

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 19-2659-NMP

Petition of Bradford Solar, LLC, for a
Certificate of public good, pursuant to
30 V.S.A. §§ 248 and 8010, and
Commission Rule 5.100, authorizing the
Installation and operation of a 500 kW
Solar electric generation facility in
Bradford, Vermont

**TOWN OF BRADFORD'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW and ORDER**

This case involves a petition filed by Bradford Solar, LLC ("Bradford Solar" or "Petitioner") with the Commission requesting a certificate of public good ("CPG") under 30 V.S.A. § 248 for the proposed construction and operation of a 500 kW solar electric generation facility in Bradford, Vermont (the proposed "Facility").

I. FINDINGS OF FACT

Bradford Town Plan

1. The Facility site is located in what the Town Plan describes as the Lower Plain District (Commercial 1) north of Route 25. Exhibit BPC-2, Town Plan Map 2 of 5 (Future Land Use Areas).
2. The goal of the Lower Plain District is to encourage a mix of land uses which complement the vitality of Bradford's Downtown and employ residents within the Bradford area in well-paying jobs; to protect and expand the economic engine that is the Lower Plain Area, while incorporating scenic and natural resources; to encourage the development of businesses that meet the needs of Bradford's population and contribute to Bradford's self-sufficiency. Exhibit BPC-1, Town Plan at p. 99.
3. The Current Land Use section of the Bradford Town Plan states in relevant part:

Traditionally the Town of Bradford has served as a local center of commerce for the smaller communities that surround it. This pattern of settlement and development has resulted in two areas of concentrated development: the historic Bradford Village, and the area surrounding the intersection of Vermont Route 25 and U.S. Route 5. These two areas lie on opposite sides of the confluence of the Waits and Connecticut Rivers. While this separation is a natural outcome of Bradford's topography, it poses unique challenges as the Town attempts to meet the state planning goal 24 VSA, 4302(c)(1): "to plan development so as to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside." While this goal is often interpreted to mean a town has only one center of development, Bradford has long had two. Townpeople are very concerned to maintain the vitality of the historic village, and it is also important to recognize the critical importance of the intersection of Routes 5 and 25 to the economic vitality of Bradford.

Growth in Bradford has generally reflected a pattern common in much of Vermont. Within areas of more concentrated development in Bradford, the type of development has remained mixed use, including residential, commercial and industrial. Outside of those areas, land use is located along Town and State highways and is primarily residential in nature, with a wide range of home businesses and some farms.

Exhibit BPC-1, Town Plan at p. 92-93 (underlined emphasis supplied).

4. The future Land Use section of the Town Plan explains its purpose as "The future land use section of a town plan is intended to act as a guide for future development within a town, and to aid local planners in the process of implementing the plan through regulatory tools." Exhibit BPC-1, Town Plan at p. 94.
5. It is the policy of the Town of Bradford, as expressed in its Town Plan, to encourage the development of businesses in the Lower Plain Commercial Area that are compatible with and complimentary to those located in the Central Business Area; to provide opportunities for concentrated growth within the Lower Plain Commercial Area, without putting an undue financial burden on municipal services; to encourage cluster development whenever possible within the Lower Plain Commercial Area; and, to encourage primary retail establishments to locate north of Route 25. Exhibit BPC-1, Town Plan at p. 99.
6. The Future Land Use section of the Town Plan states in relevant part:

Public input collected from participants in the 2007 survey point in directions that will reinforce many of the current land use patterns in Bradford and introduce

some new patterns. The survey indicated support for focusing commercial (55% “Yes”, 31% “No”) and industrial development (48% “Yes”, 36% “No”) within areas already served by water and sewer utilities. Those areas include the designated Downtown and areas of the Lower Plain that are already developed. Comments in the town plan survey voiced concern that present development regulations would not be able to prevent sprawl. Therefore development in the Lower Plain should proceed carefully with an eye toward efficient use of land already developed.

Based on the public input gathered in the town-wide survey and at forums, this plan designates the following areas and provides guidance for local planners to implement the vision expressed by Bradford residents.

Exhibit BPC-1, Town Plan at p. 94.

7. The Town Plan explains in detail the important relationship between the Central Business Areas and the Lower Plain Commercial Area to the economic vitality of the Town:

D. Economic Relationship between Central Business Area and Lower Plain Commercial Area

In recent years, many people have expressed concerns that commercial expansion on the Lower Plain might draw economic activity away from its designated downtown. (The boundaries of the designated downtown do not correspond perfectly with the Central Business Area but they are close enough that for the purposes of this discussion, the two terms can be used interchangeably.) In many cases, those concerns are justified: throughout New England there are many examples of “strip development” on the outskirts of towns exacerbating the economic decline of downtowns. In Bradford’s case, the community cannot truly flourish unless both the Lower Plain and the downtown become vibrant and prosperous zones. In short, Bradford needs both its downtown and the lower plain to host profitable businesses that draw customers from within the community and from surrounding areas.

While we desire both the downtown and the Lower Plain to prosper, the two Areas are best suited to host different types of businesses. Limited parking and small store sizes make the downtown less than ideally suited for large retail businesses. But its good sidewalks, good nighttime lighting, and the close proximity of the storefronts make Bradford’s downtown ideally suited for cafes, coffee shops, art galleries, specialty shops, restaurants, and similar enterprises. Meanwhile, good parking and access to Route 5 make the Lower Plain well suited to larger retail businesses (not, however, “big box” stores or formula retail businesses).

One of the biggest challenges Bradford faces is integrating the economic activities in the downtown and the lower plain so that they support and reinforce each other.

Several lower plain businesses draw large numbers of customers from significant distances. Farm Way, Hannaford's Valley Floors, and to a lesser extent, Oakes Brothers and the Tool Barn are examples. But at present, few of the customers who patronize these lower plain businesses come into the downtown.

Bradford needs to adopt a strategy that will draw the people who already come to the lower plain into the downtown. One such strategy might be encouraging Farm way's owners to open a Farm Way outlet store in one of the currently vacant Main Street storefronts. If that were to happen, it is likely that a significant number of Farm Way's customers would head into the downtown to see what additional bargains they might find at the outlet store, and in doing so they might stop for a meal at one of the downtown's restaurants, or do some additional shopping at one of the downtown's specialty shops. Another strategy could be for customers of lower plain business to receive a coupon with each purchase that would provide a free appetizer or beverage at a downtown eatery. Whether or not these specific ideas ever come to fruition, it is clear that businesses in Bradford's downtown and the Lower Plain need to work together on cross promotional efforts.

