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March 5, 2021

Via Electronic Filing

Melanie Bachman, Executive Director/Staff Attorney
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

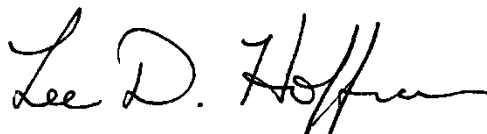
Re: DOCKET NO. 497 - Burlington Solar One, LLC Application for a Certificate of Environmental Compatibility and Public Need, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the Proposed Construction, Maintenance and Operation of a 3.5-Megawatt AC Solar Photovoltaic Generating Facility Located at Lot 33, Prospect Street, Burlington, Connecticut, and Associated Electrical Interconnection.

Dear Ms. Bachman:

I am writing on behalf of my client, Burlington Solar One, LLC (“Burlington Solar One”), in connection with the above-referenced Application. With this letter, I am enclosing Burlington Solar One’s Motion to Install Eastern Box Turtle Exclusion Fencing at the Project Site.

Should you have any questions concerning this submittal, please contact me at your convenience. I certify that copies of this submittal have been submitted to all parties on the Application’s Service List as of this date.

Sincerely,



Lee D. Hoffman

Enclosures

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Burlington Solar One, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a 3.5-megawatt-AC solar photovoltaic electric generating facility located at Lot 33, Prospect Street, Burlington, Connecticut and associated electrical interconnection.

DOCKET NO. 497

March 5, 2021

**BURLINGTON SOLAR ONE, LLC MOTION TO INSTALL EASTERN BOX TURTLE
EXCLUSION FENCING AROUND THE PERIMETER OF THE PROPOSED PROJECT
AREA**

The Applicant, Burlington Solar One, LLC (“Burlington Solar One”; or the “Applicant”), respectfully seeks the Connecticut Siting Council’s (the “Council”) permission to install Exclusion Fencing around the perimeter of the proposed Project Area to protect the known extant population of Eastern Box Turtles inhabiting the Site. As is explained in greater detail below, the Fencing would result in no adverse environmental impact(s), would be temporary in nature, and would offer the protection that is necessary to conserve these species of special concern. In light of these considerations, the Applicant strongly encourages the Council’s approval of this Motion.

By way of background, the Eastern Box Turtle (*Terrapene c. Carolina*), a State Special Concern species afforded protection under the Connecticut Endangered Species Act and listed as a “Greatest Conservation Need” species in Connecticut’s Comprehensive Wildlife Conservation Strategy (CT DEP 2005), is known to occur on the Site. Specifically, in June of 2020, representatives from Davison Environmental, LLC (“Davison Environmental”) encountered five turtles (three males and two females) along the western limits of the Site’s existing sand and gravel mine/stockpile yard.¹

¹ Photographs of each turtle, including their respective capture location, morphometrics, and marking information, are included in Appendix I of the Application.

The turtles were observed in the old field/forest edge habitat onsite, between the mixed hardwood forest and the stockpile yard. Davison Environmental posited that this was likely the turtles' nesting habitat, as these areas contain ample sparsely vegetated and friable sandy soils, which are typically favored by the Eastern Box Turtle for nesting purposes. Davison Environmental also determined that suitable hibernation habitat for the turtles exists within the mixed hardwood forest habitat on the property, which occurs within the Project Area, onsite outside of the Project Area, and offsite to the west. Davison Environmental was, however, unable to identify the precise location of such hibernation.

Because of this uncertainty, and the potential for turtle hibernation to occur within the mixed hardwood forest that lies within the Project Area, Burlington Solar One developed, in conjunction with Davison Environmental, a *Box Turtle Protection Plan* (the "Plan"), attached hereto as Exhibit A. On January 7, 2021, the Connecticut Department of Energy and Environmental Protection Wildlife Division ("CTDEEP Wildlife Division") concurred with the findings in the Plan, and this concurrence is included in Exhibit A.

The objective of the Plan is to prevent incidental mortality to the Eastern Box Turtle during construction of the Project. In furtherance of this objective, the Plan instructs the utilization of various exclusionary practices, including the installation of silt fencing ("Exclusion Fencing"; or the "Fencing") around the perimeter of the proposed limits of disturbance ("LOD"; or "Project Area") for the Project, to prevent or minimize the risk of harm to these species.

