

STATE OF CONNECTICUT SITING COUNCIL

PETITION OF LSE PICTOR LLC
FOR A DECLARATORY RULING
THAT NO CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED IS
REQUIRED FOR THE CONSTRUCTION,
OPERATION, AND MAINTENANCE OF
A 1.99 MW AC SOLAR PHOTOVOLTAIC
FACILITY IN WINCHESTER, CONNECTICUT

PETITION NO. 1398

July 9, 2020

**PETITIONER LSE PICTOR LLC'S RESPONSES TO SITING COUNCIL INTERROGATORIES
SET TWO DATED JUNE 22, 2020**

67. Referring to the petitioner's response to interrogatory 34, what is the time interval between Phase IIIA and Phase IIIB? What percent of established seedling growth is necessary to consider the Phase IIIA stabilized before proceeding to Phase IIIB? If Phase IIIA is not stabilized before construction work begins in Phase IIIB, would a sediment trap be required since the collective Phase IIIA/Phase IIIB disturbed area is greater than 5 acres?

Grass or other vegetative cover of 75% of the disturbed area is considered stabilized. For both Phase IIIA and IIIB, the seed mixture will be applied by hydroseeding with a tackifier and will result in a stable vegetative cover within ten to fifteen (10-15) days of application. As no work or equipment will be used in Phase IIIA after the application of seeding and all erosion control measures will remain in place while the vegetation becomes established, it complies with the five (5) acre threshold as there is no disturbance in Phase IIIA after seeding.

68. Referring to the petitioner's response to interrogatory 36, would the petitioner be willing to avoid earth disturbing construction activities until the Spring to allow for vegetative stabilization between phases, as specified on the site plans?

Given the timing of this pending petition, Petitioner intends to complete the tree removal and stumping along with installation of soil erosion sedimentation controls at the Site in the fall of 2020 to allow for stabilization prior to any post-driving during the winter months. Assuming this schedule is followed, there will be no impacts to vegetative stabilization or soil erosion during such post-driving. In the event that Petitioner is not able to complete its tree removal and stumping prior to December, 2020, Petitioner is willing to delay any construction activities until the spring to avoid earth disturbing construction activities during the winter months.

69. Referring to the petitioner's response to interrogatory 36, if winter construction proceeds for Phases II and III what specific erosion control measures will be implemented to ensure Site stabilization of disturbed areas? Describe procedures that will be implemented to remove these erosion control measures and prepare the soil for Spring seeding.

If stumping were to occur during the winter months, the size of the Filtrexx Soxx would be upgraded by one size. A six-inch (6") Soxx would become a twelve-inch (12") Soxx; a twelve-inch (12") Soxx would become an eighteen-inch (18") Soxx. The height of the wood chip berms would be increased from twelve inches (12") to eighteen inches (18"). If stumping is completed in the fall and only the installation of the

racking system were to occur during the winter months, then no additional erosion control measures would be required.

70. Referring to the petitioner's response to interrogatory 37, is the outer covering of the Filtrexx Soxx bio-degradable? If so, over what time interval? If the Filtrexx Soxx remains on-site after site stabilization with the outer covering intact, can it act as a barrier to small animal movement (e.g. turtle)?

The outer cover of the Filtrexx Soxx is bio-degradable and the result is that the material within the Soxx remains in position and becomes vegetated by the natural distribution of seeds. The material within the Soxx collapses into a low pile of organic material and would not be a barrier to the movement of any species, including turtles.

71. Referring to the petitioner's response to interrogatory 37, is there enough clearance for the excavator mounted scarifier to reach under the panels and around posts to loosen the soil? If not, what other methodology will be used?

A york rake is not an excavator-mounted scarifier, but is towed behind a small tractor and can swing out to either side behind the tractor so the area under the arrays can be reached by this piece of equipment from the upper and lower sides of a panel row.

72. Referring to the petitioner's response to interrogatory 63, there is no provision in the Wetland Basin Maintenance notes on Site Plan Sheet 13 for replanting of wetland plants or the inspection and removal of invasive plants, as recommended by the 2004 Stormwater Quality Manual. Please revise the Petition Operations and Maintenance Plan (Attachment 3) to include these items and the other O&M Basin/Swale items that were added to Site Plan Sheet 13.

