

BROX ENVIRONMENTAL CITIZENS

Working to Protect Wetlands & Wildlife at Special Places

April 12, 2021

Administrator
New Hampshire Site Evaluation Committee
21 South Fruit St., Suite 10
Concord, NH 03301-2429

RE: Docket No. 2021-01, Petition for Jurisdiction Over Proposed Solar Energy Facility in Milford, NH – Petitioners’ Motion (pro se) to Amend the Petition to Remedy Deficiencies

Dear Administrator:

On behalf of the Petitioners, please find enclosed for filing in the above captioned matter an original and a copy of Petitioners’ Motion (pro se) to Amend the Petition to Remedy Deficiencies.

A copy of the Motion has also been sent electronically to the service list.

Please call me if any questions.

Sincerely,

Suzanne L. Fournier

Suzanne L. Fournier, Coordinator
Brox Environmental Citizens
Working to Protect Wetlands & Wildlife at Special Places
9 Woodward Dr.
Milford, NH
(603) 673-7389

Cc: via email on 4-11-21 to service list in Docket No. 2021-01 dated 2/22/21

THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2021-01

PETITION FOR JURISDICTION OVER PROPOSED
SOLAR ENERGY FACILITY IN MILFORD, NH

PETITIONERS' MOTION (PRO SE) TO AMEND THE PETITION
TO REMEDY DEFICIENCIES

Petitioners by and through Brox Environmental Citizens (“B.E.C.” or “Brox”) and its coordinator, Suzanne Fournier (pro se), submits this motion to amend the submittal of the Petition that occurred on December 3, 2020. The purpose is to provide additional facts to remedy any deficiencies in the Petition to assure that the SEC is provided with sufficient information to be able to fully consider the request for jurisdiction.

Petitioners incorporate by reference our original letter to the SEC dated December 3, 2020 along with its attachments, as listed below:

1. Petition #1 signed by certified registered voters in Milford
2. Petition #2 signed by certified registered voters in towns abutting Milford.
3. Notes of certification of town clerks in abutting towns of: Amherst, Brookline (email), Hollis and Wilton.
4. The Milford Planning Board’s Conceptual Review packet for discussion of the construction of 16 Megawatt (MW) photovoltaic solar energy generating facility utilizing 83.05 acres of the 221 leased acres, 5/14/20; Milford Spartan Solar, LLC, Tax Map 38, Lots 4, 5, 5-1, 9, 11, 12, 13, 14 and Map 39 Lot 74.
5. Olivewood Energy’s Conceptual Review presentation to the Planning Board, May 19, 2020
6. Olivewood Energy’s Quarterly Update Regarding Permitting Progress, 9/23/20

In order to avoid unnecessary repetition, Petitioners also incorporate by reference the information they provided in Petitioners' Objection (pro se) to Milford Spartan Solar, LLC's Motion to Dismiss Petition for Jurisdiction dated April 9, 2021, including the Brox NRI that was an enclosure.

I. FACTS

A. Facts: Description of the Site & Location

1. Milford Spartan Solar ["the Company"] would lease 120 acres of Town-owned land zoned Commercial-Industrial to the west at Milford tax map 38 Lots 4, 5, 5-1, 9, 11, 12, 13, and 14, and to the east 101 acres private land zoned Residential and owned by Not Too Dusty, LLC on tax map 39, Lot 74 – together the "Property." The acreage of the Site would be 83 acres total – 36 acres on the Town's land and 47 acres on the private land.

2. To the north the Site is bounded by Route 101 Milford Bypass and to the south there are large, mainly undeveloped tracts of land owned by the Town (i.e. 150 acres of Community Lands with a shut-down gravel operation) and conservation land owned by Beaver Brook Association ["BBA"]. The Site is also interrupted on the Town-side by the 10-acres of property owned by Anders & Evelyn Hansen on Map Lots 38, Lots 10 and 10-1, land that is in Current Use and is a maintained forest interspersed with vernal pools and other wetlands.