It is Burlington Solar One's understanding that it is critical that this fencing be installed during the Eastern Box Turtles' inactive period—and prior to their emergence from hibernation, which occurs in early April—if the proposed construction activity is to be conducted at any time during nesting or incubation, which generally takes place from May through September. The reason for the early timing of the exclusionary fencing is that Eastern Box Turtles have a small "home range" and

typically return to the same place to hibernate year after year. If such hibernation habitat is compromised, it adversely affects the Eastern Box Turtle and their likelihood of survival in the wild.

In light of the Council's scheduling order for Docket No. 497, however, Burlington Solar One realizes that, if its Project were to be approved, the timeframe of construction for the Project would coincide with this period. Therefore, Burlington Solar One respectfully requests the Council's permission to access the Site for the sole purpose of installing the Exclusion Fencing.

The Exclusion Fencing would not adversely affect existing site conditions and/or other wildlife that occurs at the property. The Fencing would consist of non-reinforced conventional erosion control woven fabric that would be installed approximately six inches below surface grade and staked at seven to ten-foot intervals using four-foot oak stakes or approved equivalent. The Fencing will be installed using minimal ground disturbance and/or adverse environmental impacts, and it is anticipated that the fencing can be installed in one to three days. Davison Environmental will perform periodic inspections of the Fencing throughout the duration of the Docket No. 497 proceedings to ensure that it is working as intended and will provide the Council with any information and/or reports requested.

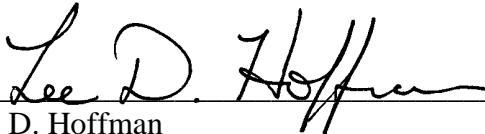
Burlington Solar One wishes to stress that, in making the present request of the Council, it does not presuppose that it will receive a Certificate of Environmental Compatibility and Public Need ("Certificate") for the Project. To the contrary, Burlington Solar One recognizes that the Project may not receive approval, in which case, the Exclusion Fencing would no longer be necessary for Burlington Solar One's intended purpose. That is why on March 4, 2021, Burlington Solar One executed an addendum to the Site's lease agreement with the current landowner that provides the landowner with the right to remove the Fencing if the Council allows the Exclusion Fencing but later denies a Certificate for the Project. A copy of this addendum is attached to this Motion as Exhibit B.

Importantly, however, even if the Council were to deny the Project a certificate, Burlington Solar One believes that the landowner would retain the Exclusion Fencing at the Site notwithstanding. The landowner has been receptive to the prospect of installing Exclusion Fencing at the property given the active gravel and mining operations that are conducted thereon. The landowner recognizes that these activities—which entail the use of heavy machinery and frequent vehicular/truck traffic—represent a potential threat to the turtles that reside onsite, and has indicated, accordingly, an interest in mitigating any potential harm(s), where and to the extent(s) feasible. As such, regardless of whether the Project gets constructed, the Exclusion Fencing offers a salutary benefit of protecting these species from the existing harms occurring at the Site. In light of their Special Concern Species status, this conservation and preservation of the Eastern Box Turtle is of utmost importance.

WHEREFORE, for the reasons described herein, Burlington Solar One, LLC respectfully requests that the Council grant this Motion.

Respectfully Submitted,

Burlington Solar One, LLC

By: 
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Its Attorneys



Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

Exhibit A

January 7, 2021

Mr. Eric Davison
Davison Environmental
10 Maple Street
Chester, CT 06412
eric@davisonenvironmental.com

Project: Verogy Solar (aka Solar Burlington Solar One) a 3.5 Megawatt Solar Facility Located on Prospect Street in Burlington, Connecticut
NDDDB Final Determination No.: 201913067

Dear Eric Davison,

I have re-reviewed Natural Diversity Database maps and files regarding the area delineated on the map provided for Verogy Solar (aka Burlington Solar One) a 3.5 megawatt solar facility located on Prospect Street in Burlington, Connecticut.

According to our records there are known extant populations of State Listed Species that occur within or close to the boundaries of this property. A list of species known from this area was provided in our NDDDB Program preliminary assessment letter dated January 13, 2020. The list included state listed plants, invertebrates, birds and reptiles.