General Goals

1. To guide industrial and commercial development in a way that will provide for appropriate economic activities on a scale that largely maintains the Town's existing settlement patterns.
2. To preserve open space and the rural character and present population distribution of the Town.
3. To protect agricultural and forestry land uses by promoting practices that are economically viable and that protect natural resources and wildlife habitat.
4. To provide orderly growth in the Downtown by planning for transportation, water, sewage, and public recreation facilities through public funding.
5. To preserve natural areas, unique habitats, and the quality of ground and surface waters.
6. To retain the essential rural character of the Bradford community while fostering its growth and economic vitality.
7. To protect the visual entrances into the downtown.
8. To enhance the walkability and bikeability of the more densely developed parts of town, by renovating, maintaining and expanding sidewalks, bike lanes, and other non-motorized methods of transportation.

Exhibit BPC-1, Town Plan at p. 94-5 (underlined emphasis supplied).

8. The Town Plan continues by focusing on the critical need to encourage the Lower Plain to become a vibrant and prosperous commercial zone and states in relevant part:

E. Lower Plain Commercial Area (1 and 2)

The Lower Plain commercial area is a large area located south of the designated Downtown which runs as far south along U.S. Route 5 as Wakefield Drive. Like the Central Business Area, the Lower Plain Commercial Area is vital to the economic vitality of Bradford. As such, it is important to encourage commercial development in this area. Existing uses are concentrated around the junction of Routes 5 and 25, South of that junction, land uses consist of residences, a working vegetable farm with a retail market, hardware store, car wash, tool rental and repair shop, mental health clinic and a church. Development north of the intersection is primarily commercial in nature, although zoning for the entire Area does allow for all types of housing, including residential care facilities, treatment centers and the like. Because the land in this area is flat, has good access to Route 5, is served by both municipal water and sewer, and has well-drained soils, it is a desirable location for development.

Feedback from residents in the 2007 survey and forums indicate a general level of comfort with the present location of businesses in the Lower Plain. However, a number of comments highlight a concern with the nature of this development, and about the potential of extending that development beyond the junction of Routes 5 and 25. In addition to local concerns, inconsistencies exist between Bradford's land use areas and those of the Regional Plan. While conformance with the Regional Plan is not mandated by state statute, a number of State programs require conformance with the Regional Plan.

Although much of the land within the Lower Plain Commercial Area is already developed, the land could be used more efficiently, particularly on properties behind those, which front directly on either Route 5 or 25. Planned commercial subdivisions and developments utilizing common access roads, and cluster site planning principles, are encouraged and should be given high priority. At present, 50% of the lot may be dedicated to the building footprint. Increasing the allowed building coverage and decreasing parking requirements would expand opportunities for infill development, although the potential for storm water disposal and parking area issues might arise with larger coverage areas. Mixed uses should continue to be encouraged in this Area. The scale of proposed development proposed must be considered carefully.

The purpose of the Lower Plain Commercial Area is to provide space for concentrated commercial development that does not unnecessarily consume land. Although a mix of uses, this area is intended to be primarily commercial in nature.

Land use activities planned for this area should be of a type, scale and design that complements rather than competes with the Downtown. No uses should impose a burden on the financial capacity of the town to accommodate the growth caused by the project.

Results of the 2007 survey very clearly showed that residents are not interested in large scale, or automobile-centered development anywhere in Bradford. Such large scale development as big box stores must be restricted. This could be achieved by setting a maximum square footage of no greater than a foot print of 36,000 square feet per commercial building.

...

While the entire area is designated as being suitable for commercial development, some types of commercial development should be encouraged in certain areas, while other commercial activities should be encouraged in other parts of the Lower Plain Commercial Area.

Specifically, businesses that are primarily retail in nature should be encouraged primarily to locate North of Route 25 around existing commercial development. This area is referred to as **Lower Plain Commercial 1.**

The portion of the Lower Plain Commercial Area south of Route 25 (or south of existing retail development immediately adjacent to the southern side of Route 25) is best suited for professional offices and commercial enterprises that are not primarily retail in nature. This area is referred to as **Lower Plain Commercial 2.**

In the last several years, the water system has been greatly improved and the sewer has been extended. In particular the water and sewer infrastructure on Route 5 has been built to a very high standard. It should also be noted that the parcel commonly known as Bradford Square is in what is designated as Lower Plain Commercial 2 but has an Act 250 permit which allows for primary retail.

Goals – Lower Plain Commercial Area

1. To encourage a mix of land uses which complement the vitality of Bradford's Downtown and employ residents within the Bradford area in well-paying jobs.
2. To protect and expand the economic engine that is the Lower Plain Area, while incorporating scenic and natural resources.
3. To maintain and enhance traffic safety on Routes 5 and 25.
4. To facilitate non-motorized transportation.
5. To conduct careful site planning and administration of design standards for

development.

6. To encourage the development of businesses that meet the needs of Bradford's population and contribute to Bradford's self-sufficiency.

Policies – Lower Plain Commercial Area

1. It is the policy of the Town to encourage the development of businesses in the Lower Plain Commercial Area that are compatible with and complimentary to those located in the Central Business Area.

2. It is the policy of the Town to provide opportunities for concentrated growth within the Lower Plain Commercial Area, without putting an undue financial burden on municipal services.

3. It is the policy of the Town to encourage cluster development whenever possible within the Lower Plain Commercial Area.

4. It is the policy of the Town to encourage development of sustainable low-carbon commercial enterprises.

5. It is the policy of the Town to encourage primary retail establishments to locate north of Route 25 in the area designated on the Future Land Use map as Lower Plain Commercial 1 while allowing other types of commercial development to locate in all parts of the Lower Plain Area.

Recommendations – Lower Plain Commercial Area

1. The Planning Commission should amend the Zoning Bylaws to prohibit new commercial buildings with a footprint in excess of 36,000 square feet in the Lower Plain Commercial Zoning Area.

2. The Planning Commission should amend the uses within the Lower Plain Commercial Area (and the Central Business Area) to restrict formula businesses and other similar establishments.

3. The Planning Commission should implement design review within the Lower Plain Commercial Area (and the Central Business Area) in order to better define the desired aesthetics of commercial development in this area.

4. The Planning Commission will amend the Zoning bylaws to include separate districts for Lower Plain Commercial Area 1 and 2.

