STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 23-1447-PET

Petition of VT Real Estate Holdings 1 LLC for a certificate of public good, pursuant to 30 V.S.A. § 248, for a 20 MW ground-mounted solar array in Shaftsbury, Vermont	Hearings at Montpelier, Vermont July 15, 2024

Order entered: 09/15/2025

PRESENT: Edward McNamara, Chair
Margaret Cheney, Commissioner
J. Riley Allen, Commissioner

APPEARANCES: Christopher Ausschnitt, *pro se*

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FINAL ORDER GRANTING CERTIFICATE OF PUBLIC GOOD

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I. INTRODUCTION

This case involves a petition filed by VT Real Estate Holdings 1 LLC ("Shaftsbury Solar" or the "Petitioner") with the Vermont Public Utility Commission ("Commission") requesting a certificate of public good ("CPG") under 30 V.S.A. § 248 authorizing the construction and operation of a 20.0 MW solar electric generation facility on Holy Smoke Road in Shaftsbury, Vermont (the proposed "Facility").

The Commission has examined the substantial evidentiary record developed throughout this case and the parties' legal briefing. We have also considered the many public comments that were filed in response to the proposed Facility. This has been a complex case with extensive testimony from numerous witnesses. The issues raised by the parties' testimony and legal arguments have required us to confront some complex and competing policy considerations. We have had to weigh the localized impacts of a large-scale solar facility within the framework of the Section 248 criteria — an analysis that is heavily informed by Vermont's ambitious energy policy goals. We have also considered Vermont's role within the broader, interconnected New England grid and our reliance on that network to maintain a reliable electric grid and to achieve our greenhouse gas reduction mandates.

After completing a careful and deliberate review of the record in this case and the parties' respective arguments, we have decided to issue a CPG for the Facility. This will be a large Facility — equal in scale to the largest solar generation project that we have previously

approved. We recognize that it will have impacts, particularly on neighbors in the Facility's immediate vicinity in Shaftsbury. The scope of our review, however, is defined by the statutory criteria set out in Section 248 and the applicable general-good standard. As explained in more detail throughout this order, the Facility, subject to appropriate conditions, satisfies each of the discrete Section 248 criteria and will promote the general good of Vermont. Therefore, we will issue a CPG to the Petitioner for the Facility.

Commissioner Cheney writes a separate concurrence that follows this order.

II. PROCEDURAL HISTORY

On May 3, 2023, the Petitioner filed a petition with supporting testimony and exhibits (the "Petition") requesting a CPG to install and operate a 20.0 MW solar electric generation facility in Shaftsbury, Vermont.

On June 15, 2023, the Commission held a scheduling conference. A schedule for the proceeding was adopted on June 30, 2023.

On July 21, 2023, the Vermont Department of Public Service ("Department") facilitated an in-person information session at Mount Anthony Union High School in Bennington, Vermont. The Commission held an in-person public hearing after the information session.

On August 1, 2023, the Commission held a site visit.

On August 25, 2023, the Commission granted party status to the Vermont Division for Historic Preservation ("DHP") and the Town of Shaftsbury Selectboard and Planning Commission. The Commission also granted limited intervention to Michael Algus, Christopher Ausschnitt, David Blackburn, Fred and Stella Erich Brownstein, Lorrie Carra, Wayne Hain, Jesse McDougall,[1] and James and Linda Poole (collectively, "Intervenors").

On September 25, 2023, the Commission granted party status to the Village of North Bennington Board of Water Commissioners ("NBBWC").

On November 17, 2023, the Petitioner submitted a first set of supplemental testimony containing stipulations between the Petitioner and DHP, the Vermont Agency of Natural Resources ("ANR"), and the NBBWC. The Petitioner also submitted a revised site plan.

[1] On April 15, 2024, Jesse McDougall withdrew from the case. Prefiled testimony and exhibits filed by Mr. McDougall before his withdrawal have not been considered in this order.

On January 19, 2024, the Petitioner submitted a second set of supplemental testimony describing revisions to the Facility's layout to address aesthetics concerns, an agreement with the Town of Shaftsbury, a revised stipulation with the NBBWC, a stipulation with the Agency of Agriculture, Food and Markets ("AAFM"), and comments from the Bennington County Regional Commission ("BCRC").

From January through May 31, 2024, the parties engaged in discovery and filed prefiled testimony.

On July 15, 2024, the Commission held an evidentiary hearing.

On August 23, 2024, the parties filed their post-hearing briefs.

On September 6, 2024, the parties filed reply briefs.

III. PUBLIC HEARING AND COMMENTS

The Commission provided an opportunity for public comments in this case through a public hearing and written comments. We convened the public hearing on July 23, 2023, in Bennington, Vermont. Of the approximately 100 people who attended the public hearing, 20 people spoke. Additionally, the Commission received dozens of written comments regarding the Facility via ePUC.

Vermont law requires the Commission to base its decisions on the evidence presented by the parties in prefiled testimony and during evidentiary hearings.[2] Even though we cannot rely on them as evidence, public comments can play a crucial role in offering fresh perspectives and identifying issues that the Commission should take into consideration. The Commission received 28 public comments between March 2023 and January 2025. The Commission reviewed all the comments made at the public hearing and in writing and appreciates the concerns expressed by interested individuals. We provide a general summary of the primary issues raised by the comments below. We also note that many of the comments focus on issues germane to specific Section 248 criteria, such as aesthetics. We address the applicable Section 248 criteria in detail throughout this order.

[2] *See* 3 V.S.A. § 809(g) ("Findings of fact shall be based exclusively on the evidence and on matters officially noticed.").

Written submissions included comments from Vermonters for a Clean Environment, Inc., BCRC, adjoining landowners, and community members. The 20 speakers at the public hearing included adjoining landowners, Shaftsbury residents, and a Bennington state representative. Almost all the commenters opposed the Facility, citing concerns about the size, reduction in home and land values, damaged views and aesthetic impacts, wildlife fragmentation, impacts on ecotourism, the potential for water and stream pollution, unmanaged water run-off, road damage, and changes to the rural feel of the community. Two commenters expressed support for the Facility because it would supply new renewable electricity.

Numerous comments focused on the size of the Facility as being poorly sited and out of scale in a rural residential and farming area. Members of the public believe the proposal is too industrial in scope and not in keeping with the values of a rural community and how Shaftsbury residents have chosen to live. One commenter presented the opinion that it should not be necessary to choose between supporting renewable energy and protecting the local environment. Adjoining landowners expressed concern about the Facility's proximity to their properties. Some commenters suggested approving a smaller portion of the proposal, such as a 5 or 10 MW project. Several discussed the impacts on the farming community and local ecotourism. Multiple commenters raised objections about cutting down forested areas and impacts on wildlife and biodiversity.

Some commenters suggested that the Facility be located in another location, such as a nearby gravel pit, or shopping locations where commercial and industrial development has already occurred.

Some comments discussed the town and regional plans. One adjoining landowner believes the Facility is contrary to the economic development, natural resources, and housing goals stated in the Shaftsbury Town Plan. Another comment discussed a non-binding vote on the Facility at a town meeting, which did not support the project. However, the BCRC submitted comments stating that the Facility is consistent with both the regional plan and the regional energy plan, and it supports regional energy goals.

Several comments discussed the economic benefits of the Facility. Many agreed that more community benefits should be provided as the Facility's profits and benefits will be realized out-of-state at the cost of Vermont property and natural resources. Some commenters

expressed concern that the Petitioner has not accurately calculated the Facility's expected tax contributions to the Town of Shaftsbury. They also challenged that the Petitioner's tax analysis did not factor reduced tax payments from neighbors whose property values they allege will decrease. Other comments expressed concern about granting a CPG for a facility that may sell its output to out-of-state utilities. There were also comments regarding safety and the need for additional training for local first responders.

The comments also presented mixed messages about the Facility's renewable energy generation. Several commenters questioned the benefits of a large solar development that destroys intact forest and the natural landscape, with one such commenter representing that it should not be necessary to "destroy the environment in order the save the planet." Some commenters argued that Vermont should not rely on large solar installations to achieve its climate goals and that development should first occur on previously disturbed sites and existing infrastructure. Other commenters, conversely, noted that Vermont will need precisely these types of facilities to mitigate the impacts of climate change.

Finally, one resident expressed understanding of those who oppose the Facility but stated that Vermonters owe a debt to other states that provide power to Vermont. Similarly, an energy consultant supported the Facility as the most appropriate technology, while a member of a local energy committee opined that the area is a perfect place to build solar power.

Although we have decided to issue a CPG for the Facility, the public comments raise specific concerns about the Petitioner's proposal that aided our review of the witnesses' testimony and exhibits, helped us prepare questions for witnesses at the evidentiary hearing, and provided context for the broader policy considerations that underly our review of the Petitioner's proposal. As we highlight above, many of the issues identified by the commenters are discussed throughout the order and in our discussions of the applicable Section 248 criteria, including economic benefits, impacts on natural resources, aesthetics, and consistency with the town and regional plans. Therefore, we address the substance of these comments in those sections of the order.

IV. FINDINGS

Based on the Petition and the accompanying record in this proceeding, the Commission makes the following findings of fact.

Description of the Facility

1. VT Real Estate Holdings 1 LLC, doing business as Shaftsbury Solar, is a Delaware limited liability company with principal offices at 58 Commerce Road, Stamford, Connecticut 06902. Reed Wills, Shaftsbury Solar ("Wills") pf. at 1.

2. Shaftsbury Solar proposes to construct and operate a 20 MW solar electric generation project, to be known as the Shaftsbury Solar Facility ("Facility"), located off Holy Smoke Road in Shaftsbury, Vermont. Wills pf. at 3.

3. The Facility will be located on approximately 80 acres over four separate parcels. The four parcels of land cover approximately 182 acres and are owned by the Petitioner. Wills pf. at 3; exh. SS-SW-2a (Revised).

4. The Facility site will be accessed using a 13-foot-wide existing driveway located on the Facility parcel that will be widened to 16 feet. During construction, large and oversized construction vehicles will use a temporary access from U.S. Route 7 and smaller vehicles will enter the Facility via Holy Smoke Road. Wills pf. at 3.

5. Shaftsbury Solar has requested a permit for temporary access from U.S. Route 7 from the Vermont Agency for Transportation. Wills 2nd pf. supp. at 12.

6. The Facility will include two new substations within a single fenced substation area. The first substation will be owned by Shaftsbury Solar and will step up the Facility's output from 34 kV to 46 kV utilizing a main power transformer with a maximum rating of 27,000 kVA. The power will run overhead to an adjacent second substation that will be owned by Green Mountain Power Corporation ("GMP") and deliver power from the Facility to the existing 46 kV transmission line on the northeastern portion of the Facility site. Wills pf. at 4-5; Lisa Potter, Shaftsbury Solar ("Potter") pf. at 5-6; exh. SS-LP-2.

7. The Facility's infrastructure will include:

- Approximately 45,752 solar panels, mounted on fixed steel racking at a height of approximately 12 feet;
- eight equipment pads spread throughout the site, each holding an inverter with a 3,200 kW capacity;
- the Facility substation, which will include a control room, lightning protection, and breakers;

- the GMP substation, which will also include a control room, lightning protection, and breakers; and
- an above-ground line that will deliver power from the Facility substation to the GMP substation. Wills pf. at 4-5; Wills 2nd pf. supp. at 8; exhs. SS-SW-2a (Revised), SS-RW-3, and SS-RW-3A.

8. The Facility will be enclosed within a fixed-knot, game or agricultural-style fence that will be a minimum of seven feet high to meet National Electrical Safety Code requirements. The fencing will prevent access to the Facility site. Wills pf. at 6; exh. SS-SW-2a (Revised).

9. Construction of the Facility is expected to last 35 to 45 weeks depending on weather conditions. Wills pf. at 11.

10. Construction activities will be limited to the hours of 7:00 A.M. to 7:00 P.M., Monday through Friday, and 8:00 A.M. to 5:00 P.M. on Saturdays. Construction will not occur on state or federal holidays or on Sundays unless authorized by the Commission upon request. Chris Bajdek, Shaftsbury Solar ("Bajdek") pf. at 3.

Review of Facility Under the Section 248 Criteria

Orderly Development of the Region

[30 V.S.A. §§ 248(b)(1) and 248(b)(1)(C)]

11. The Facility will not unduly interfere with the orderly development of the region. In making this finding, due consideration has 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. Substantial deference has been given to the land conservation measures and specific policies contained in the duly adopted regional plan. This finding is supported by the additional findings below.

12. The Shaftsbury Town Plan ("Town Plan") does not contain any land conservation measures that are specific to the Facility site or surrounding area. Michael Willard, Shaftsbury Solar ("Willard") pf. at 7; exh. SS-MW-2 (Revised) at 24; Michael J. Buscher, Department ("Buscher") pf. at 2-3; exh. PSD-MB-2 at 33.

13. The Town Plan designates most of the Facility site as "Rural Residential 40 District." A portion of the Facility site includes land located within the "Forest and Recreation District." There will not be any Facility-related infrastructure in the Forest and Recreation District. Willard pf. at 7; exhs. SS-SW-2a (Revised); SS-MW-2 (Revised) at 23-24; Intervenors-SA-02 at 9-10; and Intervenors-SA-03 at 18.

14. Shaftsbury Solar will not perform any earthwork or removal of trees in the Forest and Recreation District. Willard pf. at 7; exh. SS-SW-2a (Revised).

15. The Town Plan states that "[t]he Town should not institute zoning or other ordinances that would limit renewable energy development" and that "[t]he Planning Commission has concluded that the Town should not regulate or limit the locations of solar or wind resources and will leave siting decisions to the [Department]." Exh. SA-03 at 36, 38.

16. The Town of Shaftsbury has entered into a "Host Town" agreement with Shaftsbury Solar under which the Town agreed to file a comment letter stating that the Facility conforms with the Town Plan.[3] The Town filed a reply brief stating that the Facility complies with the Town Plan. Exh. SS-RW-8 at 3; Reply Brief filed by the Town of Shaftsbury (9/6/24).

17. The Facility site includes an approximately 100-year-old cast-iron transmission water main owned by the North Bennington Water Department ("NBWD"). Shaftsbury Solar will relocate and upgrade the portion of the existing water main that runs across the Facility's site boundaries as part of the Facility. Wills 2nd. pf. supp. at 3, exhs. SS-RW-2A (Revised), SS-RW-6, and SS-RW-6A.

18. The Bennington County Regional Plan ("Regional Plan") contains an Energy Plan ("Regional Energy Plan") that has received an affirmative determination of energy compliance under 24 V.S.A § 4352. Willard pf. at 8.

19. There are no specific land conservation measures that would apply to the Facility in the Regional Plan. Exhs. SS-MW-2 (Revised) at 24 and PSD-MB-2 at 33.

20. The Regional Plan identifies the Shaftsbury Cobbles as "unique natural features." The Regional Plan explains:

[3] The Host Town agreement includes additional obligations, including requirements for road use and site access during construction and various payments that the Petitioner will make to the Town of Shaftsbury. Exh. SS-RW-8. The Host Town agreement is discussed in other relevant sections of this order below.

> The waterfalls, caves, glens, rock outcroppings, mountain summits, and other unique geological, botanical, and hydrological features of the landscape contribute to its special character and should be protected from incompatible development. An inventory that includes many of those features has been compiled by the [BCRC] (Map 8-8), and more information on those resources is available at the BCRC and through the Vermont Agency of Natural Resources.

Exh. Intervenors-SA-04 at 111.

21. Map 8-8 includes the Shaftsbury Cobbles as item number 60. Exh. Intervenors-SA-04 at 112-113.

22. The Facility will help meet the Regional Energy Plan's goal of adding 85 MW of new solar generating capacity in the region by 2050. Exh. SS-RW-9 at 2.

23. The BCRC submitted public comments stating that the Facility is consistent with the Regional Plan and the Regional Energy Plan. The BCRC identified the policies within the regional plan that it determined applied to the Facility, noted that the Facility supports regional energy goals, and identified two recommended mitigation measures: utilizing the proposed temporary access road off U.S. Route 7 for construction and retaining and adding to existing vegetation when implementing landscape screening. Exh. SS-RW-9.

24. The BCRC also stated that "a project of this size has substantial regional impact, and efforts should be made to mitigate those impacts." Exh. SS-RW-9 at 2-3.

