

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG #NMP-6633

Application of Seymour Lake Solar, LLC for a)
certificate of public good, pursuant to 30 V.S.A. §§ 219a)
and 248 and Board Rule 5.100, for a 500 kW)
interconnected group net-metered photovoltaic electric)
power system in Morgan, Vermont)

Order entered: 8/26/2016

I. INTRODUCTION

This case involves a net metering application filed by Seymour Lake Solar, LLC (“Seymour Lake Solar” or the “Applicant”) for a certificate of public good (“CPG”) under 30 V.S.A. §§ 219a and 248, authorizing the installation and operation of a 500 kW interconnected group net-metered solar electric power system at 590 Valley Road in Morgan, Vermont (the proposed “Project”).

Based upon the findings made herein and subject to the conditions contained herein, we conclude that the Project complies with the requirements of Board Rule 5.100, the Application does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. §§ 219a and 248, and the Project will promote the general good of the State of Vermont.

II. PROCEDURAL HISTORY

On September 4, 2015, the Applicant filed its application and associated materials with the Board.

On September 22, 2015, Susan Draper filed comments with the Board.

On September 30, 2015, the Town of Morgan (“Morgan” or the “Town”) filed comments with the Board.

On October 1, 2015, comments on the Project were filed by the following entities: the Vermont Department of Public Service (the “Department”),¹ the Vermont Agency of Natural Resources (“ANR”), and the Vermont Division for Historic Preservation (“VDHP”).

1. The Department submitted two sets of comments on October 1, the second clarifying its initial submittal.

On November 18, 2015, the Applicant filed a response addressing comments received on the Project, including exhibits detailing a proposed landscaping plan to reduce the aesthetic impacts of the Project.

On March 2, 2016, the Applicant filed an additional response to comments.

On April 7, 2016, Morgan filed additional comments on the Project.²

On May 5, 2016, the Applicant filed a letter requesting that the Board hold a status conference or issue a CPG for the Project.

On July 13, 2016, VDHP filed a motion to intervene in this proceeding.

On July 21, 2016, the Board conducted a site visit at the Project site.

III. MOTIONS TO INTERVENE

With its comments, the Town of Morgan filed a notice of appearance and requested to intervene, citing the impacts of the Project under the substantive criteria of 30 V.S.A. §§ 248(b)(1) and 248 (b)(5).

Board Rule 2.209 governs intervention in proceedings before the Board and provides that, upon timely application, a person shall be entitled to intervene in a proceeding in three circumstances: (1) when a statute confers an unconditional right to intervene; (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or (3) when the applicant demonstrates a substantial interest that may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest, and where the applicant's interest is not adequately represented by existing parties.

30 V.S.A. §248(a)(4)(F) states, "The legislative body and the planning commission for the municipality in which a facility is located shall have the right to appear as a party in any proceedings held under this subsection."

Pursuant to Board Rule 2.209(A) and 30 V.S.A. §248(a)(4)(F), we hereby grant the Town of Morgan's motion to intervene as of right.

2. Morgan's comments were initially distributed to the Applicant and other commenters on January 15, 2016, but were not filed in full with the Board until April 7, 2016.

VDHP also filed a motion to intervene. In its motion, VDHP states that, as the “relevant state entity responsible for reviewing matters concerning historic sites under 30 V.S.A. § 248(b)(5)”³ it has a substantial interest in the proceeding that will not be adequately protected by any other party and that it has not other way to protect its interests. VDHP further states that its intervention will not unduly delay the proceeding or prejudice the interests of any existing party or the public.

VDHP’s motion to intervene is granted, limited to the interest it has identified in the historic sites criterion of 30 V.S.A. § 248(b)(5).

IV. SUMMARY OF COMMENTS

The Department

The Department’s comments include several recommendations: (1) that the Applicant file supplemental information related to required upgrades associated with the Project; (2) that the CPG be subject to conditions related to Vermont Electric Cooperative, Inc.’s (“VEC”) net-metering cap; (3) that the Applicant file supplemental information related to the aesthetics criterion under 30 V.S.A. § 248(b)(5); and (4) that the Applicant file supplemental information related to sound impacts from the Project.⁴

ANR

ANR states that, absent inclusion of certain conditions related to impacts on wetlands, the Project raises significant issues with regard to the wetlands criterion of Section 248(b)(5). ANR requests that the Board include these conditions in any CPG issued for the Project.

3. VDHP Motion to Intervene at 1.

4. The conditions proposed by the Department related to VEC's net metering cap are no longer relevant given that the CPG will be issued in 2016, rather than 2015. Accordingly, we have not addressed them in this Order.

