

OCT 24 2016

STATE OF VERMONT  
PUBLIC SERVICE BOARD

CPG #16-0001-NMP

Application of BDE East Montpelier Lazar Solar, LLC )  
for a certificate of public good for a 499 kW )  
interconnected group net-metered photovoltaic electric )  
power system in East Montpelier, Vermont )

Order entered: 10/19/2016

**ORDER RE: CERTIFICATE OF PUBLIC GOOD ("CPG") AMENDMENT**

**I. INTRODUCTION**

This case involves a CPG issued to BDE East Montpelier Lazar Solar, LLC (the "Applicant") by the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 219a and 248, for the installation and operation of a 499 kW group net-metered solar electric generation facility in East Montpelier, Vermont (the "Project").

In today's Order, we approve an amendment to the Applicant's CPG.

**II. PROCEDURAL HISTORY**

On September 19, 2016, the Board issued an Order and CPG approving the Project.

On September 28, 2016, pursuant to Rules 59(e) and 60 of the Vermont Rules of Civil Procedure, the Vermont Agency of Natural Resources ("ANR") filed a motion to amend judgment, requesting an amendment to CPG condition 9.

On October 4, 2016, the Applicant filed a letter stating that it has no objection to ANR's motion.

**III. DISCUSSION AND ORDER**

In order to ensure that the Project does not cause undue adverse effects on streams, ANR recommended, and the Applicant agreed, that the CPG for the Project contain a condition that requires the Applicant to maintain an undisturbed river corridor and riparian buffer around three streams located on the Project site. ANR provided proposed language for a CPG condition that

the Board, with some editorial changes, adopted. Accordingly, the September 28<sup>th</sup> Order and CPG included the following condition:

The Project shall maintain 50-foot undisturbed river corridor and naturally vegetated riparian buffers for the following streams: (1) the perennial stream depicted on the Project site plans in Exhibit BDE-AT-2 and identified as 2015-TB-1 in Attachment 1 to Exhibit BDE-AC-2; (2) the intermittent stream depicted on Exhibit DBE-AT-2 and identified as 2015-TB-2 in Attachment 1 to Exhibit BDE-AC-2; and (3) the stream located along the northeastern portion of the Project site and referenced on page 5 of Exhibit BDE-AC-2. Each of these river corridors and riparian buffers shall be measured from the top-of-bank on each side of the stream consistent with ANR's December 9, 2005, Riparian Buffer Guidance. The term "undisturbed" means the absence of activities that may cause or contribute to ground or vegetative disturbance or soil compaction, including but not limited to: construction; driving upon; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub, or groundcover removal; plowing or disposal of snow; grazing; and mowing. Prior to site preparation, construction, maintenance, and decommissioning activities that involve earth disturbance, the Applicant shall install a continuous line of flagging along the boundaries of the above-referenced river corridors and riparian buffers.<sup>1</sup>

In its motion, ANR states that its agreement with the Applicant called for the stream identified in (1) above to be measured from top-of-bank but for streams (2) and (3) to be measured from top-of-slope. ANR clarifies that this measurement standard is consistent with ANR's Riparian Buffer Guidance, and further clarifies that:

[u]nder the Guidance, the point at which the buffer is measured from is dictated by the physical characteristics of the stream. Stream channels that have little to no adjacent floodplain because of their shape and channels that have recently abandoned floodplains have buffers measured from top-of-slope.

ANR states that streams without floodplains can increase the risk of toe slope erosion, and therefore maintenance of the buffers from the top-of-slope is an important consideration to prevent adverse effects.

Having reviewed the filings before us, we find that ANR's proposed modification is consistent with the objectives of the September 28<sup>th</sup> Order and CPG and will not result in any

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1. See September 28<sup>th</sup> Order and CPG at ¶ 9.

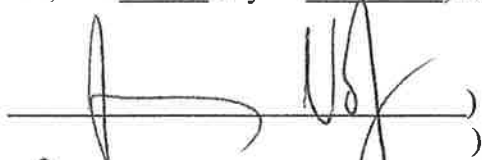
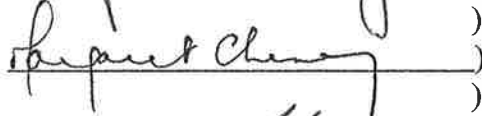

undue adverse impacts under the substantive criteria of 30 V.S.A. § 248. Accordingly, we amend ordering paragraph 9 and the CPG condition to the following:

The Project shall maintain 50-foot undisturbed river corridor and naturally vegetated riparian buffers for the following streams: (1) the perennial stream depicted on the Project site plans in Exhibit BDE-AT-2 and identified as 2015-TB-1 in Attachment 1 to Exhibit BDE-AC-2; (2) the intermittent stream depicted on Exhibit DBE-AT-2 and identified as 2015-TB-2 in Attachment 1 to Exhibit BDE-AC-2; and (3) the stream located along the northeastern portion of the Project site and referenced on page 5 of Exhibit BDE-AC-2. The river corridor and riparian buffers for stream (1), above, shall be measured from the top-of-bank on each side of the stream, and the river corridors and riparian buffers for streams (2) and (3), above, shall be measured from the top-of-slope of each side of the stream, consistent with ANR's December 9, 2005, Riparian Buffer Guidance. The term "undisturbed" means the absence of activities that may cause or contribute to ground or vegetative disturbance or soil compaction, including but not limited to: construction; driving upon; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub, or groundcover removal; plowing or disposal of snow; grazing; and mowing. Prior to site preparation, construction, maintenance, and decommissioning activities that involve earth disturbance, the Applicant shall install a continuous line of flagging along the boundaries of the above-referenced river corridors and riparian buffers.

Therefore, an amended CPG shall be issued to reflect the requested changes by the Applicant and our revised condition. Any other conditions and requirements set out in our Order of September 28, 2016, shall remain unchanged and in full effect.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 19<sup>th</sup> day of October, 2016.

  
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PUBLIC SERVICE  
BOARD  
OF VERMONT

OFFICE OF THE CLERK

FILED: October 19, 2016

ATTEST: Judith C. Whitney  
Clerk of the Board

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

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

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electric power system in East Montpelier, Vermont )

Entered: 10/19/2016

**AMENDED CERTIFICATE OF PUBLIC GOOD ("CPG") ISSUED**  
**PURSUANT TO 30 V.S.A. SECTION 248**

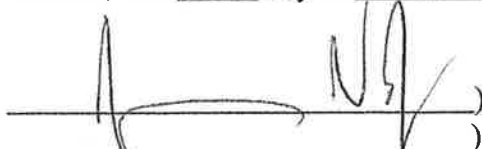
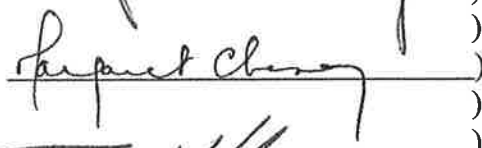
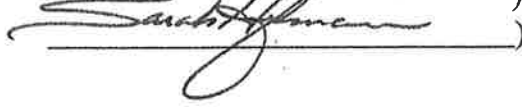
IT IS HEREBY CERTIFIED that the Vermont Public Service Board ("Board") this day found and adjudged that the construction and operation of the 499 kW group net-metering system (the "Project") by BDE East Montpelier Lazar Solar, LLC (the "CPG Holder") in East Montpelier, Vermont, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State, subject to the following conditions:

1. The Project shall maintain 50-foot undisturbed river corridor and naturally vegetated riparian buffers for the following streams: (1) the perennial stream depicted on the Project site plans in Exhibit BDE-AT-2 and identified as 2015-TB-1 in Attachment 1 to Exhibit BDE-AC-2; (2) the intermittent stream depicted on Exhibit DBE-AT-2 and identified as 2015-TB-2 in Attachment 1 to Exhibit BDE-AC-2; and (3) the stream located along the northeastern portion of the Project site and referenced on page 5 of Exhibit BDE-AC-2. The river corridor and riparian buffers for stream (1), above, shall be measured from the top-of-bank on each side of the stream, and the river corridors and riparian buffers for streams (2) and (3), above, shall be measured from the top-of-slope of each side of the stream, consistent with ANR's December 9, 2005, Riparian Buffer Guidance. The term "undisturbed" means the absence of activities that may cause or contribute to ground or vegetative disturbance or soil compaction, including but not limited to: construction; driving upon; earth-moving activities; storage of materials; tree trimming or canopy

removal; tree, shrub, or groundcover removal; plowing or disposal of snow; grazing; and mowing. Prior to site preparation, construction, maintenance, and decommissioning activities that involve earth disturbance, the Applicant shall install a continuous line of flagging along the boundaries of the above-referenced river corridors and riparian buffers.

2. All other conditions and requirements set out in CPG #16-0001-NMP by Order dated September 28, 2016, not amended herein, shall remain unchanged and in full effect.

Dated at Montpelier, Vermont, this 19<sup>th</sup> day of October, 2016.

  
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PUBLIC SERVICE  
BOARD  
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FILED: October 19, 2016

ATTEST: Julie C. Whitney  
Clerk of the Board

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