Discussion

Section 248(b)(1) requires the Commission to find that the Facility does 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.[4]

In addition, "substantial deference" must be given to "land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352."[5] Substantial deference "means that a land conservation measure or specific policy shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors

[4] 30 V.S.A. § 248(b)(1).
[5] 30 V.S.A. § 248(b)(l)(C).

affecting the general good of the State outweigh the application of the measure or policy."[6] Land conservation measures are provisions "that are specifically directed toward land conservation, and not general policy statements that apply indiscriminately throughout the municipality."[7]

Further, 30 V.S.A. § 248(b)(l) does not directly require the Commission to determine whether a project complies with a town plan. Instead, in making the orderly development finding, the Commission must only consider compliance with town plans to the extent they qualify as land conservation measures or where there are screening requirements of a municipal ordinance or bylaw.[8] If there are not applicable land conservation measures or screening requirements, the Commission must consider only the recommendations of the municipal and regional planning commissions and the recommendations of the municipal legislative bodies.[9]

Town Plan

We first address the Town Plan. For siting of new renewable energy facilities, the Town Plan includes the following relevant provisions:

- POLICY 12.1.1: The Town of Shaftsbury will not impose screening or other restrictions on renewable energy development beyond those imposed for other types of building and industry. The Town does not seek to regulate renewable energy beyond regulations imposed by the [Commission]. The Town should not institute zoning or other ordinances that would limit renewable energy development.[10]
- Map 12.1, Town of Shaftsbury Existing and Proposed Solar Sites and Solar Potential, shows the areas where solar resources potentially exist, both with and with none of the constraints listed above. There are approximately 1,000 acres of land with solar resources without any constraints, within one mile of three phase lines which would allow a total capacity of 125 MW based on an estimate of eight acres per megawatt.[11]

[6] 30 V.S.A. § 248(b)(1)(C).

[7] *Petition of Acorn Energy Solar 2, LLC for a certificate of public good*, Case No. 17-4049-NMP, Order of 7/26/19 at 24 n.92 (quoting *In re Vermont Elec. Power Co., Inc.*, Docket No. 6860, Order of 1/28/05 at 201-202, *aff'd,* 2006 VT 69); s*ee also In re Apple Hill Solar LLC*, 2021 VT 69, ¶¶ 44-45, 215 Vt. 523, 280 A.3d 44.

[8] *In re Acorn Energy 2, LLC*, 2021 VT 3, ¶ 92, 214 Vt. 73, 251 A.3d 899.

[9] 30 V.S.A. § 248(b)(1); *In re Acorn Energy 2, LLC*, 2021 VT 3, ¶ 92, 214 Vt. 73, 251 A.3d 899.

[10] Exh. Intervenors-SA-03 at 36.

[11] *Id.* at 37.

- The Planning Commission has concluded that the Town should not regulate or limit the locations of solar or wind resources and will leave siting decisions to the Vermont Department of Public Services.[12]

Taken together, these provisions indicate that the Town Plan is: (1) generally permissive toward the development of new renewable energy generation in Shaftsbury; and (2) deferential to the Commission and the Department when assessing siting decisions related to new renewable energy facilities.

This accommodating approach to developing new renewable energy resources is reinforced by the Town's legal briefing and recommendations in this case. The Town's recommendation, which is entitled to due consideration from the Commission, states that the Facility "as proposed, conforms to the [Town Plan]. Provided the terms of the Host Agreement are approved by the Commission as conditions of the [Facility's] approval, the [Town] does not oppose the Facility."[13]

With respect to specific provisions of the Town Plan, the majority of the Facility's host parcel and all Facility-related equipment will be located in the Rural Residential 40 District. The Town Plan includes language that discusses preserving scenic qualities of the Rural Residential zoning districts.[14] Specifically, the Town Plan states that the "purpose of the Rural Residential Districts is to ensure the preservation of natural resources, scenic qualities and agricultural land while accommodating relatively low-density residential development."[15] In *Apple Hill*, the Vermont Supreme Court held that "[g]eneral language about preserving the rural character of the entire Rural Conservation District is not the kind of specific, clear, written standard that can render an adverse impact undue."[16] The language of the Town Plan in this case is nearly identical to the language that the Vermont Supreme Court analyzed in *Apple Hill*. Therefore, consistent with the Supreme Court's guidance, we conclude that siting the Facility in the Rural Residential 40 District would not result in an undue adverse impact based on this provision of the Town Plan.

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[12] *Id.* at 38.
[13] Town of Shaftsbury's Reply Brief at 1.
[14] Exh. Intervenors-SA-03 at 18.
[15] *Id.*
[16] *In re Apple Hill Solar LLC*, 2021 VT 69, ¶ 42, 215 Vt. 523, 280 A.3d 44.

The Facility's underlying parcel also includes a "small pocket" of land that falls within the Forest and Recreation District.[17] The Town Plan's description of the Forest and Recreation District includes more specific and proscriptive language than its discussion of the Rural Residential district. Notably, this section of the Town Plan includes an explicit list of permissible development in the Forest and Recreation District. It discusses limiting permanent development in the Forest and Recreation District to "[o]nly seasonally occupied residences (i.e. camps) with chemical or composting toilets."[18] One stated purpose of this limitation is the "maintenance of forest resources for timber production,"[19] suggesting that some activity, such as forestry, is permitted in this district. As noted in the findings of fact above, no Facility-related infrastructure will be located in the Forest and Recreation District. The Facility also will not include "any earthwork or removal of trees in [the Forest and Recreation District]."[20] Therefore, even if we were to conclude that the Forest and Recreation District provisions of the Town Plan include a clear, written standard, the Facility does not run afoul of that standard because it will not result in permanent development within the Forest and Recreation District. We accordingly conclude that the Facility will not be inconsistent with the Forest and Recreation District provisions of the Town Plan. [21]

Section 248(b)(1) requires that we give due consideration to both the language included in the Town Plan and the Town's written recommendations. In this case, the Town filed a recommendation stating that the Facility conforms with the Town Plan. Our own analysis of the Town Plan, which is guided by applicable Vermont Supreme Court precedent, reaches the same conclusion. Therefore, under the applicable statutory standard, we determine the Facility will not be inconsistent with any land conservation measures included in the Town Plan.

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[17] Exh. Intervenors-SA-02 at 9-10. The Intervenors note that Harrington Cobble, which is on the Facility site, and adjacent Hale Mountain are both identified as being located in the Forest and Recreation Districts in the Town Plan. *Id.*; *see also* Exh. Intervenors SA-03 at App'x A Map 5.1.

[18] Exh. Intervenors-SA-03 at 19.

[19] *Id.* at 20.

[20] Willard pf. at 7.

[21] In their briefing, the parties appear to dispute whether any vegetative clearing will occur in the Forest and Recreation District. For purposes of our analysis, this disagreement is immaterial because there will not be any permanent development in the Forest and Recreation District. To the extent vegetative clearing does in fact occur in the section of Forest and Recreation District on the Facility's parcel, as noted in our discussion above, the Town Plan appears to allow vegetative management in the district.

The Intervenors raise a separate, collateral argument to challenge the adequacy of Town's written recommendation. The Intervenors assert that the Town's support for the Facility was contingent on revisions to the Facility's site plans and the implementation of additional aesthetic mitigation measures. The Intervenors allege that these revisions have not been incorporated into the Facility's final design. Specifically, the Intervenors argue that the Shaftsbury Planning Commission ("Planning Commission") sent a letter to the Shaftsbury Select Board ("Select Board") shortly after the Petitioner filed its application for the Facility. In the letter, the Planning Commission recommended that the Select Board support the Facility to help meet the renewable energy goals included in the Town Plan. The Planning Commission stated that the support should be subject to a series of proposed conditions and modifications to the Facility's design.[22] The Intervenors argue that the Petitioner's January 2024 site plan revisions did not fully respond to the Planning Commission's recommendations and therefore the Facility does not conform to the Town's recommendations. Alternatively, the Intervenors request that the Commission adopt the recommendations from the Planning Commission's letter to the Select Board as CPG conditions if we issue a CPG for the Facility.

The conditions proposed by the Planning Commission appear in a 2023 letter from the Planning Commission to the Select Board during the Town's review of the Facility.[23] As such, the proposed conditions were recommendations made to the Select Board, not requirements for the Commission's consideration under the orderly development criterion. Based on the evidentiary record for this case, which demonstrates that the Town continues to support the Facility after the January 2024 revisions to the Facility's site plans, we conclude that the Town is satisfied with Shaftsbury Solar's revisions to the Facility.[24] In reaching this conclusion, we find

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[22] *See* Exh. Intervenors SA-5. The Planning Commission's proposed conditions included the following:

(1) the two most northerly groups of solar panels either be relocated or deleted from the Facility to reduce the scale, which was "shocking to some Shaftsbury residents," and create more separation from existing residences;

(2) the [Commission] require that no herbicides be used on the site and vegetation instead be managed through the use of pastured sheep, goats, or other livestock;

(3) the [Commission] require approval of a relocated water line; and

(4) the Select Board require Shaftsbury Solar to create significant incentives for the Town to support the Shaftsbury Solar Facility.

[23] Exh. Intervenors SA-5.

[24] The Intervenors assert that the Town never filed a comment letter indicating that the Facility conforms with the Town Plan as stated in the Host Town Agreement with Shaftsbury Solar. However, as noted in the findings, the Town did file a reply brief indicating that the Facility conforms with the Town Plan after the Intervenors noted the absence, which we interpret as the Town's comment letter. Because the Town is a party to this case and was

that the Host Town agreement between the Town and Shaftsbury Solar and the Town's reply brief stating that the Facility conforms to the Town Plan provide the most accurate demonstration of the Town's support and recitation of the terms of that support.[25] The Petitioner will be bound by the terms of the Host Town agreement. We also recognize that some of the proposed conditions included in the Planning Commission's letter were ultimately incorporated into the final site plan for the Facility. The Host Town agreement is also discussed in our analysis of the Facility's aesthetic impact, below.

Regional Plan

We next address the Regional Plan within the context of the orderly development criterion under 30 V.S.A. § 248(b)(1). The Regional Plan expressly references solar facilities, stating that "[c]ommercial-scale solar energy facilities occupy large open areas and should not be sited at important gateway locations or in the foreground of viewsheds that have been identified by communities as being of particular value."[26] The Regional Plan also identifies the Shaftsbury Cobbles as one of 71 "unique natural features" in the region. The Regional Plan includes a map identifying the locations of these features. The Regional Plan states that the "waterfalls, caves, glens, rock outcroppings, mountain summits, and other unique geological, botanical, and hydrological features" contribute to the landscape's special character, and that these unique natural features "should be protected from incompatible development."[27]

In their testimony and briefing, the parties largely focus on the applicability and import of the provisions of the Regional Plan that mention the Shaftsbury Cobbles as a unique natural feature. The Intervenors assert that Harrington Cobble, which is adjacent to the Facility site, and nearby Hale Mountain are unique resources to be protected under the Regional Plan. However, the actual language from the Regional Plan relating to unique natural features (such as the Shaftsbury Cobbles) states that these resources "*should* be protected from incompatible

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afforded an opportunity to file evidence and participate at the evidentiary hearing, it is appropriate for the Town to have filed recommendations as part of its legal briefing in this case. We have, therefore, admitted the Town's Reply Brief into the evidentiary record. Any objections to the admission of the document must be filed within 14 days of the date of this order.

[25] The Host Town agreement, which is discussed in the findings of fact above, is included in the evidentiary record as Exhibit SS-RW-8.

[26] Exh. Intervenors-SA-04 at 115.

[27] *Id.* at 111.

development."[28] We address this same issue in the aesthetics discussion below, but the Vermont Supreme Court has established that "general statements of preferred, rather than mandated, objectives are far too open-ended to constitute a clear, community written standard."[29] The Supreme Court has also recently provided guidance that municipal planning documents must include "mandatory language" to establish clear, written community standards.[30] The inclusion of the word "should" in the unique natural resources section of the Regional Plan leads us to conclude that this provision is suggestive, not compulsory.[31] It lacks the type of mandatory or explicitly proscriptive directive that is needed to rise to the level of specificity required for a clear, written community standard under the Vermont Supreme Court's precedents. Therefore, although the Regional Plan specifically identifies the Shaftsbury Cobbles as one of 71 "unique natural features" in the region with a map identifying the locations of the features, the Plan's statement is one of suggestion — that the unique natural features "should be protected from incompatible development" — which is language that is not specific enough to create a land conservation measure.[32]

The Intervenors also argue that the term "incompatible development" is sufficiently specific for a land conservation measure when combined with the Regional Plan's identification of specific natural features. Although the Regional Plan is specific with respect to which resources it considers to be unique natural features, it does not explain what types of development are prohibited or incompatible. Whether a development is incompatible is a matter of opinion, as reflected in the disagreement between the Intervenors and the BCRC over whether the Facility complies with the Regional Plan. Because this language presents a general preferred approach rather than an enforceable requirement, the Regional Plan's discouragement of

[28] *Id.* (emphasis added).

[29] *Apple Hill*, 2021 VT 69, ¶ 39, 215 Vt. 523, 280 A.3d 44 (quoting *In re UPC Vermont Wind, LLC*, 2009 VT 19, ¶ 37-38, 185 Vt. 296, 969 A.2d 144).

[30] *In re Wheeler Parcel Act 250 Determination*, 2025 VT 28, ¶ 18, __ Vt. __, __ A.3d__.

[31] *See, e.g. Vt. State Emps. Ass'n, v. Vt. Crim. Justice Training Council*, 167 Vt. 191, 200 n. 4, 704 A.2d 769, 774 n. 4 (1997) (stating that use of the word "should" implies that a provision is "discretionary rather than mandatory.").

[32] *In Re Apple Hill Solar, LLC*, 2021 VT 69, ¶¶ 36-40, 43, 215 Vt. 523, 280 A.3d 44.

"incompatible development" does not rise to the level of specificity required for a land conservation measure to be considered by the Commission.[33]

We are also mindful of the BCRC's written recommendation on the Facility, which is entitled to due consideration from the Commission. The BCRC's recommendation highlights and addresses relevant provisions of the Regional Plan (including the list of unique natural features). It states that the Facility will "help meet the regional goal of adding 85 MW of new solar generation capacity in the region by 2050." It also states that the Facility "does not fall in a gateway viewshed as identified in the Regional Plan." The BCRC's recommendation concludes with a determination that the Facility is "consistent with the *Bennington County Regional Plan* and the *Bennington County Regional Energy Plan* and that the project supports regional energy goals."[34] The BCRC did note that projects of this size are not contemplated by the Regional Plan and that the Facility will have "substantial regional impact," but concluded that the Facility's impact could be mitigated with a temporary access road from Route 7 and by retaining and augmenting existing vegetation when implementing screening.[35] The Petitioner has incorporated both of the BCRC's recommendations in the Facility proposal.

Based on the above findings and discussion above, we find that the Facility will not have an undue adverse impact on the orderly development of the region.

Municipal Screening Requirements

[30 V.S.A. § 248(b)(1)(B)]

25. The Town of Shaftsbury 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 Facility would have to comply. Willard pf. at 7.

Need for Present and Future Demand for Service

[33] *Id.*; *Petitions of Vermont Electric Power Company, Inc. et al. for a certificate of public good*, Docket No. 6860, Order of 1/28/05, at 202. The Commission's order in *Petition of Vermont Electric Cooperative Inc.*, Docket No. 7816, Order of 6/22/12, cited by the Intervenors, is consistent with this conclusion. Although the Commission did find that a proposed project was consistent with a town plan's "goals to discourage uncoordinated or incompatible development," it also explained that the plan "contain[ed] no specific land conservation policy." *Id.* at 5. Stated differently, the Commission found that the project was consistent with the town plan's goals but that the goals were not land conservation measures.

[34] Exh. SS-RW-9.

[35] *Id.* at 2-3.

[30 V.S.A. § 248(b)(2)]

26. The Facility will meet the need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy efficiency and load management measures, including but not limited to those developed pursuant to the provisions of subsection 209(d), section 218c, and subsection 218(b) of Title 30. This finding is supported by the additional findings below.

27. The Facility is not currently subject to any contractual obligations for its output — including wholesale energy, renewable energy credits ("RECs"), and capacity. Walter (TJ) Poor, Department ("Poor") pf. at 5.

28. The energy, capacity, and RECs generated by the Facility may ultimately be contracted to utilities outside Vermont or delivered directly in the wholesale energy and capacity markets overseen by ISO New England ("ISO-NE"). Poor pf. at 5.

29. Without a contract with a Vermont utility, the Facility might not meet a direct Vermont need. However, as a merchant generator, the Facility will provide benefits to the entire ISO-NE marketplace in which Vermont operates and depends upon. Poor pf. at 6.

30. Both New England and Vermont are experiencing increasing energy demand, a trend expected to continue through 2031, and the Facility could generate on average 33.5 gigawatt hours ("GWh") annually, helping to meet this demand. Devi Glick, Shaftsbury Solar ("Glick") pf. at 5; exh. SS-DG-2.

31. The Facility will help to alleviate a gap between needed and available capacity — primarily during the summer peak — that the New England region is expected to face in the coming years due in part to retirements of existing fossil and nuclear generating units. Glick pf. at 4; exh. SS-DG-2.