3. The Site has no infrastructure, except for the nearby Eversouce Energy Line 314 that runs east-west and a Class VI road known as Perry Road/Service Road.

Industrial growth is very unlikely, having failed to occur in 20 years with two major failed attempts. Residential growth is also very unlikely, having been advertised for housing for two years by the private landowner with no results. The unique characteristics of the Site do not lend it to being developed.

4. The Site and its surrounding area can also be described as being a destination for wildlife watchers, photographers, hikers, bikers, and many other interest groups who currently enjoy the Property.

5. The Site is part of a large wetland complex consisting of brooks, wetlands, vernal pools, forested land, farmland, and land mapped as Wildlife Action Plan's Highest Ranked Habitat in the Region and the whole State of New Hampshire. [see the Brox Property NRI attached by reference]

6. The Company's environmental consultant is TRC Solutions, and TRC has made it clear in published information that appropriate locations for solar facilities are not sites like this one, because the following features are to be avoided when selecting a site for utility-scale solar facilities, according to TRC:

Avoid hilliness: The fact is that the Site is not all relatively flat and has at least two hills.

Avoid forests: The fact is that the Town's land is all-forested (except for the wetlands) and the private land is forested except for wetlands and a 12-acre hay field.

Avoid wetlands: The fact is that the Site is constrained by wetlands and vernal pools on all sides and in-between.

Avoid being within sensitive habitats: The fact is that the site is inhabited by three T&E species -- two turtles and one snake -- as well as numerous other rare wildlife species.

Avoid if adjacent to conservation land: The fact is that the Project borders 1,900 feet of conservation land owned by BBA and its associated wildlife corridor reaching several miles of connected wildlife habitat.

B. Facts: Description of the Project

7. The Company's written description and preliminary layout of the Project are found in Attachment #4 – Milford Spartan Solar's Conceptual Review dated May 19, 2020. The document provides information that the Project will utilize 83 acres of 221 acres of leased land. 36 acres would be on Town-owned land and 47 acres on private land. The Company says that the 16 megawatts ["MW"] of electricity generated will serve approximately 8,800 people.

C. Facts: Status of the Project

8. Information about the status of the Project is obtained directly from the Company's most recent quarterly report to the Town. The information is as complete as that provided on the Company's report to the Town. The first quarter 2021 report's contents dated March 23, 2021 read in their entirety as follows:

This letter is Milford Spartan Solar, LLC's (the "Project") quarterly update regarding progress in obtaining necessary permits in connection with the Solar Farm to the Town of Milford pursuant to section 1.g in the Land Lease Option and Lease Agreement dated September 23, 2019 (the "Lease Option").

The Project has completed wetland delineations, the vernal pool survey, initiated consultation with state agencies, and created a preliminary layout intended to prevent impacts. The Project has been granted a variance from the Zoning Board

of Adjustment, completed a Conceptual Review with the Planning Board, and looks forward to continuing to work with the Town on permitting-related matters.

As the Town is aware, the Project is currently participating in proceedings with the Site Evaluation Commission [sic] (the “SEC”) regarding a request it received for the SEC to assert jurisdiction over permitting of the Project.

D. Facts: Description of the Environment and Natural Resources

9. This region of Milford is partially developed. There is industry, commercial business, the Route 101 Bypass, residential neighborhoods, and there are also vast amounts of land that are undeveloped, or developed and providing habitat (e.g. old sand & gravel pits). The area that would be the Project Site is dark at night. The open-space land is mostly connected, including through large culverts, providing passage for wildlife and serving as a relative safe haven for many of NH’s rare, threatened and endangered species [“T&E”].

