG, pursuant to Commission Rule 5.127(B)(2) and (C)(1).

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

12. The Project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.[73] This finding is supported by findings 13 through 19, below.

13. The Project site is in an agricultural use area that is not identified for conservation by the Town of Shoreham. Prefiled testimony of George Gross, Shoreham Planning Commission ("Gross") at 14.

14. The Town Plan includes standards for siting solar arrays within the Town of Shoreham (the "Aesthetic Guidelines") The Town Plan has been reviewed and approved by the Addison County Regional Planning Commission. Gross pf. at 4-5; exh. BO-5 at 5-7.

---

[72] Exh. GMG-3; exh. GMG-4.

[73] The application was filed on August 15, 2017, and was deemed complete on September 26, 2017. The Addison County Regional Planning Commission received a Certificate of Energy Compliance on November 6, 2018. Under 30 V.S.A. § 248(b)(1) and (b)(1)(C), the Commission gives due consideration to the regional plan.

15. The Shoreham Planning Commission, the Shoreham Select Board, and the Addison County Regional Planning Commission have provided letters supporting the Project. Exh. NB-2.

16. The Shoreham Planning Commission has concluded that the Project complies with the Aesthetic Guidelines. Gross pf. at 4; tr. 9/7/18 at 119 (Gross).

17. The Town of Shoreham is considering acquiring an interest in the Project. Tr. 9/7/18 at 119-120 (Gross).

18. In response to complaints by Ms. Holmes that the Shoreham Select Board and the Shoreham Planning Commission violated the requirements of Vermont's Open Meeting Law, both bodies ratified their support for the Project location as stated in the letters of support filed with the Project Application. Tr. 9/7/18 at 110 (Gross), 140 (Holmes); exh. TH-05; exh. GMG-3; exh. GMG-4; exh. NB-2.

19. The Project will not violate any land conservation measures contained in the Shoreham Town Plan or the Addison County Regional Plan. Gross pf. at 13; Oxender pf. at 4-7; exh. BO-5; exh. BO-7; exh. BO-8.

Discussion

Section 248(b)(1) requires the Commission to find that the Project

> will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.

The Shoreham Select Board, the Shoreham Planning Commission, and the Addison County Regional Planning Commission have all provided letters supporting the Project. The Shoreham Planning Commission has also stated that the Project meets the requirements of the Town Plan, including the "Aesthetic and Decommissioning Guidelines Regarding Commercial Solar Projects for the Town of Shoreham."[74]

The Intervenors advance several arguments why the Commission should disregard the recommendations of the Shoreham Planning Commission and evaluate the compliance of the Project with the Town Plan for itself. As an initial point, due consideration of the Shoreham

[74] Gross pf. at 4; tr. 9/7/18 at 119 (Gross); exh. BO-5 at 5-7. I refer to the appendix as the "Aesthetic Guidelines."

Planning Commission's recommendation is required under Section 248(b)(1). In the discussion below, I have addressed the Intervenors' arguments as going to the weight that should be given to the recommendation of the Shoreham Planning Commission in the orderly development analysis rather than whether that recommendation should be considered at all.

Open Meeting Law Violations

First, the Intervenors argue that the Town of Shoreham ("Shoreham") failed to follow the requirements of Vermont's "Open Meeting Law"[75] when deciding whether to support the Project location and determining the Project's compliance with the Town Plan.[76] I recommend that the Commission conclude that any violations of the Open Meeting Law by the Shoreham Select Board and Shoreham Planning Commission do not affect their recommendations supporting the Project.

In response to complaints by Ms. Holmes, the Town of Shoreham acknowledged that the meetings at which the Shoreham Select Board and the Shoreham Planning Commission decided to support the Project violated several requirements of the Open Meeting Law.[77] At subsequent meetings in February 2018, the Select Board and Planning Commission reconsidered and reaffirmed their support for the Project pursuant to the cure provisions of 1 V.S.A. § 314(b)(4).[78] Pursuant to Section 314(c), relief for any additional violations of the Open Meeting Law alleged by the Intervenors must be pursued in Superior Court, not at the Commission.

Failure to Engage in Notice, Hearing, and Findings Requirements

Second, the Intervenors argue that the Shoreham Planning Commission failed to follow the notice, hearings, and factual finding requirements set out in 24 V.S.A. § 4464.[79] According to the Intervenors, the Shoreham Planning Commission is acting as an appropriate municipal panel in applying the Aesthetic Guidelines and is therefore subject to the procedural requirements of Section 4464. The Shoreham Planning Commission disputes that the requirements of Section 4464 apply to the Shoreham Planning Commission's application of the

[75] 1 V.S.A. §§ 310-314.
[76] Intervenor Br. at 42.
[77] Exh. TH-05.
[78] Exh. GMG-3; exh. GMG-4.
[79] Intervenor Br. at 44.

Aesthetic Guidelines. The Shoreham Planning Commission also argues that the Commission's jurisdiction over Section 248 projects is not limited by the municipal review and approval process.[80]

The procedures described in 24 V.S.A. § 4464 apply to "appropriate municipal panels," such as development review boards that are established by municipalities to address zoning issues.[81] The Intervenors argue that the Shoreham Planning Commission's review of a solar project under the Aesthetic Guidelines is "an equivalent" to an appropriate municipal panel's review of a proposed development.[82] The Vermont Supreme Court, however, has explained that "24 V.S.A. § 4464 does not control" in CPG proceedings.[83] I recommend that the Commission conclude that the requirements of 24 V.S.A. § 4464 do not govern the Commission's due consideration of the Shoreham Planning Commission's recommendation under Section 248(b)(1).

Legal Authorization of the Shoreham Select Board and the Shoreham Planning Commission

Third, the Intervenors argue that Shoreham's letter of support for the Project lacks legal authorization because the letter was not signed by the full Select Board or the full Planning Commission and there is no evidence that it was authorized by a majority of either municipal body.[84] As explained above, the Shoreham Select Board and Shoreham Planning Commission ratified their support of the Project at meetings in February 2018. The Shoreham Planning Commission has also continued to support the Project through its participation in this proceeding. I recommend that the Commission conclude that the Shoreham Select Board and the Shoreham Planning Commission support the Project as stated in the joint letter.[85]

---

[80] Shoreham Planning Commission Reply Br. at 6.

[81] 24 V.S.A. § 4460(e) (listing review functions to be performed by appropriate municipal panels authorized by a municipality in the municipal bylaws).

[82] Tr. 9/7/18 at 207 (Hinds).

[83] *In re LK Holdings, LLC*, 2018 VT 109, ¶27, 201 A.3d 373. *See also* 24 V.S.A. § 4413(b) (exempting projects regulated under 30 V.S.A. § 248 from local zoning requirements).

[84] Intervenor Br. at 48.

[85] Exh. NB-02.

Compliance with the Town Plan

Fourth, the Intervenors argue that the Project does not comply with the Town Plan and they ask the Commission to reject the Town of Shoreham's recommendation of the Project.[86] According to the Intervenors, there is no evidence that the Shoreham Planning Commission considered the interests of adjoining landowners as required by the Town Plan or any of the other siting requirements contained in the Aesthetic Guidelines when deciding to support the Project. The Intervenors also argue that the Shoreham Planning Commission's support of the Project must be viewed with skepticism given Shoreham's interest in investing in the Project.[87]

The Aesthetic Guidelines describe themselves as an attempt to balance the interests of developers in siting solar projects and the Town in maintaining the aesthetics of its community.[88] The framework for achieving that balance includes criteria for assessing whether projects proposed anywhere within Shoreham's boundaries are on a "good site" or a "bad site."[89] The Aesthetic Guidelines also identify a list of "mitigation methods" that may be required by the Planning Commission.[90] The Planning Commission is responsible for applying the Aesthetic Guidelines and "has sole discretion in determining whether or not a proposed mitigation plan brings a solar project into conformity with the Aesthetic Guidelines."[91]

I conclude that the Intervenors place too much weight on the specific requirements of the Aesthetic Guidelines in their analysis of the orderly development criteria of Section 248. No one has argued that the Aesthetic Guidelines are land conservation measures entitled to due consideration under Section § 248(b)(1).[92] The Aesthetic Guidelines are not screening requirements of a municipal ordinance or bylaw adopted under Sections 2291(28) or 4414(15) of Title 24 requiring consideration under Section 248(b)(1)(B).[93] The Shoreham Town Plan is also

---

[86] Intervenor Br. at 56.
[87] *Id.* at 55.
[88] Exh. BO-5 at 5.
[89] *Id.* at 5, 6.
[90] *Id.* at 6-7.
[91] *Id.* at 5, 6.
[92] *See In re Vermont Elec. Power Co., Inc.*, Docket No. 6860, Order of 1/28/05 at 201-202 (explaining that land conservation measures "are those that are specifically directed toward land conservation, and not general policy statements that apply indiscriminately throughout the municipality.").
[93] *See, e.g.*, Intervenor Br. at 42, 45 ("The *Shoreham Town Plan Appendix A* is not a bylaw adopted under 24 V.S.A. § 4414(15).").

not entitled to substantial deference under Section 248(b)(1)(C) because it has not received an affirmative determination of energy compliance under 24 V.S.A. § 4352.