VDHP

VDHP states that the Project will have no adverse effect on historic or archaeological sites provided the Applicant takes certain steps to avoid these impacts. VDHP requests that the Board include several conditions in the Project's CPG that are discussed in further detail below.

Susan Draper

Ms. Draper, an adjoining landowner to the Project, expresses several concerns related to surveying her property boundary with the Project parcel and shared water rights to a nearby spring. In addition, Ms. Draper also expresses concern related to potential impacts from glare.

The issues identified by Ms. Draper related to her property boundaries and water rights are private interests that are outside the scope of the Board's review under Section 248.⁵ Accordingly, we have not addressed these issues in this Order.

Town of Morgan

Morgan opposes the Project and requests that the Board deny a CPG or that a hearing be conducted. The Town raises concerns about the Project's impacts on water quality in Lake Seymour and Sucker Brook, a tributary of Lake Seymour. Specifically, Morgan states that runoff from the Project's solar panels will cause sedimentation and runoff that will detrimentally affect these water bodies and associated wetlands.

The Town also states that the Project will have an undue, adverse effect on rare and uncommon species under 10 V.S.A. § 6086(a)(8)(A). The Town states that the Applicant has failed to demonstrate that rare or uncommon species are not present on the Project site. Specifically, the Town argues that the fields in which the Project is sited should be considered necessary wildlife habitat for certain rare grassland birds such as the bobolink and eastern meadow lark and that the Applicant has not shown that there will not be adverse impacts on these species. The Town also expresses concerns that runoff from the Project will have an adverse

5. See *Vermont Electric Power Company, Inc. v. Bandel*, 135 Vt. 141, 145 (1977) ("This Court considers it settled law that proceedings under 30 V.S.A. § 248 relate only to the issue of public good, not the interests of private landowners who are or may be involved.").

impact on fish and loons in Lake Seymour, which, the Town argues, already suffer from the effects of runoff into the lake.

Finally, Morgan argues that the Project will have an undue, adverse impact on aesthetics and the orderly development of the region. The Town states that the Project will be visible from public roads and from Lake Seymour, that these views will be out of character with the area, and that the Applicant has failed to take reasonable mitigating steps to address these views. In addition, the Town argues that the Project is inconsistent with the orderly development of the region under 30 V.S.A. § 248(b)(1) because it is inconsistent with provisions of the town plan addressing power generation and because of the visibility of the Project from Lake Seymour, which is specifically protected under the Morgan Town Plan (the “Town Plan”).

**V. CONDITIONAL WAIVER OF REVIEW UNDER CERTAIN
CRITERIA FOR NET METERING PROJECTS**

Pursuant to 30 V.S.A. § 219a(c)(2)(A) and Board Rule 5.108(B), the Board has conditionally waived review of the following criteria, and no party presented any testimony that warrants rescinding any part of that waiver in this proceeding:

- 30 V.S.A. § 248(b)(2) (need);
- 30 V.S.A. § 248(b)(4) (economic benefit);
- 30 V.S.A. § 248(b)(5) (greenhouse gases, public health, and safety);
- 10 V.S.A. § 6086(a)(1) (air and water pollution);
- 10 V.S.A. § 6086(a)(1)(C) (water conservation);
- 10 V.S.A. §§ 6086(a)(2) & (3) (sufficiency of water and burden on existing supply);
- 10 V.S.A. § 6086(a)(5) (transportation, except for impacts related to construction);
- 10 V.S.A. §§ 6086(a)(6) and (7) (municipal & educational services);
- 30 V.S.A. § 248(b)(6) (integrated plan);
- 30 V.S.A. § 248(b)(7) (electric energy plan);
- 30 V.S.A. § 248(b)(9) (waste-to-energy facilities); and
- 30 V.S.A. § 248(b)(10) (transmission facilities).

Only the criteria applicable to the system under Rule 5.108(B) are addressed in this Order.

VI. FINDINGS

Pursuant to 30 V.S.A. § 219a, the Legislature required the Board to develop a net-metering program. This program is now embodied in Board Rule 5.100. The goals of the net-metering statute are to encourage private investment in renewable energy resources, stimulate the economic growth of the State, and enhance the continued diversification of energy sources used in Vermont. The standards and requirements in Rule 5.100 have been determined by the Board to protect public safety and system reliability. Our review of this Project has been guided by these considerations. Based upon the application and accompanying materials, we make the findings listed below.