32. The Facility will generate RECs that qualify as "Tier 1" resources under Vermont's Renewable Energy Standard ("RES"), but the RECs would also qualify for renewable portfolio standards ("RPS") in other states. Prices for Tier 1 RECs under the Vermont RES are typically lower than REC prices for RPS compliance in neighboring states. Therefore, it is possible that RECs generated by the Facility will be sold out of state. Poor pf. at 5.

33. The Facility will add to resources serving the region and will contribute to lowering the price of both wholesale energy and capacity in the ISO-NE marketplaces. The Facility would

produce renewable energy that could contribute to RPS requirements in neighboring states. Additionally, the Facility would be located within the wholesale electric market operated by ISO-NE and would increase competition in the regional market that could reduce market prices. Poor pf. at 5-6.

34. The Facility will often displace ISO-NE units that operate on the margin, including during summer peak events, which are often fossil-fueled generators, leading to reductions in emissions. Poor pf. at 9.

35. The Facility will not be located in an area of Vermont that is electrically constrained. Poor pf. at 9.

Discussion

Under Section 248(b)(2), the Commission must find that the Facility:

> is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy-efficiency and load management measures, including those developed pursuant to the provisions of subsection 209(d), section 218c, and subsection 218(b) of this title.

The Facility's capacity will be 20 MW — a figure that matches the capacity of the single largest solar generation facility that has previously been approved for construction in Vermont and is approximately nine times larger than the largest standard-offer solar facilities.[36] For Vermont, the Facility represents a significant undertaking with a concomitant impact. However, all of the Facility's marketable outputs, including the actual energy generated, RECs, and capacity, may ultimately be sold to entities located outside Vermont. This lack of any direct contractual relationship with a Vermont-based distribution utility raises a foundational question of whether the Facility will serve a need for present and future demand for service under Section 248(b)(2).

This is not the first time the Commission has considered this question within the context of a proposed merchant renewable generation facility. For example, in *Georgia Wind*, the Commission evaluated a proposal to construct a 7.5 to 12 MW wind generation facility in

[36] *See Petition of Coolidge Solar I, LLC*, Docket No. 8685, Order of 3/23/17 (approving a 20 MW solar generation facility in Cavendish, Vermont). For context, the capacity cap for projects in the standard-offer program is 2.2 MW. 30 V.S.A. § 8005a(b).

Georgia, Vermont.[37] Like the Petitioner in this case, the applicant in *Georgia Wind* had not entered into any power purchase or other contractual arrangements with a Vermont-based distribution utility before seeking a CPG from the Commission for the facility.[38] In that case, citing prior orders, the Commission re-iterated its long-standing precedent that:

> [T]he general good of the state standard includes a recognition of the value to Vermont of the benefits to the entire New England Power Pool, from which Vermont purchases much of its power and upon which Vermont depends for reliability.[39]

The Commission further elaborated that this standard recognizes "that the developer of a merchant plant ha[s] no obligation to provide energy efficiency and load-management services."[40] The *Georgia Wind* order concluded that "[a]s a renewable energy facility, the Project will contribute to meeting the regional and state needs for renewable power."[41]

The parties in this case have presented conflicting testimony and data regarding the Facility's anticipated impact on wholesale energy, capacity, and REC prices in the ISO-NE and related markets. The Intervenors have also raised concerns about approving a relatively large-scale renewable merchant generation facility that might not directly contribute to Vermont utilities' compliance with the RES and other renewable energy obligations.[42] These arguments from the Intervenors conflict with our precedent on this criterion. Although the Petitioner might not contract with any Vermont utilities directly for the Facility's output, the Facility will add new renewable energy and capacity to the ISO-NE markets. Its participation in the ISO-NE markets,

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[37] *In re Georgia Mountain Community Wind*, Docket No. 7508, Order of 6/11/10. The Coolidge Solar 20 MW facility was also approved by the Commission as a merchant generator offering power on the wholesale market without a Vermont-specific contract. *Coolidge Solar*, Docket No. 8685, Order of 3/23/17 at 14-15.

[38] *Georgia Wind*, Docket No. 7508, Order of 6/11/10 at 20 ("The proposed Project is not owned by a Vermont utility and will not provide retail service, but is rather a merchant plant offering power on the wholesale market.").

[39] *Id.* at 21 (citing *Investigation into General Order No. 45 Notice filed by Vermont Yankee*, Docket No. 6545, Order of 6/13/02 at 106; *Petition of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., for a certificate of public good to modify certain generation facilities at the Vermont Yankee Nuclear Power Station*, Docket No. 6812, Order of 3/15/04 at 21; and *Amended Petition of UPC Vermont Wind, LLC*, Docket No. 7156, Order of 8/8/07 at 29) (internal quotation marks omitted).

[40] *Georgia Wind*, Docket No. 7508, Order of 6/11/10 at 21.

[41] *Id.* We recognize that at the time *Georgia Wind* was decided the Vermont distribution utilities were not obligated to purchase RECs to comply with legislative renewable energy mandates.

[42] The RES, which ultimately requires Vermont utilities to achieve 100% renewable energy, and Vermont's other renewable energy mandates are codified at 30 V.S.A. § 8001 *et seq.* The RES was significantly amended during the pendency of this case, which included the creation of a new Tier IV compliance mechanism. Public Act No. 179 (2024 Vt., Adj. Sess.). RECs from the Facility could be used by Vermont utilities for Tier IV compliance (if purchased by a Vermont utility). We considered the evidentiary record and ultimately made our findings of fact for this case based on the amended RES.

whether through bilateral contracts or direct delivery into the ISO-NE wholesale markets, should serve to put downward pressure on both wholesale energy and capacity costs. The Facility will also likely be operational during summer-peak hours, which should allow for the displacement of oil- and natural-gas-fired peaking units and therefore result in reduced emissions.

Our decision also recognizes that Vermont utilities will, in all likelihood, depend on output from generators located in neighboring states to achieve their own RES and associated renewable energy obligations as Vermont experiences load growth and RES obligations ramp up in future years. In theory, allowing merchant generators to contribute additional renewable energy and capacity to the ISO-NE markets should help reduce wholesale energy and REC costs, which in turn should help Vermont utilities to achieve their RES mandates through the availability of lower-cost RECs.

Based on these considerations, we conclude that the Facility will meet the need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy-efficiency and load management measures.

Impact on System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

36. The Facility will not have an adverse effect on system stability and reliability. This finding is supported by the additional findings below.

37. ISO-NE conducted a System Impact Study ("SIS") for the Facility. The SIS included a review of any potential impacts on the system regarding steady state stability, short circuit stability, and a power-system model study evaluating different utility system failures that could occur. Potter pf. at 8; Potter pf. reb. at 3.

38. The SIS concluded that the Facility will not have any significant adverse steady state or stability impact on the ISO-NE power system. Potter pf. at 8.

39. The results of the SIS require the installation of a three-breaker ring bus substation with associated protection and controls to interconnect the Facility with GMP's transmission system. Potter pf. at 8; exh. SS-LP-2.

40. The Petitioner has executed a Small Generator Interconnection Agreement ("SGIA") with GMP and ISO-NE. Specifications for the GMP substation were included in the SGIA. Wills pf. reb. at 14.

41. The Petitioner will be responsible for all costs associated with interconnection of the Facility, including costs to build the GMP substation and install equipment necessary for interconnection. Wills pf. reb. at 13.

42. Because the Facility will be subject to ISO-NE interconnection rules, Rule 5.500 does not apply to the Facility. Potter pf. at 9.

43. The Facility will meet the applicable safety standards of the National Electrical Code and National Electrical Safety Code, and utility interconnection standards for safe and reliable operation of solar electric plants. Potter pf. at 9.

44. The Facility will comply with applicable interconnection and operating requirements mandated by ISO-NE, the Vermont Electric Power Company ("VELCO"), GMP, and other standards in accordance with the SGIA executed for the Facility. Potter pf. reb. at 3-4.

45. The Petitioner will be required to submit final equipment to ISO-NE, which will review and confirm that there is no impact on system performance. Potter pf. reb. at 4.

46. The Department has reviewed the Facility and did not identify any significant concerns regarding system stability and reliability. Prefiled testimony of Bill Jordan, Department ("Jordan") pf. at 2.

Discussion

None of the Intervenors intervened on issues related to system stability and reliability under 30 V.S.A. § 248(b)(3). However, many of the arguments advanced by the Intervenors' witness on the need (§ 248(b)(2)) and economic benefit (§ 248(b)(4)) criteria relate to potential stability and reliability issues that could implicate those criteria.[43]

We have not addressed those arguments here because they are beyond the scope of the issues on which intervention was granted and because they do not directly address the Section 248(b)(3) criterion. We have instead relied on the analysis and conclusions provided in the ISO-NE SIS and by the Department.

[43] *See, e.g.*, Prefiled Testimony of Robert Amelang, Intervenors ("Amelang") pf. at 27-31 (addressing the Facility's potential impacts to system stability and reliability).

We also note that GMP is not a party to this proceeding. The Petitioner, as the holder of the CPG that we will issue for the Facility, will be responsible for ensuring that all site preparation and construction work for the Facility, including any work completed by GMP, is done in a manner that is consistent with the evidence filed in this proceeding.

Economic Benefit to the State
[30 V.S.A. § 248(b)(4)]

47. The Facility will result in an economic benefit to the State and its residents. This finding is supported by the additional findings below.

48. The new spending associated with the Facility will create positive economic activity within Vermont. Poor pf. at 7.

49. The Facility will create jobs and associated local economic benefits during the construction period. These benefits will include individuals contracted to perform engineering, environmental, permitting, and construction-related jobs. Wills pf. at 21.

50. The Petitioner will pay a Solar Capacity Tax in the amount of $80,000 to the state annually. Wills pf. at 21.

51. The Petitioner will pay approximately $135,000 in municipal property taxes in the Facility's first year of operation, with recurring annual payments in the future based on revised tax rates. Wills pf. at 21; exh. SS-PS-2.

52. The Petitioner has entered a "Host Town Agreement" with the Town of Shaftsbury. Under this agreement, the Petitioner will make annual payments of $15,000 to the town. The Petitioner will also fund the purchase and installation of two electric vehicle charging stations in Shaftsbury and make a one-time payment of $50,000 to support a new community center. Wills 2nd pf. supp. at 11; exh. SS-RW-8.

Discussion

Under 30 V.S.A. § 248(b)(4), we must find that the Facility "will result in an economic benefit to the State and its residents." In applying this criterion, we have consistently applied the standard that "[t]he statute does not require an exact accounting of how much economic benefit a project will create, but only a determination that there will be some economic benefit."[44]

[44] *Petition of Next Generation Solar Farm, LLC, for a certificate of public good, pursuant to 30 V.S.A. § 248 authorizing the construction of a 2.2 MW photovoltaic electric generation facility off Field Days Road in New*

The Petitioner has demonstrated that the Facility will result in economic benefit for the State. The Facility has already created local economic benefits through permitting work that was completed by local firms. It will continue to generate additional labor and associated tax benefits during the construction phase. It will also result in new annual tax revenues both for the State and the Town of Shaftsbury. These facts are sufficient for us to conclude that the Facility will result in an economic benefit and therefore satisfy Section 248(b)(4).

With respect to the Intervenors' arguments on this criterion, we conclude that their assertions are not persuasive because they rely on anecdotal and speculative evidence.[45] Here, the Intervenors argue that construction-related economic benefits will flow out of state.[46] In support of this assertion, the Intervenors represent that some initial site work for the Facility was conducted by a Massachusetts-based firm and that license plates on vehicles seen at several other solar construction sites in southern and central Vermont were predominantly from other states.[47] This argument relies largely on anecdotal evidence, which our precedent cautions against using for this criterion.[48] However, even assuming that the Intervenors' argument is factually correct, any out-of-state workers would still be obligated to pay income taxes to Vermont. The Petitioner and any sub-contractors would also have to remit employment-related taxes for work completed in Vermont. Therefore, there would still be an economic benefit from these construction-related activities.

The Intervenors also assert that the Petitioner has not accounted for negative incidental economic impacts caused by the Facility, such as diminished aesthetic and environmental resources in the local community. The Intervenors argue that these impacts will negatively

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Haven, Vermont, Docket No. 8524, Order of 1/27/17, at 17 (citing *In Re: Joint Petition of Green Mountain Power Corporation, et. al*, Docket No. 7628, Order of 5/31/11 at 35-36). We note that the Commission may consider expanding its approach to reviewing the "economic benefit" criterion in Section 248 petitions in the future. We have often narrowly limited our review of generation projects' economic impacts on job creation and tax revenues, but this approach might not reflect a fuller accounting of the net benefits that these projects provide. However, because these concerns would affect a broad array of interested entities, a workshop process or a general rulemaking would be an appropriate forum for reviewing these issues if we decide to address them in more detail in the future.

[45] *See, e.g. Petition of Charlotte Solar, LLC*, Docket No. 7844, Order of 1/22/13 at 17 (concluding that limited, anecdotal evidence was insufficient to demonstrate that a solar would result in a net decrease in property values on a town-, county-, or region-wide basis).

[46] The Intervenors state that "[c]onstruction contractors and the third-party operations firm may well all be from out of state." Intervenors' Brief at 53.

[47] Intervenors' Brief at 52-53.

[48] *Charlotte Solar*, Docket No. 7844, Order of 1/22/13 at 17.

affect local tourism and local art and literary communities. These arguments, which mostly address the Facility's intangible impacts, are more germane to other Section 248 criteria addressed in more detail in other sections of this order, including orderly development (Section 248(b)(1)) and aesthetics (Section 248 (b)(5)). In addition, these arguments are not supported by direct evidence that could be used to quantify any actual negative economic impact from the Facility. Instead, this evidence only allows for general, speculative assumptions, and we therefore decline to accept the Intervenors' arguments on this issue.

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)]

53. Subject to the conditions described below, the Facility 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 the additional findings below, which give due consideration to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K).

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

54. The Facility 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 Facility area. Adam Crary, Shaftsbury Solar ("Crary") pf. at 9; exh. SS-AC-2 (Revised).

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

55. The Facility will not result in undue air pollution or greenhouse gas emissions. This finding is supported by the additional findings below.

56. Construction of the Facility will result in the temporary emission of minimal levels of air pollutants. These emissions will primarily be generated by typical construction equipment and will not result in any permanent increase in hydrocarbon emissions different from those

generated during a typical construction project. Stephanie Wyman, Shaftsbury Solar ("Wyman") pf. at 3.

57. During construction, dust from vehicular traffic will be controlled by the application of water to gravel roadways as needed. During the Facility's operational phase there will be infrequent and minimal emissions associated with maintenance operations such as periodic field mowing of grass. Wyman pf. at 3.

58. The Facility's operation will not emit any air pollutants, other than *de minimis* levels associated with maintenance vehicles periodically traveling to the site, mowing if needed, and the other similar activities. Wyman pf. at 3.

59. The Facility will result in at least 208,000 tons of avoided carbon dioxide. Tr. 7/15/24 (Amelang) at 262-263.

Discussion

The Intervenors presented evidence challenging the Petitioner's calculations and projections for greenhouse gas ("GHG") reductions. The Intervenors argue that the Petitioner has not conducted an adequate life-cycle analysis for the Facility's GHG impacts. They further argue that the Petitioner's calculations overlook some ancillary sources of GHG emissions attributable to site preparation and construction processes (such as fuel used for chainsaws and other equipment used for vegetation clearing). Under 30 V.S.A. 248(b)(5), we are required to give "due consideration" to the Facility's "greenhouse gas impacts." This standard does not mandate a precise calculation of the Facility's GHG impacts. Here, we are satisfied that the Petitioner's evidence shows that the Facility will result in net GHG reductions. The Intervenors' own expert witness on this issue testified that the Facility would result in 208,000 tons of avoided carbon dioxide if that expert's preferred GHG calculation methodology is used.[49] In other words, the parties do not dispute that GHG reductions will be achieved; they only argue over the total GHG reductions that can be expected from the Facility. Resolving this discrepancy in this case is not necessary to satisfy the general "due consideration" standard that applies under Section 248(b)(5) because the evidence shows that GHG reductions will be achieved. Based on these considerations, we conclude that the Facility will not have an adverse impact under the

[49] Tr. 7/15/24 (Amelang) at 262-263.

Section 248(b)(5) criterion, with due consideration having been given to the Facility's greenhouse gas impacts.

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

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

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

61. The Facility site is located in a headwaters area because the study area includes areas characterized by steep slopes and shallow soils and because it is located in a watershed of less than 20 square miles. However, the Facility site is not characterized by other features that define headwaters as set forth in 10 V.S.A. § 6086(a)(1)(A). It is not above 1,500 feet in elevation, is not in a watershed of a public water supply as designated by ANR, and is not in an area that supplies significant amounts of recharge water to aquifers. Crary pf. at 4; exh. SS-AC-2 (Revised) at 4-5.

62. The Facility work limits occupy approximately 0.82% of the Paran Creek watershed, and approximately 0.07% of the Furnace Brook watershed. Exhs. SS-AC-2 (Revised) at 5 and SS-AC-4 (Revised).