I received a Natural Resource Assessment for the Proposed Solar Generating Facility Known as Verogy Solar/ Burlington Solar and dated September 28, 2020 by Eric Davison of Davison Environmental. The Natural Resource Assessment addressed the list of species and significant natural habitats in the NDDDB Preliminary Assessment letter. The Natural Resource Assessment included a botanical assessment conducted by William Moorhead, an invertebrate habitat assessment conducted by Tanner Matson, a whip-poor-will survey by Hunter Brawley and an amphibian and reptile survey by Dennis Quinn. The only state listed species observed on the project site is State Special Concern eastern box turtle (*Terrapene c. carolina*). I concur with the findings in the Natural Resource Assessment and no further conservation action is required except for the additional protection strategies outlined below.

Protection for Eastern Box Turtle

I concur with the conservation plan submitted in Appendix E of that report: Box Turtle Protection Plan (attached) in order to keep the eastern box turtle safe during the construction phase of this project. However, habitat protection, management and enhancement should be the top priority for the continued conservation of Eastern Box Turtles after the solar facility has been constructed.

The property contains a diverse mosaic of forested uplands (deciduous or mixed) and disturbed or early-successional habitats that may be suitable for nesting (old fields, abandoned gravel pits, clearings with patches of bare soil) and habitat management and restoration guidelines should be developed and implemented to create and/or maintain consistent access to nesting and over-wintering habitat as key conservation goals.

In addition to the Box Turtle Protection Plan (attached) presented in The Natural Resource Assessment the additional protection/conservation actions are required to protect the eastern box turtle:

- Conduct one year of post-construction monitoring of box turtles that are captured and removed from the construction zone during the pre-construction sweeps outlined in the Appendix E Box Turtle Protection Plan.
- The monitoring period for the box turtles should cover one full growing season after the construction is completed.

- The goal of monitoring should focus on the identity of critical basking, nesting and hibernation sites relative to the new solar development area.
- The above monitoring of the box turtles should result in a final habitat management plan to advise the property owners on how best to manage vegetative areas of the solar facility to enhance and promote nesting, basking and hibernation habitat and to conserve the connectivity of the turtles using this property.
- The plan should also outline general maintenance activity (for example--Mowing Restrictions of this site to months when the turtles are dormant and to install the proper fencing around the facility to promote healthy mobility of the eastern box turtle on and off site).
- The data on the monitoring and final management plan will be shared with the DEEP NDDB Program as soon as it is available.

State Listed Fish Species

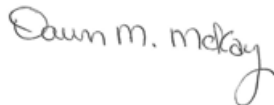
According to our information, there are records for State Special Concern *Cottus cognatus* (Slimy sculpin) in Wildcat Brook and Whigville Brook the vicinity of this project. Please be advised that a DEEP Fisheries Biologist will review the permit applications you may submit to DEEP regulatory programs to determine if your project could adversely affect slimy sculpin. DEEP Fisheries Biologists are routinely involved in pre-application consultations with regulatory staff and applicants in order to identify potential fisheries issues and work with applicants to mitigate negative effects, including to endangered species. If you have not already talked with a Fisheries Biologist about your project, you may contact the Permit Analyst assigned to process your application for further information, including the contact information for the Fisheries Biologist assigned to review your application.

This determination is good for two years. Please re-submit an NDDB Request for Review if the scope of work changes or if work has not begun on this project by January 9, 2023.

Natural Diversity Database information includes all information regarding critical biological resources available to us at the time of the request. This information is a compilation of data collected over the years by the Department of Energy and Environmental Protection's Natural History Survey, cooperating units of DEEP, landowners, private conservation groups and the scientific community. This information is not necessarily the result of comprehensive or site-specific field investigations. Consultations with the NDDB should not be substitutes for onsite surveys necessary for a thorough environmental impact assessment. The result of this review does not preclude the possibility that listed species may be encountered on site and that additional action may be necessary to remain in compliance with certain state permits.

Please contact me if you have further questions at (860) 424-3592, or deep.nddbrequest@ct.gov
Thank you for consulting the Natural Diversity Data Base.

