



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
191 MAIN STREET
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AMANDA E. BEAL
COMMISSIONER
STACIE R. BEYER
ACTING EXECUTIVE DIRECTOR

CERTIFICATION

COMMISSION DETERMINATION IN THE MATTER OF

Maine Department of Environmental Protection
Request for Site Law Certification
Three Corners Solar, LLC

SITE LAW CERTIFICATION SLC 16

Findings of Fact and Determination

The Maine Land Use Planning Commission (Commission), at a meeting of the Commission held on May 11, 2022, in Brewer, Maine, after reviewing the certification request and the supporting documents submitted by Three Corners Solar, LLC for Site Law Certification SLC 16, and other related materials on file, pursuant to the Commission's Land Use Standards, find the following facts:

1. Department Contact: Maine Department of Environmental Protection
Attn: Jami MacNeil, Project Manager
17 State House Station
Augusta, ME 04333
2. Applicant: Three Corners Solar, LLC
Attn: Deron Lawrence
30 Danforth Street
Portland, ME 04101
3. Agent: Stantec Consulting Services, Inc.
Attn: Eben Baker
30 Park Drive
Topsham, ME 04086
4. Date of Completed Application: February 18, 2022

5. Location of Proposal: Unity Township, Kennebec County, Maine
Maine Revenue Service Map KE001, Plan 01,
Lots 7,8,9,10,11,12,14,17,18,19,20,22, and 23
6. Zoning: Commercial Industrial Development Subdistrict (D-CI)
General Management Subdistrict (M-GN)
Shoreland Protection Subdistrict (P-SL2)
Wetland Protection Subdistrict (P-WL2, P-WL3)
7. Lot Size: 1,716 Acres (Lease Option Agreement)

INTRODUCTION

8. Title 12, § 685-B(1-A)(B-1) establishes that, except for projects in a planned subdistrict that was approved or accepted by the Commission for processing prior to September 1, 2012, a permit from the Commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, § 482, subsection 2. A project meeting that definition is reviewed under Title 38, § 489-A-1. A person submitting a development proposal to the Department of Environmental Protection under Title 38, § 489-A-1 shall file a notice of the intent to develop and a map indicating the location of the proposed development with the Commission prior to or concurrently with submission of a development application to the Department of Environmental Protection. The Department of Environmental Protection must receive certification from the Commission that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and the proposed development meets any land use standard established by the Commission that is not considered in the Department's review under Title 38, § 489-A-1, subsection 1 before issuing a permit.

The following Findings, Conclusions, and Conditions constitute the Commission's certification that the portion of Three Corners Solar, LLC's (applicant) development in Unity Twp., as proposed, meets the applicable Commission Land Use Standards that would not be considered by the DEP as part of any review under the Site Law.

ADMINISTRATIVE HISTORY

9. Zoning Petition ZP 776, approved by the Commission on September 11, 2019 and effective September 26, 2019, authorized the rezoning of approximately 748.1 acres within 13 parcels in Unity Township from M-GN subdistrict (729.1 acres), P-SL2 subdistrict adopted primarily to protect certain freshwater wetlands (14.2 acres), and P-WL3 subdistrict (4.8 acres) to D-CI subdistrict to allow for the construction of a grid-scale solar energy generation facility, otherwise known as the Three Corners Solar Project (Project).
10. Amendment A to Zoning Petition ZP 776, approved by the Commission on February 9, 2022 and effective February 24, 2022, authorized the rezoning of 119.3 acres within 13 parcels in Unity Township from M-GN, P-SL2, and P-WL3 subdistricts to D-CI subdistricts and to revert 42.5 acres of D-CI subdistrict back to the original M-GN subdistrict. These changes to the D-CI and M-GN subdistricts were based on wetland and stream delineation data, detailed boundary line survey data, and improvements to the proposed project layout provided by the applicant.

11. On February 18, 2022, the Maine Department of Environmental Protection (DEP) submitted to the Commission a Request for Certification for the Site Location of Development Act and Natural Resource Protection Act (SLODA/NRPA) applications submitted by the applicant. The application includes section 1, which presents a description of the project, section 26, which addresses the Commission's criteria for certification, and engineering plans, which detail exact dimensions and locations of the project's components. The Request for Certification asks that the Commission determine if the proposed project is an allowed use within the subdistricts in which it is proposed and if the Project meets the applicable Commission land use standards that are not considered in the DEP review.
12. On March 3, 2022, the Commission issued a Certification of Allowed Use to the DEP stating that the Request for Certification was accepted as complete for processing by the Commission on February 18, 2022, and that the Project, as proposed, is an allowed use within the D-CI, M-GN, P-SL2, and P-WL3 subdistricts and meets the special exception criteria for areas where the project would affect prime farmland soils.

