



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
106 HOGAN ROAD, SUITE 8
BANGOR, MAINE 04401

AMANDA E. BEAL
COMMISSIONER

STACIE R. BEYER
ACTING EXECUTIVE DIRECTOR

CERTIFICATION

Maine Department of Environmental Protection and
Three Rivers Solar Power, LLC

Findings of Fact and Determination

AMENDMENT A TO SITE LAW CERTIFICATION SLC 12

The Maine Land Use Planning Commission (Commission), through its staff, after reviewing the certification request and supporting documents submitted by the Maine Department of Environmental Protection (MDEP or Department) and Three Rivers Solar Power, LLC (Applicant) for Amendment A to Site Law Certification SLC 12 and other related materials on file, pursuant to the Commission's Land Use Standards, find the following facts:

- 1. Department contact:** Keegan Feero, Project Manager
Maine Department of Environmental Protection
Eastern Maine Regional Office
106 Hogan Road
Bangor, ME 04401
- 2. Applicant:** Three River Solar Power, LLC
Attn: Dave Fowler, Senior Director
89 Main Street
Yarmouth, Maine 04096
- 3. Agent:** Acheron Engineering, LLC
Attn: Kirk Ball
153 Main Street
Newport, Maine 04953
- 4. Landowner:** Elliot Jordan & Son, Inc.
Attn: Duane Jordan, President
381 Cave Hill Road
Waltham, Maine 04605



5. **Accepted as complete for processing:** October 27, 2022
6. **Location of proposal:** T16 MD BPP, Hancock County, Maine
Maine Revenue Service (MRS) Map HA007, Plan 01,
Lots 1.3, 4.1, and 13.1
7. **Current zoning:** Resource-Dependent Development (D-RD) Subdistrict, 716.3 acres

INTRODUCTION

8. Title 12, § 685-B(1-A)(B-1) establishes that except for projects that are located in a planned subdistrict that was approved or accepted by the Commission for processing prior to September 1, 2012, a permit from the Commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, § 482, subsection 2. A project meeting that definition is reviewed under Title 38, § 489-A-1 (Site Law). A person submitting a development proposal to the MDEP under Title 38, § 489-A-1 shall file a notice of the intent to develop and a map indicating the location of the proposed development with the Commission prior to or concurrently with submission of a development application to the MDEP. The MDEP must receive certification from the Commission that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed, and the proposed development meets any land use standard established by the Commission that is not considered in the MDEP's review under Title 38, § 489-A-1, subsection 1 before issuing a permit.

The following findings, conclusions, and conditions constitute the Commission's certification that the portion of Three Rivers Solar Power, LLC's development in T16 MD BPP, as proposed, meets the applicable Commission Land Use Standards that would not be considered by the MDEP as part of any review under the Site Law.

COMMISSION ADMINISTRATIVE HISTORY

9. On August 8, 2018, the Commission approved the application for Zoning Petition ZP 772, submitted by Next Phase Energy Services, LLC and Elliot Jordan & Son, Inc., to allow for the construction of a grid-scale solar energy generation facility in T16 MD BPP, Hancock County, Maine (the Project). The approval allowed rezoning of approximately 696 acres of a 1,115-acre parcel from General Management (M-GN) subdistrict, Wetland Protection (P-WL) subdistrict, and Shoreland Protection (P-SL2) subdistrict to Commercial Industrial Development (D-CI) subdistrict. The new subdistrict designation became effective on August 23, 2018.
10. On November 14, 2019, the MDEP submitted to the Commission a Request for Certification for the Project.
11. On November 25, 2019, as part of SLC 12, the Commission certified that the Project was an allowed use within the subdistricts in which it was proposed.
12. On February 12, 2020, as part of SLC 12, the Commission certified that the Project conformed with the applicable regulatory and statutory requirements, and plans adopted pursuant to 12 M.R.S.

Chapter 206-A and met the Commission's land use standards applicable to the project that were not considered in the MDEP's review.

