



**District Environmental Commissions #4**  
**111 West Street**  
**Essex Jct., Vermont 05452**

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August 7, 2019

GMP-Essex Solar/Storage, LLC  
c/o Kirk Shields  
163 Acorn Lane  
Colchester, VT 05446

SH-2, LLC  
c/o William Veve  
PO Box 1088  
Jericho Center, VT 05465

RE: Jurisdictional Opinion #JO-4-272

#4C0347-1 – Dissolution of Act 250 jurisdiction on a sand extraction site related to a 4.5 MW photovoltaic electric generation facility and 2 MW battery storage facility, Essex, Vermont.

Dear Will:

Facts

On October 24, 1980, the District Commission issued Land Use Permit ("LUP") #4C0347-1 for the extraction of approximately one million cubic yards of sand over a 10-year period from a 111.4-acre parcel located north of River Road and east of Sand Hill Road in Essex, Vermont. Two subsequent LUP amendments (LUP #4C0347-2 dated November 19, 1982 and #4C0347-3 dated August 8, 1983) were issued by the District Commission for minor changes in the sand excavation phasing practices. LUP #4C0347-1 authorizing the sand extraction activities expired on November 1, 1990. According to Mr. Will Veve, all extraction activities ceased in the early 1990s.

Sand Hill Solar, LLC was issued Certificate of Public Good No. 17-5016-NMP, dated February 22, 2018 for the construction of a 500kW photovoltaic electric generation facility on approximately 3.5-acres of the former sand extraction facility. On September 12, 2018, the District Coordinator issued a jurisdictional opinion stating that the portion of the former sand extraction facility to be used for the construction of the 500 kW photovoltaic electric generation facility has been reclaimed in accordance with LUP #4C0347-1, satisfying condition #11 of Certificate of Public Good No. 17-5016-NMP. Therefore, the District Coordinator concluded that Act 250 jurisdiction dissolved for the portion of the former sand extraction facility to be used for the construction of a 500 kW photovoltaic electric generation facility. The remainder of the former sand extraction facility remained under Act 250 jurisdiction.

GMP-Essex Solar/Storage, LLC was issued Certificate of Public Good No. 18-2902-PET, dated January 16, 2019 for the construction of a 4.5 MW photovoltaic electric generation facility and a 2 MW battery storage facility (the "Project") on the remainder of the limits of the former sand extraction facility.



This jurisdictional opinion was initiated pursuant to a request made by Mr. Will Veve, dated July 22, 2019, requesting an opinion from the District Coordinator whether the Project satisfies conditions #35 and 36 of Certificate of Public Good No. 18-2902-PET, which state:

35. The CPG Holder shall comply with the terms of the Memorandum of Understanding between the CPG Holder and the Natural Resources Board ("NRB") entered into the evidentiary record as exhibit GESS-WV-12.
36. With respect to the reclamation requirements of Act 250 Land Use Permit #4C0347-1 ("LUP") that attach to the parcel of land upon which the Project is to be located:
  - a. Prior to commercial operation of the Project, the CPG Holder shall file with the Commission an Act 250 Jurisdictional Opinion that confirms that reclamation has been completed in accordance with the LUP. However, if Project construction is completed after the growing season and as a result final reclamation cannot be accomplished at that time, the CPG Holder shall be allowed to operate the Project and complete final reclamation pursuant to the LUP during the next growing season (but no later than the first July 1 after the Project begins to operate).
  - b. Reclamation activities shall be permitted to occur concurrently with the construction of the Project.
  - c. Reclamation activities shall not occur within any RTE plant areas (or their buffers) as shown on exhibit GESS-WV-14, and RTE plants shall otherwise be protected in accordance with the GESS-ANR MOU, exhibit GESS-WV-11.
  - d. The CPG Holder shall not commence site preparation or construction of the Project, or reclamation as specified in subparagraph a. above, without first obtaining authorizations to discharge under Vermont Construction General Permit 3-9020 and Vermont Operational-Phase Stormwater Discharge General Permit 3-9015. The Project shall be constructed and operated in accordance with such permits.
  - e. For winter shutdown and/or winter construction, the CPG Holder shall follow the guidance and standards within the Vermont Standards & Specifications for Erosion Prevention and Sediment Control, August 2006.
  - f. Disturbed areas shall be seeded and mulched, as needed. The CPG Holder shall monitor germination and re-seed as necessary until a robust perennial cover of grass growth is established.