To the extent that the Commission must consider the Aesthetic Guidelines, it is through its due consideration of the Shoreham Planning Commission's recommendation. The Shoreham Planning Commission supports the Project and that support is based in part on the conclusion that the Project complies with the Town Plan and the Aesthetic Guidelines. The Shoreham Planning Commission is the entity tasked with making recommendations under the Aesthetic Guidelines and its conclusion that the Project complies with the Aesthetic Guidelines is supported by evidence submitted by multiple parties.[94] There is no evidence that the Shoreham Planning Commission's interest in investing in the Project has biased its conclusion and even the Intervenors' witness acknowledged that compliance with the Aesthetic Guidelines is an issue on which reasonable people may disagree and that the Commission must give due consideration to the recommendation of the Shoreham Planning Commission.[95]

Further, failing to comply with Shoreham's Aesthetic Guidelines is not dispositive of whether a project will unduly interfere with the orderly development of the region under Section 248(b)(1).[96] The Aesthetic Guidelines reflect Shoreham's attempt to balance its support of renewable energy projects within its municipal boundaries with its interest in preserving its landscape.[97] The Intervenors have identified the need for excavation, the loss of agricultural land, the lack of native plantings proposed as mitigation, and the higher burden on neighboring properties relative to the host property as examples of how the Project does not satisfy the Aesthetic Guidelines.[98] The issues identified by the Intervenors may relate to considerations deemed important by the Town of Shoreham, but the Intervenors have not shown that Shoreham's municipal considerations will also have regional impacts.[99]

---

[94] *See* BO-5 at 5 ("The Town of Shoreham Planning Commission is designated as the municipal body responsible for making recommendations to the Vermont [Public Utility Commission] with regard to applying these Aesthetic Guidelines to solar projects."). *See also* Gross pf. at 7-8; Oxender pf. at 4-5; exh. BO-5 at 6; exh. ML-03 at 7-8; tr. 9/7/18 at 22 (Buscher).

[95] Tr. 9/7/18 at 203, 206-207 (Hinds).

[96] *In re Petition of Rutland Renewable Energy, LLC*, 2016 VT 50, ¶9, 202 Vt. 59 ("We emphasize that the statutory requirement relates to the orderly development of the region, not to a particular municipality within the region.").

[97] Exh. BO-5 at 5.

[98] Intervenor Br. at 56-63.

[99] *Rutland Renewable Energy*, 2016 VT 50 at ¶9.

For the reasons above, I recommend that the Commission conclude that that the Project will not unduly interfere with the orderly development of the region and that the Intervenors have not shown that the Shoreham Planning Commission's recommendations should be disregarded.

Municipal Screening Requirements
[30 V.S.A. § 248(b)(1)(B)]

20. The Town of Shoreham has not adopted screening requirements for ground-mounted solar electric generation facilities pursuant to either 24 V.S.A. § 4414(15) or 24 V.S.A. § 2291(28) with which the Project would have to comply. Exh. JBH-02 at 1.

Impact on System Stability and Reliability
[30 V.S.A. § 248(b)(3)]

21. The Project will not have an adverse effect on system stability and reliability. This finding is supported by findings 22 through 24, below.

22. The Applicant submitted a complete interconnection application to GMP on June 27, 2017. The interconnection application was reviewed by GMP and GMP required a Feasibility Study for the Project. The Project will not have an undue adverse impact on system stability and reliability provided the Project and GMP implement the requirements of the Feasibility Study. Gould supp. pf. at 2; exh. AG-4 (12/26/17).

23. The required upgrades include installing transformers and increasing the generator reconnection time to six-and-one-half minutes. The Applicant must also do one of the following: include a recloser for the Project; certify that the Project is effectively grounded; or confirm that the Project will be disconnected within certain time periods under certain overvoltage conditions specified by GMP. The Applicant has stated that it will choose the third option and set the inverters to deenergize the system within the specifications provided by GMP. The Applicant agrees that the Project will be responsible for the cost of these necessary upgrades. Gould pf. at 4-5; exh. AG-4 (12/26/17) at 6, 12.

24. The Project will comply with the applicable electrical codes, including the National Electrical Code and the National Electrical Safety Code and current UL 1741 and IEEE 1547 standards. Gould pf. at 4; exh. AG-4 (12/26/17) at 5.

Aesthetics, Historic Sites, Air and Water Purity, the Natural Environment, the Use of Natural Resources, and Public Health and Safety
[30 V.S.A. § 248(b)(5)]

25. Subject to the conditions described below, the Project will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, or public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K), impacts on primary agricultural soils as defined in 10 V.S.A. § 6001, and greenhouse gas impacts. This finding is supported by findings 26 through 82, below.

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

26. The Project will not affect any outstanding resource waters as defined by 10 V.S.A. § 1424a(d) because there are no outstanding resource waters in the Project area. Dailey supp. pf. (4/28/18) at 4.

Air Pollution and Greenhouse Gas Impacts
[30 V.S.A. § 248(b)(5); 10 V.S.A. § 6086(a)(1)]

27. The Project will not result in undue air pollution or greenhouse gas emissions. This finding is supported by findings 28 and 29, below.

28. The Project will not produce emissions while operating. Tr. 9/7/18 at 41 (Behn).

29. There will be emissions associated with the construction of the facility, including delivery of equipment and the removal of excavated material, as well as emissions for periodic maintenance. These emissions will be similar to other construction projects of comparable size and will not be undue. Tr. 9/7/18 at 44 (Behn).

Discussion

The Intervenors raised concerns in their hearing requests that the Project would require blasting to remove bedrock in conjunction with the excavation and grading of the Project site. In response to those concerns, the Applicant stated that it "will conduct no blasting at the Project

site and no hearing is therefore required on the issue."[100] The Intervenors subsequently requested a CPG condition specifying that there will be no blasting on the Project site.[101] In light of the request and the Applicant's representation, I recommend that the Commission include a CPG condition prohibiting blasting in connection with the Project.

Water Pollution
[10 V.S.A. § 6086(a)(1)]

30. The Project will not result in undue water pollution. This finding is supported by findings 31 through 48, under the criteria of headwaters through soils, below.

Headwaters
[10 V.S.A. § 6086(a)(1)(A)]

31. The Project will not have an undue adverse effect on headwaters because the Project is not located in a headwaters area. Daily supp. pf. (4/27/18) at 4.

Waste Disposal
[10 V.S.A. § 6086(a)(1)(B)]

32. The Project will meet all applicable health and Vermont Department of Environmental Conservation regulations regarding the disposal of wastes and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Behn pf. at 14.

Water Conservation
[10 V.S.A. §§ 6086(a)(1)(C)]

33. The Project will not have an undue adverse effect on water conservation because the Project will not involve the regular use of water. Behn pf. at 14.

Floodways
[10 V.S.A. § 6086(a)(1)(D)]

34. The Project is not located within a floodway or floodway fringe and therefore will not restrict or divert the flow of flood waters, significantly increase the peak discharge of a river or

[100] Acorn Energy Solar 2, LLC Opposition to the Holmes and Madison Requests for a Technical Hearing, filed 11/17/17, at 17.
[101] Holmes Opposition to Petitioner's Motion to Restrict Intervenor Participation, filed 11/30/17, at 16.

stream within or downstream from the Project, or endanger the health, safety, or welfare of the public or of riparian owners during flooding. Matosky pf. at 6; exh. JM-5.

Streams
[10 V.S.A. § 6086(a)(1)(E)]

35. The Project will not have an undue adverse effect on streams because there are no streams in the Project area. The nearest stream is approximately 1,189 feet to the west of the Project area. Dailey pf. at 4-5.

Shorelines
[10 V.S.A. § 6086(a)(1)(F)]

36. The Project is not located on or near a shoreline. Dailey pf. at 5.

Wetlands
[10 V.S.A. § 6086(a)(1)(G)]

37. The Project will not have an undue adverse effect on wetlands. This finding is supported by findings 38 through 42, below.

38. The Project is not located in or adjacent to a Class I or Class II wetland or associated wetland buffer. Dailey pf. (4/28/18) at 5; exh. KD-5.

39. There are two Class III wetlands on or near the Project site. Class III wetlands are not regulated by the State of Vermont and the Project does not require a wetland permit. Dailey pf. at 5-6; exh. KD-6.

40. The Class III wetlands are located in a field that is currently used for agricultural purposes, including livestock grazing and hay production. Dailey pf. at 6; exh. Intervenor Cross B; tr. 9/7/18 at 32 (Behn).

