AMENDED 10/7/15

Town of Cornwall
Interim Bylaw Regarding Screening and Siting Requirements
for Ground-Mounted Solar Electric Generation Projects over 15 kW

I. Authority; Implementation

A. This interim Bylaw is enacted pursuant to 24 V.S.A. §§ 2291(28), 4414(15), and 4415.

B. In accordance with 24 V.S.A. §§ 2291(28)(A), 4414(15)(A) and 4415, this interim Bylaw is intended to be no more restrictive of ground-mounted solar electric generation plants that generate over 15 kW of electricity ("solar projects") than the screening requirements governing new commercial development in Cornwall.

C. The Cornwall Select Board is hereby designated as the municipal body to make recommendations to the Vermont Public Service Board ("PSB") applying this Bylaw to solar projects.

D. This interim Bylaw has been adopted by the Town of Cornwall due to the sudden changes wrought by Act 56 of the Vermont Legislature in the 2015 session and to set forth a clear, written community standard regarding the aesthetics of solar projects. Act 56 will require a careful re-writing of sections of the Town Plan and study of Cornwall's role in the state's development of solar projects. This interim Bylaw, adopted as an emergency measure, shall be in effect for two years from the date of its adoption by the Cornwall Select Board, or for such extended term as may be allowed by 24 V.S.A. § 4415, while the Cornwall Select Board and Planning Commission study the issue of solar project screening, siting, and setbacks in the Town. The Cornwall Select Board is adopting this interim Bylaw in order to protect the general welfare of Cornwall residents and land owners and to provide for orderly physical and economic growth within the Town, while promoting the development of renewable energy resources and facilities in Cornwall in a manner that limits adverse impacts to the Town's cultural and scenic resources. Cornwall is a rural community with very little commercial development and low to medium density residential housing. Proper screening and decommissioning of solar projects is vital to maintaining the aesthetic quality of the landscape, which is fundamentally non-industrial.

II. Definitions

A. "Field of view" from a given point means the area visible within a photograph taken from that point with either of two camera and lens combinations as follows:
- A Digital Camera with a Full-Frame Sensor and a 50mm focal length lens
- A Digital Camera with an APS-C Sensor and a 35mm focal length lens.

B. "Commercial development" means all construction other than for residential, agricultural, governmental purposes or by a religious institution, which is subject to the review of the

Cornwall Planning Commission and/or any Development Review Board created by the Town. "New commercial development" means any construction of new commercial buildings which commenced after the effective date of this interim Bylaw.

C. "Plant" has the meaning set forth in 30 V.S.A. § 8002(14).

D. "Project" means a) a ground-mounted solar plant of over 15 kW, including any accessory structures, but excluding utility poles or b) new commercial development within the Town of Cornwall. A project does not include, and this interim Bylaw does not apply to, a solar plant of 15 kW or smaller.

E. "Screening" means reasonable aesthetic mitigation measures to harmonize a project with its surroundings and includes landscaping, vegetation, fencing, and topographic features and existing structures, all of which must be maintained until a solar project decommissioning is complete or the project is dismantled and the site restored to its pre-installation condition.

F. "Setback" has the meaning set forth in 30 V.S.A § 248(s)

G. "Town" means the town of Cornwall, Vermont.

H. "Visible area" refers to the portion of a project that is not blocked from view by screening.

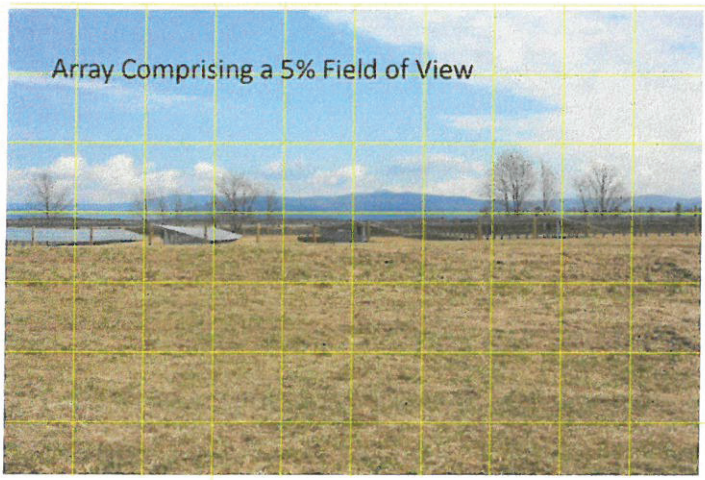
III. Screening Requirements

A. Each project, any part of which is proposed to be constructed within the Town, must be designed and constructed of materials, colors and textures that blend into the surrounding natural or built environment to the maximum extent feasible.