Exhibit BPC-1, Town Plan at p. 97-100 (underlined emphasis supplied).

9. The Town Plan's Energy section expresses support for residential scale solar energy projects, stating: "Solar energy has the potential to provide clean, reliable, and safe energy, even in Vermont's climate. Most areas in Vermont have the potential for some solar energy production, at least at the residential scale." Exhibit BPC-1, Town Plan at p. 42.
10. However, the Town Plan then cautions: "The town is concerned about plans for major development within Bradford and in neighboring towns. These types of developments could threaten the environment and quality of life that Bradford residents value. The town would like to have the option to be represented at the Public Service Board as an interested and/or average person in any and all future plans before the Public Service Board." Exhibit BPC-1, Town Plan at p. 42.
11. With regard to renewable energy projects the Town Plan expresses support for responsibly sited renewable energy projects:

The Town of Bradford supports responsibly sited and developed renewable energy projects within its boundaries. It recognizes that to maximize profits, developers desire projects to be located in close proximity to electric power lines capable of transmitting the load proposed to be generated and easy access from major transportation networks for construction. However, the town desires to maintain the working landscape, adopted conservation and habitat protection measures and scenic rural views important to its economy and rural cultural aesthetics. Not all commercial or community scale solar projects proposed can meet this standard.

Exhibit BPC-1, Town Plan at p. 97-100.

12. Thus, the Bradford Town Plan requires that: "Projects must meet the following community standards in order to be considered 'orderly development' supported by this plan and in order to not unduly impact the aesthetics of the rural countryside this plan intends to protect. In particular, these standards should be considered when the development falls under Section 248 of Title 30 of the VT Statutes." Exhibit BPC-1, Town Plan at p. 43.
13. The Town Plan's Community Standards applicable to the project state as follows:
 1. Community Standards
 - i. Siting: Where a project is placed on the landscape constitutes the most critical element in the aesthetic siting of a project. Poor siting cannot be adequately mitigated. Accordingly, all renewable energy projects must evaluate and address the proposed site's aesthetic impact on the surrounding

landscape.

1. Good sites have one or more of the following characteristics:
 - a. Roof-mounted systems (except in the historic Area)
 - b. Systems located in close proximity to existing larger scale, commercial, industrial or agricultural buildings.
 - c. Proximity to existing hedgerows or other topographical features that naturally screen the proposed array from view from at least two sides.
 - d. Reuse of former brownfields or otherwise impacted property.
2. Poor sites have one or more of the following characteristics:
 - a. No natural screening
 - b. Topography that causes the arrays to be visible against the skyline from common vantage points like roads or neighborhoods.
 - c. A location in proximity to and interfering with a significant viewshed (significant viewsheds within the Town of Bradford include I91, Route 5, Route 25, South Road, Goshen Road, Fairground Road, along the Waits River and Connecticut River
 - d. The removal of productive agricultural land from agricultural use.
 - e. Sites that require public investment in transmission and distribution infrastructure in order to function properly.
- ii. Mass and Scale: The historical working landscape that defines Bradford currently and that Bradford desires to preserve is dominated by viewsheds across open fields to wooded hillsides. Rural structures like barns fit into the landscape because their scale and mass generally do not impact large tracts of otherwise open land. All commercial scale solar arrays shall also be limited in mass and scale, and/ or have their mass and scale broken by screening, to fit in with the landscape. Commercial solar projects larger than an acre are larger than any other structure within the Town of Bradford. If they cannot be adequately screened or mitigated to blend into the municipality's landscape and are therefore prohibited.

2. Average Person

For the purposes of this plan, either the Selectboard or the Planning Commission shall be deemed to represent the voice of the "average person" with respect to the "Quechee Test" when evaluating the aesthetics of a proposed solar array.

3. Mitigation methods:

- i. In addition to properly siting a project, solar developers must take the following action to mitigate all project sites:
 1. Locate the structures on the site to keep them from being "skylines" above the horizon from public and private vantage points.
 2. Shorter panels may be more appropriate in certain spaces than taller panels to keep the project lower on the landscape.
 3. At a minimum all solar arrays must observe the setback restrictions contained in Act 56 governing solar installations. However developers are

encouraged to increase setbacks to at least those listed in the Town Zoning Regulations within the Zoning Area in which it lies.

4. Use the existing topography, development or vegetation on the site to screen and or break the mass of the array.

5. In the absence of existing natural vegetation, the commercial development must be screened by native plantings beneficial to wildlife and pollinators that will grow to a sufficient height and depth to provide effective screening within a period of 5 years. Partial screening to break the mass of the site and to protect public and private views of the project may be appropriate.

6. Practice a “good neighbor policy”. The siting of the array should be done in such a manner that the array creates no greater burden on neighboring property owners or public infrastructure than it does on the property on which it is sited. As an example, a landowner may not site an array on his or her property in a location calculated to diminish the visual impact of the array from his or her residence, but places the array immediately within their neighbor’s or the public’s viewshed. Locating a solar array in such a manner designed to reduce impacts on neighbors or public viewsheds constitutes reasonable mitigation.

7. Use black or earth tone materials (panels, supports fences) that blend into the landscape instead of metallic or other brighter colors.

ii. Decommissioning and Restoration: All projects shall be decommissioned at the end of their useful life and the property shall be restored to its pre-project condition. Developers of all projects 100kW and greater shall provide the town with appropriate assurances to guarantee funding exists to decommission the project such as a bond. In keeping with the Town of Bradford’s desires to retain our agricultural land base, a solar array’s useful life shall be deemed to be at the end of the initial contract for services with the power company.

Exhibit BPC-1, Town Plan at p. 43-44 (underlined emphasis supplied).

14. In addition, the Town Plan contains a section within the Energy Chapter regarding Permitting Considerations:

E. Permitting Considerations

Energy generation in Vermont is subject to a number of different permitting requirements, most of which are limited to state level permitting. State statute protects residential renewable energy generation systems from regulations that will completely prohibit their development.

Section 248

Distributed power generation facilities, such as hydropower dams, fossil fuel plants, and wind power or solar systems owned by utilities, are subject to review and approval by the Vermont Public Service Board (30 VSA §248). Under this law, prior to the construction of a generation facility, the Board must issue a Certificate of Public Good. A Section 248 review addresses environmental, economic, and social impacts associated with a particular project, similar to Act 250. In making its determination, the Board must give due consideration to the recommendations of municipal and regional planning commissions and their respective plans. Accordingly, it is appropriate that this Town Plan address these land uses and provide guidance to town officials, regulators, and utilities.