41. No fill or grading will occur in the Class III wetlands on the Project site. Helical posts to support the solar panels will be installed in one of the Class III wetlands. The Class III wetlands will be protected by reinforced silt fences to prevent the erosion of stored prime agricultural soil into the wetland area. Dailey supp. surreb. pf. (8/17/18) at 2.

42. The Applicant applied for a permit from the Army Corps of Engineers to construct the Project in the Class III wetland. The Army Corps of Engineers visited the Project site and determined that the Class III wetland in which the Applicant will install support posts is non-

jurisdictional due to its isolation and does not require a general permit. Dailey surreb. pf. (7/23/18) at 2-3, 6-7.

Discussion

The Intervenors argue that the evidence does not support a positive finding under the natural environment criteria of Section 248(b)(5) due to the impact of the Project on wetlands. According to the Intervenors, the excavation required for the preparation of the Project site will require the removal of substantial bedrock material, which may affect the Class III wetland areas on the Project site and extending onto the neighboring Holmes property.[102] Potential effects of removing the bedrock identified by the Intervenors include increased water flow in areas of disturbance and the destruction of the wetland areas due to the draining caused by excavation.[103]

Neither ANR nor the Army Corps of Engineers has expressed concern about the Project's impact on the Class III wetlands under State or Federal requirements. In addition to agreeing with the wetland delineation performed by the Applicant's wetland witness, ANR also reviewed the Project site for evidence of amphibian breeding habitats or other wetland species and concluded that the wetland areas did not provide a high-quality amphibian breeding habitat.[104] The wetlands are not currently well-protected and are used for agricultural purposes including livestock grazing.[105]

The Intervenors' wetlands witness identified potential effects of the Project on wetlands due to the disturbance of what he believes is a bedrock ridge located on the Project site that channels a shallow groundwater flow.[106] The witness's opinion about the bedrock ridge is not based on tests performed at the Project site. The witness explained that he did not enter the host property and did not perform the tests that he believes should have been performed.[107]

In contrast, the Applicant's wetland witness did evaluate the Project site and testified that nothing she found would lead her to believe that the removal of the ridge would affect the wetland areas.[108] The Applicant's wetland witness did acknowledge, however, that her auger

---

[102] Intervenor Br. at 88-89.
[103] *Id.* at 92, 95.
[104] Exh. KD-10.
[105] Finding 40; tr. 9/7/18 at 100 (Dailey).
[106] Exh. SR-02 at 1-2.
[107] Tr. 9/7/18 at 136-137 (Revell); exh. SR-02 at 2.
[108] Tr. 9/7/18 at 102 (Dailey).

samples were met with rock refusal in the upland area of the Project site, which is consistent with the belief of the Intervenors' witness that the ridge may be bedrock.[109]

Although there is conflicting evidence in the record, the opinion of the Applicant's witness is based on a review of the Project site and is consistent with the conclusions reached by ANR and the Army Corps of Engineers. I recommend that the Commission conclude that the Project will not have an undue adverse effect on wetlands.

Sufficiency of Water and Burden on Existing Water Supply
[10 V.S.A. §§ 6086(a)(2) and (3)]

43. The Project will not cause an unreasonable burden on an existing water supply because the Project will not involve the regular use of water. Behn pf. at 14-15; tr. 9/7/18 at 43-44 (Behn).

Soil Erosion
[10 V.S.A. § 6086(a)(4)]

44. The Project will not cause undue soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results. This finding is supported by findings 45 through 48, below.

45. The total amount of earth disturbance associated with the Project will be approximately 1.71 acres. The Project will add no new permanent impervious surface at the site. Any new impervious surface due to the construction of the temporary access road will be removed after construction. Matosky supp. surreb. pf. (8/17/18) at 4; exh. JM-2 (8/17/18); Behn pf. at 7.

46. The Project will require a Vermont Construction General Permit based on the amount of earth disturbance associated with the Project but will not require a Stormwater Discharge Permit. The Applicant has obtained the Construction General Permit. Matosky supp. surreb. pf. (8/17/18) at 5; exh. JM-7.

47. The Project will be constructed in accordance with the Vermont Standards & Specifications for Erosion Prevention and Sediment Control. Matosky supp. surreb. pf. (8/17/18) at 5-6.

[109] *Id.* at 95-96 (Dailey).

48. The soil storage berms will be secured with erosion control matting and silt fencing until vegetation is reestablished. Tr. 9/7/18 at 68 (Matosky), 93-94 (Dailey); Dailey supp. surreb. pf. (8/17/18) at 2.

Transportation
[10 V.S.A. § 6086(a)(5)]

49. The Project will not result in undue traffic or congestion. This finding is supported by findings 50 and 51, below.

50. The Project will only cause an increase in traffic for a short duration during construction. Behn pf. at 15-16.

51. During construction, traffic will include standard 40- to 53-foot trailers, delivering materials to the Site. Traffic will also include approximately 25 dump-truck loads removing non-prime soils from the Project site over the course of the construction period. Project construction traffic will be similar to any construction project of comparable size. Behn pf. at 15; tr. 9/7/18 at 29-31, 44 (Behn), 54 (Matosky).

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

52. The Project will not place a burden on the ability of a municipality to provide educational services because the Project will not require or affect educational services. Behn pf. at 16.

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

53. The Project will not place an unreasonable burden on the ability of the affected municipality to provide municipal or government services because the Project will not require or affect local services. Behn pf. at 16.

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

54. The Project will not have an undue adverse impact on aesthetics or on the scenic or natural beauty of the area, nor will the Project have an undue adverse effect on historic sites or rare and irreplaceable natural areas. This finding is supported by findings 55 through 69, below.

Aesthetics

55. The Project site occupies a portion of a farm pasture approximately 500 feet south of Watch Point Road. The Project site is screened from views from the east by existing vegetation. Oxender pf. at 8; exh. BO-2 at 3, 5, 7; Buscher pf. at 2.

56. The closest views of the Project from a public vantage point will be from Watch Point Road to the north. These views are mostly open but will be partially broken up by residences, other buildings, two maple trees proposed as mitigation, and existing trees during leaf-on conditions. Exh. MB-03; tr. 9/7/18 at 18 (Buscher); Buscher pf. at 2; exh. BO-2 at 3, 5.

57. Watch Point Road and Basin Harbor Road are in an area frequented by cyclists and walkers and are included on the state bicycle route map. Prefiled Testimony of Margaret Barnes, Adjoining Landowner ("Barnes") at 5; prefiled testimony of Joann Madison, Adjoining Landowner ("Madison") at 6-7; tr. 9/7/18 at 82 (Oxender); exh. JM-4; exh. TH-01.

58. Public views of the Project from the northwest and west along Watch Point Road and Basin Harbor Road are across open pasture but at increasing distances (exceeding 1,500 feet along Basin Harbor Road to the west). Views from these vantage points also include large agricultural structures, including a two-story barn with a metal roof and two white silos. Exh. MB-03; tr. 9/7/18 at 18, 22 (Buscher); exh. ML-02 at 9-10, 12-13, 19-21, 23-25; Buscher pf. at 2.

59. The Project will be directly visible from areas of the adjoining property to the south, which belongs to the Holmeses. The Holmeses owned the parcel on which the Project is proposed before subdividing and selling the property and relocating in connection with a job transfer in 2004. Prefiled testimony of Therese Holmes, Adjoining Landowner ("Holmes") at 4; exh. ML-02 at 28; exh. ML-03 at 12.

60. The Holmeses currently live in South Carolina and there is no residence on their property in Shoreham. The Holmeses visit their property when they return to the area and plan to build a home and retire on the property. At the time of the evidentiary hearing, the Holmeses had not hired an architect or applied for any building, well, or wastewater permits. The Holmeses have inquired with the State of Vermont about the wastewater permitting process. Holmes pf. at 4; tr. 9/7/18 at 141-143 (Holmes); exh. ML-02 at 28.

61. The Project will have an adverse impact on the aesthetics of the area. Buscher pf. at 2; exh. ML-02 at 24; exh. BO-2 at 8.

62. The views of the Project from the northwest and west are mitigated by distance, several interspersed trees, and existing vegetation behind the array. Soil storage berms along the west side of the Project will provide additional mitigation of the view from Basin Harbor Road. Buscher pf. at 2-3; exh. MB-4; tr. 9/7/18 at 179 (Lawrence); exh. ML-05; Oxender supp. surr. pf. (8/17/18) at 3; exh. JM-3.

63. The Applicant's proposed screening includes planting two pairs of sugar maples located to the north and northwest of the Project and extending a cedar hedge also to the north of the Project. This screening will mostly screen views from a historic structure on the host property and from Watch Point Road to the north. Oxender supp. surr. pf. (8/17/18) at 2-3; tr. 9/7/18 at 90, 91 (Oxender); exh. JM-2 (8/17/18); Buscher pf. at 2; Behn supp. surreb. pf. (8/17/18) at 2.