BACKGROUND

13. The 824.9-acre D-CI subdistrict, rezoned in ZP 776 and Amendment A to ZP 776, consists primarily of mixed coniferous and deciduous forest predominantly managed for active commercial forest management. The entire 1,716 acre site currently consists of the same mixed coniferous and deciduous forest along with delineated forested, scrub-shrub, emergent, and unconsolidated-bottom wetlands.

The Project area is accessed from Route 139 via Bessey Lane in the Town of Benton or via Palmer Road in Unity Township. Existing logging roads and skid trails extend through the Project area.

There are no existing structures within the Project area. Within 1 mile of the Project area, there are approximately 70 residential dwellings, an existing transmission line right-of-way, small scale agricultural farming, and small and large-scale commercial businesses.

PROPOSAL

14. The applicant proposes to construct a 110 megawatt (MW), alternating current, grid-scale solar energy generation facility with a 5.2 mile, 115 kilovolt (kV) generator lead line to transmit power to the existing Central Maine Power (CMP) Albion Road substation. The Project will be located within the Towns of Benton and Clinton and Unity Township; however, the Commission only has the authority to assess the parts located within Unity Township.

Within Unity Township, the Project would include approximately 256,000 photovoltaic (PV) modules, up to 33 paired central inverters/transformers on skids, 1.3 miles of 34.5 kV overhead collector lines, 11.5 miles of 64.5 kV underground collector lines, 1.7 miles of new Level C roads, 5.4 miles of reconstructed or upgraded Level A and B roads, and 8 temporary laydown areas. The PV modules and the inverters/transformers would be located entirely within the D-CI subdistrict. Overhead collector lines would extend through D-CI, M-GN, P-SL2, and P-WL2 subdistricts. Underground collector lines would extend through D-CI, M-GN and P-WL3 subdistricts. New, Level C roads would be located within the D-CI subdistrict, and upgraded or

reconstructed Level A and B roads would be located within D-CI, M-GN, P-SL2, and P-WL subdistricts. The temporary laydown areas would be located entirely within the D-CI subdistrict.

REVIEW CRITERIA, ANALYSIS AND COMMISSION FINDINGS

The Commission's Land Use Standards that are applicable to certifying compliance of the project, which are not considered in the DEP's review under Title 38, § 489-A-1, subsection 1, are evaluated in Findings #15 through #21 below.

15. Public Health, Safety and General Welfare:

- A. Review Criteria: Under the provisions of 12 M.R.S. § 685-B(4) and Chapter 10, § 10.24,A,1, the burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public's health, safety and general welfare will be adequately protected.
- B. Analysis: The applicant has previously provided information as part of Zoning Petition ZP 776 and Amendment A to Zoning Petition ZP 776 regarding public health, safety and general welfare. Clinton Fire and Rescue, located approximately 3.25 miles from the project area, indicated they would be available to respond to fire or medical emergencies at the project area. In addition, the Kennebec County Sheriff's Office provides law enforcement services for Unity Township and did not foresee any issues with providing law enforcement services to the project area.
- C. Finding: The Commission finds that the ability of Clinton Fire and Rescue and the Kennebec County Sheriff's Office to provide emergency services to the project area meets the requirements of 12 M.R.S. § 685-B(4) and Chapter 10, § 10.24,A,1.

16. Right, Title or Interest:

- A. Review Criteria: Under the provisions of 12 M.R.S. § 685-B(2)(D) and Chapter 10, § 10.24,A,1, the applicant must demonstrate evidence of sufficient right, title or interest in all of the property that is proposed for development or use.
- B. Analysis: The applicant has submitted deeds for the parcels in Unity Township showing ownership by Bessey Development Company. A Memorandum of Lease Option Agreement between Bessey Development Company and Three Corners Solar, LLC has also been submitted for the parcels in Unity Township. Additional deeds, lease agreements, licenses, and easement agreements have been submitted for contiguous parcels extending into the Towns of Clinton and Benton.
- C. Finding: Three Corners Solar, LLC has simultaneously applied for the DEP's SLODA/NRPA permits and the Commission's Site Law Certification. Provided that the DEP finds in their review of the project that the applicant has sufficient right, title or interest, the Commission finds that Three Corners Solar, LLC has met the requirements of 12 M.R.S. § 685-B(2)(D) and Chapter 10, § 10.24,A,1.