30 V.S.A § 219a Requirements

1. The Project will be a 500 kW group net-metering system interconnected with the Vermont Electric Cooperative, Inc. (“VEC”) distribution system. Application at 4.
2. The Applicant has designated Martha Staskus as the group administrator responsible for communications regarding the group. Application at 5.
3. The Applicant has identified the meters to be included in the group by number and location. The Applicant has specified the manner of allocating credits generated by the Project. Application at 5.
4. The Applicant will not require the Board, the Department, or VEC to resolve a dispute within the group. Application at 5.
5. The Applicant will retain ownership of the environmental attributes associated with the Project. Application at 5.

Description of the Project

6. The Project is a 500 kW photovoltaic electric generation facility that will occupy approximately 7 acres of an open field in Morgan, Vermont. Application at 1; exh. SLS-1.

7. The Project will consist of 100 5 kW AllEarth Series 20 dual-axis solar trackers and associated wiring and equipment. Each tracker will include a base, mast, frame, and racking structure, 20 photovoltaic panels, and an inverter that converts the DC power produced by the tracker to AC power. Each tracker has a maximum installed height of approximately 18 feet above ground level and a width of 25.5 feet. Application at 2; exh. SLS-1; exh. SLS-4; exh. SLS-4a; exh. SLS-5; exh. SLS-6.

8. Wiring for the array will be installed in underground conduit and will interconnect with the existing VEC distribution system along Valley Road. The Project will require the installation of an approximately half-mile distribution line upgrade to convert existing lines from single-phase to three-phase, a one-pole line extension onto the Project site, and three 167 kVA pole-mounted transformers. Application at 2; exh. SLS-1; exh. SLS-4; exh. SLS-5.

9. Access to the site will be via an existing driveway off Valley Road. Application at 1; exh. SLS-1; exh. SLS-6.

10. The Project will not require tree clearing. Exh. SLS-3 at 7.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

11. The Project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions and legislative bodies, and the land conservation measures contained in the town and regional plans. This finding is supported by findings 12 through 14, below.

12. No land conservation measures in the applicable town or regional plans aim to prevent development in the area where the Project is proposed. Application at 5; exh. SLS-6.

13. The Town Plan contains provisions that address the siting of energy facilities. These provisions outline potential impacts that such facilities should be sited to avoid or minimize their effect on various resources. Exh. SLS-6.

14. At the end of the useful life of the Project, the Applicant has agreed to restore the site to its pre-existing condition, including the removal of all above-ground equipment and all below-ground parts of the Project down to 24 inches below grade. Application at 6.

Discussion

Morgan argues that the Project is inconsistent with the orderly development of the town based on provisions of the Town Plan that seek to avoid energy facilities that have adverse impacts on certain resources. Specifically, the Town Plan provides that “[e]nergy facilities are to be sited to avoid where physically feasible, or to otherwise minimize encroachment and mitigate the adverse impacts of facility development”⁶ on water quality, open space, significant wildlife habitat, and aesthetics and scenic areas. As discussed further below under the applicable criteria, we are not persuaded that the Project will have the adverse impacts that the Town Plan seeks to avoid. Accordingly, we conclude that the Project is not inconsistent with the Town Plan.

Impact on System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

15. The Project will not adversely affect system and reliability. This finding is supported by findings 16 through 18, below.

16. VEC conducted an initial Fast Track screening to assess the ability of the Project to safely interconnect with VEC’s distribution system. The Project failed one criterion, Criterion 3, of the Fast Track screening. Exh. SLS-5.

17. Notwithstanding the Project’s failure of Criterion 3, VEC has concluded that a System Impact Study is not necessary to safely interconnect the Project if system upgrades are completed prior to Project interconnection. Exh. SLS-5.

18. The Applicant has agreed to enter into an interconnection agreement with VEC before the Project commences operation and will pay for all costs to interconnect the Project consistent with the requirements of the interconnection agreement. Exh. SLS-5; affidavit of Douglas MacDonald, Seymour Lake Solar.

Discussion

Board Rule 5.503(A) states:

6. Town Plan at 37.

Applications for proposed Generation Resources which are determined to be complete in accordance with 5.504 and which satisfy all of the Fast Track Criteria of Section 5.505(B), shall follow the Fast Track process specified in 5.506. Complete Applications for proposed Generation Resources that do not meet all of the Fast Track Screening Criteria shall be evaluated through the appropriate Feasibility, Systems Impact and/or Facilities Studies as set forth in Section 5.507 of this Rule.