63. The Facility will meet all applicable health and Vermont Department of Environmental Conservation regulations regarding reduction of the quality of the ground or surface waters in a headwaters area. Crary pf. at 4; exh. SS-AC-2 (Revised) at 5.

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

64. The Facility 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. This finding is supported by the additional findings below.

65. The Facility will not need permanent sanitary waste treatment or public waste treatment facilities and will not involve any on-site waste disposal or the injection of waste

materials or any harmful or toxic substances into groundwater or wells. During construction, portable toilets will be brought on site as needed and managed by a licensed contractor. Wyman pf. at 5; exh. SS-SW-2 (Revised) at 2.

66. The Facility will generate minor amounts of scrap and waste material during installation, and this waste will be disposed of or recycled at an approved disposal facility in accordance with Vermont Solid Waste Management Rules and Procedures. The Facility is not anticipated to generate any waste during operation. Wyman pf. at 5.

67. Pad-mounted transformers will be housed within secondary oil containment, sized to contain 110 percent of the largest anticipated volume of a potential release of transformer dielectric fluid, plus five inches of freeboard. Wyman pf. at 4.

68. Secondary oil containment will also be provided for the larger 27,000 kVA transformer. The Facility's substation will be surrounded by an impermeable perimeter berm with oil/water filters to allow drainage of precipitation but prevent migration of a release of oil outside the substation. Alternative configurations for secondary containment that provide an equivalent amount of storage/protection may be selected pending review and approval by a professional engineer. Exh. SS-SW-3 (Revised) at 3.

69. The Facility is subject to Spill Prevention Control and Countermeasure ("SPCC") planning regulations under 40 C.F.R. § 112 ("SPCC Regulations") because the total volume of oil storage at the Facility Site will exceed 1,320 gallons. Exh. SS-SW-3 (Revised) at 3.

70. The Facility will prepare a SPCC Plan before operation. The SPCC Plan will consist of an inventory of oil-filled containers and equipment, facility map showing drainage, flow paths, potential release locations, and threats to navigable waters; discharge prevention and spill containment measures, spill countermeasures, and containment structures; routine monitoring and inspection procedures; emergency response and reporting procedures, equipment failure analysis (if applicable) and spill history (if applicable). This is a routine plan, and the Facility will be able to meet the requirements of the SPCC Regulations. Wyman pf. at 4-5.

Water Conservation

[10 V.S.A. §§ 6086(a)(1)(C)]

71. The Facility will not have an undue adverse effect on water conservation because the Facility will involve only limited use of water. Any amount of water required will be transported to the Facility site. Wyman pf. at 6.

Flood Hazard Areas and River Corridors
[10 V.S.A. § 6086(a)(1)(D)]

72. The Facility is not located within a flood hazard area or river corridor and therefore will not restrict or divert the flow of floodwaters, cause or contribute to fluvial erosion, or endanger the health, safety, or welfare of the public or of riparian owners during flooding. Crary pf. at 5; exh. SS-AC-2 (Revised) at 6.

Streams
[10 V.S.A. § 6086(a)(1)(E)]

73. The Facility will maintain the natural condition of all streams and will not endanger the health, safety, or welfare of the public or adjoining landowners because no work is required or proposed in any streams. This finding is supported by the additional findings below.

74. The Facility is not on or adjacent to the bank of a stream and has been designed to avoid any direct impacts on streams. Crary pf. at 5; Billy Coster, ANR ("Coster") pf. at 3; and exhs. SS-AC-2 (Revised) at 7 and SS-AC-4 (Revised).

75. The Facility's closest Vermont Hydrography Dataset mapped stream is an unnamed tributary to Paran Creek and is located adjacent to the northeastern corner of the Natural Resources Study Area. Exhs. SS-AC-2 (Revised) at 18, Natural Resources Map and SS-AC-4 (Revised).

76. An intermittent stream channel exists within the northern portion of the Natural Resources Study Area, an unnamed tributary to Paran Creek, that originates from the coalescing of three small intermittent channels collecting runoff from a field and has an approximately 0.03-square-mile watershed. A 50-foot riparian buffer is incorporated into the Facility design. Crary pf. at 5; exh. SS-AC-2 (Revised) at 7, 24.

77. The Petitioner avoids any potential indirect impacts on streams by designing the Facility so that all construction activities and impacts will be outside streams and their 50-foot riparian buffers. Crary pf. at 5; exh. SS-AC-2 (Revised) at 7.

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

78. The Facility will not have an adverse impact on shorelines because it is not located on a shoreline. Crary pf. at 5-6; exh. SS-AC-2 (Revised) at 7.

Wetlands
[10 V.S.A. § 6086(a)(1)(G)]

79. The Facility will not have an undue adverse effect on wetlands. This finding is supported by the additional findings below.

80. There are confirmed Class II wetlands on the Facility site, and the Facility has been designed to avoid impacts on the identified Class II wetlands. Crary pf. at 6; exh. SS-AC-2 (Revised) at 8.

81. The proposed temporary access from U.S. Route 7 during the construction phase creates unavoidable impacts on one Class II wetland buffer. New impacts to the wetland buffer have been minimized as the Petitioner will use a former haul road for temporary access during the construction phase. Crary pf. at 6; exh. SS-AC-2 (Revised) at 8.

82. Impacts on the Class II wetland buffer will be limited to approximately 4,200 square feet and the buffer will be restored following construction. A Vermont Wetlands Permit is required to authorize this encroachment. Crary pf. at 6; Coster pf. at 5-6.

83. The Petitioner has agreed to obtain a Vermont Wetlands Permit before beginning site preparation or construction of the Facility. Site preparation, construction, operation, and maintenance of the Facility will be in accordance with the Wetland Permit. Wills pf. supp. at 1-2; Coster pf. at 5-6; exh. Joint SS-ANR-1 (Rev.).

84. The Facility will comply with the Vermont Wetlands Rules. Crary pf. at 6.

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

85. The Facility will not cause an unreasonable burden on an existing water supply or affect the sufficiency of water. This finding is supported by the additional findings below.

86. The Facility will not cause an unreasonable burden on an existing water supply because the Facility does not require a connection to a well or municipal water supply for construction or operation. Water will be brought to the site for dust control during the construction phase and to establish vegetation post-construction. Otherwise, the Facility will not utilize water. Wyman pf. at 6.

87. The Facility includes an approximately 100-year-old cast-iron transmission water main owned by the NBWD. This main conveys water from sources located to the east of U.S. Route 7 to the municipal water system, running through the Facility parcels as well as other parcels to the east and west. Wyman pf. at 7.

88. The Petitioner will relocate the water line along the Facility's gravel access road between two sections of perimeter fence within a 65-foot cleared corridor. The 12-inch-diameter ductile iron water line will conform with local and state design standards, and a Water Supply Permit from the Vermont Department of Environmental Conservation will be required. Wyman pf. at 7; Wills pf. supp. at 3; Wills 2nd pf. supp. at 3, 17; Coster pf. at 5-6; exhs. SS-SW-2a (Revised), SS-RW-6, SS-RW-6A, and SS-RW-8.

Soil Erosion
[10 V.S.A. § 6086(a)(4)]

89. The Facility will not cause unreasonable soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition may result. This finding is supported by the additional findings below.

90. The Facility will involve more than one acre of earth disturbance and will require a construction-phase stormwater permit from the Vermont Department of Environmental Conservation. The Facility's estimated direct earth disturbance is approximately 54 acres, which is necessary for the access road construction and drainage, tree clearing/grubbing, landscape berms, underground electric lines, interconnection facilities, and use of a laydown/staging area. The estimated total potential disturbed area is 104.2 acres. Wyman pf. at 7-9; Wyman pf. supp. 5-6; Wyman pf. reb. at 4-5; exhs. SS-SW-3 (Revised) at 5, SS-SW-2a (Revised), and SS-SW-2b (Revised).

91. The Facility will require an Individual Construction Stormwater Discharge Permit as more than five acres of concurrent earth disturbance will occur during construction at any one time. Construction activities will be performed in accordance with the Vermont Standards & Specifications for Erosion Prevention and Sediment Control. Wyman pf. at 7-8; Wyman pf. supp. at 5; exh. SS-SW-3 (Revised) at 5.

92. The Facility will implement a variety of stormwater runoff and erosion control methods, including temporary soil stabilization within 14 days of initial site disturbance, a temporary stabilized construction entrance, silt fence downslope of all proposed disturbances and when work is proposed within 100 feet of a wetland, erosion control berms, sediment traps, and sediment basins. Wyman pf. at 8; Wyman pf. supp. at 5-6; Wyman pf. reb. at 7-8; exh. SS-SW-2b (Revised).

93. The Facility will create approximately 2.7 acres of impervious surfaces from the pad-mounted transformers, concrete pads, control house, and access roads. The existing impervious area is estimated at 0.3 acre. Following construction, the total impervious area of the Facility will be approximately three acres. Wyman pf. at 9; Wyman pf. supp. at 4-5; exhs. SS-SW-2a (Revised) and SS-SW-3 (Revised).

94. The Facility will require an operational stormwater permit as the total impervious surface is greater than one acre. Wyman pf. at 9; Wyman pf. reb. at 9-10; Coster pf. at 5-6; exhs. Joint SS-ANR-1 (Rev.) at 2-3, SS-SW-2a (Revised), SS-SW-2b (Revised), and SS-SW-3 (Revised).

95. The proposed stormwater system is comprised of five gravel wetlands distributed around the Facility and simple disconnection areas along the access road. The proposed locations for the gravel wetlands are based on the existing drainage patterns on the site. Runoff from all impervious surfaces created by the Facility will be conveyed via overland flow and drainage culverts, primarily along the gravel access roads, to receive treatment in one of the five gravel wetlands or, if appropriate, simple disconnection, before being responsibly discharged into tributaries to Paran Creek. Wyman pf. at 10-11; Wyman pf. reb. at 10; exhs. SS-SW-3 (Revised) and SS-SW-2a (Revised).

96. Following construction, final site stabilization will be achieved in accordance with ANR standards, through revegetation of pervious areas and graveling of access roads.

Implementation of these measures will prevent undue soil erosion and protect water quality. Wyman pf. at 8, 10; Wyman pf. reb. at 8-9; exhs. SS-SW-3 (Revised) at 4-5, SS-SW-2a (Revised), and SS-SW-2b (Revised).

97. The Facility will have an operational stormwater maintenance plan that includes cleaning schedules and periodic inspections of the system to ensure it continues to operate as designed over its lifetime. Reporting will be submitted to the Vermont Department of Environmental Conservation on the operation, maintenance, and condition of the system as well as a renewal of the permit and recertification of the stormwater system every five years. Wyman pf. reb. at 13; exh. Joint SS-ANR-1 (Rev.).

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

98. The Facility will not cause unreasonable congestion or unsafe conditions with respect to the use of highways, waterways, railways, airports, airways, or other means of transportation, existing or proposed. This finding is supported by the additional findings below.

99. The Petitioner will obtain a Section 1111 permit from the Vermont Agency for Transportation ("VTrans") for a temporary access from U.S. Route 7. This avoids heavy trucks and oversized loads from using local roads during construction. Wills 2nd pf. supp. at 12.

100. Temporary access from U.S. Route 7 will be designed to the VTrans Standard B-71B for commercial drives, which includes providing adequate horizontal and vertical geometry with adequate sight distances to provide safe access onto and off U.S. Route 7. Wyman pf. at 12.

101. Lighter-duty vehicles will access the site from East Road and Holy Smoke Road. Traffic on Holy Smoke Road will be temporary, limited to a portion of the road, between 7:00 AM and 7:00 PM Monday through Friday and 8:00 AM to 5:00 PM on Saturdays. Wills pf. at 22; Wills pf. reb. at 9; exh. SS-RW-8 at 1-2.

102. Following construction, access to the site will be limited to landscape management and equipment maintenance and repairs. Wills pf. at 22.

103. The Department and Shaftsbury Solar have agreed to include a CPG condition for the Facility that requires the Petitioner to file documentation with the Commission before site preparation or construction that confirms VTrans' approval of the Facility's temporary access road from U.S. Route 7. Jordan pf. at 2-3; Wills pf. reb. at 15-16; exh. PSD-BJ-2.

Discussion

The temporary access from U.S. Route 7 is critical to divert traffic from local roads. To mitigate the Facility's impacts on traffic, we will include in the CPG the condition agreed upon by the Petitioner and the Department that will require that the Petitioner confirm VTrans' approval of temporary site access from U.S. Route 7 before any site preparation or construction occurs.

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

104. The Facility will not place an unreasonable burden on the ability of a municipality to provide educational services because the Facility will not require or affect educational services. Wills pf. at 22.

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

105. The Facility will not place an unreasonable burden on the ability of the affected municipality to provide municipal or government services because the Facility will not require or affect local services. This finding is supported by the additional findings below.

106. The Petitioner has agreed to coordinate with local fire officials to ensure familiarity with the Facility, and there will be 24-hour access for emergency personnel. Wills pf. reb. at 10-11.

107. The Petitioner will provide an annual payment of $15,000 to the Town of Shaftsbury to support the purchase and maintenance of certain firefighting equipment. Wills 2nd pf. supp. at 11-12; Wills pf. reb. at 10-11; exh. SS-RW-8.

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

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

Aesthetics

109. The Facility site will cover approximately 80 acres currently consisting of mostly open fields with forest and hedgerows separating and surrounding the open areas. The Facility will clear approximately 42 acres of trees, including 34.6 acres of forest. Exhs. SS-MW-2 (Revised) at 1-2, SS-RW-2B, and PSD-MB-2 at 3, 9.

110. The Facility's surroundings are rural and characterized by rolling hills, cobbles, and dense forested areas. The surrounding landscape has a pattern of rural residential development, agricultural fields and farmland, open meadows, hedgerows, rolling hills, and heavily forested lands. The nearest residence on Holy Smoke Road is approximately 338 feet from the northern edge of the Facility. Exhs. SS-MW-2 (Revised) at 6-7, Intervenors-SA-02 at 9, SS-RW-2B, and PSD-MB-2 at 9.

111. The Facility will be located on a hilltop. Approximately one-third of the Facility site slopes to the south at an approximate 3% grade. The remaining two-thirds slopes to the north at approximately 10% grade. Exhs. Intervenors-SA-02 at 9 and PSD-MB-2 at 9.

112. The Facility site is located west of U.S. Route 7 and south of Holy Smoke Road within an area currently and historically used for agriculture. The U.S. Route 7 corridor generally runs in a north-south direction and is located approximately 0.07 mile east of the Facility at its nearest point. Exhs. SS-MW-2 (Revised) at 6-7, Intervenors-SA-02 at 9, and PSD-MB-2 at 9.

113. The Petitioner revised the Facility layout in January 2024 to reduce Facility visibility for views from Holy Smoke Road and Trumbull Hill Road. Wills pf. supp. at 4-6; exhs. SS-RW-2A (Revised) (site plan comparison), PSD-MB-2 at 23, PSD-MB-10 (simulations), and PSD-MB-11 (simulations).

114. The revised site plan provides a slightly smaller Facility footprint (79.4 acres compared to the original proposed 83.6 acres) and reduced non-forest clearing (reduced to 7.6 acres from 8.4 acres). Total forest clearing acreage (34.6 acres) is not affected by the Facility revision. Wills pf. supp. at 4-6; exhs. SS-RW-2A (Revised) (site plan comparison) and SS-RW-2B (summary of changes).

115. The revised Facility layout increases the distance between the Facility and Holy Smoke Road from 115 feet to 130 feet but reduces the distance to the nearest residence from 360

feet to 338 feet. Exhs. SS-RW-2A (Revised) (site plan comparison) and SS-RW-2B (summary of changes).

116. There will be intermittent views of the Facility from adjacent Holy Smoke Road and residences along Holy Smoke Road. Although Holy Smoke Road is lined with existing, mature hedgerow-style trees and vegetation, some views of the Facility will be possible through the hedgerow and through breaks in the existing vegetation. Visibility will increase during leaf-off conditions. Vegetation along Holy Smoke Road will not be removed as part of the Facility. Exhs. SS-MW-2 (Revised) at 8-9, 16, Appx. B at Viewpoints 9-17, Appx. E (simulations); Intervenors-SA-02 at 14-20; Intervenors-SA-2A at Views 1-18; Intervenors-SA-2B (simulations); PSD-MB-2 at 10, 12; PSD-MB-9 at Viewpoints 6-13; and PSD-MB-10 (simulations).

117. Most views from Trumbull Hill Road will be limited by topography, existing vegetation, existing buildings and residences, and distance (approximately 1.2 miles), although some residences will have unobstructed views of the northern-sloping sections of the Facility limited only by distance. Because of the hilltop topography of the Facility site, views from Trumbull Hill Road will include only the northern-sloping sections of the Facility. Approximately 1,500 feet of the Facility where it crests the hilltop will appear against the skyline due to the clearing of forested areas on the Facility site. Exhs. SS-MW-2 (Revised) at 7-8, Appx. B at Viewpoints 1-5, Appx. E (simulations); Intervenors-SA-02 at 11-14; Intervenors-SA-2A at Views 19-46; Intervenors SA-2B (simulations); PSD-MB-2 at 10, 11-12; PSD-MB-9 at Viewpoints 14-19; and PSD-MB-11 (simulations).