On July 30, 2019, a site visit to the property was made by the District Coordinator and additional photographs of the site reclamation taken on August 4-5, 2019 were provided to the District Coordinator by Mr. Will Veve on August 6, 2019. The District Coordinator observed that the portion of the site to be used for the Project has been reclaimed consistent with LUP #4C0347-1.

#### Decision

Once Act 250 jurisdiction has attached, it does not "detach" from a parcel unless the permit has expired *In re Eustance*, No. 13-1-06 Vtec, Decision at 11 (2/16/07), Judgment Order (3/16/07)(citing *In re Huntley*, 2004 VT 115, ¶12; 177 Vt. 596, 5999 (2004)), *aff'd*, 2007-156 (Vt. S. Ct. 3/13/09). Until 1996 all permits had expiration dates but amendments were made to 10 V.S.A. 6090 such that expiration dates contained in permits issued before July 1, 1994 (involving developments that are not for extraction of mineral resources, operation of solid waste disposal facilities, or logging above 2,500 feet) are extended for an indefinite term, as long as there is

compliance with the conditions of the permits. Since then, the only expiration date in permits was in projects for extraction of mineral resources. The Environmental Board had often stated that once Act 250 jurisdiction is triggered, subsequent events will not lift such jurisdiction, nor can jurisdiction be waived. *In Re John Rusin*, 162 Vt.185, 189 (1994), affirming, *Re: John Rusin*, #8B0393-EB, Finding of Facts, Conclusions of Law and Order at 5 (Vt. Env'tl. Bd. June 10, 1993). However, the Environmental Division of the Superior Court ruled that Act 250 jurisdiction over sand and gravel extraction project dissolves when the project's permit expires and where the tract has been reclaimed under 10 V.S.A. 6086(a)(9)(E)(ii). *In re: Richard and Elinor Huntley*, No. 2004 VT 115 (2004), reversing *Re: Richard and Elinor Huntley*, Declaratory Ruling #419, Memorandum of Decision (7/3/03).

The District Coordinator finds that the portion of the site used for the 500 kW photovoltaic electric generation facility project (the Sand Hill Solar, LLC project) was reclaimed in accordance with LUP #4C0347-1 and Act 250 jurisdiction has previously been dissolved on that portion of the site. The District Coordinator also finds that the portion of the site to be used for the 4.5 MW photovoltaic electric generation facility and 2 MW battery storage facility project (the GMP-Essex Solar/Storage, LLC project) has also been reclaimed in accordance with LUP #4C0347-1, and satisfies conditions #35 and 36 of Certificate of Public Good No. 18-2902-PET. Therefore, the District Coordinator concludes that Act 250 jurisdiction dissolves, in total, for the entirety of the former sand extraction facility.

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the District Coordinator at the above address. As of May 31, 2016, with the passage of Senate Bill 123 (Act number pending), Act 250 Rule 3(C) (Reconsideration by the Board) is no longer in effect. Instead, any appeal of this decision must be filed with the Superior Court, Environmental Division (32 Cherry Street, 2<sup>nd</sup> Floor, Ste. 303, Burlington, VT 05401) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings ("VRECP"). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50. The appellant also must serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

If you have any questions regarding this jurisdictional determination, please contact me at 802-879-5658 or [rachel.lomonaco@vermont.gov](mailto:rachel.lomonaco@vermont.gov).

Sincerely,



Rachel Lomonaco  
District #4 Coordinator

cc: Greg Boulbol, NRB General Counsel

## CERTIFICATE OF SERVICE

I hereby certify on this 7<sup>th</sup> day of August 2019, a copy of the foregoing JURISDICTIONAL OPINION #4-272 GMP-ESSEX SOLAR/STORAGE, LLC/ C/O KIRK SHIELDS, COLCHESTER, VT AND SH-2, LLC, C/O WILLIAM VEVE, JERICHO CENTER, VT, was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

**Note:** any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to [NRB.Act250Essex@vermont.gov](mailto:NRB.Act250Essex@vermont.gov)

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### FOR YOUR INFORMATION

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Diane Snelling, Chair  
Greg Boulbol, General Counsel  
Evan Meenan, Associate General Counsel  
Natural Resources Board  
10 Baldwin Street  
Montpelier, VT 05633-3201

Dated at Essex Junction, Vermont, this 7<sup>th</sup> day of August, 2019.



Natural Resources Board Technician  
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