10. A comprehensive description of the Town’s Brox land, its environment and its natural resources is found in the natural resources inventory (“NRI”) that was conducted at the request of the Milford Conservation Commission (“CC”) titled “Brox Property – Milford, New Hampshire, Natural Resources Inventory and Recommendations” -- dated March 2015. [NRI is enclosed by reference] Dr. Kevin Ryan of FB Environmental gave a presentation of the NRI to the community on December 1, 2015, available on video at this link <http://gtm.milford.nh.gov/CablecastPublicSite/show/614?channel=2>

11. The NRI describes a major feature of the Site area which is the 37-acre Heron Pond, providing home to the Great Blue Heron colony, ducks, osprey,

cormorants, mergansers and many more species. Heron Pond directly abuts the Site along 1,500 feet. The NRI describes three brooks, wetlands, vernal pools, undulating hills, depressions, the forests that together Dr. Ryan has called “an ecological gem.”

12. The CC has correctly described the private side of the Project as being within a “*complex ecosystem* which sustains a population of threatened and endangered species as part of a diverse suite of plants and wildlife.” [emphasis added] [10/12/18 letter to NHDES Wetlands Bureau]

13. The WAP provides a list of 64 potential rare species for Milford. A couple of dozen of these species have been photographed and verified as being at the Brox town land area. The rest of the species are there to be discovered.

E. Facts: Abutting Properties

14. The major abutting landowner is BBA whose conservation land borders the Project’s private-side along 1,900 feet.

The mission of BBA is “to promote the understanding of interrelationships in the natural world and to encourage conservation of natural resources through education and land stewardship. Beaver Brook Association has 2,187 acres of forest, fields, and wetlands in Hollis, Brookline, and Milford, New Hampshire.” 216 acres are in Milford.

[<https://www.beaverbrook.org> and <https://www.beaverbrook.org/wp-content/uploads/2018/03/burns-farm-trails.jpg>]

15. A second abutter’s 10 acres of land abuts the Project’s Town-side within the Project Site between Map 38, lots 9, 11, and 14, owned by Anders & Evelyn Hansen. A

third abutter is the Town of Milford with approximately 150 acres to the south of the powerline that is zoned Residential and referred to as the Town's Community Lands.

16. Other abutters are: the Milford School District (50 acres) abuts the Site to the west; the State's Department of Transportation abuts the Site to the North at Route 101 Bypass; and William & Patricia Kokko (31 acres) abuts the Site to the east.

F. Facts: Town's Lack of Unanimity

17. The Town's boards are not all unified in favor the Project, as both the Budget Advisory Committee ["BAC"] and the CC opposed the enabling Warrant Article ("WA #32") called Multi-Year Lease of Town Property for a Solar Farm. The fact is that the BAC opposed WA #32 by a vote of 7 to 2 against its authorization. In addition, Audrey Fraizer represented the CC at the Deliberative Session to say that the CC opposed WA #32, pointing out the impact to the natural resources and saying it is not the best site. Ms. Fraizer said that the CC does not support this proposal.

G. Facts: The Project Disrupts Orderly Development of the Region; Conservation Might Be the Better Choice

18. The Town's Master Plan is outdated with respect to plans for the area of the Town where the Project would be located. It was last updated in December 2016. It does not address potential large ground solar arrays.

[https://www.milford.nh.gov/sites/g/files/vyhlf4701/f/uploads/master_plan_document_2016_web_0.pdf]

19. Following purchase of the Brox Property in 2000, the Master Plan set objectives, two of which have not been met, though they are relevant to the current Project.

These two unmet objectives are discussed on page 71. They are:

- (a) “Make the industrially-zoned acreage ‘development ready’ by seeking means to extend necessary roads and utilities.”
- (b) “Work with conservation groups, including the Milford Conservation Commission, to preserve and protect the significant wetlands, surface waters, and natural areas located on the property.”

Regarding objective (a), the Town tried over the past 20 years, but failed to meet the objective of development-ready roads and utilities.

Regarding objective (b), the Town has not worked to preserve and protect the significant natural resources. As explained in paragraph 32, the Town has failed to place 75-acres of land into a conservation easement.