For all commercial energy generation facilities, the following policies shall apply:

1. **Preferred Locations:** New generation and transmission facilities shall be sited in locations that reinforce Bradford's traditional patterns of growth - compact village centers surrounded by a rural countryside, including farm and forest land.
2. **Prohibited Locations:** Because of their distinctive natural, historic or scenic value, energy facility development shall be excluded from the following areas:
 - Floodways shown on FEMA Flood Insurance Rate Maps;
 - Fluvial erosion hazard areas shown on Fluvial Erosion Hazard Area maps;
 - Wetlands as indicated on Vermont State Wetlands Inventory maps or identified through site analysis; and
 - Rare, threatened or endangered species habitat or communities.
 - The Bradford Town Forests
3. **Significant Areas:** All new generation, transmission, and distribution facilities shall be sited and designed to avoid or, if no other reasonable alternative exists, to otherwise minimize and mitigate adverse impacts to the following:
 - Historic Areas, landmarks, sites and structures listed, or eligible for listing, on state or national registers.
 - Public parks and recreation areas, including state and municipal parks, forests and trail networks.
 - Municipally designated scenic roads and viewsheds (see Natural Resources).
 - Special flood hazard areas identified by National Flood Insurance

Program maps.

- Public and private drinking water supplies, including mapped source protection areas.
- Necessary wildlife habitat identified by the state or through analysis, including core habitat areas, migration and travel corridors.

4. Natural Resource Protection: New generation and transmission facilities must be sited to avoid the fragmentation of, and undue adverse impacts to, the town's working landscape, including large tracts of undeveloped forestland and core forest habitat areas, open farm land, and primary agricultural soils mapped by the U.S. Natural Resource Conservation Service.

5. Protection of Wildlife: Designers must gather information about natural and wildlife habitats that exist in the project area and take measures to avoid any undue adverse impact on the resource. Consideration shall be given to the effects of the project on: natural communities, wildlife residing in the area and their migratory routes; the impacts of human activities at or near habitat areas; and any loss of vegetative cover or food sources for critical habitats.

6. Site Selection: Site selection should not be limited to generation facilities alone; other elements of the facility need to be considered as well. These include access roads, site clearing, onsite power lines, substations, lighting, and off-site power lines. Development of these elements shall be done in such a way as to minimize negative impacts. Site clearing and roadways can have greater visual impacts than the energy generation facility itself. In planning for facilities, designers should take steps to mitigate the project's impact on natural, scenic and historic resources and improve its harmony with the surroundings.

Exhibit BPC-1, Town Plan at p. 46-48 (underlined emphasis supplied).

15. The Town Plan's Natural Resource section specifically designates and protects Bradford's natural resources which are vital to the town's cultural heritage, economic stability, and quality of life:

VIII. Natural Resources

Bradford's town center lies at the confluence of the Waits and the Connecticut Rivers. Together with surrounding steep terrain, US Interstate 91 defines the

western limit of the town center, and the Connecticut River its eastern limit. Traditionally Bradford's economy was based in agriculture and forestry, and it served as a local center of mercantile business for smaller towns nearby.

Forests, farms, and open land define Bradford's rural character. While the Bradford community wishes to allow appropriate development, it also seeks to maintain its rural character. A landscape including open farmland and working forests attracts visitors and contributes to our tourism industry. A healthy environment enhances our quality of life. Access to natural areas for recreational use promotes physical and emotional well-being. Protection of Bradford's natural resources is vital to the town's cultural heritage, economic stability, and quality of life.

Respondents to the 2007 Town Plan Survey strongly encouraged sustainable development of Bradford's local food supply. Agricultural land is essential for local food production and supports a diversified economy. Over seventy-five percent (75%) of survey respondents considered "wildlife conservation", "conservation of natural habitats" and "recreation" important.

While it is the intention of the citizens of Bradford to preserve the scenic beauty and quality of wildlife habitat in all areas of the town, lands that the town places special value upon for scenic, wildlife, and recreational importance include:

The ridgelines High elevation areas particularly Wrights Mountain. Town's ponds, rivers and streams as well as smaller tributaries, wetlands, vernal pools and bear and deer habitat. Scenic roads including I91, Route 5, Route 25, South Road, Fairground Road and Goshen Road Historic Area and historic sites outside the designated Historic Area including Goshen Church

Bradford values its ridgelines and other high elevation areas and recognizes the great importance of these areas to both residents and migratory wildlife. Therefore commercial and industrial development at elevations greater than 1700 feet or on ridgelines should be strictly avoided. The town discourages land development including the construction of roads and extension of utilities at these elevations with the exception of activities related to non-commercial recreation and forest management.

These natural resources provide economic, recreational, and aesthetic benefits to both residents and visitors. Development that would compromise these benefits is inappropriate and inconsistent with the town's vision and goals.

Recommendations of the Bradford Planning Commission and Selectboard

16. Marcey Carver, Chair of the Bradford Planning Commission provided pre-filed testimony on behalf of the Planning Commission and Selectboard of the Town of Bradford. She has lived in the area since 1988, has served on the Planning Commission for 5 years and serves as an alternate to Two Rivers Ottauquechee Regional Planning Commission. Prefiled Testimony of Marcey Carver, p. 2.
17. Ms. Carver has a B.A. in Molecular Biology from Wellesley College, an M.B.A. from Washington University in St. Louis and a Master's Degree in Accountancy from Bentley College. She has worked in the financial industry in strategic planning, product development and Consumer Lending; in role as Controller/Financial Officer at various companies in Vermont/New Hampshire; owned various businesses including Real Estate Sales, Retail Business, Residential Development and Construction Companies and Residential Rental Property Management. Prefiled Testimony of Marcey Carver, p. 2.
18. Ms. Carver's testimony was offered for the purposes of providing the Bradford Selectboard and Planning Commission's recommendations with respect to the proposed project. Her testimony supports the Town of Bradford's opposition to the Petition by Bradford Solar for a Certificate of Public Good pursuant to 30 V.S.A. §§ 248 and 8010 and Commission Rule 5.100 with respect to the proposed project. She described the provisions of the Bradford Town Plan, and other municipal planning activities that are applicable to the proposed solar array. She explained the recommendations of the Town Selectboard and Planning Commission and the project's lack of compliance with orderly development, acoustics, aesthetics, public health and

safety and impacts to the town's infrastructure investment. Prefiled Testimony of Marcey

Carver, p. 3-4.