13. On July 10, 2020, the MDEP issued Department Order L-28195-PS-A-N/TH-B-N to Three Rivers Solar, LLC for the Project, which included the construction of a 100 megawatt (MW) solar facility with a substation, a main power transformer, inverters, and collector lines. The Project consisted of approximately 300,000-400,000 solar panels in a 465-acre area, plus a 480-foot by 250-foot substation located adjacent to an existing transmission line.
14. On June 8, 2022, the Commission approved the application for Amendment A to Zoning Petition ZP 772, submitted by Three Rivers Solar, LLC, to allow for the construction of a grid-scale solar energy generation facility in T16 MD BPP, Hancock County, Maine. The approval allowed the rezoning of approximately 716 acres to a Resource-Dependent Development (D-RD) subdistrict. The rezoning included the original 696 acres of D-CI subdistrict approved under Zoning Petition ZP 772 (see Finding 9), and an additional 20 acres that was formerly, but no longer, designated as prime farmland soils (the Expansion Area). The new subdistrict designation became effective on June 23, 2022.
15. On September 30, 2022, the Commission received a notice of intent to amend the Project to include the 20-acre Expansion Area. The Request for Certification by the Applicant initiated Amendment A to SLC 12 (SLC 12-A), an Amendment to the SLC 12 Certification previously issued to the MDEP. The Commission accepted the Request for Certification as complete for processing on October 27, 2022.
16. On November 30, 2022, as part of the Certification of SLC 12-A, the Commission certified that the uses proposed within the Expansion Area were allowed within the D-RD subdistrict.

PROPOSAL

17. In addition to certifying that the uses proposed within the Expansion Area are allowed uses within the D-RD subdistrict (see Finding 16), the Request for Certification asks that the Commission determine if the Expansion Area proposal meets the applicable Commission land use standards that are not considered in the MDEP review.
18. The application includes section 1, which presents a description of the project; section 25, which addresses applicable notice of intent to file requirements; section 31, which addresses the Commission's criteria for certification, and engineering plans, which detail exact dimensions and locations of the Expansion Area project components. Activities within the expansion area generally include installation of solar panels resulting in 170 square feet of additional impervious area; utilization of 2.5 acres for a temporary staging area, which would be covered with solar panels when the project is completed; and revegetation of 1.25 acres of an existing gravel access road.
19. The Expansion Area is not within a flood prone area. No vegetation clearing, new access roads, parking areas, lighting, or changes to previously approved signs are proposed within the Expansion Area.

20. This proposal is an amendment to the existing Site Law Certification SLC 12 and involves Zoning Petition ZP 772 and Amendment A to Zoning Petition ZP 772; therefore, the Commission has reviewed and takes notice of the non-confidential agency records of Site Law Certification SLC 12, Zoning Petition ZP 772, and Amendment A to Zoning Petition ZP 772.

RULES OF PRACTICE, CRITERIA, ANALYSIS AND FINDINGS

Pursuant to 12 M.R.S. § 685-C(1), the Commission has adopted a *Comprehensive Land Use Plan*, ver. 2010 (CLUP) that guides the Commission in developing specific land use standards, delineating district boundaries, siting development, and generally fulfilling the purposes of the Commission's governing statute. The Commission's land use standards are codified in *Land Use Districts and Standards* 01-672 C.M.R. ch. 10 (Chapter 10), last revised March 29, 2022. The land use standards that are applicable to certifying compliance of the Expansion Area, which are not considered in the MDEP's review under Title 38, § 489-A-1, subsection 1, are evaluated in Findings 21 through 24 below.

21. **Notice of filing:** Notice of filing of the Request for Certification was properly made on October 27, 2022, to appropriate parties and the public as required under Section 4.04(B)(3)(b) of the Commission's *Rules of Practice*, 01-672 C.M.R. Ch. 4, last revised November 01, 2021.

22. Public health, safety and general welfare:

- A. Criteria: The burden is on the applicant to demonstrate by substantial evidence that the public's health, safety, and general welfare will be adequately protected. 12 M.R.S. § 685-B(4) and Chapter 10, § 10.24(A)(1). Also, the applicant must show that the proposed use will not burden local public facilities and services such as fire and ambulance services, and police. CLUP, Section 4.3,E, p.65.
- B. Analysis: The Applicant has previously provided information as part of Zoning Petition ZP 772 and Amendment A to Zoning Petition ZP 772 regarding the public's health, safety, and general welfare. The Town of Eastbrook Volunteer Fire Department, which is located 5.2 miles from the Project and Expansion Area, stated they would provide fire and ambulance services; they believe the solar project would have minimal impact on the services they provide and would not require any additional resources from the department. Police services would be provided by the Hancock County Sheriff's Department.
- C. Finding: The Commission finds that the Applicant has demonstrated that emergency services for the project area will be provided. In regards to the public's health, safety, and general welfare, the proposal meets the intent of the applicable portions of the CLUP, 12 M.R.S. § 685-B(4), and Chapter 10, § 10.24(A)(1).