Since 2012 when B.E.C. started its work, the Board of Selectmen [“BOS”] has not welcomed discussions about conserving natural resources at the Brox land. The CC has chosen not to work with B.E.C to protect the identified vernal pools and the other habitat of the T&E. The sad fact is that the CC has actually worked against preserving and protecting the most significant wetland that is Heron Pond by draining it twice in recent years under the misguided notion that the beaver-impounded pond ought to return to being a marsh. Having received pushback from NHF&G’s Nongame & Endangered Wildlife Program, the CC allowed the pond to refill to near-normal height, although a beaver-flow system is installed that limits the height of the pond.

20. As the NRI recommended, all of the land north of the powerline should not be developed, and instead, placed into conservation; therefore, orderly development of this region of the Town might be better served by a focus on conservation of the undeveloped area rather than development, including utility-scale solar.

H. Facts: Solar Ordinance 7.11's inadequacy with regards to 162-H:1

21. The Town adopted its Solar Collection Systems ordinance ["7.11"] in March 2019. It is not detailed enough because it fails to address many potential environmental impacts, not focused on specifics about numerous important environmental topics, such as types of forests and their rarity and protection of rare wildlife habitat and rare plants, not asking about existence of vernal pools and the need for uplands by the species who are dependent on vernal pools for survival.

22. The zoning ordinance 7.11 lacks specificity to deal with the types of forests that exists on a Site. The fact is that the forest on the site is mostly the rare Appalachian Oak-Pine forest, with some rare Hemlock-Hardwood-Pine forest [See Habitat Stewardship Series brochures at <https://wildlife.state.nh.us/habitat/brochures.html>]

23. Audrey Fraizer who was a long-time member of the CC, and who served as Chair of the CC for close to a decade, wrote the following suggestions for the draft 7.11 in her role as a member of the CC: "My concern is to have something about 'not making significant impacts to the natural environment. Industrial solar is best sited in already disturbed sites like sand and gravel operations and farms.'" [Nov. 20, 2018 email] Her siting recommendations were ignored by the Planning Department and not included in 7.11, leaving the forested Brox land to still be considered for solar. The natural environment is not protected under 7.11.

24. 7.11 is not designed to address all of the issues in 162-H:1, including: the financial/technical/managerial issues, while not much is known publicly about the Company that was founded in 2017; not the welfare impacts on the human population (parts of the existing recreational trail network would be lost; citizens would lose the forest's clean air and water filtration); not the environment of the State (some of the Wildlife Action Plan's Highest Ranked Habitat in all of NH, not just in the biological region, would be lost); not the aesthetics from the perspective of the abutting School's properties and the Heron Pond lookout sites; and not the protection of the T&E species. The 7.11 ordinance is not extensive and specific enough to prevent the loss of functional habitat for the T&E species that require large, undeveloped landscapes, and wetland complexes that include forests.

25. During the Company's conceptual review meeting with Town boards on May 19, 2020, the Company discussed how the solar farm design will meet standards set in the Milford Zoning Ordinance, as below. The few topics covered are: safety, wetland setbacks, parcel boundary setbacks, post-construction vegetation, noise impacts, visual impacts, and quite oddly, how partially shifting the Project's Site onto the private parcel eliminates potential impacts on Town-owned land; of course it would, but there would still be the additional impacts on the private side, though hidden from the Boards' and the public's view. Petitioners draw your attention to the lack of content related to characteristics of a site, in this case, the highly-sensitive nature of the complex ecosystem inhabited by the threatened and endangered wildlife species ["T&E"]:

Safety: Will coordinate with the Town during site plan review (e.g. fencing requirements and site access for emergency responders)

Setbacks: Will comply with or exceed requirements for:

- wetland setback: 50 feet and 25 feet from Birch Brook and other wetlands, respectively. But the Brox Property NRI recommends that the Town conduct a Prime Wetland study because Birch Brook, Heron Pond and other wetlands would undoubtedly be classified as Prime Wetland and would be given a 100 foot buffer of protection. The Town has put off having a Prime Wetland study done.
- parcel boundary setbacks: 30 feet and 15 feet from front and other sides, respectively.