64. The Applicant has not considered alternative locations because the current location is the only location the host landowner will allow for the Project. Tr. 9/7/18 at 34 (Behn).

Discussion

The Commission applies the so-called "Quechee test" to determine whether a proposed energy facility satisfies the aesthetics criterion contained in 30 V.S.A. § 248(b)(5). The first step of the test is to determine whether the project would have an adverse impact on aesthetics and the scenic and natural beauty of an area because it would not be in harmony with its surroundings. If the answer is no, then the project satisfies the aesthetics criterion.

If a project will have an adverse effect on aesthetics, the adverse impact will be found to be undue if any one of the three following questions is answered affirmatively: (a) Would the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? (b) Would the project offend the sensibilities of the average person? (c) Have the applicants failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings?

A project has an adverse effect on aesthetics if it would be out of character with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space.

All parties agree that the Project will have an adverse effect on aesthetics.[110] I agree that the Project will have an adverse impact due to its proposed location in an open, rural setting and because it will be visible from surrounding public roads.

Because the aesthetic impact of the Project will be adverse, the aesthetics analysis continues to the second part of the Quechee test to evaluate whether the impact of the Project will be unduly adverse. The first step is evaluating whether the Project would violate a clear, written community standard intended to preserve the aesthetics or scenic natural beauty of the area. The Applicant argues that ambiguities in the Aesthetic Guidelines prevent them from being clear, written community standards for the purpose of the aesthetics analysis.[111] The Department states that it found no violation of a clear, written community standard.[112] The Intervenors argue that the Project will violate the Aesthetic Guidelines in the Shoreham Town Plan, which are clear, written community standards.[113]

To be a "clear, written community standard" under the Commission's precedent, a standard "must be 'intended to preserve the aesthetics or scenic beauty of the area' where the proposed project would be located and must apply to specific resources in the proposed project area."[114] The Aesthetic Guidelines in the Shoreham Town Plan describe themselves as "community standards" but do not identify any specific resources for protection.[115] Instead, the Aesthetic Guidelines provide general siting criteria for solar projects that are applied on a case-by-case basis by the Shoreham Planning Commission with a goal of minimizing the impacts on "the aesthetics of the rural countryside [the] plan intends to protect."[116] The Aesthetic Guidelines do not "identify designated areas and resources that need protection."[117]

The Aesthetic Guidelines also include inconsistencies that prevent them from being clear community standards. For example, Section 4.d states that projects that do not conform with the Aesthetic Guidelines must develop a mitigation plan that includes the mitigation actions outlined

---

[110] *See* finding 61.
[111] Applicant Br. at 31.
[112] Brief of the Vermont Department of Public Service filed 9/28/18 ("Department Br.") at 3.
[113] Intervenor Br. at 73.
[114] *Petition of Apple Hill Solar LLC*, Docket 8454, Order of 9/26/18 at 42 (quoting *In re Halnon*, NM-25, Order of 3/15/01, at 22).
[115] Exh. BO-5 at 62.
[116] *Id.*
[117] *Rutland Renewable Energy*, 2016 VT at ¶19.

in Section 5. The Aesthetic Guidelines assign to the Shoreham Planning Commission the sole discretion to determine whether a proposed mitigation plan brings a solar project into conformity.[118] Section 5, however, states that the listed mitigation actions apply to "all project sites," not just projects that do not conform to the Aesthetic Guidelines.[119] Here, the Shoreham Planning Commission has resolved the inconsistency by concluding that the Project complies with the Aesthetic Guidelines.[120]

For the above reasons, I recommend that the Commission find that the Project will not violate a clear, written community standard.

The second step in evaluating whether the Project will have an undue adverse aesthetic impact is to determine whether the Project will offend the sensibilities of the average person. The Applicant argues that the Project will not be offensive to the average person because of the setbacks, planned mitigation, and existing structures and vegetation.[121] The Department agrees.[122] The Intervenors have not addressed the issue.

The average person's views of the Project from the west and northwest will be at distances of up to 1,500 feet along Basin Harbor Road and the intersection with Watch Point Road.[123] From these vantage points, views of the Project will be partially obscured by the soil storage berms, which will eventually be covered with vegetation, and will also include the agricultural structures present on the host property.[124] Some open views of the Project will remain from Watch Point Road to the north, although the open views will be broken up by existing and proposed vegetation and existing structures.[125] Most views of the Project from public and private vantage points will also include views of the agricultural buildings and farm operations on the host property.[126] For these reasons, I recommend that the Commission conclude that the Project will not offend the sensibilities of the average person.

---

[118] Exh. BO-5 at 6 (Section 4.d).
[119] *Id.* (Section 5).
[120] *See* finding 16.
[121] Applicant Br. at 30.
[122] Department Br. at 3-4.
[123] Finding 58.
[124] Findings 48, 62.
[125] Finding 56.
[126] Finding 58.

The third step in evaluating whether the Project will have an undue adverse aesthetic impact is to determine whether the Applicant failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings.

The Applicant argues that its cooperation with the Town of Shoreham on site selection, the increased setbacks, and the soil storage berms all demonstrate that it has taken generally available reasonable mitigating steps.[127] The Town of Shoreham and the Department agree that the proposed mitigation is reasonable.[128] The Department's aesthetics witness initially suggested that the Project would benefit from additional screening for views from the north, but later agreed that the revised site plan submitted by the Applicant provided sufficient screening and that the Project was in a good location given the setbacks and the existing structures on the property.[129]

The Intervenors do not agree that the mitigation proposed by the Applicant is reasonable.[130] The Intervenors compare the mitigation proposed by the Applicant with mitigation approved by the Commission in connection with other solar projects.[131] The Intervenors also note that the Applicant has proposed no mitigation to the south of the Project for views from the Holmes property and question the reasonableness of the mitigation provided by the soil storage berms along the western edge of the Project.[132]

The Intervenors argue that the reasonable person standard requires more mitigation than the Applicant has proposed, but they have not identified any specific mitigation that would satisfy their objections. The Intervenors' aesthetics witness stated generally that "[a] reasonable person would have proposed a more robust landscape plan to protect meadow views from the west and northwest" and that "[a] reasonable person would be aware that the project will have an impact on the next-door neighbor and provide mitigation."[133]

---

[127] Applicant Br. at 29.
[128] Department Br. at 4; Exh. MB-4; exh. NB-2; tr. 9/7/18 at 119 (Gross).
[129] Buscher pf. at 2; Exh. MB-4; tr. 9/7/18 at 22 (Buscher) (noting the presence of metal buildings, a barn, silos, sheds, fences, and an electrical line).
[130] Exh. ML-02 at 29; Intervenor Br. at 79-80, 82.
[131] Intervenor Br. at 73-79.
[132] *Id.* at 82.
[133] Exh. ML-02 at 29.

The Intervenors did suggest relocating the Project to a specific alternative location on the host landowner's property.[134] The Applicant has represented that it does not have access to the alternative site because the current location is the only location that the host owner will lease for the Project.[135] The Intervenors have not presented any evidence contradicting the Applicant's representation.

Tracy Perry requested specific mitigation in his comments filed on November 22, 2017, and reiterated that request on April 17, 2019.[136] Mr. Perry explained that he would support the Project if the Applicant agreed to include a double row of evergreen plantings along the entire west side of the array and agreed not to expand the project. According to Mr. Perry, these conditions are necessary because "Acorn/Aegis will likely want to expand the footprint of the project in the future once the existing project is operational."[137] Mr. Perry's property is approximately a half-mile from the Project site.[138] The Applicant has not agreed or responded to Mr. Perry's proposal.

Regarding the Intervenors' reliance on prior Commission orders, I do not agree that mitigation approved by the Commission in other cases is indicative of the level of mitigation that is reasonable here because every project involves unique considerations. For example, the mitigation required in several of the orders cited by the Intervenors was the product of agreements reached by some of the parties to those proceedings.[139] The Commission approved the proposed mitigation but might have required something different if the Commission had resolved the dispute on its own. The parties have not presented any agreed-upon mitigation here.[140]

I conclude that the aesthetic mitigation proposed by the Applicant is reasonable. The open public views from the west and northwest are mitigated by distance and some vegetation.[141]

---

[134] *Id.* at 29-30.

[135] *See* finding 64. *See also Application of Orchard Road Solar I, LLC*, CPG No. 16-0042-NMP, Order of 7/20/18 at 6 (noting that the applicant had identified and evaluated two alternative sites).

[136] T. Perry Comments, filed 11/20/17, at 2; T. Perry Comments, filed 4/17/19, at 1.

[137] T. Perry Comments, filed 4/17/19, at 1.

[138] Exh. ML-03 at 3.