In this case, the Project failed Criterion 3 of the Fast Track Analysis and would, therefore, be required to undergo a System Impact Study as required under the Rule. However, here the interconnecting utility has determined that the criterion failure is not relevant to the Project's ability to interconnect with its system and that interconnection could occur without adverse impacts on stability and reliability provided that several modifications are made to the existing distribution system prior to interconnection.

In this case, the Board is relying on VEC's knowledge and assessment of its system to conclude that the Project can be safely and reliably interconnected. Accordingly, we waive the requirement for further studies dictated by Board Rule 5.503. In addition, we adopt the following condition to ensure that upgrades are completed prior to Project operation:

Prior to commissioning the Project, the Applicant shall file with the Board a letter from VEC confirming that all system protection upgrades necessary to safely interconnect the system have been completed.

Aesthetics, Historic Sites, and the Natural Environment

[30 V.S.A. § 248(b)(5)]

19. The Project will not have an undue adverse effect on aesthetics, historic sites, or the natural environment. This finding is supported by findings 20 through 47, below.

Outstanding Resource Waters

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

20. The Project will not result in an undue adverse effect on any outstanding resource waters as defined by 10 V.S.A. § 1424a(d) or 30 V.S.A. § 248(b)(8) because the Project is not located on or in the vicinity of any segment of such waters. Exh. SLS-7.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

21. The Project will not have an undue adverse impact on headwaters because the Project is not located on or near a headwaters area. Exh. SLS-3 at 6-7.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

22. The Project will meet all applicable Vermont Department of Health and 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. Waste generated during the installation and operation of the Project will be handled and disposed of in accordance with applicable regulations. Application at 7.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

23. The Project is not located within a floodway or floodway fringe and therefore will not restrict or divert the flow of flood waters, significantly increase the peak discharge of a river or stream within or downstream from the Project, or endanger the health, safety, or welfare of the public or of riparian owners during flooding. Application at 8; exh. SLS-8.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

24. The Project will not have an undue adverse impact on streams. The closest stream is located approximately 500 feet to the southeast of the Project. Application at 7; exh. SLS-3 at 6-7.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

25. The Project will not have an undue adverse effect on any shorelines because the Project is not located on a shoreline. Application at 8; exh. SLS-1; exh. SLS-3 at 6.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

26. The Project will not result in an undue adverse impact on wetlands. This finding is supported by finding 27, below.

27. A wetland delineation was conducted for the Project and identified a wetland covering part of the existing field as well as an adjacent marsh and Northern White Cedar Swamp. The Project has been designed to avoid impacts to these wetlands and their buffer areas. Application at 8; exh. SLS-3 at 7-8.

Discussion

In its comments, ANR states that the Project is directly adjacent to a 50-foot wetland buffer. To ensure that the Project does not have an adverse impact on wetlands, ANR recommends that the CPG for the Project contain the following two conditions:

- 1) The [Applicant] shall avoid impacts to Class II wetlands and 50 foot wetlands buffer zones, or obtain and comply with the provisions of a State Wetlands Permit. Any activity within the wetlands or wetlands buffer that is not an allowed use designated in Section 6 of the Vermont Wetland Rules shall require a State Wetland Permit.
- 2) Prior to site preparation, construction, maintenance that involves earth disturbance, or decommissioning, the [Applicant] shall install a continuous line of flagging tape along the wetland buffer boundary and signage to identify the wetland buffer zone as a protected area.⁷

The Applicant does not object to the inclusion of the first condition and accepts the second with the minor revision that it be limited to the on-site wetland buffer boundary, as the wetland extends beyond the Project site onto neighboring parcels.

Based on ANR's representation that these conditions are necessary to ensure that the Project will not have an adverse impact on wetlands, we adopt ANR's proposed conditions, with the clarification proposed by the Applicant, as part of our approval of the Project, and we will include this condition as a term in the CPG.

7. ANR Comments at 2.

The Town of Morgan also expresses concerns about impacts to the wetlands neighboring the Project site. However, these concerns are based on the Town's arguments related to impacts from runoff and soil erosion associated with the Project, which we have addressed under the soil erosion criterion, below.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

28. The Project will not cause undue soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results. This finding is supported by findings 29 through 34, below.

29. The Project will not involve grading, but will require limited earth disturbance to install the tracker bases, panel boards, utility upgrades, and underground conduit. Application at 9.

30. The total amount of earth disturbance associated with the Project will be less than one acre. Application at 9; exh. SLS-1.