Post-construction: Will include native species consistent with solar farm use

Noise impacts: Little to no additional sound expected, with equipment to be at or below noise requirements, and set back from property boundaries.

Visual impacts: Will be screened principally by preserving existing trees and vegetation. Visual screening is provided by 7.111.6, but the fact is that visual screening works from a fixed point of view, not when people travel through the Site, especially on the extensive trail network. Classes from Heron Pond Elementary School utilize the trails to Heron Pond for nature studies. The view by the Heron Pond School's outdoor classes and the visiting public would be negatively affected, if the forest were to be replaced with solar panels.

Siting: Locating a significant portion of the project on adjacent private land would not eliminate environmental impacts of the Project as a whole.

26. It's a fact that the Town has no experience with utility-scale solar except for this present Project. The very first test of the ordinance occurred when the Zoning Board of Adjustment ["ZBA"] was asked to grant a variance for project size on the private land side. The ZBA granted the variance for 4 megawatts of energy affecting 22 additional acres without addressing the needs of the abutting BBA conservation land, the needs of local citizens for access to recreational trails, and the needs of the T&E for habitat.

27. In section 7.11.2 of the solar ordinance it seeks: "to accommodate solar energy collections systems ... in *appropriate locations*, while protecting the public's health, safety and welfare, and the environment." [emphasis added] But the 7.11.2 does not define what are "appropriate locations" except as relates to zoning districts. The Company's consultant – TRC Solutions – would not have had a basis for recommending this Site for selection, if TRC had been consulted during the site selection process and had followed its own guidelines [see paragraph 6]. 7.11 is not designed to reject sites that TRC would have rejected.

28. Under 7.11.6, A,2,e,ii the Town "may" require an "environmental study," but even it does, the Development Regulation 5.011 would result in an Environmental Impact Statement that could allow harm that is "minimized" and/or "mitigated," if impacts are unavoidable. The T&E and their habitat would certainly be harmed.

Facts: Town's inadequacy with regards to 162-H:1

29. The ZBA should have done a more thorough review of the Company's application for a variance before increasing the size by four MW and the acreage by 22 acres. The ZBA's review made no mention of the 35 acres of directly-abutting

conservation land belonging to BBA that is part of 215 acres of contiguous conservation land owned by BBA in Milford. There is 1,900 feet of common border between the Project Site and BBA conservation land.

30. The credibility of the PB is in doubt because of its very active and persuasive member, Paul Amato, who does not recuse himself when he should, even though he had been the owner of Not Too Dusty LLC that is the private side of this Project from 2013 to 2017. This should be considered a serious conflict-of-interest. The current relationship between Mr. Amato and the Not Too Dusty LLC and Tom Lorden, the new owner/manager, is unknown, but it is friendly. As a result of the conflict of the member, the PB's integrity is in question.

31. There are failures at the Town level in numerous ways. (a) The Petitioners are not aware from public information whether the BOS asked and received sufficient financial and corporate viability, or managerial and technical information to assure that the Project could happen. (b) The ZBA did not ask all of the right questions about adjacent conservation land and sensitive wildlife when it heard the Company's case for a variance. (c) The PB's credibility is in question because of Paul Amato who does not recuse himself. (d) It is a failure of the PB that the solar ordinance 7.11 has a serious deficiency in that it does not define "appropriate locations" other than by zoning district, and not by natural features of the land, which it should.

32. The SEC review is needed to assure that the concerns of 162-H:1 are actually met, because the Town's ability to meet them is in doubt, given the failure story of what happened with the 75-acre conservation easement ("CE") that NHDES required at the Brox town land as part of the permit requirements it issued to the Town in 2017.