17. Land Division History:

- A. Review Criteria: Under the provisions of 12 M.R.S § 682-B, 12 M.R.S. § 685-B,1,B, and Chapter 10, § 10.25,Q,1,g, a person may not commence development of or construction on any lot, parcel or dwelling unit within any subdivision or sell or offer for sale any interest in any lot, parcel or dwelling unit within any subdivision without a permit issued by the Commission unless the lot, parcel or dwelling unit is exempt from subdivision requirements.
- B. Analysis: The applicant provided deeds and a detailed 20-year land division history indicating ownership by Bessey Development Company of Plan 01, Lots 5, 7, 8, 9, 10, 11, 12, 14, 17, 18, 19, 20, 21, 22, 23, 33, 55, 56, and 57. Lots 33, 55, 56, and 57 are separated from the remaining lots by State Route 139, a fee road, and therefore do not need to be reviewed for this project. A Memorandum of Lease Option Agreement between Bessey Development Company and Three Corners Solar, LLC, originally signed and dated March 15, 2018, and most recently amended on January 28, 2022, includes Lots 7, 8, 9, 10, 11, 12, 14, 17, 18, 19, 20, 22, and 23. This Lease Option Agreement created three new lots: the Three Corners Solar, LLC Lease Lot; and Lots 5 and 21, which are still owned by Bessey Development Company, but not contiguous. Bessey Development Company has committed to retaining Lot 5 for forest or agricultural management activities only for at least a period of five years from the date of the Memorandum of Lease Option Agreement.
- C. Finding: Based on the information provided and existing deed records, the Commission finds that the proposed project meets the subdivision and lot creation requirements of 12 M.R.S § 682-B, 12 M.R.S. § 685-B,1,B, and Chapter 10, § 10.25,Q,1,g. There have been no illegal divisions of land stemming from the parent parcel that would have required subdivision approval from the Commission in the preceding 20 years.

18. Vehicular Circulation, Access and Parking:

- A. Review Criteria: Under the provisions or Chapter 10, § 10.25,D, provision shall be made for vehicular access to and within the project premises in such a manner as to avoid traffic congestion and safeguard against hazards to traffic and pedestrians along exiting roadways and within the project area. Development shall be located and designed so that the roadways and intersections in the vicinity of the development will be able to safely and efficiently handle the traffic attributable to the development in its fully operational stage.
- B. Analysis:
- 1) *Vehicular Circulation*. Internal access roads will be reviewed by the DEP with regard to stormwater runoff and erosion control standards. Within LUPC jurisdiction areas, there would be 5.4 miles of gravel internal access roads ranging from 16' to 24' wide and 1.1 miles of 12' wide gravel access roads for accessing interior site outparcels. Internal access roads would be located on existing logging roads and skid trails where possible. The Project would produce approximately 80-100 vehicles per day during construction and 2-4 vehicles per day once fully operational. No traffic study was completed.

- 2) *Access*. Access to the site would be via Bessey Lane or Palmer Road, both of which are existing roads that branch off State Route 139. Access via Palmer Road would be within LUPC jurisdiction and would extend straight off the end of the existing road. There are no plans for improvements to Palmer Road. No backing onto Palmer Road or State Route 139 would be required for access to and egress from the site.
 - 3) *Parking*. No permanent on or off street parking is proposed for this project within LUPC jurisdiction. Temporary parking during construction would be located within an existing cleared area adjacent to the Palmer Road entrance.
- C. Finding: The Commission finds that the Project meets the applicable requirements of Chapter 10, § 10.25,D for vehicular circulation, access, and parking.

19. Lighting:

- A. Review Criteria: Chapter 10, § 10.25,F,2 details lighting standards that must be met for projects located within LUPC jurisdiction. All residential, commercial and industrial building exterior lighting fixtures must be full cut-off, except for incandescent lights of less than 160 watts, or any other light less than 60 watts. All exterior lighting must be designed, located, installed, and directed in such a manner as to illuminate only the target area, to the extent practicable.
- B. Analysis: No permanent lighting is proposed within LUPC jurisdiction for this project. The applicant indicated that temporary lighting may be used during construction at project access points for nighttime security. It would be full cut-off lighting and would be directed only toward access points.
- C. Finding: The Commission finds that the proposed temporary lighting meets the requirements of Chapter 10, § 10.25,F,2.

20. Dimensional Requirements:

A. Minimum Lot Size:

- 1) *Review Criteria*. Under the provisions of Chapter 10, § 10.26,A,2, the minimum lot size for commercial, industrial, and other non-residential uses involving one or more buildings in 40,000 square feet.
- 2) *Analysis*. The Project would be located on 13 contiguous lots totaling 1,716 acres in size.
- 3) *Finding*. The Commission finds that the Project meets the dimensional requirements of Chapter 10, § 10.26,A,2 for minimum lot size.

B. Minimum Road Frontage:

- 1) *Review Criteria.* Under the provisions of Chapter 10, § 10.26,C,1,b, the minimum road frontage shall be 200 feet for commercial, industrial, and other non-residential uses involving one or more buildings.
- 2) *Analysis.* The applicant indicated that the property has 450 feet of road frontage along Palmer Road.
- 3) *Finding.* The Commission finds that the Project meets the dimensional requirements of Chapter 10, § 10.26,C,1,b for minimum road frontage.