31. The Project will leave native soils in place, and the wide spacing of the trackers will facilitate revegetation of the ground following any earth disturbance. Application at 9; exh. SLS-1; exh. SLS-6.

32. The Project will create 1,486 square feet of new impervious surface. Application at 9; exh. SLS-1.

33. The Applicant represents that the Project will not require any construction or operational stormwater permits because the earth disturbance and new impervious surface associated with the Project are below the thresholds that would trigger the need for such permits. Application at 9; exh. SLS-1.

34. Project construction will be done in accordance with ANR's *Low Risk Site Handbook for Erosion Prevention and Sediment Control (2006)*. Application at 9.

Discussion

The Town of Morgan argues that the Project is likely to cause adverse water pollution impacts due to concentrated rainwater runoff from the Project's solar panels. The Town argues

that rainwater will “sheet from the panels,. ”⁸ causing soil erosion along the ground at the lower edge of each panel and contributing to increased sedimentation and nutrient loading in nearby Sucker Brook and Lake Seymour. The Town maintains that Lake Seymour is particularly susceptible to such impacts due to its uniquely small drainage basin, which causes the Lake to retain such pollutants for a longer period of time. To address these concerns, the Town proposes that the Applicant be required to conduct a “scientific collection of data regarding the temperature, sediment load and phosphorus in Sucker Brook . . . both above and below the solar array for a two year period to substantiate their claim of no undue adverse impact on water quality.”⁹

In response to the Town of Morgan’s comments, the Applicant states that the impacts that the Town argues may be associated with the Project are unlikely due to the Project’s use of moving tracker-type panels, which change angle and orientation with the sun over the course of the day and do not have a continually fixed edge that may direct water to a single location. In addition, the Applicant represents that the panels are not considered an impervious surface under State regulations, which would require the Applicant to obtain construction or operational stormwater permits. Finally, the Applicant argues that it intends to construct the Project consistent with ANR’s *Low Risk Site Handbook for Erosion Prevention and Sediment Control*, which will minimize any adverse effects on soil erosion.

In conducting its review of the environmental criteria of Section 248, the Board has long recognized that compliance with applicable environmental regulations and permits creates a rebuttable presumption of compliance with the substantive criteria of Section 248.¹⁰ In this instance, the Applicant represents that the Project’s solar panels are not considered an impervious surface for purposes of the State’s regulations related to stormwater runoff and thus that the Project will not require the issuance of permits related to the concerns that Morgan raises. In addition, we observe that ANR, the agency with primary responsibility for water quality issues,

8. Morgan 9/30/16 Comments at 6.

9. Town of Morgan 4/7/16 Comments at 1.

10. See, Docket 7862, *Petition of Entergy Nuclear Vermont Yankee and Entergy Nuclear Operations for a Certificate of Public Good*, Order of 6/19/13 at 10 and Docket 5323, *Arrowhead Generation Company, L.P.*, Order of 9/27/89 at 26.

has not expressed concern about the Project's impacts in this area or disputed the Applicant's representation of its compliance with its regulatory requirements.

In support of its argument, the Town submitted photographs of high water levels at a fixed-panel solar array in Vermont. However, the Town has not presented a compelling connection between the installation of infrastructure similar to that used by the Project and the adverse effects it argues will result. This is particularly true in light of the moving tracker-type panels that the Applicant has proposed, which will gradually rotate throughout the day and assume a different position at night, reducing the likelihood of focusing rainwater onto a single line beneath them. Absent such a connection, we are not persuaded that the Town's arguments rebut the presumption that the Project's compliance with applicable regulations related to soil erosion and stormwater discharge satisfies the related environmental criteria of Section 248.

Transportation

[10 V.S.A. § 6086(a)(5)]

35. The Project will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of highways, waterways, or other means of transportation. Construction materials will be delivered to the Project site on local roads without the need for special permits, and the Project will comply with any necessary transportation-related permits for the use of the existing access road. Application at 10.

Aesthetics, Historic Sites, and Rare and Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

36. The Project will not have an undue adverse impact on aesthetics, historic sites, or rare and irreplaceable natural areas. This finding is supported by findings 37 through 43, below.

Aesthetics

37. The Project will not have an adverse impact on the aesthetics of the surrounding area. Visibility of the Project from off-site locations is restricted due to topography and vegetation. Exh. SLS-6 at 12.

38. Existing views of the Project site do exist from Lake Seymour and certain locations along Valley Road, as well as some neighboring residences. Potential visibility of the Project is centered along two gaps in the existing vegetative screening that surrounds the Project site, one located to the northwest and one to the southwest of the Project. The Applicant has proposed mitigation plantings that will substantially obscure these views and limit public visibility of the Project. Exh. SLS-1a; exh. SLS-6a; exh. SLS-6b.