19. There have been many changes in the town since 1988. There has been an increase in the number of businesses that are located in the town. The Industrial Park has seen tremendous growth. Major businesses have come to Bradford including Valley Floors and Copeland Furniture and J&M Landscaping. There is now a large assisted living facility here as well as a drug treatment facility. Several businesses remain here since 1988 including Oakes Brothers (soon to be acquired by Bethel Mills) and Colatina Exit Restaurant. Prefiled Testimony of Marcey Carver, p. 3.
20. The project is located in the town's Lower Plain District north of Route 25. The land use for this district both in the Town's current Town Plan is for Commercial Businesses. The future land use for this parcel is also determined to be suitable for commercial businesses based on the current Regional Plan (<https://www.trorc.org/trorc-regional-plan/>). The parcel has been vacant for many years. Only recently has the owner acquired a portion of this parcel from the state. Prefiled Testimony of Marcey Carver, p. 3.
21. The state had owned this parcel as a potential jug handle to handle traffic flow. The parcel where the Solar Array project is proposed was recently subdivided off from the other land that the Cairns own and, in doing so, the parcel that has the Bradford Minimart hooked up to town sewer. In doing so, the leach field that is located on the parcel for the proposed solar array has been abandoned. The area surrounding this parcel is a mix of businesses and residential properties. This parcel is well suited for concentrated development based on the stated goals for development as reflected in the Town Plan as well as the Town's Bylaws. Prefiled Testimony of Marcey Carver, p. 4.

22. The project is located in what the Town views as the gateway to its town and village as you exit I-91. People will generally travel past the proposed solar array site on their way to the grocery store, garden center, hardware business, Farmway, the Industrial Area and numerous other businesses. They will pass by this area on their way into the downtown village of Bradford. This is a primary reason why Route 25 is identified as a scenic vista in the Town Plan. Prefiled Testimony of Marcey Carver, p. 4 (underlined emphasis supplied).
23. Consistent with implementation of the Town Plan, the newly adopted Zoning Bylaws has adopted a Development Review process to help ensure that future development in the Lower Plain District will be more like an extension of the Historic Downtown. While these bylaws were adopted after the Solar Project was applied for at the PUC, they demonstrate the development of sound planning principals by the town as an outgrowth of the study, Pathways to a Vibrant Economic Center (Exhibit BPC-3) which was provided at the Hearing Officer's request when the town answered his questions, was created as part of the Planning Commission's work and was an outgrowth of the goals and recommendations for this district in the Town Plan. This study clearly showed that the townspeople did not want strip mall type development but rather multistory buildings with more intensive use of the land than Hannaford's as an example. In addition, parking requirements were greatly relaxed and no longer include a minimum number of spaces but rather a maximum number. There is also a strong preference for parking to be to the rear or side of a building rather than in front. There is nothing about this development that is consistent with the results of the Capacity study, the town plan, the town bylaws or the general community sentiment. Prefiled Testimony of Marcey Carver, p. 4-5.

24. Such a scenic vista is severely negatively impacted when the area is broken up by incongruous structures and buildings such as ground mounted solar arrays. What is even more devastating is the length of time these projects appear to be scheduled to last. Prefiled Testimony of Marcey Carver, p. 5.
25. The town supports solar energy in general and has supported other large solar arrays including on Sand Hill, at Oxbow High School, Farmway and Copeland. In these three instances, the siting of the solar array is in the case of Oxbow High School at the back of the parcel in an otherwise unusable part of the property and can be well shielded from the residences in the area based on the screening requirements. Farmway has tucked their solar array in the back of the property so that it is barely visible from the road or the primary parking area. Copeland has placed their solar array in the Industrial District on a parcel that is considered a brown field. It is a parcel that is very highly contaminated by tetrachloroethylene (dry cleaning fluid). It is undergoing long term monitoring, with groundwater samples being analyzed regularly. The parcel was not suited for construction of a building because there are dozens of groundwater monitoring wells all over the property. Placement of the solar panels was carefully laid out so that the wells are still accessible. Prefiled Testimony of Marcey Carver, p. 5.
26. In addition, in the town's efforts to find a workable solution for the Cairns, they reached out to Bob Haynes, Executive Director of Green Mountain Economic Development as well as to a developer who is interested in building a Tractor Supply and has an option to purchase a parcel on Route 5 in the Commercial District. The Tractor Supply developer was willing to provide Cairns with the option to acquire the parcel on Route 5 in exchange for acquiring the Cairns parcel where the solar array is proposed. Cairns was not willing to sell the 3 acre parcel to the

Tractor Supply developer. He would only consider leasing the currently proposed Solar Array site to the Developer. Cairns also determined that they were not willing to move forward on the swap because it would entail a new application to the PUC with a reduced financial benefit as the tax rebate is reduced in 2020. Prefiled Testimony of Marcey Carver, p. 5-6.

27. Bradford Solar has NOT met its burden of proof to show that there will not be an undue adverse effect on orderly development, aesthetics including visual impacts and noise as well as public safety. The fact that the solar project can be seen from so many residences and businesses and is directly visible as you exit the Interstate and head east on Route 25 will have a tremendously negative impact on the vibrancy and desirability of the town for both consumers and residents of the town. The fact that the parcel proposed to be used for a solar array is in a clearly identified area for commercial development, is supplied by water, sewer and electricity as well as being on a major thoroughfare and within close proximity to I91 exit is evidence that using the parcel for solar array is a gross underutilization of the parcel. Prefiled Testimony of Marcey Carver, p. 7.

28. Ms. Carver was aware of interest by others to acquire this parcel to further develop it for commercial purposes. Specifically, the abutters to this property have expressed interest and the developer for Tractor Supply has indicated a willingness to acquire the parcel in exchange for the owners of Bradford Solar to acquire a larger parcel on Route 5 south of Route 25. Prefiled Testimony of Marcey Carver, p. 7.

29. Ms. Carver has witnessed public feedback in various public meetings include in a Select Board meeting in which Encore representative presented an offer of compensation to the Select Board in an effort to persuade the board to support the solar array, members of the audience who were in attendance to discuss the adoption of the Bradford Zoning Bylaws expressed strong

opposition with one member shouting to fight this. In numerous other interactions, the general reaction has been that placing a solar array in this location is a horrible idea, that solar panels are ugly and that this location is no place for them. In only one case did a person show strong support for the project. He stated his position very clearly at the PUC Public Hearing that given the climate crisis, we should support solar panels everywhere.