Sincerely,



Dawn M. McKay
Environmental Analyst 3

APPENDIX E: Box Turtle Protection Plan

Eastern Box Turtle Protection Plan

Eastern Box Turtle, a State Special Concern species afforded protection under the Connecticut Endangered Species Act and listed as a Greatest Conservation Need species in Connecticut's Comprehensive Wildlife Conservation Strategy (CT DEP 2005), is known to occur on the site. The following protective measures are recommended to satisfy requirements from the Connecticut Department of Energy & Environmental Protection ("CTDEEP") Wildlife Division and follow protocols developed from previous rare species consultations and state-approved protection plans. This plan is focused on preventing incidental mortality to eastern box turtle but will also serve to limit mortality to other herpetofauna located within the construction, including hognose snake, should they be present.

Davison Environmental, LLC will serve as the Environmental Monitor for this project to ensure that Eastern Box Turtle protection measures are implemented properly.

The Contractor shall contact Eric Davison at least 5 business days prior to the pre-construction meeting. Mr. Davison can be reached by phone at (860) 803-0938 or via email at eric@davisonenvironmental.com.

The recommended Eastern Box Turtle protection program consists of the following components:

1. Isolation of the project perimeter: *fencing to be installed no later than April 1st, 2021*
2. Targeted searches of the project area prior to construction: *between April 1st and May 31st*
3. Periodic inspection and maintenance of isolation structures: *throughout construction period*
4. Education of all contractors and sub-contractors prior to initiation of work on the site
5. Documentation and reporting: *submitted to CSC and NDDB by December 31, 2021*

1. Isolation Barrier (Erosion and Sedimentation Controls)

- a. Plastic netting used in a variety of erosion control products (i.e., erosion control blankets, fiber rolls [wattles], reinforced silt fence) has been found to entangle wildlife, including reptiles, amphibians, birds and small mammals. These products or reinforced silt fence should not be used on the project. Temporary erosion control products, either erosion control blankets, fiber rolls composed of processed fibers mechanically bound together to form a continuous matrix (netless) and/or netting composed of planar woven natural biodegradable fiber should be used to avoid/minimize wildlife entanglement.
- b. Installation of erosion and sedimentation controls (i.e., silt fencing), required for erosion control compliance and creation of a barrier to migrating/dispersing herpetofauna, should be installed by the Contractor prior to clearing activities or any earthwork, and prior to April 1, 2021. The intention is to install the barrier prior to box turtle emergence from hibernation.

- c. The barrier fencing should be installed with minimal ground disturbance and tree clearing, preferably using a single small backhoe or trenching equipment.
- d. The fencing will consist of non-reinforced conventional erosion control woven fabric, installed approximately six inches below surface grade and staked at seven to ten-foot intervals using four-foot oak stakes or approved equivalent. The Contractor is responsible for daily inspections of the fencing for tears or breeches in the fabric and accumulation levels of sediment, particularly following storm events of 0.25 inch or greater. Davison Environmental will provide periodic inspections of the fencing throughout the duration of construction activities, generally on a biweekly frequency or more frequently if site conditions warrant.
- e. The barrier fencing should extend into the existing quarry, to create a zone of early-successional habitat between the forest and the barrier fencing to aid in box turtle location and capture.
- f. The Environmental Monitor will inspect the work zone following erosion control barrier installation to ensure the barrier is satisfactorily installed.
- g. All openings in the isolation barrier, used during the work day for accessibility, should be closed with hay bales at the completion of each day.
- h. The extent of the barrier fencing will be as shown on the site plans. The Contractor should have available additional barrier fencing should field conditions warrant extending the fencing as directed by Davison Environmental.
- i. No equipment, vehicles or construction materials shall be stored outside of the isolation barrier fencing.
- j. All silt fencing shall be removed within 30 days of completion of work and permanent stabilization of site soils.

2. Targeted Searches – Pre-Construction

- a. Upon completion of the barrier fence installation, the project limits will be searched for eastern box turtle from April 1st through May 30th. The purpose of this work is to locate and remove all box turtles from within the construction zone. This time period coincides with the period of highest activity and movement for box turtle just prior to the nesting period.
- b. All turtles observed will removed from the project area to the identified *Relocation Zone* that is located immediately southwest of the project limits.
- c. The time of day, frequency and intensity of the pre-construction searches should be determined by the Environmental Monitor based on weather conditions and success of relocation progression. It is anticipated that searches will be conducted once per week at a minimum, with more intensive and frequent searches conducted during periods of high activity

which would increase the likelihood of captures.