When the 75-acre CE was being handled by NHDES, NHF&G and the Town, the easement at the Brox town land that was a requirement of AoT-1313 never came to fruition, not during the 2-year period allowed to get it done, and not in the foreseeable future. On February 5, 2021 Betsey McNaughten of NHF&G responded to the CC with this: "The CE was a condition of the now revoked AoT permit and at this point I don't believe a new one has been re-issued. That said, NHFG is not in a position to move forward on this until there is an [sic] new AoT permit and the Department understands what the mitigation will be, and if it will includes (sic) a conservation easement." The fact is that not one acre of the Brox town land has been placed into conservation. The plan has fallen through entirely and the condition of the permit was not met.

33. The loss of the CE is an example of the coordination among the Town, NHDES and NHF&G that resulted in failure to conserve the 75-acres of land even though it was a requirement. The SEC can help assure that such permit requirements are actually met.

34. The Town cannot be trusted to treat the Project as a significant aspect of land use planning. The Town (namely the BOS and PB) previously pushed for a gravel operation in the southern, community land portion of the Brox land, despite the problems it would pose for T&E species. After two years of operations, the NH Supreme Court ["SC"] [Case No. 2018-0617] caused NHDES to rescind the AoT permit for reasons related to T&E. The Town lost its gravel operation permit as a result of the Town's and the State's mishandling of the matter of T&E who utilize the Brox land. This reflects badly on the Town's ability to act correctly with respect to the current Project.

Therefore, the BOS and the PB have not demonstrated they would treat the Project's use of land as they should.

35. Town staff and boards lack expertise and motivation relative to the issues of protecting conservation land, trail networks, and especially protection of T&E habitat. Technical issues are also beyond expertise at the Town level. The Town cannot fully address all concerns, outlined in RSA 162-H:1, because, missing and not addressed is the information about the financial viability of the Company; abutter impacts and environmental harm to T&E wildlife.

J. Facts: NHDES' and NHF&G's inadequacy with regards to 162-H:1

36. NHDES and NHF&G were involved in two prior failures at the Town's Brox land: (a) the Town's gravel operation that they had approved which had to be shut down following the SC case; and (b) they loss the 75-acre easement that was the mitigation for the two-years of sand & gravel operation that did occur. These failures suggest that SEC jurisdiction is necessary to maintain a balance between the environment and need for new energy facilities.

37. The fact is that both NHDES and NHF&G did not fare well with the NH SC Case No. 2018-0617 where they were both admonished for mishandling the T&E issue; Therefore, the ability of NHDES and NHF&G in consultation with TRC to correctly decide about the environmental issues that include T&E wildlife is very much in doubt because of the prior poor record of NHDES and NHF&G. All the review by, and consultation with, NHDES and NHF&G cannot compensate for the agencies' poor judgment with regard to issues of T&E wildlife.

38. NHF&G and NHDES were involved in another Alteration of Terrain ["AoT"] project at the Brox land. Along with NHF&G's consultation, NHDES issued AoT-1149 in 2016 that excluded the Hognose Snake from a five-acre area that the species was documented to be inhabiting, in order to transform the field and forest into soccer fields. Later in 2020 a female adult Hognose Snake under NHF&G study would be found dead on the sports field. NHDES and NHF&G are responsible for this further endangerment of T&E species. Therefore, the demonstrated failures of NHDES and NHF&G and the inexperience of the Town with regard to solar, regardless of 7.11, provides the basis for SEC review.

K. Facts: The Delays Are Those of the Company; Process Is Preliminary

39. The Company has not proceeded to submit a permit application to the Town or the State. Their in-service target date is sometime in 2022. The SEC process would provide a fixed timeframe.

L. Facts: Use of the Land Is Unreasonable

40. The Project is not a reasonable use of 83 acres of environmentally-sensitive land.

(a) The CC opposed WA #32, pointing out the impact to the natural resources and saying it is not the best site. [March 2019 Deliberative Session]

(b) The New Hampshire 10-Year State Energy Strategy (April 2018) contemplates the negative impacts of NH using up vast areas of land for solar installations. On page 34 of the plan it states: "While there is currently greater potential for cost-effective wind generation in New Hampshire than for solar, a buildout of the technology sufficient to surpass the generation of other renewables would

necessitate extensive land use and stakeholder input concerning the impact on our state's scenery and natural resources. [underline is original]