118. The Facility will also have limited visibility from U.S. Route 7 in two sections, an approximate 1.36-mile length northeast of the Facility site and a 0.28-mile length east of the Facility site. Views will be limited by existing vegetation, the topography between U.S. Route 7 and the Facility site, and the speed of vehicles traveling on U.S. Route 7, but will include potential views of the Facility's substation components. Exhs. SS-MW-2 (Revised) at 9-10, Appx. B at Viewpoints 21-24; Intervenors-SA-02 at 19; PSD-MB-2 at 11-12; PSD-MB-9 at Viewpoints 20-21; and PSD-MB-12 (simulations).

119. Other limited views of the Facility may be possible from more distant public areas (*i.e.*, greater than two miles), including Vermont Route 7A and Glastonview Road. Exhs. SS-

MW-2 (Revised) at 11-12, Appx. B at Viewpoints 25-29; Intervenors-SA-02 at 20; Intervenors-SA-2A at Views 47-48; PSD-MB-2 at 12; and PSD-MB-9 at Viewpoints 22-25.

120. The Facility's materials and colors will include dark solar panels, galvanized steel racking systems, fencing, and galvanized substation structures. Exhs. PSD-MB-02 at 13, Intervenors-SA-02 at 20-21, and PSD-MB-2 at 13.

121. An existing 46 kV transmission line is present on the Facility site, and the Facility site is bordered on the east side by Route 7, which has three lanes in the area of the Facility site. There are other industrial facilities in Shaftsbury with similar materials and colors, but none are within the same viewshed as the Facility and those facilities do not define the character of the Facility area. Exhs. SS-MW-2 (Revised) at 12, Appx. B at Viewpoints 14-15, 17; Intervenors-SA-02 at 9, 12; Intervenors-SA-2A at Views 4, 13; and PSD-MB-2 at 13; Tr. (7/15/24) at 130-31 (Willard), 222-23 (Anderson).

122. The parties agree that the Facility will have an adverse impact on the aesthetics of the area. Exhs. SS-MW-2 (Revised) at 13, Intervenors-SA-02 at 25, and PSD-MB-2 at 13-14.

123. The Facility will not violate any clear, written community standards in the Town Plan or Regional Plan intended to preserve the aesthetics or scenic beauty of the area. Exhs. SS-MW-2 (Revised) at 14-16 and PSD-MB-2 at 14-23.

124. The Facility will be located in the Rural Residential 40 District defined in the Town Plan, which permits one dwelling unit per 40,000 square feet. The Facility will also abut the Forest and Recreation District. Portions of the Facility parcel are located in the Forest and Recreation District, but no Facility equipment will be located in the Forest and Recreation District. Exhs. SS-MW-2 (Revised) at 23-24, Intervenors-SA-02 at 9-10, and Intervenors-SA-03 at 18.

125. The Town Plan does not contain any clear, written community statements that the Facility would violate and does not specifically identify the Facility site as a scenic resource. Exhs. PSD-MB-2 at 22-23 and Intervenors-SA-02 at 27.

126. The Town Plan states that "[t]he Town should not institute zoning or other ordinances that would limit renewable energy development" and that "[t]he Planning Commission has concluded that the Town should not regulate or limit the locations of solar or

wind resources and will leave siting decisions to the Vermont Department of Public Service[]." Exh. SA-03 at 36, 38.

127. The Town of Shaftsbury states that the Facility complies with the Town Plan. However, the Town also noted, regarding the original design, that "[t]he scale of this project is shocking to some Shaftsbury residents." Reply Brief filed by the Town of Shaftsbury (9/6/24); exh. Intervenors SA-5 at 1.

128. The Bennington County Regional Plan does not contain any clear, written community statements that the Facility would violate. Exh. PSD-MB-2 at 20.

129. The Bennington County Regional Plan identifies the Shaftsbury Cobbles as "unique natural features." The Regional Plan explains:

> The waterfalls, caves, glens, rock outcroppings, mountain summits, and other unique geological, botanical, and hydrological features of the landscape contribute to its special character and should be protected from incompatible development. An inventory that includes many of those features has been compiled by the [BCRC] (Map 8-8), and more information on those resources is available at the BCRC and through the Vermont Agency of Natural Resources.

Exh. Intervenors-SA-04 at 111.

130. Map 8-8 in the Regional Plan includes the Shaftsbury Cobbles as item number 60. Exh. Intervenors-SA-04 at 112, 113.

131. The Regional Planning Commission concluded that the Facility is consistent with the Bennington County Regional Plan but also states that "a project of this size has substantial regional impact, and efforts should be made to mitigate those impacts." Exh. SS-RW-9 at 2-3.

132. The Facility will include reasonable aesthetic mitigation measures, including landscape plantings and four- to six-foot-high earthen berms that will provide additional screening for closer views from Holy Smoke Road and Route 7. Exhs. SS-MW-2 (Revised) at 17-18, Appx. C (cross-sections), Appx. D (mitigation plan) and PSD-MB-2 at 24.

133. The landscape mitigation plan provided for the Facility will include 91 deciduous trees, 200 evergreen trees, and 423 shrubs to reduce Facility visibility. Exh. SS-MW-2 (Revised) at 17-18, Appx. D (mitigation plan).

134. The Facility will not be so out of character with or so significantly diminish the scenic qualities of the area that it would be offensive or shocking to the average person. Exhs. SS-MW-2 (Revised) at 16-17 and PSD-MB-2 at 24.

135. Visibility of the Facility from residences and public vantage points will be softened by existing vegetation, topography, distance, or by a combination of the three. Some unobstructed skylined views of the Facility will be possible along portions of Trumbull Hill Road and residences along that road. Mitigation of closer views from Holy Smoke Road will benefit from the implementation of the aesthetic mitigation plan. Exhs. SS-MW-2 (Revised) at 16-17 and PSD-MB-2 at 24.

Discussion

In determining whether a proposed project satisfies the aesthetics criterion contained in 30 V.S.A. § 248(b)(5), the Commission applies the so-called "Quechee test."

The first step in the two-part Quechee test is to determine whether a project would have an adverse impact on aesthetics and the scenic and natural beauty of an area because the project would not be in harmony 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. If the project does not have an adverse effect on aesthetics because it is in harmony with its surroundings, then the project satisfies the aesthetics criterion.

If a project would have an adverse effect on aesthetics, such 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) 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? (c) Would the project offend the sensibilities of the average person?

In addition, the Commission's consideration of aesthetics under Section 248 is "significantly informed by overall societal benefits of the project."[50]

[50] *In re: Northern Loop Facility*, Docket No. 6792, Order of 7/17/03, at 28.

All parties agree that the Facility will have an adverse impact on the aesthetics and natural beauty of the area. After reviewing the record evidence, we agree that the Facility will have an adverse impact on aesthetics or on the scenic or natural beauty of the area because the Facility is not in harmony with its surroundings, introduces novel colors and materials into the immediate environment, is prominently visible from certain public vantagepoints, and impacts open space. Because there is no dispute that the Facility is adverse, we move directly to our analysis of whether the impact is unduly adverse under step two of the *Quechee* test.

Clear, Written Community Standard

The first prong in the second step of the *Quechee* test asks: Would the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? The sources of such community standards are town and regional plans.[51] "In order for a provision to be considered a clear, written community standard, it must be 'intended to preserve the aesthetics or scenic beauty of the area' where the proposed project is located and must apply to specific resources in the proposed project area."[52] Generalized statements and general scenic resource policies that are not focused on a particular scenic resource or that fail to offer specific guidance or measures to protect the resource cannot be considered "clear, written community standards."[53] A town or regional planning commission must identify "designated areas and resources that need protection" with specificity to constitute a clear, written community standard.[54] Put differently, a clear, written community standard must expressly "identify [the Facility] parcel as a scenic resource worthy of protection."[55]

Town Plan

The Town Plan defers to the Commission and Department to regulate the siting of solar generation facilities.[56] The Town Plan specifies that the Town has not imposed "screening or other restrictions on renewable energy development" beyond those imposed for other forms of

[51] *In re Apple Hill Solar LLC*, 2021 VT 69, ¶ 32, 215 Vt. 523, 280 A.3d 44.
[52] *Georgia Wind*, Docket No. 7508, Order of 6/11/10 at 52.
[53] *Id*. at 53.
[54] *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 19, 202 Vt. 59, 147 A.3d 621; *In re UPC Vermont Wind, LLC*, 2009 VT 19, ¶ 38, 185 Vt. 296, 969 A.2d 144; *Petition of UPC Vermont Wind, LLC*, Docket No. 7156, Order of 8/8/07 at 65.
[55] *Petition of Rutland Renewable Energy, LLC*, Docket No. 8188, Order of 3/11/15 at 85-86.
[56] Exh. SS-MW-2 (Revised) at 23.

development.[57] The Town Plan includes general policy statements about promoting a transition from fossil fuel to renewable energy.[58] These policy statements suggest that the Town has not imposed clear, written community standards proscribing solar development in any particular location. However, the Town Plan also contains general goals of conserving and managing forested lands, maintaining ecological integrity of natural communities and rare and unique species populations, and including aesthetic considerations in the design of infrastructure.[59]

Nonetheless, we must look at the various land-use standards contained in the Town Plan. "The land use policies of the Town Plan are implemented through enforcement of the Zoning Bylaws and Subdivision Regulations, which identify planning districts and guide the type, location, and density of land use for future growth."[60] The Facility will be located almost entirely in the Rural Residential District; however, a small portion of the parcel that will host the Facility lies within the Forest and Recreation District. We analyze the Town Plan language concerning both districts for purposes of determining whether the Town Plan contains a clear, written community standard applicable to the Facility.

The Town Plan states,

> The purpose of the Rural Residential Districts is to ensure the preservation of natural resources, scenic qualities and agricultural land while accommodating relatively low-density residential development. These districts are planned to be predominantly residential in character, while permitting appropriate compact development but in all cases at densities to avoid the need for municipal water supplies or sewer systems.[61]

Most of the Facility site is designated Rural Residential 40, which is the highest-density subdistrict at one dwelling unit per 40,000 square feet.[62] The language in the Town Plan describing Rural Residential Districts is similar to the language used in the Bennington Town Plan's description of Rural Conservation Districts, which the Supreme Court in *Apple Hill*

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[57] Exh. SS-MW-2 (Revised) at 23 (quoting Town Plan Policy 12.1.1: "The town of Shaftsbury will not impose screening or other restrictions on renewable energy development beyond those imposed for other types of building and industry. The town does not seek to regulate renewable energy beyond regulations imposed by the [Commission]. The town should not institute zoning or other ordinances that would limit renewable energy development."); Exh. Intervenors-SA-03 at 36, 37.

[58] Exh. SS-MW-2 (Revised) at 24.

[59] Exh. PSD-MB-13 at PDF pp. 102, 104, 106-107.

[60] Exh. PSD-MB-13 at PDF p. 112.

[61] Exh. SS-MW-2 (Revised) at 23.

[62] Exh. PSD-MB-13 at PDF p. 113.

concluded was too general to be a clear, written community standard.[63] Unlike the Bennington Town Plan, the Shaftsbury Town Plan does not contain any design standards similar to what the Supreme Court in *Apple Hill* found specific enough to be a clear, written community standard.[64] Further, the Facility site is not identified in the Town Plan as a scenic resource.[65]

Additionally, the Facility may involve some brush clearing along the perimeter of a Forest and Recreation District that surrounds Harrington Cobble.[66] "Shaftsbury's Forest and Recreation (FR) Districts are designed to provide opportunities for forestry and recreational uses and to protect timber, wildlife, and watershed resources in the Town's major forested areas, and to protect our watersheds from contamination."[67] As explained above in our discussion of the orderly development criterion, the limitations contained in the Town Plan's discussion of Forest and Recreation Districts are more specific than for the Rural Residential District, but the Facility will not violate any of those limitations.

We also note that the Town Plan contains a map of solar resources and explains that "[t]here are approximately 1,000 acres of land with [existing, proposed, and potential] solar resources without any constraints, within one mile of three phase lines which would allow a total capacity of 125 MW based on an estimate of eight acres per megawatt."[68] The Facility site is identified as an area both with constraints and with no constraints. However, to the extent this portion of the Town Plan identifies constraints, those constraints are not germane to aesthetic impacts. Instead, they address impacts on other natural resources that are addressed in other sections of this order.[69]

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[63] *In re Apple Hill*, 2021 VT 69, ¶¶ 42-43, 215 Vt. 523, 280 A.3d 44 ("[G]eneral language about preserving the rural character of the entire Rural Conservation District is not the kind of specific, clear, written standard that can render an adverse impact undue under Section 248(b)(5).").

[64] *Id.* at ¶¶ 44-45.

[65] Exhs. PSD-MB-2 at 22; SS-MW-2 (Revised) at 16; Intervenors-SA-02 (Rev.) at 27 ("After a comprehensive review of the Shaftsbury Town Plan, no clear written community standards were discovered in the document that would affect the development of the [Facility].").

[66] Exh. Intervenors-SA-02 at 9-10 (describing extension of Facility site into Forest and Recreation District as a "small pocket"). *See also supra* n. 21 and our related discussion of orderly development above.

[67] Exh. PSD-MB-13 at PDF p. 114.

[68] Intervenors-SA-3 at 37, Appx. A, Map 12.1.

[69] The "constraints" from the Town Plan include natural resources (*e.g.*, vernal pools; river corridors; floodways; wilderness areas; rare, threatened, and endangered species; deer wintering areas; forest blocks); agricultural, prime, and hydric soils; historical and cultural districts; and a residential wind buffer area). Intervenors-SA-3 at 37.

In all three aesthetics reports filed in this case, the drafters of the reports conclude that there are no clear, written community standards in the Town Plan. The Town has also concluded that the Facility complies with the Town Plan.[70] For these reasons and those discussed in connection with land conservation measures in the orderly development section, and based on our analysis above, we conclude that the Town Plan also does not include any clear, written community standards that apply to the Facility.

Regional Plan

We have also considered the Intervenors' arguments based on the Regional Plan and conclude that the Regional Plan also does not contain any clear, written statements directed at protecting aesthetics that are inconsistent with the Facility.

The Department's and the Petitioner's aesthetics experts both testify that there are no clear, written community standards in the Regional Plan.[71] The Intervenors' aesthetics expert concludes that although the Regional Plan "does not provide a clear written community standard to protect the [Facility] parcels under Quechee by identifying the [Facility] parcel as a 'highly scenic area,' the Regional Plan *does* call out the Shaftsbury Cobbles as a 'Significant Natural Area.'"[72] The Regional Plan states that the region's unique natural features "should be protected from incompatible development."[73] The Intervenors' aesthetics report argues that the Shaftsbury Cobbles includes Harrington Cobble, which is partially on the Facility site, and some deforestation is proposed on and around the Harrington Cobble landform.[74]

As we explained above, general scenic-resource policies that do not identify the Facility parcel as an area for protection, are not focused on a particular scenic resource, and fail to offer specific guidance or measures to protect the resource cannot be considered "clear, written community standards."[75] The Shaftsbury Cobbles is identified in the Regional Plan as a "unique natural feature" without a specific link to their aesthetic or scenic value.[76] The Regional Plan, however, only states that unique natural features "should be protected from incompatible

[70] *See* Town Reply Brief at 1.
[71] Exhs. PSD-MB-2 at 20, SS-MW-2 (Revised) at 16.
[72] Exhs. Intervenors-SA-02 at 28, Intervenors-SA-4 at 111-113.
[73] Exh. Intervenors-SA-02 at 111.
[74] Exh. Intervenors-SA-02 at 28.
[75] *Georgia Wind*, Docket No. 7508, Order of 6/11/10 at 53.
[76] Exh. Intervenors-SA-04 at 111-113; *see In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 19, 202 Vt. 59, 147 A.3d 621.

development." Assuming that the Regional Plan's map identifies the Shaftsbury Cobbles as a "unique natural feature," the quoted language above does not provide the degree of specificity that is required to constitute a clear, written community standard."[77]

For this prong of the analysis, the Vermont Supreme Court has directed that language in a town or regional plan must be "clear and unqualified, and create[] no ambiguity."[78] In other words, the relevant plan language must include a mandatory directive to qualify as a clear, written community standard for purposes of our aesthetics analysis.[79] In this case, we are tasked with assessing a Regional Plan directive that is more aspirational than compulsory. Specifically, it includes a goal that natural resources "should be protected from incompatible development." Using the verb "should" instead of "shall" or "must" implies that the Regional Plan does not include a mandatory requirement.[80] Further, the phrase "protected from incompatible development" and the term "incompatible development" are not defined in the Regional Plan. The Vermont Supreme Court has determined such concepts in a town or regional plan to be "abstract policy" that is "too ambiguous to be enforced against" an applicant.[81] We decline to find the statement cited in the Intervenors' aesthetics report to be a clear, written community standard. However, even if the statement were a clear, written community standard, we nonetheless would conclude that the Project satisfies the aesthetics component of Section 248(b)(5). The Facility, subject to appropriate CPG conditions and associated aesthetic mitigation, will be protective of the significant natural area listed in the Regional Plan. In other words, because the aesthetic impact on adjacent natural resources will be adequately mitigated, the Facility is consistent with this portion of the Regional Plan.