39. Under the proposed screening plan, the Applicant will plant coniferous trees to fill in two gaps in the existing vegetation that currently screens the site. This plan includes the planting of twelve 8-foot-tall trees, arranged in two rows, along the southwestern gap in vegetation, and a similar set of four trees along the smaller northwestern gap in vegetation. Exh. SLS-6a.

40. The Project will result in sound levels of 31.6 dBA at the closest property boundary and 20.6 dBA at the closest residence. Exh. SLS-9.

Discussion

In determining whether a proposed project would have an undue adverse impact on aesthetics, the Board applies the so-called "Quechee Test."¹¹ Under this analysis, the first step is to determine if the impact of a project will be adverse. A project would have an adverse impact on the aesthetics of the area if its design were deemed to be out of context or not in harmony with the area in which the project is located. If it is found that the project's impact would be adverse, it is then necessary to determine whether such an adverse impact would be "undue." Impacts are considered unduly adverse if the project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area, if the project developer fails to take generally available mitigating steps to improve the harmony of the project with its surroundings, or if the project would offend the sensibilities of the average person.

Morgan argues that the Project will adversely affect views from Lake Seymour and along Valley Road, which the Town has identified as a scenic corridor, as well as from nearby homes and residences. The Town argues both that the effects of the Project will be adverse because of the Project's size, colors, and conspicuousness and that the effects will be unduly adverse

11. *In re UPC Vermont Wind, LLC*, 144 VT 2009 ¶ 24, 185 Vt. 296.

because it will violate community standards related to preserving the “pristine state”¹² of Lake Seymour. The Town further argues that alternative sites offer reduced impacts, and that the Project will be out of character with its surroundings.

In its comments, Department also raises concerns about the visibility of the Project from neighboring residences.

Based on the site plan and photographs included in the Application and in the Town of Morgan’s comments, potential visibility of the Project is focused on two gaps in the existing vegetative screening surrounding the Project. Both of these gaps appear to offer some potential visibility of the Project to neighboring residences. In particular, the southwestern gap offers a corridor of visibility that continues along Valley Road to Lake Seymour. Although this corridor offers only a narrow window of the Project, it does create the potential for aspects of the Project to be visible from Valley Road and Lake Seymour, as well as from a residence located on the opposite side of Valley Road.

Morgan expresses particular concerns regarding the visibility of the Project from the beach along Lake Seymour, as well as from the Lake itself. The Town’s concern regarding the potential for impacts to the view from these points is reasonable, as the Lake clearly constitutes an important scenic resource worthy of protection. However, given the distance of the Project from the Lake and the existing vegetative screening, it does not appear that the Project will be highly visible from these locations under current conditions. In addition, the Applicant has proposed to install additional vegetative screening that will have the effect of substantially reducing the visibility of the Project from these points, as well from the residence located across Valley Road.¹³ With the addition of this mitigation, we conclude that views of the Project will be largely obscured, even under leaf-off conditions, and therefore the Project will not have an adverse effect on the aesthetics of the area.

In its April 7 comments, the Town points to the absence of a formal landscaping plan to argue that it is not clear whether the screening effect of this planting will be achieved. However, the Applicant’s November 18 submission contains a detailed description of the proposed

12. Morgan 9/30/15 Comments at 19.

13. The proposed mitigation will also address the glare concerns raised by Ms. Draper.

screening and a site plan documenting the location of proposed tree planting. We find that this is sufficient documentation to support our conclusion that the Project will not have an adverse effect on the aesthetics of the area. However, in recognition of the potential impacts of the Project absent this additional landscape planting, particularly on the neighboring residence located across Valley Road, we have determined to condition our approval of the Project on the installation and maintenance of the landscaping proposed by the Applicant, and therefore include the following conditions in the Applicant's CPG:

1. The Applicant shall implement the landscaping mitigation plan as described in Exhibit SLS-6a and Exhibit SLS-1a.
2. The Applicant shall inspect annually the landscaping to ensure that plants are in good health. If plants are dead or dying and in need of replacement, the Applicant shall ensure that the plants are replaced in the next available planting season.

Historic Sites

41. There are no historic sites located near the Project, and the Project site is not within a historic district. Application at 6.

42. VDHP has reviewed the Project and concluded that the Project will have no adverse effect on historic or archaeological resources provided certain conditions are met. VDHP Comments at 1-2.