[139] *See, e.g.*, *Application of Sun CSA 20, LLC*, CPG #NM-6159, Order of 8/21/15 at 3; *Application of Sun CSA 32, LLC*, CPG # NM-5523, Order of 4/16/15 at 8; *Application of Aegis Renewable Energy, Inc.*, CPG # 16-0023-NMP, Order of 8/11/16 at 6, 11.

[140] Exh. ML-02 at 29; tr. 9/7/18 at 145 (Holmes); Applicant Reply Br. at 18.

[141] Findings 62-63.

All parties agree that the soil storage berms will provide some mitigation for views of the Project from the west by blocking the visibility of the array supports and making the array appear shorter.[142] Because the Project site is situated near the top of a rising hillside, views from the west along Basin Harbor Road will look up at the Project giving the soil storage berms more of a screening effect.[143] Some open views remain from the north with intermittent mitigation due to existing structures and vegetation as well as proposed plantings.[144] Mr. Perry's proposed double row of plantings would provide additional mitigation of the views from the west and northwest, but those views are already adequately mitigated by distance.[145]

The Applicant has not proposed any mitigation for views from the Holmeses' property to the south. Although the views from the south are from private property, the Vermont Supreme Court has explained that the Commission "can and should consider all vantage points, including from private property" when evaluating the aesthetic impact and the reasonableness of mitigation.[146] Commission Rule 5.112(D) also explains that "the Commission will consider the perspective of an average person viewing the project from both adjoining residences and from public vantage points."

The Holmeses' property to the south is a 33-acre parcel that is currently leased for hay production.[147] The Holmeses have stated that they intend to build a residence on the property, but have not yet taken concrete steps to do so.[148] The view of the average person for the purpose of this analysis, therefore, is from the Holmeses' open field.

The Project will be 166 feet from the Holmeses' property boundary.[149] This setback exceeds the 25-foot setback requirement for a project of this size, but the Project will still be openly visible from the Holmeses' property.[150] The initial revised site plan filed by the Applicant on July 23, 2018, included soil storage berms on the southern edge of the Project

[142] Oxender supp. surr. pf. (8/17/18) at 3; tr. 9/7/18 at 90 (Oxender), 174-75 (Lawrence); exh. ML-04; exh. ML-05; exh. MB-4.
[143] Tr. 9/7/18 at 175 (Lawrence); exh. ML-04; exh. ML-05.
[144] Findings 62-63.
[145] Exh. ML-03 at 7-11.
[146] *Rutland Renewable Energy*, 2016 VT at ¶21.
[147] Holmes pf. at 4-5.
[148] Finding 60.
[149] Exh. JM-2 (8/17/18).
[150] *See* ML-03 at 12; BO-4 at 6-7.

boundary that would have provided some mitigation of views from the Holmeses' property but that site plan was withdrawn in response to the Intervenors' objections.[151] The Holmeses have not described or discussed any specific additional mitigation along their property boundary that they would find satisfactory.[152]

The Applicant is not required to eliminate all visibility of the Project but must provide sufficient mitigation to prevent the Project from having an unduly adverse aesthetic impact.[153] Here, there are no specific views from the Holmeses' property for the Applicant to mitigate. Unless the Applicant eliminates visibility from every possible viewpoint on the Holmeses property, screening in one location will likely leave open views from another.[154] I conclude that requiring the Applicant to mitigate unknown viewpoints, or all viewpoints, from the Holmeses' property is not reasonable and recommend that the Commission not require any additional mitigation of the views from the Holmeses' property.

Historic Sites

65. The Project will not have an undue adverse effect on historic properties. This finding is supported by findings 66 through 69, below.

66. The Project site is not archaeologically sensitive, and the Project does not have the potential to affect below-ground historic resources. Exh. NB-6 at 2.

67. The Project will have an adverse visual effect on one historic property listed on the State Register of Historic Places, the "Fry Residence." DHP has requested a vegetative screen to minimize the adverse aesthetic effects on the Fry Residence and the Applicant has agreed. Exh. NB-6; DHP 11/2/17 Comments (exh. BO-11); Behn pf. at 13.

68. The Project has potential visual effects on two additional historic properties listed in the State Register of Historic Places. DHP concluded that the Project "will not create significant intrusions into the public views of these historic buildings and that the scale of the [P]roject when viewed from these resources will not impair the viewshed nor overwhelm the historic resources or their setting." Exh. NB-6 at 2; exh. ML-03 at 7; exh. ML-05.

---

[151] *See* Oxender surr. pf. (7/23/18) at 3; exh. JM-2 (7/23/18); Intervenors' Motion to Dismiss filed 8/3/18.
[152] Exh. ML-02 at 29-30; exh. ML-03 at 13; tr. 9/7/18 at 145 (Holmes).
[153] *Application of Sun CSA 6*, CPG #NM-4188, Order of 9/10/14 at 5.
[154] Applicant Reply Br. at 17-18.

69. One of the two additional historic properties discussed by DHP belongs to Tracy Perry (Number 3 on the Town of Shoreham State Register Map) and is approximately a half mile away from the Project site to the west-northwest. Exh. NB-6 at 2; prefiled testimony of Tracy Perry, Adjoining Landowner ("Perry") at 3-4; exh. TP-1; exh. ML-03 at 3, 7; exh. ML-05.

Discussion

DHP has requested a CPG condition requiring the Applicant to extend an existing cedar hedge to screen views of the public from the historic Fry Residence and the Applicant has agreed to the requested condition. I recommend that the Commission include the requested condition in any CPG that issues.

As discussed above, Tracy Perry requested additional mitigation in his comments filed on November 22, 2017, and April 17, 2019.[155] The revisions to the site plan relocating two proposed maple trees and adding soil storage berms maintain some mitigation of the views from Mr. Perry's property approximately a half-mile away, but the Project will remain visible.[156]

Based on the proposed mitigation, the distance of the Project from Mr. Perry's residence, and DHP's conclusion as to the limited impact of the Project on the historic resources including Mr. Perry's residence, I recommend that the Commission conclude that the Project will not have an undue adverse impact on historic sites.

Rare and Irreplaceable Natural Areas

70. The Project will not have an undue adverse effect on rare and irreplaceable natural areas because there are no rare and irreplaceable natural areas within the Project area. Dailey supp. pf. (4/27/18) at 8.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

71. The Project will not have an undue adverse effect on any endangered species or critical wildlife habitat. This finding is supported by findings 72 through 74, below.

72. The Project site does not contain any necessary wildlife habitats. Dailey pf. at 6.

---

[155] *See* footnotes 136-138 and related discussion.

[156] *See* Exh. ML-02 at 24-25; exh. ML-05.

73. The Applicant found no rare, threatened, or endangered plant species on the Project site. Dailey pf. at 7.

74. Two endangered mammals, the Indiana bat and the northern long-eared bat, have been documented in the Addison county area, but the trees to be removed as part of the project are not likely to be roost trees or foraging habitat. ANR has not required a bat survey or placed any time-of-year restrictions on removing the four maple trees as proposed in the Application. Dailey pf. at 6; exh. JM-2; Letter from B. Marks to J. Whitney re: ANR Bat Comment, filed 3/22/19.

Development Affecting Public Investments
[10 V.S.A. § 6086(a)(9)(K)]

75. The Project will not unnecessarily or unreasonably endanger the public or quasi-public investment in any facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of, or access to any such facility, service, or lands. The only public investments near the Project are public roads and the local electric grid and they will not be adversely affected by the Project. Behn pf. at 16; Findings 21-24 and 49-51.

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

76. The Project will not have any undue adverse effects on the health, safety, and welfare of the public. This finding is supported by findings 77 and 78, below.

77. The Project will be designed and built to the standards of the National Electrical Code and the National Electrical Safety Code. Gould pf. at 4.

78. Panel circuitry will be covered with solar scrim as a safety measure and in compliance with electrical code requirements. Behn pf. at 6.

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

79. The Project will not have any undue adverse effects on primary agricultural soils as defined in 10 V.S.A. §6001. This finding is supported by findings 80 through 82, below.

80. No primary agricultural soils will be removed from the site. Matosky supp. surreb. pf. (8/17/18) at 3.

81. Primary agricultural soils will be stored on site in berms along the western edge of the array and under the rows of panels. Matosky supp. surreb. pf. (8/17/18) at 3-4; exh. JM-2 (8/17/18); exh. JM-9 (8/17/18).

82. Stored primary agricultural soils will be restored after the Project is decommissioned in compliance with parts 2 and 3 of the Vermont Agency of Agriculture, Food and Markets ("AAFM") "Act 250 Procedure: Reclamation of Vermont Agricultural Soils." Behn supp. surreb. pf. (8/17/18) at 2.