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[77] *See In Re UPC Wind LLC*, 2009 VT 19, ¶ 38, 185 Vt. 296, 969 A.2d 144 ("The plan here did not identify any particular scenic area for preservation that would be affected by the project. Instead, it recommended that there be limited development in the 'rural area' districts that made up large portions of the Northeast Kingdom, and stated that development 'should be' compatible with existing land use. . . . [T]hese general statements of preferred, rather than mandated, objectives are far too open-ended to constitute a clear, community written standard that would put UPC on notice that its project was prohibited.").

[78] *In re Wheeler Parcel Act 250 Determination*, 2025 VT 28, ¶ 18, __ Vt. __, __ A.3d __ (quotation omitted).

[79] *See id*.

[80] *See id.* (determining regional plan did not provide "clear, written community standards with respect to aesthetics" when "in making the Plan, the Regional Planning Commission "intentionally chose to use 'should,' rather than shall, in the Plan's goal statement.").

[81] *In re Times & Seasons, LLC*, 2008 VT 7, ¶¶ 21-23, 183 Vt. 336, 950 A.2d 1189.

The Regional Plan also states that "commercial-scale solar energy facilities . . . should not be sited at important gateway locations or in the foreground of viewsheds that have been identified by communities as being of particular value."[82] The Regional Plan relies on local communities to identify important viewsheds, which is a factor that significantly affected our aesthetics analysis in a past case involving the Bennington County Regional Plan.[83] Here, Shaftsbury has not identified the Facility site as located in a viewshed of particular value. The Intervenors' aesthetics report does not cite site-specific community standards that would prohibit solar development based on viewsheds in the area.[84] The Intervenors' arguments about the viewsheds in the Facility vicinity fit best, instead, in our analysis of the visibility of the Facility under step one of the *Quechee* test, where we have already determined the Facility is adverse, or in the Commission's determination of whether the Facility would offend the sensibilities of the average person.

For these reasons and those discussed in connection with land conservation measures in the orderly development section, and based on our analysis above, we conclude that the Regional Plan also does not include any clear, written community standards that apply to the Facility. The Regional Planning Commission reached the same conclusion, finding that the Facility is consistent with the Regional Plan but including some recommendations to mitigate the impact of the Facility due to its magnitude.[85] The Regional Planning Commission recommends (1) a temporary access road off U.S. Route 7 to mitigation traffic and maintenance impacts on Holy Smoke Road; and (2) retention and augmentation of existing vegetation when implementing screening, which have been incorporated into the final design for the Facility.[86]

Based on the above findings and discussion, we find that the Facility will not violate any clear, written community standards intended to preserve the aesthetics or scenic beauty of the area. However, as considered below in the section on mitigation, we adopt some of the

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[82] Exh. Intervenors-SA-04 at 115.

[83] *See MHG Solar*, Case No. 20-1261-NMP, Order of 9/17/21 at 45-46.

[84] Exh. Intervenors-SA-02 at 31 ("While there are no explicit directives for protection of the scenic beauty of Holy Smoke and Trumbull Hill Roads Neighborhood that can be derived from any relevant planning documents, the viewshed impact of the project from public and private locations along Holy Smoke Road and Trumbull Hill Road is significant.").

[85] Exh. SS-RW-9 at 2-3.

[86] BCRC public comments (10/27/23) at 2.

recommendations of the Shaftsbury Planning Commission to further mitigate the impact of the Facility.

Reasonable Aesthetic Mitigation

Under the second prong in the second step of the *Quechee* test, the Commission asks whether a petitioner has taken generally available mitigating steps that a reasonable person would take to improve the harmony of the Facility with its surroundings. The Commission does not require renewable energy to be invisible.[87] Put differently, a petitioner "is not required to eliminate all visibility" of a facility "but must provide sufficient mitigation to prevent the [facility] from having an unduly adverse aesthetic impact."[88]

The Petitioner and the Department identify site selection, revisions to the site layout to mitigate visibility of the Facility, setbacks from the road, the open fields on the site that reduce the need for vegetative clearing, the low profile of the Facility equipment, topography of the site, the location adjacent to an existing transmission line, and a significant proposed landscape mitigation plan as evidence that the Petitioner has taken generally available mitigating steps to improve the harmony of the Facility with its surroundings. The landscape mitigation plan for the Facility includes a mix of nearly 300 deciduous and evergreen trees and more than 400 shrubs. The Facility will also use earthen berms of varying heights to create a more natural form along with the plantings to soften or eliminate close views of the Facility.

In the Intervenors' aesthetic testimony and exhibits, they argue that a "substantial redesign," including significant reduction in the Facility's size as well as preservation of existing forest, is the only appropriate mitigation for the Facility site.[89] In the Intervenors' briefing, however, they advance two mitigation steps: (1) removing the triangular section of panels on the northeastern side of the proposed array; and (2) retaining and augmenting existing vegetation when implementing screening.[90] The Intervenors go on to state, "[t]he only way to truly mitigate

[87] *Petition of MHG Solar LLC for a certificate of public good*, Case No. 20-1261-NMP, Order of 11/19/21 at 3.
[88] *Petition of Acorn Energy Solar 2, LLC*, Case No. 17-4049-NMP, Order of 7/26/19 at 40; *see also Petition of Next Generation Solar Farm, LLC*, Docket No. 8523, Order of 4/6/17 at 9 ("Petitioners are not required to completely 'harmonize' their projects, and they are not required to abandon their projects if some adverse scenic impacts cannot be feasibly mitigated."); *Application of Sun CSA 6*, Case No. NM-4188, Order of 9/10/14 at 5.
[89] Exh. Intervenors-SA-02 at 32-34.
[90] Intervenors' Brief at 88.

views from Trumbull Hill Road is to maintain more of the existing mature forest and hedgerow vegetation, and to remove large portions of the proposed panels from the [site plan]."[91]

In response to these comments and those of the Shaftsbury Planning Commission and Regional Planning Commission, the Petitioner eliminated nine rows of panels on the northern part of the Facility and moved the panels in the northeastern portion of the Facility away from the road and implemented additional screening.[92] This conforms with a request by the Shaftsbury Planning Commission that the triangular northeastern portion of the Facility "be moved away from Holy Smoke Road or removed from the Facility."[93] The Shaftsbury Planning Commission further requested that no herbicides be used for maintenance on the site and that the water line relocation be a condition of the CPG, if granted.[94] We will impose these conditions. However, we decline to further reduce the Facility's size.

Although some visibility of the Facility will remain, whether through gaps in the existing vegetation and mitigation or from the more distant elevated locations, we find that the Facility's aesthetic mitigation plan is reasonable, and the Facility is sited to minimize the aesthetic impact of a facility of this size. When combined with the already limited views of the Facility, we conclude that the mitigation proposed by Shaftsbury Solar is reasonable and Shaftsbury Solar has taken generally available mitigating steps that a reasonable person would take to improve the harmony of the Facility with its surroundings.

Shocking or Offensive

Under the third prong in the second step of the *Quechee* test, the Commission considers whether the Facility would be so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person. For purposes of this analysis, the "average person" is defined as a neutral party viewing the project both from public and private vantage points, applying an objective rather than a subjective standard.[95]

[91] Intervenors' Brief at 88.
[92] Exh. SS-RW-2A (Revised).
[93] Exh. Intervenors-SA-5, Attachment A.
[94] Exh. Intervenors-SA-5 at 1.
[95] *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶¶ 21-22, 202 Vt. 59, 147 A.3d 621.

Undeniably, a facility of this size and scale in a rural setting, set against a mountain backdrop, alters the character of its surroundings. As we have emphasized in previous orders, "[w]e recognize that scenic qualities of the area are important to its residents and there will always be some resistance to any change in the landscape. However, the *Quechee* test does not guarantee that the aesthetic qualities of an area will not change."[96] Additionally, we have acknowledged that the greater the distance a viewer is from a project the less overwhelming the project and consequently the less likely "an average viewer would find its observation shocking or offensive" even if the project "may be seen as 'out of character' with the surrounding area."[97]

Despite its size, the Facility will have limited visibility from both public and private viewpoints. From nearly all vantage points, views of the Facility will be moderated by existing mature trees and other vegetation, distance, topography, or a combination of factors. Further, the Facility site is adjacent to U.S. Route 7, a busy highway, a transmission line corridor, and an overhead distribution line.[98] However, there will be minimal visibility of the Facility from travelers along Route 7 after all construction of the Facility is completed.

As discussed in the findings above, the closest public road to the Facility is Holy Smoke Road. Facility-related infrastructure will border Holy Smoke Road for less than 1,000 feet and views will be filtered by roadside trees and vegetation. The full scale of the Facility will not be apparent from Holy Smoke Road because of the Facility's limited visibility due to existing and proposed screening and the topography of the site. The Facility site slopes downward toward Holy Smoke Road from south to north, which limits potential close views to the northern two-thirds of the Facility through breaks in the existing vegetation and mitigation berms. Additional buffering will be provided by berms and proposed mitigation plantings. Residences in this area are on the northern side of Holy Smoke Road from the Facility and have additional screening provided by the vegetation lining the road's northern edge. Visibility from Holy Smoke Road will increase in leaf-off conditions but will continue to be softened by the mature growth as well as the earthen berms and evergreens that are introduced as mitigation. Traffic on Holy Smoke Road is "relatively light and local."[99]

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[96] *UPC Vt. Wind, LLC*, Docket No. 7156, Order of 8/8/07 at 69.
[97] *In re UPC Vt. Wind, LLC*, 2009 VT 19, ¶¶ 33-34, 185 Vt. 296, 969 A.2d 144.
[98] Exh. SS-SW-2a (Revised).
[99] James Poole, Intervenor ("Poole") pf. at 2.

The Intervenors have specifically identified three residences along Holy Smoke Road owned by Intervenors in this case and three residences along Trumbull Hill Road as having the potential for aesthetic impacts from the Facility.[100] Closer views of the Facility from nearby residences will be filtered by the mature trees and vegetation that currently line both sides of Holy Smoke Road and by the earthen berms that are proposed as part of the Facility's aesthetic mitigation. Unobstructed residential views will be from more distant viewpoints, where the Facility will appear as part of the larger surrounding landscape.

More direct views of the northern sections of the Facility will be possible from residences along Trumbull Hill Road. Because of elevation, these views will be mitigated only by distance and topography. Views from public areas along Trumbull Hill Road will be minimal and at similar distances. The limited visibility from public sections of Trumbull Hill Road will also be mitigated by existing vegetation along the road. Topography will hide the full scale of the Facility from distant viewpoints on Trumbull Hill Road, but it will also result in the undesirable skylining of the Facility. Views of the Facility from Trumbull Hill Road will be skylined for approximately 1,500 feet from most vantage points. Some residences along Trumbull Hill Road will have unobstructed views, including skylined views. Those views, however, are at distances exceeding one mile and are limited to the northern portions of the Facility array, so the Facility will not be a dominant feature in these views.

Intermittent views of portions of the Facility will also be possible from nearby Route 7 and other surrounding roadways, although these views will be more limited than those from Holy Smoke Road and Trumbull Hill Road.

The Intervenors urge the Commission to find the Facility shocking and offensive based on the significance of natural resources in the Facility's vicinity. In *MHG Solar*, the hearing officer and the Commission cited the Bennington County Regional Plan's statement that "[c]ommercial-scale solar energy facilities occupy large open areas and should not be sited at important gateway locations or in the foreground of viewsheds that have been identified by communities as being of particular value."[101] In its analysis of whether that proposed project

[100] Exh. Intervenors-SA-02 at 15-19.

[101] *MHG Solar*, Case No. 20-1261-NMP, Order of 9/17/21 at 12-13, 27, 30. The Bennington County Regional Plan also covers Shaftsbury.

would offend the sensibilities of the average person, the Commission considered the Regional Plan statements in conjunction with the Manchester Town Plan, which identified the project site in *MHG Solar* as a scenic resource area.[102] The Commission described the Manchester Town Plan's recognition of the scenic qualities of the proposed project site as relevant to the Commission's consideration of how an average person would perceive the project.[103]

Here, although Shaftsbury is subject to the same Regional Plan that was reviewed in *MHG Solar*, the Town Plan does not identify the Shaftsbury Cobbles or views along Holy Smoke and Trumbull Hill Roads as scenic resources. Because the Town Plan does not identify the Facility site as a scenic natural resource, the Regional Plan statement about protecting viewsheds "identified by communities" does not further inform our assessment of an average person's perception of the Facility. To do so would contradict our assessment of the role the Regional Plan and Town Plan play in the *Quechee* analysis. As discussed above in the section on clear, written community standards, we do not find the language in the Town Plan and Regional Plan to proscribe siting the Facility under *Quechee*.

Finally, the Intervenors urge the Commission to find that the Facility is shocking and offensive due to insufficient aesthetic mitigation. Our assessment of the whether a project is so out of character with its surroundings as to offend the sensibilities of an average person includes any proposed mitigation.[104] As we explained above, the additional mitigation proposed for the Facility will further reduce already limited close views along Holy Smoke Road, U.S. Route 7, and other public and private vantage points near the Facility. The proposed mitigation will consist of earthen berms and plantings, providing an immediate additional buffer in leaf-on and leaf-off seasons. Because of the topography of the area, mitigation for views of the northern sections of the Facility from points along Trumbull Hill Road is not possible. However, topography prevents views of the entirety of the Facility from any vantage point and direct views of the Facility from Trumbull Hill Road are at significant distances that place the Facility in the overall landscape. We concluded above that the aesthetic mitigation proposed by Shaftsbury Solar is reasonable, even though it does not completely screen the Facility from view.

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[102] *Id.* at 45-46.
[103] *Id.*
[104] *Id.* at 48.

Aesthetics Conclusion

Introducing an 80-acre solar array into a rural area will unavoidably result in impacts on the character and aesthetics of the area. Our task under Section 248 is to determine whether those impacts will be undue. We have carefully considered the facts surrounding the Facility and conclude that, although the Facility will be out of character with its surroundings, the Facility will not violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area; the Petitioner has taken generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings; and the Facility will not offend the sensibilities of the average person. As we have explained, the standard is not complete harmony or eliminating visibility of renewable energy projects. The Facility will have some visibility, but that visibility will be softened through screening or from a distance to be seen as one element in a larger panoramic view.

Sound

136. The Facility will not have an undue adverse impact with respect to sound impacts. This finding is supported by the additional findings below.

137. Construction-related noise will be of limited duration, comparable to the sound generated by light construction equipment, and will not occur in the evenings. Construction activities will be limited to the hours of 7:00 A.M. to 7:00 P.M., Monday through Friday, and 8:00 A.M. to 5:00 P.M. on Saturdays. Construction will not occur on state or federal holidays or on Sundays unless authorized by the Commission upon request. Bajdek pf. at 3.

138. Rock removal may be required for construction of the Facility. Any rock removal will be conducted during the limited construction times above and will be conducted in accordance with applicable state and local regulations. Bajdek pf. at 3.

139. During operation, the Facility will introduce new sources of sound that include the 27,000 kVA main power transformer at the Petitioner's substation, a 46 kV three-breaker ring bus at the adjacent GMP substation, and the eight transformers and eight inverters within the solar array. Exh. SS-CB-2 (rev. 2) at 1.

140. The closest piece of sound-generating equipment on the Facility site will be approximately 675 feet away from the nearest residence. Exh. SS-CB-2 (rev. 2) at 3.

141. The estimated daytime and nighttime Facility-related sound levels at the nearest residence are estimated to be approximately 25.1 dBA (daytime) and 23.5 dBA (nighttime). These projections are conservative in that they assume that all equipment is operating continuously at full load during the day. Because the inverters do not operate at night, nighttime sound levels were predicted based on simultaneous full operation of all transformers on the site. Bajdek pf. at 3-4; Bajdek pf. supp. at 3; exh. SS-CB-2 (rev. 2) at 3.

142. The estimated Facility-related sound levels at the closest residence and other nearby residences would be considered in the low range of audibility, and comparable to daytime and nighttime sound levels in quiet rural areas. Bajdek pf. supp. at 3; exh. SS-CB-2 (rev. 2) at 5.