B. Each project shall incorporate screening that (i) breaks up the visible area of the project so as to prevent unobstructed views of the project; (ii) mitigates adverse aesthetic impacts on views from residences and public highways; and (iii) harmonizes the project with the character of the surrounding landscape and neighborhood.

C. In addition to the requirements of subsection III B above, any project must incorporate sufficient screening to ensure that the visible area of the project represents no more than 5% of the field of view from any of the following: (i) any point within a residence, (ii), any point within 150 feet of a residence, or (iii) any point on a public highway. By way of example, and not limitation, the image of solar panel front surfaces below was taken with a lens giving an equivalent field of view to that of a 50 mm lens on a 35mm camera. The 7x10 grid imposed on the image shows the acceptable portion of a solar project visible from the vantage point: only 3.5 grid squares show solar panels out of a total of 70 grid squares, or 5% of the field of view. The remainder of the solar project (including the

panels visible edge-on) shown in the photograph would have to be completely screened from the vantage point shown to meet the 5% field-of-view standard. This 5% field of view may be achieved by use of setbacks in conjunction with a planting plan or any other acceptable screening technique.



D. Plantings for screening purposes shall be of sufficient height, density and maturity to achieve the screening standard within three years of planting.

E. Plantings shall be made in accordance with a screening maintenance plan, included with application for and made a condition of the project's Certificate of Public Good. Such screening maintenance plan shall include at a minimum:

   a. A schematic showing the location of both existing and planned planting material, earthwork and structures.
   b. A plant material list including all plants to be made as part of the screening, listed by both common and botanical name, the size at installation, expected size at maturity, and expected number of years to maturity.
   c. The name, telephone number, street address, and e-mail address of the person or persons responsible for screening installation and maintenance, the timing of installation, and a plan for ensuring year-round screening maintenance.
   d. A copy of an on-going screening maintenance contract (which may have commercially sensitive price terms redacted). Such contract shall be for a term of no less than three years.
   e. Pre-construction photographic images of the site to document the site's condition prior to planting or project construction. These images shall set the standard for decommissioning.

F. The screening requirements of this Section apply year-round during the entire period of existence of a project, whether or not a solar project is still in service. Screening must remain in place and be maintained until a project has been fully decommissioned or deconstructed and the site restored to its condition prior to installation or construction.

G. A project shall be sited within a parcel in such a manner as to make maximum use of pre-existing vegetation, hedgerows, hills, ridges, buildings, and other topographical features and structures that naturally screen the project, thereby minimizing the need for the installation of new screening materials.

H. Where new screening materials must be installed or planted to ensure compliance with this interim Bylaw, natural, living, native screening materials such as native trees and shrubs shall be used in lieu of artificial screening materials such as walls, fences, and other structures; provided, however, that limited use of artificial screening materials is permissible to the extent that (i) the use of living screening in that area is not feasible, and (ii) the artificial screening is of size, scale and materials that are consistent with the character of the surrounding neighborhood and landscape. All planting must be completed within four weeks of the date on which the solar project first feeds electricity onto the electric grid (the "in service date"), or in the case of new commercial development the completion of principle construction. A solar project with an in-service date falling during frozen ground conditions must complete all plantings within four weeks of the following spring thaw.

I. Maintenance of landscaping and screening shall be the joint and several responsibility of the developer and property owner on which the project is constructed, maintained and operated. Screening maintenance shall include at a minimum: watering, dead heading, trimming where appropriate, prompt replacement of any diseased, damaged or dead plant material, and control of invasive species, and in the case of any project such obligations shall be a condition of any Certificate of Public Good granted by the PSB, or any successor administrative agency having jurisdiction over such project A landowner hosting a project – whether by using his land, leasing his or her land to a project developer or by grant of easement or other means -- who allows screening vegetation contained in an approved planting plan to die and does not replace or repair such screening within three weeks of written notice by the Town shall be subject to a civil fine of ~~$500 and $50~~up to the maximum amount allowed by 24 V.S.A. § 4451 or any successor statute for each day that the condition remains unremedied, as well as all Town costs, including but not limited to legal fees, related to enforcement of the same. No payment of a civil penalty under this subsection shall relieve a project developer from responsibility for maintaining screening in accordance with the project's approved screening plan.

J. Notwithstanding anything in this Bylaw to the contrary, a) no screening shall be placed in the public right of way needed by the Town or by the State of Vermont for road plowing or maintenance, including but not limited to areas needed for installation and maintenance of culverts and ditches, and b) no screening shall be planted or allowed to grow in a manner that casts a shadow over the public right of way from October to May, thereby creating a cold spot on the road. The burden shall be on the project developer to demonstrate that any screening plantings near a public right of way do not and will not interfere with Town maintenance of its roads, ditches and culverts and will not cast such shadows in the winter months.