30. This parcel is well suited for concentrated development based on the stated goals for development as reflected in the Town Plan as well as the Town's Bylaws. Prefiled Testimony of Marcey Carver, p. 4.
31. This project is located in what the Town views as the gateway to its town and village as you exit I-91 and which is specifically protected in the Town Plan's Natural Resource Section. Prefiled Testimony of Marcey Carver, p. 4; Exhibit BPC-1, Town Plan at p. 56.
32. Such a vista is severely negatively impacted when the area is broken up by incongruous structures and buildings such as ground mounted solar arrays. What is even more devastating is the length of time these projects appear to be scheduled to last. Prefiled Testimony of Marcey Carver, p. 5.
33. The town supports solar energy in general and has supported other large solar arrays. It has also endeavored to "find a workable solution for Cairns." Prefiled Testimony of Marcey Carver, p. 5 and 6;
34. Regional Plan indicates that principal retail establishments must be located in Town Centers...to minimize the blighting effects of sprawl and strip-development along major highways and maintain a rural character." While Solar Arrays are certainly not retail

development, they do seem to have “blighting effect” along major highways and certainly don’t help to maintain a rural character. Prefiled Testimony of Marcey Carver, p. 16.

35. The extreme size of the project (in excess of an acre) is by far one of the largest developments in the town and exceeds current zoning standards for square footage as commercial building. The project is inconsistent with the purpose of the Lower Plain District to have concentrated commercial development as part of sound land use planning. Prefiled Testimony of Marcey Carver, p. 24.
36. The public sewer system was extended for the express purpose so that commercial businesses would be able to locate in Bradford in the Lower Plain District north of Route 25. The sewer system was not developed in order for more fees to be collected by the Bradford Water and Sewer Commission. Prefiled Testimony of Marcey Carver, p. 24.
37. Many positive contributions come from developing a commercial property: increased grand list resulting in significantly higher municipal tax revenue, employment and products and services that can be used by the town’s residents resulting in a healthier and more vibrant community. A passive development such as the solar project primarily benefits one party, the investor (the Cairns) due to the rich tax credit and the above market rate on power generated. Prefiled Testimony of Marcey Carver, p. 24 and 25.
38. The Town is opposed to any extension of time beyond the initial phase. Prefiled Testimony of Marcey Carver, p. 25.
39. The screening as proposed is woefully inadequate. Prefiled Testimony of Marcey Carver, p. 26.
40. The Town of Bradford Planning Commission and Selectboard recommend that the Certificate of Public Good be Denied because the Project would have an undue adverse impact on the

aesthetics, orderly development of the region and the public health and safety. Prefiled

Testimony of Marcey Carver, p. 26.

41. In addition to the financial benefits to the community, there is the immeasurable benefit to the health and vitality of the community when a retail establishment locates in close proximity to its population. Prefiled Testimony of Marcey Carver, p. 33.
42. The project is located in the Town's Lower Plain District north of Route 25. The land use designation for the district in the Town's current Town Plan is for Commercial Businesses. The future land use for this parcel is also determined to be suitable for commercial businesses based on the current Regional Plan (<https://www.trorc.org/trorc-regional-plan/>). Prefiled Testimony of Marcey Carver, p. 8.

Two Rivers Ottawaquechee Regional Planning Commission's Recommendation

43. Two Rivers Ottawaquechee Regional Planning Commission ("TRORPC") supports the development and use of renewable energy resources – including but not limited to wind, solar, biomass, micro hydro and cogeneration – at a scale that is sustainable, that enhances energy system capacity and security, that promotes cleaner, more affordable energy technologies, that increases the energy options available locally, and that avoids undue adverse impacts of energy development on the local community and environment." TRORC Response to Hearing Officer dated 2/7/2020, p. 1; *see also* TRO Regional Plan, Energy policy #10, p. 335.
44. According to the Regional Plan: "Development should be directed to the east, in and around the intersection of Routes 5 and 25, taking opportunities to make use of the available land that is located between and behind the existing development, creating a compact core that allows other lands to remain open." TRORC Response to Hearing Officer dated 2/7/2020, p. 1; *see also* TRO Regional Plan, Bradford Interchange specific policy, p. 64.

45. Placement of ground mounted solar on the parcel as proposed would counter this direction for development “between and behind the existing development”, which is where this lot is located, creating a compact core in this area. TRORC Response to Hearing Officer dated 2/7/2020, p. 1.
46. TRORPC’s stated: “we reiterate our opinion, not found in the Regional Plan, but more a basic land use planning tenet, that taking a level buildable lot with sewer and water that is zoned for intense commercial use and covering it with a use that will not take advantage of those scarce site qualities is contrary to orderly development. TRORC Response to Hearing Officer dated 2/7/2020, p. 2.
47. The TRORC Regional Plan adopted on July 26, 2017 was approved for energy compliance by the Vermont Department of Public Service (PSD) on September 27, 2017. TRORC Response to Hearing Officer dated 3/30/2020, p. 1.
48. The project will have a “substantial regional impact” which is defined in Chapter 15, #9 criteria as: “A new or expanded generating or transmission facility, electrical or other, located within one or more municipalities or requiring Public Service Board approval under 30 V.S.A. § 248.” This project fits that definition. TRORC Response to Hearing Officer dated 3/30/2020, p. 1.
49. TRORC has worked with the Town’s Planning Commission in its last revision to the Town Plan, and also assisted in drafting the zoning bylaws recently adopted by the Town. They have also been working most recently on our draft Regional Plan and changes to the future land use areas in the project area, where they have proposed changing the project area from Interchange to an extension of the Town Center. All of these efforts are meant to engender more dense development north of VT 25 and of a nature that is conducive to recreating a built landscape that is an extension of the current “village.” TRORC Response to Hearing Officer dated 3/30/2020, p. 1.
50. In this particular case, TRORPC does not believe that substantial deference is required. However, they do believe that the PUC has the authority to consider even non-mandatory policies if it so desires. TRORC Response to Hearing Officer dated 3/30/2020, p. 2.
51. As to the policy on page 64, “*Development should be directed to the east, in and around the*

intersection of Routes 5 and 25, taking opportunities to make use of the available land that is located between and behind the existing development, creating a compact core that allows other lands to remain open” is importantly prefaced with a “should”, again, making it a non-mandatory policy. TRORC Response to Hearing Officer dated 3/30/2020, p. 2.