Discussion

The Applicant states that it will comply with parts 2 and 3 of AAFM's "Act 250 Procedure: Reclamation of Vermont Agricultural Soils." The Intervenors argue that the Applicant's soil storage plan is insufficient to support a finding that the Project will not have an adverse effect on primary agricultural soils because the Applicant has not delineated the soil impact of the project or identified where the soils will go.

I recommend that the Commission conclude that the Project will not have an adverse effect on primary agricultural soils. AAFM has not filed any comments raising concerns with the Applicant's proposed storage of primary agricultural soils. Part 2 of AAFM's procedures requires prime agricultural soils to be stored in "several distinct piles" made up of the A, B, and BC or C horizon. Part 3 specifies reclamation procedures that require layering the stockpiled soil in the order that it was removed. Compliance with parts 2 and 3 of AAFM's procedures requires the Applicant to identify the soil horizons and stockpile them in known, identifiable locations.

Minimum Setback Requirements

[30 V.S.A. § 248(s)]

83. The Project will comply with Vermont's statutory setback requirements for ground-mounted solar electric generation facilities because the Project is set back more than 40 feet from the nearest road and more than 25 feet from the nearest property boundary line. Ex. JM-2 (8/17/18).

Discussion

30 V.S.A. § 248(s) requires the Project to be set back at least 40 feet from any state or municipal highway and at least 25 feet from any property boundary that is not a state or municipal highway. The setbacks proposed for the Project meet these minimum requirements.

The Intervenors argue that Commission Rule 5.113 requires a 50-foot setback from property lines for 150 kW facilities. The Intervenors also question the definition of the term "facility" and the point from which the required setbacks should be measured.

Rule 5.113(2)(b) requires a setback of "25 feet for a solar facility with a plant capacity less than or equal to 150 kW but greater than 15 kW," which applies to the Project here. The point of measurement for determining the setback is defined in 30 V.S.A. § 248(s)(4)(B) as "the shortest distance between the nearest portion of a solar panel or support structure for a solar panel, at its point of attachment to the ground." The Project is set back from the surrounding property lines by the following distances: 270 feet (north), 166 feet (south), 50 feet (east), and 576 feet (west). I recommend that the Commission conclude that these setbacks satisfy the distances required by statute and the Commission's rules.

VII. DECOMMISSIONING PLAN

84. The Applicant has stated that it will comply with the requirements of Commission Rule 5.904 and remove the Project facilities once they are no longer in service and restore the site to its pre-Project condition to the greatest extent practicable. Tr. 9/7/18 at 37-38 (Behn).

Discussion

Commission Rule 5.904(A) requires a project with a capacity equal to or greater than 150 kW and less than or equal to 500 kW to be removed once it is no longer in service, and the site shall be restored to its condition prior to installation of the facility to the greatest extent practicable. Because the Project's capacity equals 150 kW, the Applicant must comply with Commission Rule 5.904(A).

The Intervenors argue that the decommissioning plan provided by the Applicant does not satisfy the requirements of the Shoreham Town Plan or Rule 5.900.[157] The Applicant filed its Application on August 15, 2017, which is the date that Rule 5.900 took effect. The Application

[157] Intervenor Br. at 64.

materials describe a plan for decommissioning the Project and the Applicant testified at the evidentiary hearing that it had no objection to a CPG condition requiring compliance with Rule 5.900.

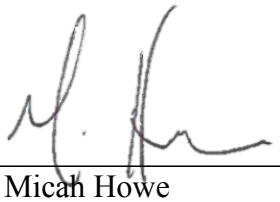
The Commission's decommissioning rule does not require a letter of credit or any other form of financial security for a project of this size.[158] The Aesthetic Guidelines do contain a requirement that the Applicant guarantee funding for decommissioning and the Town of Shoreham has stated that it is satisfied with the funding proposed by the Applicant.[159] Because the Project is not required to have any financial security, I have not considered the Applicant's funding proposal to the Town of Shoreham.

For these reasons, I recommend that the Commission approve the Applicant's decommissioning plan and require, as a condition of approval, that the Applicant comply with the terms and conditions of its proposed decommissioning plan, as described in finding 84.

VIII. CONCLUSION

Based upon the certifications of the Applicant and the findings made herein, I recommend that the Commission conclude that, subject to conditions, the Project will comply with the requirements of Commission Rule 5.100 and will promote the general good of the State.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.



Micah Howe
Hearing Officer

[158] *See* Commission Rule 5.904(B) (requiring letters of credit for facilities greater than 500 kW).
[159] Exh. BO-5 at 7; Gross pf. at 9.

IX. COMMISSION DISCUSSION AND CONCLUSIONS

The Applicant, the Shoreham Planning Commission, the Department, the Intervenors, and Tracy Perry filed comments on the proposal for decision. The Applicant and the Department support the proposal for decision. The Shoreham Planning Commission supports the proposal for decision with one clarification to reflect that additional evidence was developed in an evidentiary hearing. Tracy Perry notes the potential of an alternative site for the Project. The Intervenors object to the proposal for decision on multiple grounds, discussed below.

On June 10, 2019, Commissioners Cheney and Hofmann participated in a site visit at the proposed Project location at the request of the Intervenors.

On June 13, 2019, the Commission held an oral argument on the proposal for decision.

Based on our review of the proposal for decision and the parties' comments, we adopt, with clarifications and modifications, the conclusions and recommendations of the Hearing Officer. The parties' comments and our determinations are addressed separately below by topic area.[160]

Major or Minor Amendment

Comments

The Intervenors argue that the Applicant's proposed amendments to the Project on August 17, 2018, should be treated as a major amendment under the Commission's rules. The Intervenors specifically identify inconsistent testimony regarding the amount of material to be excavated from the Project site and uncertainties as to the storage locations of excavated primary agricultural soils given by the Applicant's witnesses at the evidentiary hearing as a basis for rejecting the Hearing Officer's conclusion that the amendment is minor. According to the Intervenors, the sworn testimony provided by the Applicant must outweigh the documentary evidence in the Commission's determination.

[160] The discussion below does not consider or rely on the letter filed on June 20, 2019, by the Applicant after the oral argument. This post-argument submission was not requested and is not otherwise permitted under the Commission's procedures. Accordingly, we grant the Intervenors' motion to strike the Applicant's filing without considering the rebuttal arguments presented by the Intervenors.

Discussion and Conclusions

We agree with the Hearing Officer's reconciliation of the inconsistent evidence in the record. The documentary evidence submitted by the Applicant, which includes the site plan governing the construction of the Project, does not describe any material being excavated in connection with the access road or the construction staging area. Counsel for the Intervenor confirmed the Hearing Officer's conclusion during oral argument before the Commission.[161]

The Project will still involve excavation in connection with preparing the array site. However, this excavation was a part of the original Application materials and does not constitute an amendment to the Project. The storage of the excavated material from the array site is a change to the original Application, but has been designed to stay within the definition of a minor amendment under Commission Rule 5.103, as the Hearing Officer explains.

Although the testimony provided by the Applicant at the evidentiary hearing about the construction of the access road and staging area was inconsistent with the August 17, 2018 site plans, resolving this factual inconsistency in favor of the documentary evidence results in far less excavation and impact associated with the Project. We agree that the August 17 changes to the Project are a minor amendment. The proposal for decision addresses the remainder of the Intervenors' arguments, including those incorporated by reference.

Orderly Development

Comments

The Intervenors disagree with the Hearing Officer's proposed findings and analysis under the orderly development criteria of Section 248(b)(1) of Title 30. The Intervenors argue that—given Shoreham's interest in the Project as a potential customer and the Open Meeting Law violations by the Shoreham Planning Commission and the Shoreham Select Board when noticing the meetings at which the Project was discussed—the Commission must evaluate for itself whether the Project complies with Shoreham's Town Plan rather than defer to Shoreham's recommendation. According to the Intervenors, the Commission is obligated to evaluate town plans and routinely does so in other cases when considering the orderly development criteria.

[161] Oral Argument Tr. (6/13/19) at 29-30.

Discussion and Conclusions

The Commission's obligation to review regional and town plans is specified by statute and encompasses several situations. First, section 248(b)(1) requires the Commission to give "due consideration" to "the land conservation measures contained in the plan of any affected municipality." Second, where a municipal or regional plan has received an affirmative determination of energy compliance under 24 V.S.A. § 4352, the Commission must give substantial deference to land conservation measures or specific policies in those plans.[162] Third, the Commission is also required to consider the compliance of ground-mounted solar projects with municipal bylaws adopted under 24 V.S.A. § 4414(15) and municipal ordinances adopted under 24 V.S.A. § 2291(28), and the recommendations of a municipality applying the bylaw or ordinance.[163]

As the Hearing Officer explains, the Intervenors have not shown that the Shoreham Town Plan contains land conservation measures that we must consider under either the due consideration or substantial deference standard. Nor is the Town Plan a bylaw or municipal ordinance. We therefore agree with the Hearing Officer that in this case we are only required to consider the recommendations of the Shoreham Planning Commission and Select Board and the Addison County Regional Planning Commission, all of which support the Project in the proposed location. Evidence in the record supports the Shoreham Planning Commission's recommendation that the Project complies with the Shoreham Town Plan, and we accept that recommendation.