143. The estimated sound levels will be below the American National Standards Institute's Noise Guidelines, which recommend an exterior nighttime noise limit of 40 dBa for outside residential buildings. Exh SS-CB-2 (rev. 2) at 5.

Discussion

We have reviewed the Petitioners' evidence related to the Facility's estimated sound impacts on adjoining properties. We conclude that the sound created by the Facility will be within reasonable limits and will not result in an undue adverse impact.

The Intervenors raise a concern that the Petitioner did not conduct sounds studies or tests for ambient noise or construction-related impacts. We have not previously required such evidence for proposed solar facilities and we conclude that it is not necessary to do so for this case. There is sufficient evidence in the record to conclude that: (1) sound-generating equipment will be located at an adequate distance away from any adjoining properties; and (2) maximum sound levels will be approximately 25 dBA at the nearest residence, which is an acceptable level.[105] Although construction-related activities will result in greater sound impacts than during the Facility's operational phase, we will impose our standard CPG conditions that limit construction activities to the hours of 7:00 A.M. to 7:00 P.M., Monday through Friday, and 8:00

[105] *See, e.g. Petition of Next Generation Solar Farm, LLC*, Docket No. 8523, Order 1/27/17 at 32 (concluding that noise levels below 40 dBA at the boundaries of a solar facility are acceptable). The Commission does not have an express standard for sound levels at solar generation facilities, but by way of comparison, our rule for wind facilities sets decibel limits at 42 dBA during daytime hours and 39 dBA during nighttime hours for facilities with a capacity of 50 kW or greater. *See* Commission Rule 5.703.

A.M. to 5:00 P.M. on Saturdays. These time limitations will mitigate the construction-related sound impacts.

Historic Sites

144. The Facility will not have an undue adverse effect on historic properties. This finding is supported by the additional findings below.

145. Shaftsbury Solar conducted a Historic Resources Assessment to evaluate the effects of the Facility on both above-ground and below-ground (archaeological) resources, which included both desktop and field research. Britta Tonn, Shaftsbury Solar ("Tonn") pf. at 2; exh. SS-BT-2.

146. The University of Vermont Consulting Archaeology Program and Crown Consulting Archaeology, LLC conducted on-site archaeological assessments in 2018 and 2023. Neither assessment identified any areas of archaeological sensitivity and no additional archaeological studies were recommended. Tonn pf. at 2-3; exh. SS-BT-2.

147. There are no above-ground historic resources on the Facility site. Tonn pf. at 3.

148. DHP and Shaftsbury Solar entered a memorandum of understanding that required the Petitioner to do further investigation regarding post-contact historic resources on the site (the "DHP MOU"). In the DHP MOU, DHP concluded that the Facility will cause no effect on above-ground historic resources and pre-contact archeological sites. Exh. SS-RW-5.

149. The Petitioner has agreed to the supplemental investigations and conditions for performance contained in the DHP MOU. Exh. SS-RW-5.

Discussion

Pursuant to the DHP MOU, which specifies the procedures for additional archeological work at the Facility site, we have included the parties' proposed CPG conditions in Shaftsbury Solar's CPG for the Facility.

Rare and Irreplaceable Natural Areas

150. The Facility will not have an undue adverse effect on rare and irreplaceable natural areas because there are no rare and irreplaceable natural areas within the Facility study area. Crary pf. at 7; exh. SS-AC-2 (Revised) at 9.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

151. The Facility will not have an undue adverse effect on any endangered species or necessary wildlife habitat. This finding is supported by the additional findings below.

152. The Facility study area contains one vernal pool (Class II wetland) that will not be affected by the Facility due to a 100-foot buffer. Crary pf. at 8; exh. SS-AC-2 (Revised) at 8, 12.

153. Shaftsbury Solar conducted a breeding bird survey for grassland birds to determine the Facility area's existing use by those species. The survey showed the site did not support grassland bird breeding. ANR has also confirmed that the fields are not of sufficient size to warrant necessary wildlife habitat designation under ANR guidelines. Crary pf. reb. at 2-3; exh. SS-AC-6.

154. There are two rare, threatened, or endangered ("RTE") plant species mapped by ANR within the Study Area. Shaftsbury Solar conducted a rare plant survey of the Facility study area between 2018 and 2021 and documented three previously unknown state rare plants. The onsite occurrences of the rare plants were mapped, and the Facility was designed to avoid the occurrences with 25-foot buffers. Crary pf. at 9; exh. SS-AC-2 (Revised) at 10-11.

155. Shaftsbury Solar reviewed the Facility study area for potential impacts on protected forest-dwelling bat species, including the northern long-eared bat, from the proposed tree cutting, including a passive acoustic survey. The survey resulted in a "probable absence determination." Based on the survey results, ANR guidance does not require seasonal tree clearing restrictions, further surveys, or conservation measures regarding RTE bats. Crary pf. at 9; exh. SS-AC-2 (Revised) at 11.

156. The Facility will not have an undue adverse impact on any known RTE plant or animal species. Crary pf. at 9; exh. SS-AC-2 (Revised) at 10-11.

157. The Petitioner will implement pollinator habitat plantings and vegetative management to benefit monarch butterflies as well as other pollinators. The pollinator habitat will be promoted and managed operationally within the array's perimeter fence. Exhs. SS-AC-2 (Revised) at 11 and SS-AC-5 (Revised).

Discussion

Shaftsbury Solar and ANR have entered into an MOU with requirements that will protect the vernal pool and rare plant species near the Facility site ("ANR MOU"). The CPG issued for the Facility will include conditions that incorporate these requirements from the ANR MOU.

The Intervenors have raised concerns about the adequacy of the Petitioner's proposed pollinator and vegetation management plans. We are satisfied that the conditions in the ANR MOU will adequately ensure the protection of the RTE plant species located on the Facility site. Because the evidence in this case does not indicate that the pollinator plan is necessary for the protection of any identified RTE species, we agree with the Petitioner that it is a voluntary measure and not an express regulatory requirement.[106] Therefore, we will not include any conditions in the CPG regarding the protection of RTE species, including any related to the pollinator plan, that are not included in the ANR MOU. The Petitioner will nonetheless be obligated to construct the Facility in a manner that is consistent with its testimony and site plans, which include the pollinator habitat and management plan described in its testimony.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

158. The Facility will not unnecessarily or unreasonably endanger any public or quasi-public investment in a 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. This finding is supported by the additional findings below.

159. The Petitioner will relocate and upgrade the existing NBWD water line on the Facility site at its own expense and will provide access rights to NBBWC for maintenance and monitoring of the relocated line. Wills 2nd pf. supp. at 10.

160. The Petitioner will obtain a Public Water System Individual/General Water Main Construction Permit ("Water Main Construction Permit") from the Vermont Department of Environmental Conservation before beginning site preparation or construction of the portions of the Facility that are subject to the Water Main Construction Permit. Site preparation, construction, operation, and maintenance of the Facility will be in accordance with the Water Main Construction Permit, where applicable. Exh. Joint SS-ANR-1 (Revised).

161. Holy Smoke Road and U.S. Route 7 are public investments adjacent to the Facility site. The Facility will not impact or create any adverse burdens on these public

[106] The Intervenors filed testimony and briefing about the adequacy of the Petitioner's pollinator plan. Because we conclude that the pollinator plan is not required for the protection of an RTE species (i.e. it is a voluntary measure), it is not necessary to address the parties' respective arguments on the adequacy of the pollinator plan.

investments given the limited and temporary use of the roads during construction and operation. Wills pf. at 23.

162. The Petitioner will repair or correct any damage to any Town of Shaftsbury highway and related infrastructure caused by the Petitioner or its contractors during construction of the Facility and to restore the same as near as reasonably practical to its condition prior to construction or better. Exh. SS-RW-8.

Discussion

The ANR MOU with the Petitioner includes a condition that will require the Petitioner to obtain a Public Water System Individual/General Water Main Construction Permit. We will include this requirement as a condition in the CPG for the Facility.

Public Health and Safety

[30 V.S.A. § 248(b)(5)]

163. The Facility will not have any undue adverse effects on the health, safety, and welfare of the public. This finding is supported by the additional findings below.

164. The Facility will be installed to meet the applicable safety standards of the National Electrical Code and National Electrical Safety Code, and utility interconnection standards for safe and reliable operation of solar electric plants. Potter pf. at 9.

165. All switchgear equipment will be inside a locked, UL-listed, code-approved electrical enclosure. Wills pf. at 24.

166. A perimeter fence with a minimum height of seven feet around the Facility array and an eight-foot fence topped with barbed wire around the substations will prevent unauthorized persons from accessing these areas and potentially causing damage to the Facility or harm to themselves. The fences will be posted with appropriate electrical warning signs. Potter pf. at 9; exh. SS-RW-2 (Rev. 2).

167. A lock box at the gate and a labelled site plan will provide the local fire department access and appropriate information in case of a fire. Potter pf. at 10.

168. The Facility's panels are designed to absorb rather than reflect the sun's energy, which will prevent undue glare. Wills pf. at 24.

169. The Facility's transformers will be installed with a secondary containment structure so that the surrounding land and water resources would be protected in the unlikely event that any transformer fluid leaks from the transformer. Potter pf. at 10.

170. The Petitioner will become a member of Dig Safe for the life of the Facility and comply with Commission Rule 3.800 as applicable. Potter pf. at 10.

171. The Facility will be set back more than 300 feet and across a road from the nearest residence and will not present any undue risk for spread of fire compared to other solar facilities or developments or require special firefighting techniques. Wills pf. reb. at 10.

172. The Facility does not present any significant concerns with respect to impacts on public health and safety. Jordan pf. at 2.

Primary Agricultural Soils

[30 V.S.A. § 248(b)(5)]

173. The Facility will not have any undue adverse effects on primary agricultural soils as defined in 10 V.S.A. § 6001. This finding is supported by the additional findings below.

174. There are approximately 64.4 acres of primary agricultural soils ("PAS") located within the Facility's limits of disturbance and covered by the Facility's Construction Stormwater Permit. Wyman pf. at 11; exhs. SS-SW-2a (Revised) and SS-SW-4 (Revised) at 1.

175. The Facility will directly disturb approximately 19.8 acres of PAS during the construction of the access roads, stormwater features, and waterline relocation. The remainder of the PAS within the limits of disturbance, approximately 44.6 acres, will be subject to indirect impacts, including unintended impacts from construction traffic and incidental occurrences. Wyman pf. at 11; Wyman pf. supp. at 6; exh. SS-SW-4 (Revised) at 1.

176. All impacts on PAS on the Facility site will be fully mitigated following AAFM guidelines. Wyman pf. supp. at 6; exhs. SS-SW-4 (Revised) at 1 and SS-RW-7.

177. For installation of the underground electrical conduit, the soil horizons will be separated during construction and re-laid in the order in which they were removed. If sand bedding is required for the electrical conduit installation, then the PAS will be removed and stored on site in a PAS stockpile area. Wyman pf. at 11-12.

178. PAS stockpiles will be used as landscaping berms for the Facility and will be seeded, mulched with straw, stabilized, and preserved in a manner that allows for complete

restoration during the Facility's decommissioning in accordance with AAFM guidelines. Wyman pf. at 11.

179. When the Facility is decommissioned, the electrical conduit, access drive, pad-mounted transformers, secondary containment, substation, and stormwater treatment elements will be removed and the PAS will be restored and maintained in accordance with AAFM guidelines. Wyman pf. at 12.

180. The Petitioner has entered a stipulation with AAFM that includes a series of proposed CPG conditions regarding management of PAS on the Facility site.

Discussion

The Petitioner's stipulation with AAFM includes a series of proposed conditions regarding PAS at the Facility site. These conditions relate to the manner in which PAS will be disturbed, extracted, stored, and ultimately replaced on the Facility site. To protect the PAS resources located at the Facility site, the proposed conditions will be included in the CPG for the Facility.

Consistency With Company's Least Cost Integrated Plan

[30 V.S.A. § 248(b)(6)]

181. The Commission has not required non-utilities to have a least-cost integrated resource plan. Therefore, this criterion is inapplicable.

Compliance with Twenty-Year Electric Plan

[30 V.S.A. § 248(b)(7)]

182. The Facility is consistent with the 2022 Comprehensive Energy Plan approved by the Department under 30 V.S.A. § 202(f). This finding is supported by the additional findings below.

183. The Department has determined that the Facility is consistent with the 2022 Comprehensive Energy Plan. Poor pf. at 4, 9.

Waste-to-Energy Facility

[30 V.S.A. §248(b)(9)]

184. The Facility does not involve a waste-to-energy facility; therefore, this criterion is not applicable.

Existing or Planned Transmission Facilities

[30 V.S.A. § 248(b)(10)]

185. The Facility can be served economically by existing or planned transmission facilities without undue adverse effects on Vermont utilities or customers. This finding is supported by the additional findings below.

186. The Facility will interconnect with GMP's existing 46 kV transmission line on the eastern portion of the site. Potter pf. at 10; exh. SS-LP-2.

187. The Petitioner will be responsible for the costs of any electrical system modifications required to interconnect the Facility to the GMP transmission line. Potter pf. at 10-11.

188. The SIS conducted for the Facility by ISO-NE confirmed that the Facility will not have any significant adverse steady state or stability impact on the ISO-NE Power System. Potter pf. at 8.

189. The Facility will not increase the probability for system curtailments due to either over-generation or transmission or distribution congestion. Potter pf. reb. at 5.

190. Transmission planning resources indicate sufficient hosting capacity available on the 46 kV transmission line to which the Facility will interconnect as well as adjacent distribution circuits serving Shaftsbury and Bennington. Potter pf. reb. at 5.

191. Modeling completed by VELCO demonstrates that even with much greater load of distributed solar generation gross load (up to 1,300 MW total), the southwestern area of the state where the Facility will be located would not require transmission line or transformer upgrades. Potter pf. reb. at 5.

192. The Facility will not be located in an area of the state that is electrically constrained due to too much generation and is consistent with Vermont's goal to locate new renewable energy in areas of the state that can support it. Poor pf. at 9.

193. The Facility will be a "dispatchable" energy resource. This means that ISO-NE will curtail the Facility's generation in instances where necessary to manage the grid. Potter pf. reb. at 6.

Woody Biomass Facilities
[30 V.S.A. § 248(b)(11)]

194. The Facility will not produce electric energy using woody biomass; therefore, this criterion is not applicable.

Minimum Setback Requirements
[30 V.S.A. § 248(s)]

195. The Facility complies with Vermont's statutory setback requirements for ground-mounted solar electric generation facilities because the Facility's solar panels or support structures for the solar panels are set back at least 100 feet from the nearest road and at least 50 feet from the nearest property boundary line. Wills pf. at 9, 25-26.

196. The Facility will be set back approximately 130 feet from the nearest road, Holy Smoke Road, and approximately 338 feet from the nearest residence. Exh. SS-SW-2a (Revised).

197. The setbacks from the edge of the Facility's solar array to the adjoining property lines are approximately 107 feet to the north, 145 feet to the south, 88 feet to the east, and 85 feet to the west. Exh. SS-SW-2a (Revised).

Discussion

30 V.S.A. § 248(s) requires that the nearest portion of a facility's solar panels or support structure for a solar panel be set back at least 100 feet from any state or municipal highway and at least 50 feet from any property boundary that is not a state or municipal highway. The setbacks proposed for the Facility's solar panels or support structures for the solar panels meet these minimum requirements.

General Good of the State
[Section 248(a)(2)]

Under 30 V.S.A. § 248(a)(2), "no company . . . may begin site preparation for or construction of an electric generation facility . . . unless the [Commission] first finds that the same will promote the general good of the State and issues a certificate to that effect." Although Section 248(b) includes the list of discrete criteria that we consider when evaluating Section 248 petitions, our review is conducted through the lens of the overarching "public good" standard. We have previously recognized the primacy of this standard in stating that:

> In essence the factors enumerated in subsection (b) are conditions precedent to the ultimate conclusion that a proposal is consistent with the general good of the state, rather than being full proof of that conclusion. In other words, they are necessary, but they may not be sufficient."[107]

In this case, the parties have developed an expansive evidentiary record with considerable detail and conflicting evidence on nearly all of the applicable Section 248(b) criteria. Although we have made positive findings of fact on each of these criteria, this case has forced us to confront several complex and challenging policy considerations. Much testimony and many of the arguments put forward by the Intervenors in this case expose an inherent tension that exists between the Section 248(b) siting criteria and the State's broader energy policies, particularly the RES. Our review of this petition has forced us to consider aesthetic and environmental impacts affecting a specific Vermont community within the context of Vermont's broader legislative and energy objectives. Under the RES, we are tasked with overseeing and regulating the Vermont utilities' transition to supplying 100% renewable energy to Vermonters — a goal that we recognize is highly unlikely to be achieved without both significant amounts of new solar generation in Vermont and reliance on the ISO-NE regional marketplace. Therefore, in evaluating this petition under applicable Section 248 criteria, particularly the "need" for the Facility in the absence of a Vermont-specific contract for the Facility's output, our review has also been informed by Vermont's role in the broader ISO-NE regional energy market, which in turn factors into our overall assessment of the public good to be achieved by the Facility.