- d. The *Relocation Zone* consists of an area of mixed hardwood forest/old field transition zone at the edge of the active quarry. This is the area where all (5) turtles were observed. All existing mining and stockpiling activity within this zone should temporarily cease while relocation is underway.
- e. The *Relocation Zone* should also be searched from April 1st through May 30th, to relocate the (5) observed box turtle, along with others that may be present onsite. Should any turtles be observed/relocated in this zone, it would indicate that the subject turtle did not hibernate within the project limits. Any turtles found within the *Relocation Zone* will be documented and left *in situ*.

3. Contractor Education

- a. Prior to the start of construction, the Contractor shall attend an educational session at the pre-construction meeting with Davison Environmental. This orientation and educational session will consist of an introductory meeting with Davison Environmental providing photos of herpetofauna that may be encountered during construction activities, including eastern box turtles, emphasizing the non-aggressive nature of these species, the absence of need to destroy wildlife that might be encountered and the need to follow the prescribed protection measures.
- b. The Contractor will be provided with cell phone and email contacts for Davison Environmental to immediately report encounters with any turtles or other herpetofauna. Educational poster materials will be provided by Davison Environmental and displayed on the job site to maintain worker awareness as the project progresses.

4. Turtle Protective Measures – During Construction

- a. Prior to the start of construction each day, the Contractor shall search the entire work area for turtles. The Environmental Monitor will also conduct periodic inspections of the work area depending upon weather conditions, observed turtle activity, or other factors.
- b. If a turtle is found, it shall be immediately moved by carefully grasped in both hands, one on each side of the shell, between the turtle's forelimbs and the hind limbs, and placed just outside of the isolation barrier closest to where it was encountered. The Environmental Monitor should be notified of any observed eastern box turtle.
- c. Special care shall be taken by the Contractor during early morning and evening hours and on overcast rainy days so that possible basking or foraging turtles are not harmed by construction activities.

5. Reporting

- a. Following completion of the construction project, Davison Environmental will provide a summary report to the Connecticut Siting Council and CTDEEP documenting the monitoring and maintenance of the barrier fence and erosion control measures.
- b. Any observations of eastern box turtle or other state listed species will be reported to CTDEEP by Davison Environmental with photo-documentation (if possible) and with specific information on the location and disposition of the animal.

Burlington Solar One, LLC
150 Trumbull Street, 4th Floor
Hartford, CT 06103

March 3, 2021

Prospect St LLC
575 North Main Street
Bristol, CT 06010
Attn: Robert Hiltbrand

RE: Eastern Box Turtle Protection Measures for Burlington Solar One Solar Photovoltaic Project

Dear Rob,

Reference is hereby made to the solar photovoltaic project to be installed on the property owned by Prospect St LLC (the "Landlord") located on Prospect Street in Burlington, Connecticut pursuant to the Lease Agreement between Burlington Solar One, LLC ("Burlington Solar One") and Landlord, dated August 30, 2019.

As part of the project and pursuant to Burlington Solar One's application for a Certificate of Environmental Compatibility and Public Need (the "Certificate") to the Connecticut Siting Council ("CSC"), Burlington Solar One intends to install protection measures on the site for the protection of the Eastern Box Turtle, as outlined in the attached Eastern Box Turtle Protection Plan incorporated into Burlington Solar One's Certificate to the CSC (the "Protection Measures").

In the event the project is not approved by the CSC, Landlord shall have the right, but not the obligation, to remove the Protection Measures, including but not limited to the isolation barrier that is installed for protection of the Eastern Box Turtle.

Should you have any questions, please don't hesitate to contact me.

Thanks,

Bryan Fitzgerald
bfitzerald@verogy.com
(203) 257-3375

ACKNOWLEDGED AND ACCEPTED:

Prospect St LLC

By: 

Name: Robert Hiltbrand
Title: Member/Manager
Date: March 4, 2021

EXHIBIT B