C. Minimum Setbacks:

- 1) *Review Criteria.* Under the provisions of Chapter 10, § 10.26,D,3, commercial, industrial, and other non-residential principal and accessory structures shall be set back 100 feet from non-forested wetlands located in P-WL1 subdistricts, 75 feet from all roadways, and 25 feet from the side and rear property lines. Under the provisions of Chapter 10, § 10.26,G,10,b, the Commission may reduce the minimum road setback requirement for commercial, industrial and other non-residential structures and uses, to no less than 20 feet provided the road is internal to the development and not a throughway, it is impracticable to extend the road in the future to create a longer road or a throughway (based on geography, surrounding development or other characteristics), the road will be used primarily by clients or customers of the facility, and the reduction in road setback will not cause an undue adverse impact to the natural resources, community character, or scenic quality of the area.
- 2) *Analysis.* The applicant has submitted detailed plans showing the locations of PV modules, inverters, internal project roadways, and underground and overhead powerlines. Minimum structure setbacks include the following:
 - 129 feet to a flowing water draining less than 50 square miles;
 - 310 feet to a body of standing water less than 10 acres in size;
 - 322 feet to a non-forested wetland located in a P-WL1 subdistrict;
 - 1,135 feet to the Sebasticook River;
 - 3 miles to Unity Pond;
 - 92 feet to Palmer Road;
 - 20 feet to the nearest internal project road; and
 - 92 feet to the nearest abutter property line.
- 3) *Finding.* The Commission finds that the Project meets the minimum setback requirements of Chapter 10, § 10.26,D,3 and § 10.26,G,10,b.

D. Maximum Structure Height:

- 1) *Review Criteria.* Under the provisions of Chapter 10, § 10.26,F,1,b, the maximum structure height shall be 100 feet for commercial, industrial, and other non-residential uses involving one or more structures.
- 2) *Analysis.* The maximum proposed structure height would be 10 feet for PV panels.

- 3) *Finding*. The Commission finds that the Project meets the dimensional requirements of Chapter 10, § 10.26,F,1,b for maximum structure height.

21. Vegetation Clearing:

- A. Review Criteria: Vegetation clearing in protected natural resource areas is reviewed by the DEP. In other areas, under the provisions of Chapter 10, § 10.27,B,1,a, a vegetative buffer strip must be retained within 50 feet of the right-of-way or similar boundary of any public roadway.
- B. Analysis: The applicant has proposed approximately 688 acres to be cleared for construction, PV arrays, shade management, access roads, and the collector corridor with maintenance inspections that would occur twice per year. Clearing for shade management would involve cutting 1 to 2 feet from the ground surface, maintaining low growing herbaceous plants. No clearing is proposed within 50 feet of any public roadway.
- C. Finding: The Commission finds that proposed vegetation clearing for the Project meets the requirements of Chapter 10, § 10.27,B,1,a.

FINAL CONCLUSION FOR THE CERTIFICATION OF COMPLIANCE WITH THE COMMISSION'S LAND USE STANDARDS

Based on the findings set forth above, the Commission concludes that, with respect to the proposed Project, Three Corners Solar, LLC has met its burden of demonstrating that the Project conforms with the applicable statutory and regulatory requirements and plans adopted pursuant to 12 M.R.S Chapter 206-A and meets the Commission's Land Use Standards applicable to the Project that are not considered in any DEP review.

CONDITIONS

Therefore, the Commission CERTIFIES that Site Law Certification SLC 16, submitted by Three Corners Solar, LLC for a grid-scale solar energy generation facility, complies with the relevant provisions of the Commission's Land Use Standards, subject to the findings of fact and conclusions contained herein, and the following conditions:

1. *Right, title or interest*. The DEP finds in its SLODA/NRPA permitting decision that Three Corners Solar, LLC possesses sufficient right, title or interest to develop the Project.
2. *Dimension requirements*. All project structures, both temporary and permanent, must be designed and located in accordance with the requirements of Chapter 10, § 10.26 of the Commission's Land Use Standards.
3. *Lighting*. All project lighting, including temporary lighting, must comply with the requirements of Chapter 10, § 10.25,F,2 of the Commission's Land Use Standards.
4. The Project is otherwise designed, constructed, and operated as proposed in the materials submitted to the Commission.

Pursuant to Chapter 4 § 4.05(F)(1)(f), a Commission determination to approve or deny a request for certification of a Site Law application pending before the Maine Department of Environmental Protection (MDEP) is not a final agency action and is not appealable except as part of the Department of Environmental Protection permitting decision.

DONE AND DATED AT BREWER, MAINE, THIS 11TH DAY OF MAY, 2022.

By: 
Stacie R. Beyer, Acting Executive Director