Please see revised plans attached hereto as Exhibit D.

73. The clearing limits for Site Plan Sheet 8 does not match the previous site plan sheets but the quantity of clearing -13.6 acres- is the same. Please clarify the acreage of site clearing for the project, including the wetland basin area.

Clearing limit for the area of the array is 13.75 acres, clearing limit for access road is 0.47 acres for a total of 14.22 acres. Please see revised plans attached hereto as Exhibit D.

74. Has the petitioner submitted the Environmental Land Solutions, LLC NDDB analysis report dated March 17, 2020 (Attachment 8) to DEEP for comment? If so, when? Please provide any DEEP response. If not, at what point will the report be submitted?

Petitioner has submitted and received final sign-off from NDDB regarding any species of concern in the vicinity of the Site. Please see correspondence from NDDB attached hereto as Exhibit E.

75. Referring to the Environmental Land Solutions, LLC NDDB analysis report dated March 17, 2020 (Attachment 8), the report Summary states an erosion control site monitor will be retained during construction and that a disturbed area will have 75% vegetative cover prior to proceeding to the next phase. The site plan notes contain no information regarding these specific measures. Please provide more information regarding the erosion control site monitor, frequency of inspections and the implementation of the erosion control site monitor's recommendations, and Site Plan Note language regarding 75 percent vegetation establishment prior to work on the next construction phase.

Erosion inspections will be done monthly and after every rainfall event over 0.5"/24 hours. The design engineer who will be performing these inspections will direct the contractor to repair or replace any erosion control barriers that are not functioning properly at the time of the site inspection. Additionally, under the section entitled Control Plan Implementation of Exhibit D are other inspections and requirements which the site contractor must perform.

76. According to the Connecticut Environmental Conditions Online (CT ECO) fisheries data viewer, Taylor Brook is listed as containing wild brook trout. Chapter 11, p. II-P2-4 of the 2004 Stormwater Quality Manual does not recommend the discharge from stormwater wetlands, including those that contain wetland vegetation, directly to cold water fish habitats due to the potential for thermal impacts. Please explain the rationale for using a stormwater wetland detention basin for this Project as opposed to other types of detention basins that could have a reduced thermal impact to coldwater fisheries, as recommended by the 2004 Stormwater Quality Manual.

Petitioner specifically avoided the utilization of wet ponds that are open water basins with no vegetation except along the edge since those are the type of detention basin that poses a risk to reduced thermal impact. The proposed, constructed wetland is not the type of wetlands that are expected to result in a thermal impact to coldwater fisheries. The proposed, constructed wetland is a densely vegetated system with a shallow permanent pool of water (12" or less) and is not subject to high thermal loads as the water surface is effectively covered with wetland plants. Additionally, in this case, runoff from the solar array will have to flow through a dense vegetated cover under the panels and then into a densely grassed swale before any runoff can ever reach the constructed wetland basin. Flow through these surfaces will result in reduction of the temperature of any runoff. Lastly, the proposed constructed wetland will not be exposed to a significant amount of sunlight as the tree line is located very close to the limit of the basin on the east, south and west sides. Therefore, Petitioner does not expect that the basin will result in thermal impact to coldwater fisheries.

77. In order to maintain an undisturbed 100-foot buffer to the western wetland/watercourse from project related clearing, was a stormwater detention basin considered at the south end of the Project limits, within or adjacent to the clearing limit? If not, why not.

Petitioner did not consider a detention basin in this area for the following reasons:

- a. A basin located directly south of the array would require both a long outlet pipe and riprap emergency spillway to run from the basin to the wetland boundary, approximately four hundred seventy-five feet (475') to the same discharge point currently proposed. This would significantly increase the amount of Site disturbance and thus would have a higher potential for erosion than the current plan.
- b. In order to create a constructed wetland basin, a significant groundwater component is required to support the constructed wetland during drier summer months, a basin on the ridge line does not have the necessary groundwater component to support a constructed wetland basin as there is an insufficient drainage area to provide the groundwater component.
- c. If a constructed wetland basin were located to the south of the array, it would have to be lined with a 30-mil impermeable liner to maintain the wet condition for the basin to function properly.