52. Orderly development is by definition in keeping with plans, so long as those plans are consistent with state planning goals. TRORPC does not mean to suggest that *any* opinion by a town is a standard for compliance, but an opinion that is buttressed by its actions in planning where the town plan has been regionally approved and its zoning should be given proper weight. Also, smart growth principles are now the mainstream of land use planning, and these have concentrated core areas. TRORC Response to Hearing Officer dated 3/30/2020, p. 2.

53. Though this project meets the standard statutory definition of development, so would a ballfield or a town well. TRORPC’s intent was to infill the area north of VT 25 so as to create a compact core. We do not consider ground mounted solar as infill. TRORC Response to Hearing Officer dated 3/30/2020, p. 2.

54. A compact core in this setting would have the attributes of Bradford village – typically small setbacks, multiple stories, and a mix of both residential and commercial use types. TRORC Response to Hearing Officer dated 3/30/2020, p. 2.

55. General policy 6g states: “Development concepts that should be utilized for interchange areas include: . . . A pattern and scale of development that complements traditional patterns and uses in regional growth areas.” Bradford village is such a regional growth center, and the proposed project is not of a traditional pattern. TRORC Response to Hearing Officer dated 3/30/2020, p. 3.

56. The study would not support such a use as it is single story, land intensive with no regard for the transportation and sewer/water infrastructure in place, and certainly does not create any type of “village” feel. TRORC Response to Hearing Officer dated 3/30/2020, p. 3.

57. The Bradford Solar Project would unduly interfere with the orderly development of the region. Often a particular use might be less than desirable, but not appear that concerning on an individual level. However, as when drafting plans or bylaws, uses must be looked at for

their precedent setting potential. So, a general store in a rural area might seem like a good idea, but allowing a store allows all owners in that district a store, which would be a shocking land use. Similarly here, permitting this development would jeopardize prime commercial land in many locations in the region designated for more intensive land use. Such areas make up just 2% of the land in the region and are a scarce and important resource.

ORDERLY DEVELOPMENT – DISCUSSION
30 V.S.A. § 248(b)(1)

The Facility would unduly interfere with the orderly development of the region in violation of 30 V.S.A. § 248(b)(1), with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. This conclusion is supported by factual findings 1 through 57 above.

Legal Standard Section §248(b)(1) requires the Commission to find, prior to issuing a CPG, that the project will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. 30 VSA §248(b)(1); In re UPC Vermont Wind, LLC, 2009 VT 19.

While there is undoubtedly both a regional and statewide need for additional renewable energy which is generally supported by the Town, this demand should not be supplied by a solar energy project proposal that will destroy the Town and Regional planners comprehensive planning for the economic viability of the Town of Bradford which is expressed in the Town

Plan and Regional Plans and will compromise the Town's public investment in its sewage system, which was designed to ensure that the Lower Plain could become a vibrant and prosperous retail/commercial zone. Both planning documents recognized the vital importance of the gateway area of the town and are specifically designed to protect the intersection of Routes 5 and 25, which is key to the overall economic vitality of Bradford. Moreover the planning documents specifically identify and reserve the Lower Plain to host profitable businesses that draw customers from within the community and from surrounding areas. Consequently, the project will unduly interfere with the orderly development of the region and must be DENIED.

AESTHETICS, SCENIC and NATURAL BEAUTY – DISCUSSION
30 V.S.A. § 248(b)(5)

Having reviewed the record and considered the parties' positions, I recommend that the Commission find that the Project, if built, would also have an undue adverse effect on the aesthetics and scenic and natural beauty of the area in violation of 30 V.S.A. § 248(b)(5). This finding is supported by findings 11, 12, 13, 14, 15, 18, 22, 24, 27, 29, 31, 32, 34, 39, and 40 above.

Legal Standard - In determining whether a project raises a significant issue with respect to the aesthetics criterion, the Commission is guided by the two-part *Quechee* test:

First, a determination must be made as to whether a project will have an adverse impact on aesthetics and the scenic and natural beauty. In order to find that it will have an adverse impact, a project must be out of character with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space.

The next step in the two-part test, once a conclusion as to the adverse effect of the project has been reached, is to determine whether the adverse

effect of the project is “undue.” The adverse effect is considered undue when a positive finding is reached regarding any one of the following factors:

- a. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?
- b. Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
- c. Have the petitioners failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?¹

Analysis of whether a particular project will have an “undue” adverse effect on aesthetics and scenic or natural beauty is also significantly informed by the overall societal benefits of the project.²

The Quechee Test

(1) First Prong - Adverse Impact - Utilizing the two-step Quechee Lakes test³ as the standard of review, there is no doubt that the introduction of two acres of 1,575 industrial solar arrays, will have an adverse impact on the aesthetics and the scenic and natural beauty of this area because such an industrial land use is out of character and in conflict with the surroundings of this retail commercial area which serves as a gateway to the town. Even the Applicant’s expert witness has admitted that the project creates an adverse impact, and if the project were to be sited as proposed, this primary adverse question of Quechee

¹ *Quechee Lakes Corp.*, 154 Vt. 543 (1990).

² Commission Rule 5.109(A).

³ *Quechee Lakes Corp.*, 154 Vt. 543 (1990).

Lakes is inarguable because the industrial siting of the array therein threatens the high scenic qualities necessary to attract commercial business to the town.

(2) Second Prong – Is the Adverse Impact Undue? - Having concluded that the impact of the project would be adverse, I will proceed to apply the three subparts of the second prong of the *Quechee* test to determine whether the adverse impact will be “undue” and ultimately determines if the plan to site the solar array in this highly visible and scenic location should be denied by the Board. An affirmative answer to any one of the three subparts means the Project would have an unduly adverse impact.⁴

(a) Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?

Having reviewed the record, I recommend that the Commission find that the Project would offend the sensibilities of the average person because it would be offensive or shocking and because it would significantly diminish the scenic qualities of the protected scenic gateway area.

Of the three “undue” questions the most obvious violation is that the project will clearly offend the sensibilities of any reasonable person when viewed objectively from public and private roads and properties in the area. The significant intrusion of a massive industrial structure into the center focal point of a scenic town gateway viewshed would be shocking and offensive to any reasonable person driving through, visiting or residing in the area.