K. Siting: A project's location in the landscape constitutes a critical element in the aesthetic siting of a project. Poor siting cannot be adequately mitigated. Accordingly, the first element any solar developer must consider is the proposed site's aesthetic impact on the surrounding landscape.

Good solar project sites generally have several of the following characteristics:

- Roof-mounted systems;
- Systems located in close proximity to, or screened by, existing large-scale commercial, industrial or agricultural buildings;
- Proximity to existing hedgerows, evergreen vegetation, berms, hills, or other topographical features that naturally screen some aspects of the proposed solar project;
- Reuse of former brownfields or otherwise impacted property, which otherwise complies with the set-back requirements of this interim Bylaw.

Poor solar project sites generally have several of the following characteristics:

- No natural screening;
- Topography that causes the solar project to be visible against the skyline, or from hiking trails or scenic bicycle routes, public, historic or scenic places, and common vantage points like roads or neighborhoods;
- A location that requires clear-cutting or fragmentation of the working landscape, including forestland, open farm land, and primary agricultural soils, as mapped by the U.S. Natural Conservation Service.
- Rare, threatened, or endangered species habitat, or communities as mapped or identified through site investigation, and core habitat areas, migratory routes, and travel corridors;
- A location in proximity to and interfering with a significant viewshed. Significant viewsheds within the Town of Cornwall include the Town's scenic by-ways and historic districts.

IV. Setbacks. This subsection sets minimum Cornwall setback requirements that shall apply to solar projects in the Town approved by the Vermont Public Service Board under 30 V.S.A. § 248 and may be used in conjunction with physical screening to achieve the Town's solar project screening standard.

A. The minimum setbacks from a State or municipal highway, measured from the edge of the traveled way shall be:

(i) 200 feet for a facility with a plant capacity exceeding 150 kW; and

(ii) 100 feet for a facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.

B. From each property boundary that is not a State or municipal highway:

(i) 100 feet for a facility with a plant capacity exceeding 150 kW; and

(ii) 50 feet for a facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.

C. This subsection does not require a setback for a facility with a plant capacity equal to or less than 15 kW.

D. No solar project shall be located within 1,000 feet of any other solar project.

E. The requirements of the setbacks in this section may be decreased to the minimums set forth in Act 56 if the project developer can demonstrate that the topography of a site naturally screens 100% of project view from the boundary line in question and that no portion of the solar project or any associated screening will affect road maintenance or plowing.

V. Decommissioning. In order to preserve the aesthetic qualities of Cornwall's rural character and to support the orderly development of the region each solar project in the Town of Cornwall shall be decommissioned at the end of its useful life and the property shall be restored to its pre-project condition, including but not limited to the removal of all above-ground installed infrastructure that is part of the project. Developers of all solar projects and landowners hosting solar projects shall jointly and severally provide the Town with appropriate assurances to guarantee funding exists to decommission the project.

VI. Good Neighbors. Solar developers should practice a "good neighbor policy". The siting of the solar project should be done in such a manner that the solar project creates no greater burden on neighboring property owners or public infrastructure than it does on the property on which it is sited.

VII. Waiver. Under this interim Bylaw, the Cornwall Select Board upon application may, in any administrative proceeding, support the issuance of regulatory approval for a project not otherwise in compliance with this interim Bylaw, after public hearing preceded by notice in accordance with 24 V.S.A. § 4464. Such support by the Cornwall Select Board shall be granted only upon a finding by Select Board that the proposed project is consistent with the health, safety, orderly development, and welfare of the municipality. The applicant and all abutting property owners shall be notified in writing of the date of the hearing and of the Select Board's final determination.

VIII. Screening Plans; Complaints. Copies of all PSB orders authorizing the construction, operation and maintenance of solar projects are available to the public on the PSB's website (http://psb.vermont.gov/orders). Hard copies of all applicable PSB orders and screening plans related to Cornwall projects shall be maintained for public viewing at the Cornwall Town Clerk's Office during normal business hours. Any person who believes that the screening requirements of a PSB order applicable to a particular Cornwall solar project are not being met may contact the PSB, the Vermont Department of Public Service, or the Cornwall Select Board and make his or her concerns known. Any person who believes that the screening plan requirements for a new commercial

development are not being met may contact the Cornwall Select Board and make his or her concerns known.

IX. Severability. If any section of this interim Bylaw is held by a court or administrative agency of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this interim Bylaw.

Effective Date. This interim Bylaw shall become effective upon the affirmative vote of the majority of the Cornwall Select Board, subject to the notice and public hearing requirements of 24 V.S.A. §4415.

Approved: ~~September~~ November __~~8~~, 2015

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Ben Wood

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John Roberts

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