- d. A basin in the area south of the array would be exposed to higher levels of sunlight during certain times of the day which could warm up the water in the basin, which could result in thermal impacts as noted in Interrogatory #76. In the proposed location, the constructed wetland is shaded on all sides, particularly the east, south and west sides which will prevent any warming of the runoff within the basin.

78. *What areas of the solar field have non-averaged grades that are 15 percent or greater?*

Only 1.25 acres within the area of the array have slopes which are greater than 15%.

79. *Referring to the two swale details on Site Plan Sheet 7, does the depth of 2 feet represent the bottom of the excavation itself or does it represent the depth to the top of the 6 inches of sandy loam/9 inches of rip rap?*

The two-foot (2') depth is to the top of the soil surface in the grass swales or the top of the riprap in the riprap swales.

80. *Referring to the petitioner's response to interrogatory 35, Site Plan Sheets 10 and 11 appear to show an alternating pattern of Filtrexx Soxx and wood chip berms as the sole erosion and sediment control barrier around the downgradient perimeter of Phase 2 and portions of Phase 3. The 2002 Guidelines do not identify wood chip berms for use as a sole erosion and sediment control barrier. Please clarify.*

Wood chips berms is one of those devices which have been shown to be highly effective in filtering turbid runoff from disturbed construction sites as well as being quite easy and cost effective to install. An added benefit of the wood chip berms is that they become vegetated as the wood chip decomposes into rich organic matter and can remain in place. As the Council is aware, Petitioner will be seeking a stormwater permit from DEEP and, in the event that DEEP requires alternative barriers, Petitioner will revise its plan accordingly.

81. *There are no perimeter erosion and sediment control barriers evident or along the downgradient portions of the central and northern portions of the eastern swale. Please clarify.*

Erosion barriers are only located where there is any degree of fill material being placed for the swale. Where the swale is entirely in a cut, an erosion barrier is not necessary as the swale is a low point. The Petitioner will place a singular row of siltation fence in the other areas. As the Council is aware, Petitioner will be seeking a stormwater permit from DEEP and, in the event that DEEP requires additional barriers, Petitioner will revise its plan accordingly.

82. *Would fuels be stored on site during construction? If so, in what location(s)? Please submit a spill prevention and control plan for the site.*

No fuels will be stored on the Site during construction.

83. *Please respond to the Town of Winchester's comments dated June 2, 2020.*

As noted in its petition, Petitioner has made numerous attempts to engage the Town and receive feedback from the Town and/or its various commissions regarding the Project. As part of its continued outreach, Petitioner and the Town have entered into an agreement in principle, which should be approved by the Town at its July 20, 2020 Board of Selectmen meeting whereby the Town will be the beneficiary of the virtual net metering credits generated by the Project. Petitioner looks forward to the Town's continued

support of the Project and for the Town to receive over \$1 million in savings as the beneficiary of the virtual net metering credits.

In addition, Petitioner notes that the Council has received several inquiries regarding public participation and feedback regarding the Project. Petitioner would like to clarify that the meeting that occurred on January 6, 2020 was organized by the Winchester Land Trust. Petitioner did not organize the meeting nor did Petitioner require a sign-in sheet for attendance at such meeting but several abutting property owners were present. As the Council is aware, Petitioner was not required to participate in any municipal consultation in association with this Petition. Notwithstanding, and as noted above and noted previously, Petitioner has made repeated offers to the Town offering to attend any town meetings requested by the Town or hold a public informational session. To date, Petitioner has not received any invitation from the Town to attend any such meeting.