On page 45 the State's energy plan states: "While it is technically correct that New Hampshire could produce the necessary electricity to meet our state's demands with wind and solar (on a sunny or windy day), *the land use consequences of such an achievement would be enormous.*" [emphasis added]

M. Facts: Impacts on Wildlife and Other Natural Resources

41. There would be negative impacts on clean air and water from lost forest *locally*. There is a school and a residential neighborhood to the immediate southwest of the Site (i.e., Heron Pond Elementary School, Brookview Court and Brookview Drive).

For this Project, the low profile "nature of solar facilities" on the ground is not benign environmentally. This Project would have serious negative environmental impacts because it would alter the ground of 83 acres of an "ecological gem" that is a "complex mosaic of cover types and wetland types" that is "the reason there is [sic] so many rare species there," as said by Dr. Ryan during his 12/1/15 presentation of the 2015 NRI. The Project is not low-environmental-impact because it cuts down forests, crosses wetlands, invades and severs T&E habitat, and affects adjacent conservation land and the significant wildlife corridor extending miles to which it leads.

42. The environment would benefit if the expert advice were followed that is contained in the NRI report in which Dr. Ryan recommends putting the land north of Heron Pond Road into conservation and not to develop it. On page 21 of the NRI, it states: "do not develop past the intersection with the school access road [Heron Pond

Road] just to the south of the peatland complex just south of Heron Pond his [sic] would ultimately reduce the overall amount of development at the site....” But the Project would be located north of Heron Pond Road where the NRI alerts that “the development proposed to the north and east of the road will reduce the amount of habitat available to development-sensitive species and sever terrestrial connections between individual wetlands.”

43. Not just development, but open space too is essential to NH’s economic growth. The New Hampshire 10-Year State Energy Strategy (April 2018) states that “our scenery & natural resources” need to be protected against solar and wind projects that consume vast amounts of land – that is, open space, but the Project would put the open space and its natural resources at serious risk, as NHF&G cautioned the Town in May 2019 when the Town was exploring for water within the 36-acre area of Town land: “All 3 sites ... are in areas that state-listed spotted and Blanding’s turtles and state-listed eastern hognose snakes have been observed and could be encountered during test well drilling activities. Turtles utilize upland areas to traverse between vernal pool feeding areas in the spring and for travel to upland nesting sites during late spring into summer. Eastern hognose snakes utilize a variety of habitat this time of year for feeding and mating *within this landscape.*” [emphasis added] [email May 28, 2019] It costs NH less to conserve T&E species in the first place than it does to recover them once they are lost, just ask NHF&G’s Nongame & Endangered Wildlife Program.

44. Bad things can be predicted to happen to the T&E wildlife, if the Project develops into their habitat, because it already has on the residential Lot # 39-74 (Not Too Dusty LLC) which was the site of the death of a Spotted Turtle in summer 2019

caused by hauling activity of the same owner's gravel operation traveling out of his adjacent Lot 42-1.

45. NHF&G informed the Company's environmental consultant -- TRC -- that "the proposed location is within a *highly sensitive landscape* as it provides important habitat for several state-listed species." [emphasis added] TRC's apparent response is to continue to assist the Company through the permitting process. The SEC's review and intervention is needed to protect this highly-sensitive landscape.

N. Facts: Benefits to the Public of SEC Review

46. The benefits to the public include: greater guarantee of the Company's financial and technical expertise; more certainty that abutting conservation land would not be negatively impacted; that the State's highest ranked wildlife habitat would be protected; that the extensive recreational trail system would continue to serve the differing interests of the public from walking to wildlife photography; that the function of wetlands would not be impacted; that vernal pools would continue to be connected as habitat for the vernal-pool-dependent wildlife species; and that the forests continue to deliver clean air, sequester carbon, and filter water.