Discussion

With the Application, the Applicant included an archaeological assessment that concluded that it was unlikely that archaeological resources were present on the Project site and recommended that no further archaeological work be conducted. In its comments, VDHP disagrees with this assessment. Specifically, VDHP states that the southern part of the Project area has a high likelihood of containing archaeological sites and that, absent the inclusion of conditions in the Project's CPG, the Project could have an undue, adverse effect on these resources. Following receipt of VDHP's comments, the Applicant has indicated that it does not object to the inclusion of these conditions. Based on VDHP's representation that the conditions it proposes are necessary to ensure that the Project will not have an undue, adverse effect on

historic sites, we adopt VDHP's proposed conditions as part of our approval of the Project, and we will include these conditions in the CPG.

We also note that one of the conditions proposed by VDHP requires mitigation in the event archaeological resources are identified, and includes as part of such potential mitigation the potential "redesign of one or more of the proposed Project components."¹⁴ We remind the Applicant that, should such a redesign become necessary to comply with this condition, an amendment to its CPG may be necessary pursuant to Board Rule 5.408.

Rare and Irreplaceable Natural Areas

43. There are no rare and irreplaceable natural areas within or near the Project area. Exh. SLS-3 at 8.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

44. The Project will not destroy or significantly imperil necessary wildlife habitat. This finding is supported by findings 45 and 46, below.

45. No necessary wildlife habitat or habitat for rare, threatened, or endangered ("RTE") species has been identified on digital maps or other inventories on the Project site. Exh. SLS-3 at 9.

46. The Project site consists of a mowed hayfield and is not a likely habitat for RTE species. ANR reviewed the Project and determined that an inventory of RTE species was not needed. Exh. SLS-3 at 9.

Discussion

The Town of Morgan argues that the review of digital databases conducted by the Project's environmental consultant was insufficient to identify potential RTE species that may be present on the Project site. Specifically, the Town points to potential impacts to grassland birds. The Town also argues that, in light of its concerns related to water quality discussed above, the

14. VDHP Comments at 2.

Project will have adverse effects on necessary wildlife habitat associated with fish in Lake Seymour and neighboring wetlands due to its concerns related to runoff as discussed under the soil erosion criterion above.

In response, the Applicant represents that ANR, the State agency tasked with enforcing protections for RTE species, has reviewed the Project and concluded that, in light of the condition of the Project site, an additional review for RTE species is unnecessary. After considering the Town's comments and the fact that ANR has not recommended that an inventory for RTE species be conducted, we are not persuaded that an additional review for such species is necessary.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

47. The Project will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facilities, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of, or access to any such facility, service, or lands. The Project will cause only temporary and minimal impacts to the only affected public investment, Valley Road. Application at 10.

Waste-to-Energy Facility

[30 V.S.A. § 248(b)(9)]

48. The Project is not a waste-to-energy facility; therefore, this criterion is not applicable.

Setbacks

[30 V.S.A. § 248(s)]

49. The Project will comply with the setback requirements of 30 V.S.A. § 248(s). This finding is supported by findings 50 and 51, below.

50. The Project is set back more than 100 feet from the nearest road. Application at 1 and 6; exhs. SLS-1a; exh. SLS-6a.

51. The Project is set back more than 50 feet from the nearest property line. Application at 1 and 6; exhs. SLS-1a; exh. SLS-6a.

VII. CONCLUSION

Based upon the findings above, we conclude that the Project does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. §§ 219a or 248 and that the Project will promote the general good of the State.

VIII. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. In accordance with the evidence and plans submitted in this proceeding, the 500 kW photovoltaic group net-metering system (the “Project”) proposed for construction and operation by Seymour Lake Solar, LLC (the “Applicant”) in Morgan, Vermont, will promote the general good of the State of Vermont pursuant to 30 V.S.A. §§ 219a and 248, and a certificate of public good to that effect shall be issued in this matter.

2. The net-metering system shall comply with applicable existing and future statutory requirements and Board Rules and Orders.

3. In the event the certificate of public good (“CPG”) is transferred pursuant to Board Rule 5.110(D)(1), the new owner of the system shall file the required certificate transfer form with the Board prior to operating the system. This CPG may not be otherwise transferred without Board approval.

4. Pursuant to 30 V.S.A. § 219a(d)(3), the installation of the net-metering system shall be completed within one year of the date of the CPG unless otherwise ordered by the Board.