To the extent feasible and appropriate, Petitioner has incorporated the Town's requested changes to its plans, attached hereto as Exhibit D. Petitioner has the following additional responses to the categories of comments submitted by the Town of Winchester dated June 2, 2020:

A. Environmental Review:

Please see Exhibit D for updated plans with updated soil symbols as requested and Exhibit E, correspondence from NDDb confirming that no species of concern will be impacted by the Project. If the Project is approved, Petitioner is willing to submit a vegetation management plan and to re-flag wetlands that are in proximity to the array pursuant to the Town's request.

B. Emergency Services:

The proposed access driveway and inter-row spacing are consistent with the numerous solar projects approved by the Council in the past and provide for sufficient emergency access in the unlikely event of an emergency. In addition, the requested sixteen foot (16') width would result in a significant increase in the disturbed area at the Site and therefore increase the environmental impact of the Project and is not necessary to provide emergency services to the Project in the highly unlikely event that an emergency were to occur. As noted in the Petition, driveway maintenance, including snow removal, will be conducted on an as-needed basis. Petitioner is willing to conduct Site-specific training for the local fire department upon approval and construction of the Project and, in addition, provide local emergency services with access instructions to enter the Project area in the highly unlikely event of an emergency.

C. Engineering Review:

Relevant comments from the Town's engineering review have been incorporated into the revised plans attached hereto as Exhibit D. Petitioner notes the following in addition to those comments:

- A maintenance building with sanitary facilities is not necessary at the Site, is not industry-standard as noted by the Council in the various, similarly-situated solar projects recently approved by the Council and would only result in an additional and unnecessary environmental impact.
- Petitioner is willing to install a twenty-foot paved driveway apron as requested but notes that the proposed access driveway is no different than any other access driveway located within the Town. Petitioner's driveway design is in conformance with other solar projects previously approved by the Council.

D. Information Needed from the Petitioner:¹

Petitioner has completed its final archeological assessment required by the State Historic Preservation Office (“SHPO”) and Petitioner’s archeological consultant has concluded that the Project will not have an impact on any archeological resources. See Exhibit F attached hereto. Petitioner expects the SHPO concurrence with this conclusion and will forward such concurrence upon Petitioner’s receipt thereof.

Since the provisions of Petitioner’s ground lease are proprietary and confidential, Petitioner cannot produce a copy of the lease agreement as requested by the Town.

Winter work protocols are referenced herein and in Exhibit D attached hereto.

Petitioner’s O&M manager has not been selected at this time and Petitioner will not engage with an O&M provider until after Project approval.

E. Decommissioning Plan

Petitioner has in place a twenty (20) year lease with renewal options for an additional ten (10) years. Therefore, Petitioner does not anticipate decommissioning the Project for another thirty (30) years. As a result, Petitioner has purposefully not prepared or submitted a more detailed decommissioning plan as practices and procedures will be subject to change and improvement over that thirty (30) year period. Notwithstanding, Petitioner represents and is willing to accept, as a condition of approval, a condition requiring Petitioner to dispose of hazardous materials, if any, in accordance with all applicable laws.

In addition, while the Town has requested a decommissioning bond be in place, Petitioner notes that this requirement has not been imposed by the Council on any other solar projects recently approved by the Council and therefore would not be appropriate to impose for this specific Project.

F. General:

While the Town has requested the imposition of a requirement of an independent third-party environmental inspector, again, Petitioner notes that such a requirement has not been imposed by the Council on any other solar projects recently approved by the Council and therefore would not be appropriate to impose for this specific Project.

¹ Petitioner notes that the Town also included sections regarding “Stormwater Management” and “Representations by the Petitioner.” There is no additional information requested from Petitioner so therefore Petitioner has not provided any formal response. Petitioner does note that it is willing to accept conditions of approval that no blasting will occur during the construction period and that no pesticides or herbicides will be used at the Project.

Respectfully submitted,

Petitioner
LSE PICTOR LLC

By: Carrie Larson Ortolano
Jeffrey J. Macel, Manager
Carrie Larson Ortolano, Associate General Counsel
% Lodestar Energy LLC
40 Tower Lane, Suite 201
Avon, CT 06001

EXHIBIT D
Revised Site Plans

EXHIBIT E
NDDB Sign Off

EXHIBIT F
Cultural Resources Report