The Intervenors state that the Commission routinely reviews town plans for itself in cases where towns oppose projects based on provisions in the town plan, and to not review the town plan in this case constitutes a "new rule." We disagree. Although the Intervenors did not provide specific citations, the cases in which the Commission reviews town plans typically involve one of the situations discussed above where review is statutorily required. Most frequently, such cases involve allegations that a project violates land conservation measures contained in the plan.[164] As stated above, land conservation measures are not at issue here.

---

[162] 30 V.S.A. § 248(b)(1)(C).
[163] 30 V.S.A. § 248(b)(1)(B).
[164] *See, e.g.*, *Petition of Chelsea Solar LLC*, Docket No. 8302, Order of 2/16/16 at 50-54.

The Intervenors are correct that the handling of the interests of adjoining landowners in this process by the Town of Shoreham and the Applicant left much to be desired. Shoreham admitted that it violated the requirements of Vermont's Open Meeting Law, but cured those violations when the issue was raised by one of the Intervenors. If there were additional violations or the admitted violations were not properly cured, the Open Meeting Law specifies the procedures to address those violations and the Intervenors have not pursued them. The Intervenors' concerns over potential bias due to Shoreham's admitted interest in investing in the Project are understandable, but Shoreham's interest has not been shown to have had an impact. We therefore conclude that the Project will not unduly interfere with the orderly development of the region.

Rate Adjustors

Comments

The Intervenors challenge the Hearing Officer's proposed finding that the Project is located on a preferred site. According to the Intervenors, the joint letters of support relied on for preferred-site status should be disregarded for several reasons. The Intervenors note that the letters state that the Select Board and Planning Commission support the Project, but do not state that the location is a "preferred site." The Intervenors also argue that the statement of support should be disregarded because it was issued in violation of the Open Meeting Law by an interested planning commission and because the statement was made before the effective date of the regulation authorizing preferred-site status based on joint letters of support. In addition to objecting to the letter of support from the Shoreham entities, the Intervenors also object to the Hearing Officer's proposed admission of a comment letter received from the Addison County Regional Planning Commission.

Discussion and Conclusions

We agree with the Hearing Officer that the joint letters of support are sufficient for preferred-site status and do not alter the analysis in the proposal for decision. The letters state that they support the Project at the proposed location, which is what is required by our rule. While any violation of the Open Meeting Law is concerning, the Select Board and Planning Commission took steps to cure those violations once notified and reaffirmed their support for the

Project in subsequent meetings. As stated above, no further allegations of violations of the Open Meeting Law have been made under the proper procedures as outlined in 1 V.S.A. § 314. We are not persuaded by the Intervenors' arguments that the letters of support provided by the municipal entities in this case should be rejected.

We do not admit the public comment filed by the Addison County Regional Planning Commission, and we instead rely solely on the original letter from the Addison County Regional Planning Commission as the Hearing Officer did in Finding 11. We also clarify that, although these letters do not specifically state that the Project site is a "preferred site," they do demonstrate support for the Project at the proposed location by the required entities, which is what our rules require.

Greenhouse Gas Impacts, Burdens on Transportation and Municipal Services, and Effect on Public Investments

Comments

The Intervenors argue that the Hearing Officer's proposed findings regarding greenhouse gas emissions are not supported by the evidentiary record and are arbitrary and capricious. According to the Intervenors, the Applicant did not address the full extent of truck traffic associated with the removal of excavated material. By only addressing truck traffic associated with deliveries, the Intervenors continue, the Applicant significantly understated the greenhouse gas emissions that will be involved with the Project. The Intervenors similarly rely on the understated truck traffic to argue that the Hearing Officer's findings on transportation, municipal services, and public investments are also arbitrary and capricious.

Discussion and Conclusions

The proposed findings explain that, in addition to the truck traffic associated with deliveries described in the original Application, the Project will also require approximately 25 dump-truck loads to remove material excavated from the Project site.[165] The additional 25 dump-truck loads were not described in the original Application materials, but were disclosed in witness testimony during the evidentiary hearing.

[165] Finding 51.

We agree with the Hearing Officer's findings that the additional traffic will not have an undue adverse impact on greenhouse gas emissions, transportation, municipal services, or public investments. Although the Project will require an increase in traffic during the construction period, the increase will be a temporary increase spread over the approximately eight-week construction period and will end when construction is complete. While the amount of truck traffic required for the Project is more than what is disclosed in the Application, it is less than traffic levels that we have approved for other projects and is not undue.[166]

Wetlands, Burden on Water Supply, and Soil Erosion

Comments

The Intervenors argue that the evidence does not support the Hearing Officer's proposed finding that there will be no adverse impact on wetlands, existing water supply, or soil erosion. According to the Intervenors, construction of the Project will require the removal of significant amounts of bedrock from the site. Removing the bedrock, the Intervenors maintain, will affect the groundwater flows around the Project site and disrupt the Class III wetlands located on the host parcel. The Intervenors argue that the Commission should not allow the proposed excavation until the Applicant performs a sub-surface evaluation of the geology and hydrogeology of the site.

Discussion and Conclusions

Although the Project will require more excavation than a typical solar installation, the Applicant has taken steps to protect the Class III wetlands located on the Project site, has obtained the necessary construction permit from the Department of Environmental Conservation, and will follow standard erosion prevention and sediment control construction techniques. The Class III wetlands on the site are in an active agricultural area that is used as a grazing pasture for cows. Both the Agency of Natural Resources and the Army Corps of Engineers inspected the wetlands and were not concerned by the Project's impact.

The excavation of the Project site may affect the water flows in the area. This alone, however, does not lead to a finding that the Project will have an undue adverse impact on the Class III wetlands, existing water supplies, or soil erosion. The Intervenors have not identified

[166] *See, e.g.*, *Petition of New England Waste Services of Vermont, Inc.*, Docket 7948, Order of 6/25/13 at 17, 19.

any existing water supplies that will be affected by the Project.[167] And we agree with the Hearing Officer that Mr. Revell's testimony, although backed by substantial experience, does not outweigh the other evidence, which includes the conclusions reached by the other parties in the case and the protective steps taken by the Applicant. Even though the Project may affect the Class III wetlands, the evidence shows that the Class III wetlands are not of particularly high value to the natural environment and are not protected in the State of Vermont. Provided the Applicant adheres to the construction techniques outlined in Vermont's low-risk site handbook and any conditions provided in its construction stormwater permit, we conclude that the Project will not have an undue adverse impact on wetlands, existing water supplies, or soil erosion.

Aesthetics

Comments

The Intervenors disagree with the Hearing Officer's proposed finding that the aesthetic impact of the Project will not be unduly adverse. The Intervenors maintain that the reasonable-person standard requires more aesthetic mitigation to improve the harmony of the Project with its surroundings, especially for views from the north along Watch Point Road and views from the south from the Holmeses' property. The Intervenors also argue that the Hearing Officer should have independently assessed the Project under the Aesthetic Guidelines contained in the Shoreham Town Plan.

Discussion and Conclusions

We agree with the Hearing Officer's conclusion that the aesthetic impact of the Project will not be unduly adverse. No party has raised any concerns over views of the Project from the west, where any views are obscured by trees. Views of the Project from Basin Harbor Road to the east are mitigated by the significant distances between the Project and the public vantage points. Views from Watch Point Road to the north are intermittent due to the presence of residential and farm structures, several existing trees, and new trees and a hedge extension to be added by the Applicant. Views of the Project from the surrounding roadways will also include the agricultural facilities on the host property. Because of the distance and existing structures

[167] There was a discussion about a natural spring located on the Holmeses' property at oral argument, but it is not an existing water supply.

and vegetation, no additional mitigation of these views is required to improve the harmony of the Project with its surroundings.

The views from the south of the Project from the Holmeses' property will not be mitigated. However, there are no residences on the Holmeses' property, which the Holmeses lease to a neighbor for haying. Many of the views of the Project from the Holmeses' property will also include the agricultural facilities on the host property. In assessing what mitigation would be reasonable under these circumstances, we agree with the Hearing Officer that no additional mitigation is needed because there are no specific views to mitigate.

The Intervenors argue that the Hearing Officer deferred to the Shoreham Planning Commission's conclusion that the Project complies with Shoreham's Aesthetic Guidelines. The Hearing Officer concluded that the Project will not violate any clear, written community standards, but not because the Project complies with the Aesthetic Guidelines. Instead, the Hearing Officer explained that the Aesthetic Guidelines provide general siting criteria rather than designating specific areas for protection, which means that the Aesthetic Guidelines are not clear written, community standards.[168] We agree and conclude that the Project does not violate any clear, written community standards because there are no clear, written community standards that have been identified by the parties.