⁴ *In re McShinsky*, 153 Vt. 586, 593 and 572.

The Public Utility Commission has stated that the Quechee test “require(s) that reasonable consideration be given to the visual impacts on neighboring landowners.”⁵ The Vermont Supreme Court has recognized that all vantage points, including from private property, be considered by the Commission and specifically ruled that:

In determining whether there has been an undue adverse impact, considering the sensibilities of the average person, the Board can and should consider all vantage points, including from private property. Here, the Board did consider neighbors’ perspective and required extensive screening to mitigate that impact. Under our standard of review, we affirm the decision. We acknowledge that, in addition to considering neighbors’ interest, the Board ruled that the test definition of an average person meant “the average member of the viewing public who would see a particular project from the vantage point of the public;” that is, while the Board must consider all vantage points, it does so from an objective, as opposed to subjective and neighborly, perspective.⁶

The record of the Bradford Solar case clearly shows that: (1) the Project would be clearly visible from several private properties in the area; (2) the Project would be clearly visible from several public roads in the area including Routes 5 and 25 which are designated as scenic gateway roads which must be protected; (3) landscape mitigation would not satisfactorily mitigate views of the Project; and (4) as viewed from most of the surrounding properties and portions of public roads, the Project would be out of context with its surroundings and would significantly diminish the scenic qualities of the Middletown Springs’ viewshed. Moreover the Town Plan specifies that the opinion of the Planning Commission and Selectboard shall be considered that of a reasonable person. Given these factors, I am persuaded that the average person would find the Project offensive or shocking and that the Project’s presence would significantly diminish the scenic qualities of the area. Therefore, I recommend that the Commission find that the Project would

⁵ *In re Petition of Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 20 (2015).

⁶ *Id.* (emphasis supplied).

offend the sensibilities of the average person because it would be offensive or shocking and because it would significantly diminish the scenic qualities of the area.

(b) Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?

In order for a provision to be considered a clear, written community standard, it must be “intended to preserve the aesthetics or scenic beauty of the area” where the proposed project would be located and must apply to specific resources in the proposed project area.⁷ A clear, written community standard must be more than simply “general in nature” and do more than seek “to promote good stewardship of scenic resources without identifying specific actionable standards.”⁸

The Town Plan itself contains comprehensive protections for the Lower Plain district as detailed in the findings 11, 12, 13, 14, 15, 18, 22, 24, 27, 29, 31, 32, 34, 39, and 40 above. The Planning Commission Chair has ably pointed out the provisions requiring examination which do comprise a clear written community standard which are violated by the proposed project. Therefore, I find that the Town Plan does contain a clear written community standard intended to preserve the aesthetics or scenic beauty of the area and which is violated by the project proposal.

(c) Have the petitioners failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?

⁷ *Chelsea Solar LLC*, Docket No. 8302, Order of 7/16/15 at 56, citing *In re Halnon*, NM-25, Order of 3/15/01 at 22.

⁸ *Chelsea Solar LLC*, Docket No. 8302, Order of 7/16/15 at 56, citing *Joint Petition of Green Mountain Power Corporation, et al*, Docket 7628, Order of 5/31/11 at 83.

The next part of the “undue” evaluation from the Quechee Lakes test is whether the applicant has failed to take reasonable mitigating steps to improve the harmony of this proposed solar project with the surrounding highly scenic rural landscape and residential neighborhood. With regard to the Bradford Solar Project, one can easily conclude that the Applicant, by choosing to site the array in the middle of a highly prominent commercial area which is within the gateway area of the town, has failed to take reasonable mitigating steps to improve the harmony of his proposed solar project with the surrounding landscape which is designed to promote commercial activity for the town. The Applicant’s minimal landscaping plan will never adequately screen the monolithic appearance of 2 acres of solar array which can be seen from Routes 5 and 25 which are designated as scenic resources of the town.

Moreover, the applicant has failed to elect to use at least one alternative site which would have provided a location that does not interfere with the aesthetics of the gateway area and Lower Plain district. As such, the project fails to take the mitigating steps to harmonize itself with its surroundings and I do not believe that the project, as proposed, can be properly mitigated unless an alternative site can be identified that provides sufficient screening around the industrial apparatus. If the project is approved at the proposed location, the Bradford Solar project will have an undue adverse impact to what is otherwise a quintessential Vermont Town.⁹ Thus, the Applicant has failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the Project with its surroundings because it failed to provide evidence of

⁹ *Quechee Lakes Corp.*, 154 Vt. 543 (1990).

valid consideration of suitable alternative sites to locate the Project.

Consequently, the Applicant has failed to provide evidence of any reasonable attempt to locate a suitable alternate location for the Project, despite the one Alternative Sites proposed by the Town. In *In re Halnon*, 174 Vt. 514, 811 A.2d 161 (2002), the Vermont Supreme Court held that the Applicant must show that alternative sites that reduce the adverse aesthetic effect are unavailable. The Court denied Halnon a CPG because the Applicant failed to demonstrate that the alternative locations on the property could not be used to mitigate the adverse aesthetic effect on the neighbor.

Because the Applicant has failed to consider an alternative site on the property that would significantly mitigate the adverse impact to the viewshed, and because the proposed site cannot be adequately screen to accomplish any kind of effective screening of the project, I am recommending that the Commission find that Applicant has failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings.

Therefore, the Bradford Solar Project violates 30 V.S.A. 248(b)(5) because it poses an adverse and undue impact to the scenic or natural beauty of the Bradford Town Lower Plain District (Commercial 1) because it is shocking and offensive, violates clear written community standards contained in the Regional Plan and the Town Plan, and because Applicant has failed to take reasonable mitigation measures.

CONCLUSION

I recommend that the Commission conclude that the evidence in this case demonstrates that the Project would violate 30 V.S.A. §248(b)(1)(orderly development) and 30 V.S.A. §248(b)(5)(aesthetics).

DATED at Randolph, County of Orange and State of Vermont this 10th day of July, 2020.

TOWN OF BRADFORD, PLANNING COMMISSION
and SELECTBOARD

/s/ *L. Brooke Dingledine*

BY: L. Brooke Dingledine, Esquire
VALSANGIACOMO, DETORA & McQUESTEN
P. O. Box 625
172 North Main Street
Barre, VT 05641
(802) 476-4181 Ext. 311
Lbrooke@vdmlaw.com