To be clear, this is not a situation where Vermont absorbs the localized environmental burdens of an energy facility while all of the benefits from the facility flow out of state.

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[107] *Georgia Wind*, Docket No. 7508, Order of 6/11/10, at 80 (quoting *Application of twenty-four electric utilities for a certificate of public good authorizing execution and performance of a firm power and energy contract with Hydro-Quebec and a Hydro-Quebec Participation Agreement*, Docket No. 5330, Order of 10/12/90 at 46).

Vermont's participation in ISO-NE entails benefits and burdens that flow in both directions. On the one hand, our utilities benefit from system reliability and access to wholesale energy markets, both of which are necessary for the provision of safe and reliable electric service in Vermont. On the other hand, these same utilities, and consequently their ratepayers, contribute to the costs of maintaining the regional transmission grid. New generation built in Vermont, including this Facility, that delivers power to the region's bulk power system benefits all users of that system. This includes Vermont utilities even when the output is sold to an out-of-state entity. Ultimately, we benefit from increased renewable energy serving the regional system, which should reduce wholesale costs and drive down the market cost of RECs, which in turn can reduce the Vermont utilities' RES compliance costs. We nonetheless recognize that Vermont must not bear a disproportionate burden of hosting generation of renewable energy for the ISO-NE region generally. Therefore, if at some point in the future it appears that Vermont is hosting an unequal share of renewable load for ISO-NE we may need to revisit our approach to the need criterion and public-good standard.

Our order should not be read to overlook or disregard the concerns raised by the Intervenors. They have presented several compelling arguments in their testimony and briefing, and we did not arrive at our final decision in this case easily. However, when viewed through the prism of the "public good" standard and the Section 248(b) criteria, the evidence in this case leads us to a determination that that Facility should be granted a CPG. The Facility will bring online a considerable amount of new renewable energy generation, which will help promote State energy goals even if the power and RECs are sold out of state. For these reasons, we find that the Facility will promote the public good and will issue a CPG to the Petitioner.

V. DECOMMISSIONING COST ESTIMATE AND LETTER OF CREDIT

198. At the end of the Facility's expected useful life, a determination will be made whether the Facility can be re-powered (after any necessary regulatory approval), or whether it will be decommissioned and the site restored. Wills pf. at 16.

199. When the Facility is decommissioned, the Facility's equipment will be dismantled and removed from the site and sold, re-used, recycled, and/or disposed of in accordance with applicable waste laws and regulations in existence at that time. The Facility site will be restored

to its condition prior to installation of the Facility to the greatest extent practicable. Wills pf. at 16.

200. The Petitioner filed a decommissioning plan for the Facility that includes a decommissioning cost estimate that satisfies the requirements of Commission Rule 5.904(B)(1). Wills pf. at 16; exh. SS-RW-4 (Revised).

201. The estimated cost of decommissioning the Facility is $1,643,636.00. The Petitioner has proposed a surety bond as the form of financial security for the decommissioning fund. The Petitioner's decommissioning plan includes a proposed form of a surety bond. Exh. SS-RW-4 (Revised).

202. The decommissioning plan and the proposed use of a surety bond are reasonable. Scott Wheeler, Department ("Wheeler") pf. at 2-5.

Discussion

Commission Rule 5.900 establishes standard requirements for the decommissioning of electric generation, electric transmission, and natural gas facilities. Rule 5.904(B) requires that non-utility-owned generation facilities greater than 500 kW in capacity be removed once they are no longer in service and the site be restored, to the greatest extent practicable, to the condition it was in before installation of the facility. Commission Rule 5.904(B)(2) requires that requests to construct these facilities include a draft irrevocable standby letter of credit in an amount sufficient to fund the estimated decommissioning and site restoration costs. Alternatively, Commission Rule 5.904(B)(3) provides that "[t]he Commission may, in its discretion, approve alternative forms of financial security from" an irrevocable standby letter of credit "if it finds that such alternative forms will provide an assurance of the availability of financial resources for decommissioning that equals or exceeds that provided by" an irrevocable standby letter of credit.

The Petitioner has submitted a plan for decommissioning the Facility with a detailed cost estimate of $1,643,636.00 to decommission the Facility. The Petitioner has also submitted a proposed surety bond as part of its decommissioning plan, which requires approval under Rule 5.904(B)(3).

The Department recommends that the Commission approve the Petitioner's proposed decommissioning plan, including the proposed surety bond.

Having reviewed the surety bond and the supporting documentation, we find that the Petitioner has satisfactorily addressed the decommissioning fund requirements. We find that the surety bond will provide financial assurances that are equal to or greater than those provided by a letter of credit. Accordingly, the surety bond is approved. The Petitioner will be required to file an original paper version of the executed surety bond with the Commission before starting site preparation.

The Petitioner's plan for decommissioning and the draft surety bond submitted with the plan are consistent with the requirements of Commission Rule 5.904(B). Therefore, we include in the CPG for the Facility conditions requiring compliance with the terms and conditions of the proposed decommissioning plan and relevant provisions of Commission Rule 5.904(B). We will also include all applicable conditions from Commission Rule 5.904(B) in the CPG.

VI. MEMORANDA OF UNDERSTANDING AND STIPULATIONS

203. On May 31, 2024, the Petitioner and ANR filed the ANR MOU, which contains provisions to protect against undue impacts on natural resources. Exh. Joint SS-ANR-1 (Rev.).

204. On January 19, 2024, the Petitioner filed the Host Town Agreement with the Town of Shaftsbury, which contains provisions regarding construction access to the Facility site and payments the Petitioner will make to the Town of Shaftsbury. Exh. SS-RW-8.

205. On January 19, 2024, the Petitioner filed the AAFM Stipulation, which contains proposed CPG conditions to protect against potential undue impacts on a variety of resources including PAS. Exh. SS-RW-7.

206. On November 17, 2023, and January 19, 2024, the Petitioner filed stipulations with NBBWC ("NBBWC Stipulation"), which requires the Petitioner to relocate and upgrade an existing water main owned by NBBWC on the Facility site. Exhs. SS-RW-6A, SS-RW-6, and SS-SW-2a (Rev.).

207. On November 17, 2023, the Petitioner filed the DHP MOU, which contains provisions to protect against undue impacts on historic resources. Exh. SS-RW-5.

Discussion

We accept the ANR MOU, Host Town Agreement, NBBWC Stipulation, DHP MOU, and AAFM Stipulation with all of their provisions and conditions without material change or

conditions and require the Petitioner to comply with the terms and conditions of these agreements as a condition of our approval of the Facility.

VII. CONCLUSION

Based upon the evidence in the record, we conclude that the Facility, subject to the conditions set forth herein:

(a) 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, and the recommendations of the municipal legislative bodies;

(b) complies with the screening requirements of applicable municipal bylaws or ordinances and recommendations of a municipality applying such a bylaw or ordinance;

(c) will meet a need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy efficiency and load-management measures, including those developed pursuant to the provisions of subsection 209(d), section 218c, and subsection 218(b) of Title 30;

(d) will not adversely affect system stability and reliability;

(e) will result in an economic benefit to the State and its residents;

(f) will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d), impacts on primary agricultural soils as defined in 10 V.S.A. § 6001, and 6086(a)(1) through (8) and (9)(K), and greenhouse gas impacts;

(g) is a non-utility project and criterion 30 V.S.A. § 248(b)(6) is therefore not applicable;

(h) is consistent with the *Vermont Twenty-Year Electric Plan*;

(i) does not involve a facility affecting or located on any segment of the waters of the State that has been designated as outstanding resource waters by the Secretary of Natural Resources;

(j) does not involve a waste-to-energy facility;

(k) can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers;

(l) does not involve an in-state generation facility that produces electric energy using woody biomass; and

(m) is consistent with statutory minimum setback requirements.

VIII. ORDER

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

1. In accordance with the evidence and plans submitted in this proceeding, the 20.0 MW AC solar electric generation facility (the "Facility") proposed for construction and operation by VT Real Estate Holdings 1 LLC (the "CPG Holder") at Holy Smoke Road in Shaftsbury, Vermont, will promote the general good of the State of Vermont pursuant to 30 V.S.A. § 248, and a certificate of public good ("CPG") to that effect will be issued in this matter.

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

Dated at Montpelier, Vermont, this 15th day of September, 2025.

Edward McNamara	)	PUBLIC UTILITY
	)	
	)	COMMISSION
J. Riley Allen	)	OF VERMONT
	)	

OFFICE OF THE CLERK

Filed: September 15, 2025

Attest: _____
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.

CONCURRING OPINION OF COMMISSIONER CHENEY

In today's order the Commission approves a 20 MW solar facility for construction in Shaftsbury, Vermont. It is not a simple case, for the reasons cited throughout the order. Although I reluctantly agree with Commissioners McNamara and Allen on the outcome of this case, I find it necessary to concur separately to address two other issues of general concern relating to the Facility's impacts and how we approach our review of similar projects in the future.

Before I delve into these specific concerns, it is important to emphasize the scale of the Facility. It will be huge, and it will have impacts. An 80-acre, industrial-scale solar project and two new substations will be built on land that now consists of rolling hills, agricultural fields, open meadows, dense forested areas, and scattered homes. More than 104 acres will be disturbed as part of the construction, including 64 acres of primary agricultural soils.[1] More than 42 acres of trees will be cut, including 34.6 acres of mature forest.[2]

However, it is possible that neither the power from the Facility nor its renewable energy credits ("RECs") will benefit Vermont because they could be sold outside the state. This means these outputs might not be available to Vermont utilities for compliance with Tier IV of Vermont's RES or help meet the goals of the Global Warming Solutions Act ("GWSA").[3] In other words, Vermont will bear the burdens of this Facility but might not directly reap the environmental benefits that it provides.

As explained in the final order, the Commission has approved the Facility because it checks all necessary boxes from the list of discrete Section 248 criteria for a project to obtain a CPG in Vermont. In addition, while the Facility's renewable power and attributes might not benefit Vermont directly, we recognize that Vermont is part of a larger region with growing energy demands and that the availability of this Facility could potentially ease upward price pressure on wholesale energy and capacity in the ISO-NE marketplace, which could benefit ratepayers regionwide in the long term. For these reasons, I have decided to join the majority in the outcome of this case.

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[1] Wyman pf. at 11; exhs. SS-SW-2a (Revised) and SS-MW-2 (Revised).
[2] Exhs. SS-MW-2 (Revised) at 1-2, SS-RW-2B, and PSD-MB-2 at 3, 9.
[3] Public Act No. 153 (2020 Vt. Adj. Sess.).

Looking forward, however, this case raises two concerns that caused me to write this separate concurrence.

First, we must prioritize improved siting for facilities of this size and scale in Vermont. At 20 MW, this Facility is 40 times larger than the biggest net-metering projects and nine times larger than Vermont's 2.2 MW standard-offer solar facilities. There is only one other plant this size in Vermont, but more are being proposed. Like the majority opinion, I recognize that substantial development of new renewable generation resources will be necessary to meet the GWSA and RES goals, including new projects at this scale. This Facility, however, only narrowly complies with several of the Section 248 criteria; it should be possible for future facilities to be better sited and designed in a manner that minimizes the aesthetic and environmental impacts on immediately surrounding communities.

By way of example, the siting of this Shaftsbury Facility differs notably from the equally large "Coolidge" facility in Ludlow, Vermont, which we approved in 2017.[4] That 20 MW facility was sited 600 feet from VELCO's existing Coolidge substation and near several large existing transmission lines. We found in that case that "the visibility of these [pre-existing] facilities establishes electric power infrastructure as a significant part of this landscape's existing character."[5] Views of that project, along a little-traveled road, were limited to the first several rows of panels. The wooded areas that were cleared had been harvested within the last 20 years for timber and other products.

The Coolidge project represents a much better choice of site. As with net-metering, we should consider how to create incentives to site very large facilities away from unspoiled land and close to existing infrastructure. Although this goal may be best achieved through future legislative amendments, renewable energy developers should be more deliberate in identifying sites that minimize localized aesthetic and environmental impacts.

Second, I am concerned about the amount of forest that will be cleared for this project, which not only affects aesthetics but seriously diminishes the Facility's greenhouse gas ("GHG") benefits.

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[4] *Coolidge Solar*, Docket No. 8685, Order of 3/23/17 (approving a 20 MW solar generation facility in Cavendish, Vermont).

[5] *Id.* at 28.

In the 2023 update of Commission Rule 5.100, the Commission raised concerns about the amount of forest that was being cleared for the largest net-metering projects.[6] We found that the vast majority of these 500 kW projects involved little to no forest clearing, but a handful were clearing as many as nine acres of trees to avoid shading the solar panels — while the panels themselves would occupy only three to four acres. Recognizing that forests serve a vital role as carbon sinks and that greater carbon reductions are achieved by developing solar with minimal forest clearing, the Commission then imposed a three-acre limit on forest clearing for the largest net-metering projects to qualify for "preferred site" status and the financial incentives that went with it.[7]

In the same investigation, the Vermont Agency of Natural Resources ("ANR") found that the existing net-metering incentive system had resulted in solar projects being disproportionately sited in undeveloped fields and forests because greenfield sites cost less money to develop.[8] ANR referred to this as "forest conversion" because the trees that are cut to make room for solar facilities do not grow back as long as the facility is in place.[9]

In its post-workshop comments (9/24/21), the ANR noted that:

> In addition to the lost carbon storage and sequestration resulting from forest conversion, large amounts of forest conversion for net-metering systems significantly increases their embodied emissions. It can take years for such systems to turn "net positive" through the displacement of energy generated by fossil fuel plants, which runs counter to the urgent need . . . for immediate emissions reductions. Indeed, a lifecycle greenhouse gas assessment conducted for the 2.2-megawatt Battle Creek I solar project, which proposed to remove 12.72 acres of forest, estimated that the emissions associated with disturbance of forest above-ground biomass, below-ground biomass, and annual sequestration of biomass comprise approximately 35 percent of that project's total greenhouse gas emissions. *Thus, a significant amount of the carbon dioxide emissions associated with renewable energy generation projects can be avoided by steering them away from forested sites*.[10]

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[6] *See Proposed revisions to Vermont Public Utility Commission Rule 5.100*, Case No. 19-0855-RULE, Order of 5/17/23 at 3-7.

[7] *Id.* at 4.

[8] *Id.* at 4-5 n.6 (citing "Forest Conversion for Net-Metering: Trends & Options to Reduce PowerPoint presentation, Vermont Agency of Natural Resources, Case No. 19-0855-RULE, 8/24/2021 at slide 3).

[9] *Id.*

[10] Case No. 19-0855-Rule, ANR Comments filed 9/24/21 at 3 (emphasis added).

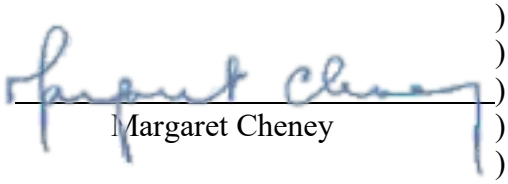
Notably, a preliminary analysis by ANR estimated that even with the new restriction on forest clearing in the proposed net-metering rule, 507,056 "non-treed" acres would still be available for solar development throughout Vermont.

Vermont is the most rural state in the United States.[11] It is also the fourth most forested.[12] This characteristic represents an important asset in the form of carbon storage and sequestration — an asset that must be preserved in tandem with renewable energy development. However, as demand for energy and renewable attributes grows across New England, Vermont stands to attract more out-of-state developers. Our large tracts of undeveloped land may be cheaper to buy than properties in other states. They also provide the kind of large, unbroken canvas of 100 acres or more that is necessary for projects on this scale. If deforestation is part of the pattern of such development — and especially if Vermont utilities and their ratepayers do not stand to receive direct benefits, as is this case here — the determination of whether a project is in the public good will shift.

As we state in the final order, we may revisit our approach to the public-good and need criteria if Vermont starts to host a disproportionate share of renewable generation for ISO-NE with no direct benefits to the State to help meet our own requirements. I would add the multiple negative impacts of deforestation as another factor that would tip the scale. We should quantify the embodied carbon emissions that result from deforestation in a lifecycle GHG accounting and create incentives to avoid clearcutting forested land. As noted by ANR in the net-metering rulemaking, Vermont has enough acres to host solar development without sacrificing the state's carbon-reducing forests.

[11] https://worldpopulationreview.com/state-rankings/most-rural-states
[12] https://worldpopulationreview.com/state-rankings/most-forested-states

Dated at Montpelier, Vermont, this 15th day of September, 2025.



Margaret Cheney

) PUBLIC UTILITY
)
) COMMISSION
)
) OF VERMONT

PUC Case No. 23-1447-PET - SERVICE LIST

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