O. Facts: The Need for More Disclosure to the SEC on Behalf of the Public

47. The Milford public has an interest in the private side of the Project, not just the public side of it, because what happens with the private side, affects the Project as a whole. The SEC may seek to learn important information, including confidential business information on the public's behalf.

P. Facts: Basis for SEC to Consider Jurisdiction

48. As basis for the SEC's consideration of jurisdiction: (a) The Company has not applied for permits either to the Town or NHDES; the Project is still mostly in the planning and preliminary stages; (b) The Project Site is "industrial" only by zoning designation. The Site is undeveloped open space whose unique characteristics do not lend it to development. It has been undevelopable for 20 years. T&E wildlife live in the extensive wetlands complex. The site abuts conservation land. The NRI's author describes the Site as an "ecological gem." (c) The solar ordinance 7.11 is new and does not address all environmental concerns and does not define "appropriate locations" except for the type of facility allowed in the different zoning districts. (d) The Company's goal is to be operating in 2022. The SEC process would not be duplicative or cause delay because the permitting has not begun; the Company's T&E study has not been done and no plant inventory was done, only what is mentioned in the NRI. (e) To date the PB and the ZBA have not demonstrated that they considered all of the necessary factors pertaining to the siting and construction of this Project to fully address the objectives of 162-H:1.

II.DISCUSSION

49. The following are questions that the SEC could help answer to determine if this location is suitable for the proposed 16 MW Project. Is this Project too environmentally-impactful to meet the State's energy goals without sacrificing natural resources and scenery? Is it needed for Milford when the energy will not stay in Milford, but instead go into ISO for other New England states, but not NH? Do Milford's citizens need to lose some of their local carbon-sequestering forests and clean air; lose use of recreational

trails established not long after the Town purchased the 270 acres of Brox Property in 2000? Does Milford need a large-scale solar array to abut its 37-acre Heron Pond, a “prime wetland” in all but name, and do damage to the wetland’s complex ecosystem?

50. Regarding the concerns of 162-H:1 that are described in detail in Site 301 regulations, Petitioners have presented the information needed by the SEC to consider the question of jurisdiction to address all of the concerns. We have provided the following: Descriptions of the Site, location, and the Project; status of the Project; description of the environment & natural resources; identification of abutting properties; information that the Town lacks unanimity of support for the Project; that the Project disrupts orderly development; that the solar ordinance 7.11 is inadequate with regards to 162-H:1; that the Town is inadequate with regards to 162-H:1; that the state agencies are inadequate with regards to 162-H:1; that the SEC process would not cause delay; that the use of the land is unreasonable; impacts on wildlife and other natural resources; benefits to the public of SEC review; the need for more disclosure; and additional basis for the SEC to consider jurisdiction.

51. Most important of the regulations is Site 301.07 – Effects on Environment – because of the significant wildlife species and significant habitat resources. Petitioners believe that we have provided the SEC with the basis on which to make its decision for jurisdiction.

CONCLUSION:

52. Based on the foregoing, Petitioners believe they have provided a factual basis for the SEC to consider requiring a certificate. Petitioners have shown that the Project does not meet the exemption under 162-H:4,IV from SEC review, because (a) there

does not exist adequate protections of the objectives of 162-H:1, and (b) not all environmental impacts or effects are adequately regulated by NHF&G and NHDES or by local regulations, including the solar zoning ordinance.

WHEREFORE, Petitioners respectfully requests that the New Hampshire Site Evaluation Committee:

- A. Grant Petitioners' Motion to Amend the Petition to Remedy Deficiencies;
- B. Proceed to consider jurisdiction; and
- C. Grant such other and further relief as is deemed just and appropriate.

Respectfully submitted,

The Petitioners

Dated: April 12, 2021

By: Suzanne L. Fournier

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Certificate of Service

I hereby certify that on the 12TH day of April, 2021, the Petitioners' Motion (pro se) to Amend the Petition to Remedy Deficiencies was served electronically on the Docket Service List dated 2/22/21.

Suzanne L. Fournier

Suzanne L. Fournier