5. Prior to commencing site preparation or construction of the Project, the Applicant shall obtain all necessary permits and approvals. Construction, operation, and maintenance of the Project shall be in accordance with such permits and approvals.

6. The Applicant shall follow the applicable interconnection procedures contained in Board Rule 5.500. The Applicant shall implement and shall pay for any system upgrades determined by the interconnecting utility to be necessary to safely interconnect the net-metering system.

7. The Applicant shall restrict construction activities to the hours between 7:00 A.M. and 7:00 P.M. Monday through Friday and between 8:00 A.M. and 5:00 P.M. on Saturdays. No construction activities shall occur on Sundays or state or federal holidays.

8. Prior to commissioning the Project, the Applicant shall file with the Board a letter from Vermont Electric Cooperative, Inc. confirming that all system protection upgrades necessary to safely interconnect the system have been completed.

9. The Applicant shall maintain all wetlands and associated 50-foot wetland buffer zones located on the Project property in an undisturbed state. The term “undisturbed” means the absence of activities that may cause or contribute to ground or vegetation disturbance or soil compaction, including but not limited to: construction; driving upon; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub, or groundcover removal; plowing or disposal of snow; and mowing.

10. The Applicant shall avoid impacts to Class II wetlands and 50-foot wetland buffer zones, or obtain and comply with the provisions of a Vermont Wetland Permit. Any activity within the wetlands or wetland buffer that is not an allowed use designated in Section 6 of the Vermont Wetland Rules shall require a Vermont Wetland Permit.

11. Prior to site preparation, construction, maintenance that involves earth disturbance, or decommissioning, the Applicant shall install a continuous line of flagging tape along the on-site wetland buffer boundaries and signage to identify the wetland buffer zone as a protected area.

12. Prior to the completion of all relevant archaeological investigations, the Applicant, in consultation with the Vermont Division for Historic Preservation (“VDHP”), shall identify the southern section of the Project area on either side of the intermittent drainage as a not-to-be-disturbed archaeological buffer zone.

13. Topsoil removal, grading, scraping, cutting, filling, stockpiling, logging, or any other type of ground disturbance shall be prohibited within the archaeological buffer zone prior to conducting all appropriate archeological studies.

14. Archaeological studies to identify and evaluate sites shall be carried out by a qualified consulting archeologist within the archaeological buffer zone. The archaeological

studies shall be scheduled accordingly so that mitigation measures that may be necessary can be satisfactorily planned and accomplished prior to construction.

15. All archaeological studies and assessments shall be conducted by a qualified consulting archaeologist and shall follow the VDHP *Guidelines for Conducting Archaeological Studies in Vermont*. The Applicant's archaeological consultant shall submit any scope of work to VDHP for review and approval before commencing work.

16. Archaeological sites within the Project area shall not be disturbed until any necessary mitigation measures have been completed. Mitigation may include, but is not limited to, further site evaluation, data recovery, redesign of one or more of the proposed Project components, or modification of the buffer zone boundaries or the specific conditions that refer to the same.

17. Proposed mitigation measures shall be discussed with and approved by VDHP prior to implementation. The archaeological studies shall result in one or more reports, as appropriate, that meet the VDHP *Guidelines for Conducting Archaeological Studies in Vermont*. A digital copy of the final report shall be submitted to the VDHP.

18. At the time the Project permanently ceases operation, the Applicant shall restore the site by removing the equipment that is installed above ground and those portions installed up to 24 inches below ground level.

19. The Applicant shall implement the landscaping mitigation plan as described in Exhibit SLS-6a and Exhibit SLS-1a.

20. The Applicant shall inspect annually the landscaping to ensure that plants are in good health. If plants are dead or dying and in need of replacement, the Applicant shall ensure that the plants are replaced in the next available planting season.

21. As required by 30 V.S.A. § 248(a)(7), within 45 days of the date of this Order, the Applicant shall record a notice of the CPG on the form available at <http://psb.vermont.gov/sites/psb/files/forms/MunicipalNoticeFormFillable.pdf> in the land records of each municipality in which a facility subject to the CPG is located. The Applicant shall also file proof of this recording with the Board.

Dated at Montpelier, Vermont, this 26th day of August, 2016.

<u>s/James Volz</u>)	
)	
)	PUBLIC SERVICE
<u>s/Margaret Cheney</u>)	
)	BOARD
)	
)	OF VERMONT
<u>s/Sarah Hofmann</u>)	

OFFICE OF THE CLERK

FILED: August 26, 2016

ATTEST: s/Judith C. Whitney
Clerk of the Board

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

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