The Intervenors also refer to the testimony of the Department's aesthetics witness, who stated that "[a]dditional landscape planting along the north side of the Project would help to further screen the Project from public locations."[169] We note that the witness's ultimate opinion, however, was that the aesthetic impact of the Project would not be undue even without the additional plantings.[170] More mitigation is always possible, but we find that the Applicant has taken the generally available mitigating steps that a reasonable person would take to improve the harmony of the Project with the surroundings, including the large setbacks from public roads, planting two sugar maple trees to the north and two more to the northeast, and extending an existing cedar hedge on the host landowner's property.

---

[168] Proposal for Decision at 35-36.
[169] Buscher pf. (8/6/18) at 2.
[170] *Id*. at 3.

For the reasons provided above, we agree that the Project will not have an undue adverse impact on aesthetics.

Alternative Sites

Comments

The Intervenors also argue that the Applicant was required to consider an alternative site proposed by the Intervenors' aesthetics witness in his rebuttal testimony. According to the Intervenors, the Applicant's explanation that the host landowner would not allow the Project to be constructed on any other sites on the parcel is insufficient to carry the Applicant's burden of showing that the Intervenors' proposed alternative was not available.

Tracy Perry also submitted comments noting that there are other sites in the Shoreham area that could be used for solar projects.

Discussion and Conclusions

The Intervenors refer to several Vermont Supreme Court decisions addressing when an applicant is obligated to consider alternative sites, as well as the Commission's precedent addressing alternative sites. In *Rutland Renewable Energy*, the Vermont Supreme Court distinguished *Halnon*, explaining that the requirement that an applicant consider alternative sites depends on the applicant having additional sites on property that it controls. The Court declined to extend the holding of *Halnon* to situations in which an applicant does not "own or control the land on which the . . . project might be sited," explaining that the burden was "unreasonable, and probably unmeetable."[171] The Commission's order in *Orchard Road Solar I* is consistent with this precedent, explaining that "the Applicant itself identified two alternative sites and did some evaluation of each" and the neighbors had met their initial burden of demonstrating that those alternative sites were available.[172]

Here, the Intervenors' witness identified an alternative site but did not show that that alternative site is available. The only evidence of the availability of that site came from the Applicant, who stated that the current proposed site is the only location for the Project that the host landowner will allow on the host property. The Intervenors have not shown the Applicant

[171] *Rutland Renewable Energy*, 2016 VT 50, ¶¶ 26-28.
[172] *Orchard Road Solar I*, CPG No. 16-0042, Order of 7/20/18 at 5-6.

to be incorrect and have not carried their initial burden as required to shift the burden back to the Applicant. The alternative locations recommended by Mr. Perry, which the Intervenors also note, are all located outside of the host property and have similarly not been shown to be available or appropriate for the Project.

For these reasons, and because we have already concluded that the Applicant has taken all generally available mitigating steps that a reasonable person would take in these circumstances, we agree with the Hearing Officer that the Applicant was not required to further investigate the alternative site presented by the Intervenors.

Primary Agricultural Soils and Decommissioning

Comments

The Intervenors argue that the Applicant has not disclosed the full extent of the disturbance to primary agricultural soils that will occur in connection with the Project. The Intervenors also argue that the Applicants should be required to comply with all three sections of the Agency of Agriculture, Farm, and Markets' "Act 250 Procedure: Reclamation of Vermont Agricultural Soils" rather than just sections two and three as proposed by the Applicant and adopted by the Hearing Officer. Finally, the Intervenors argue that more should be required for decommissioning, including a financial instrument to ensure that decommissioning will be accomplished.

Discussion and Conclusions

We addressed the Intervenors' first argument above in the "Major or Minor Amendment" discussion. The Intervenors have also raised an argument regarding soil compaction during construction, which the Intervenors argue is also considered a disturbance of primary agricultural soil. The compaction conditions that AAFM typically requests in CPGs specifically do not apply "to the use of any on-site gravel roads that are constructed with geotextile fabric, a minimum of 10 inches of gravel, and a 1 inch or thicker cap of crushed aggregate."[173] The gravel road proposed in the Applicant's site plans meets or exceeds these requirements, and we see no need to include additional protections for this Project.

We also do not see a need to require the Applicant to comply with additional sections of AAFM's reclamation procedures. Sections two and three of the reclamation procedures require

[173] *See, e.g., Petition of Springfield Edgewood Solar LLC*, Case No. 18-2504-NMP, Order of 4/22/19 at 15.

the Applicant to stockpile soil horizons in distinct piles and to restore them in corresponding layers, which will require identifying the horizons. Past Commission orders have explicitly required compliance with the stockpiling and reclamation sections of the procedures (i.e., sections two and three) without explicitly requiring a pre-disturbance characterization of the site (section one).[174] The Applicant has already provided a soil map and has identified the location of the soil stockpiles, which are included among the requirements of section one of the reclamation guidelines.

Regarding decommissioning, the Intervenor has stated that it will comply with our decommissioning rule, and our rules do not require a financial security for projects of this size. As the Hearing Officer notes, the Applicant has reached an agreement with the Town of Shoreham on decommissioning. However, because that agreement may include obligations beyond what our rules require, we have not considered it in reaching our conclusion that the decommissioning plan proposed by the Applicant is sufficient.

[174] *Id.* at 14 (requiring stockpiling consistent with the reclamation guidelines and sequencing and returning soils consistent with the AAFM guidelines during decommissioning).

XI. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission ("Commission") of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are adopted. All other findings proposed by parties, to the extent that they are inconsistent with this Order, were considered and not adopted.

2. Acorn Energy Solar 2's motion for a minor amendment, filed 8/17/18, is granted.

3. In accordance with the evidence and plans submitted in this proceeding, the 150 kW AC solar group net-metering system (the "Project") proposed for construction and operation by Acorn Energy Solar 2 ("CPG Holder") at 869 Watch Point Road in Shoreham, Vermont, will promote the general good of the State of Vermont pursuant to 30 V.S.A. §§ 248 and 8010, and a certificate of public good ("CPG") to that effect shall be issued in this matter.

4. As a condition of this Order, the CPG Holder shall comply with all terms and conditions set out in the CPG issued in conjunction with this Order.

5. The motion filed by intervenors Therese and Timothy Holmes, Bill and Meg Barnes, and George and JoAnn Madison on June 28, 2019, to strike the CPG Holder's post-argument submission is granted.

Dated at Montpelier, Vermont, this 26th day of July, 2019.

Anthony Z. Roisman) PUBLIC UTILITY

Margaret Cheney) COMMISSION

Sarah Hofmann) OF VERMONT

OFFICE OF THE CLERK

Filed: July 26, 2019

Attest: _____
Deputy Clerk of the Commission

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

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

PUC Case No. 17-4049-NMP - SERVICE LIST

Parties:

Nils Behn
Aegis Renewable Energy, Inc.
340 Mad River Park, Suite #6
Waitsfield, VT 05673
nbehn@aegis-re.com
(for Acorn Energy Solar 2)

Leslie A. Cadwell, Esq.
Legal Counselors & Advocates, PLC
P.O. Box 827
Castleton, VT 05735
lac@lac-lca.com
(for Town of Shoreham Planning Commission)

Donald J. Einhorn, Esq.
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
donald.einhorn@vermont.gov
(for Vermont Agency of Natural Resources)

George M Gross
Town of Shoreham Planning Commission
977 Bates Road
Shoreham, VT 05770
george@solarhavenfarm.com
(for Town of Shoreham Planning Commission)

Cindy Ellen Hill, Esq.
Hill Attorney PLLC
144 Mead Lane
Middlebury, VT 05753
lawyerhill@yahoo.com
(for Bill and Meg Barnes) (for Therese and Timothy Holmes) (for George and JoAnn Madison)

Benjamin Marks, Esq.
Benjamin Marks Attorney at Law PLC
2098 Route 74
Cornwall, VT 05753
benmarks2005@gmail.com
(for Acorn Energy Solar 2)

Karin McNeill
Vermont Agency of Natural Resources
1 National Life Drive
Davis 2
Montpelier, VT 05620-3901
(for Vermont Agency of Natural Resources)

Karin.McNeill@vermont.gov

Tracy Perry, *pro se*
PO Box 237
Shoreham, VT 05770
tracybperry@videotron.ca

James Porter, Esq. (for Vermont Department of Public Service)
Vermont Department of Public Service
112 State St
Montpelier, VT 05620
james.porter@vermont.gov

Leslie A. Welts, Esq. (for Vermont Agency of Natural Resources)
Office of General Counsel, Vermont Agency
of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901
leslie.welts@vermont.gov

Alexander Wing (for Vermont Department of Public Service)
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
alexander.wing@vermont.gov