23. Right, title and interest, and subdivision and lot creation:

- A. Criteria:
 - 1) The applicant must demonstrate evidence of sufficient right, title, or interest in all of the property that is proposed for development or use. 12 M.R.S. § 685-B(2)(D) and Chapter 10, § 10.24(A)(1).

- 2) A person may not commence development of, or construction on, any lot, parcel, or dwelling unit within any subdivision or sell or offer for sale any interest in any lot, parcel, or dwelling unit within any subdivision without a permit issued by the Commission. 12 M.R.S. § 685-B(1)(B). In considering the land use standards, the Commission evaluates, among other items, whether the proposal to place a structure upon any lot is in a subdivision and whether any divisions of land comply with the Commission's laws and rules governing subdivisions. Chapter 10, § 10.25(Q).

B. Analysis:

- 1) The Project and Expansion Area parcels are currently owned by Elliot Jordan and Sons, Inc. (Landowner).¹ The Landowner entered into a lease agreement with Three Rivers Solar Power, LLC, effective December 2, 2019, summarized by a *Memorandum of Solar Land Lease* signed by the property owner on November 22, 2019 and recorded in the Hancock County Registry of Deeds.² The Lease contains an automatic extended term clause extending the lease term thirty five years from the start of commercial operations with the right for the lessee to extend the lease for an additional twenty five years.
- 2) The Applicant provided an updated land division history showing that no divisions of the parcel have occurred since SLC 12 was approved in February of 2020. SLC 12 provided a detailed land division history going back to 1993 and concluded that no land divisions requiring a subdivision permit from the Commission had occurred during the preceding 20 years.

- C. Finding: Three Rivers Solar Power, LLC has applied for a minor amendment to Department Order L-28195-PS-A-N/TH-B-N, in addition to the Commission's Site Law Certification. Provided that the MDEP finds in their review of the minor amendment that the Applicant has sufficient right, title or interest, the Commission finds that Three Rivers Solar Power, LLC has met the requirements of 12 M.R.S. § 685-B(2)(D) and Chapter 10, § 10.24(A)(1). Additionally, based on the information provided and the existing deed records, the Commission finds that structures will not be located on a lot in an unpermitted subdivision in accordance with Commission's laws and rules governing subdivisions including Chapter 10, §§ 10.24(A)(1)(F) and 10.25(Q). Specifically, there have been no illegal divisions of land stemming from the parent parcel that would have required subdivision approval from the Commission in the preceding 20 years.

¹ Hancock County Registry of Deeds, Book OR 6020, Pages 38 - 46.

² Hancock County Registry of Deeds, Book OR 6995, Pages 832 - 836.

24. Dimensional requirements:

A. Criteria and Analysis:

1) *Minimum setbacks:*

- a) Criteria: Commercial, industrial, and other nonresidential principal and accessory structures shall be set back 100 feet from a flowing water draining less than 50 square miles and from non-forested wetlands located in P-WL1 subdistricts, 75 feet from all roadways, and 25 feet from the side and rear property lines. Chapter 10, § 10.26(D)(3).

The Commission may reduce the minimum road setback requirement for commercial, industrial and other non-residential structures and uses, to no less than 20 feet provided the road is internal to the development and not a throughway, it is impracticable to extend the road in the future to create a longer road or a throughway (based on geography, surrounding development or other characteristics), the road will be used primarily by clients or customers of the facility, and the reduction in road setback will not cause an undue adverse impact to the natural resources, community character, or scenic quality of the area. Chapter 10, § 10.26(G)(10)(b).

- b) Analysis: The Applicant stated that all structures associated with the Expansion Area will be set back at least 150 feet from any streams and waterbodies and 25 feet from side and rear property boundary lines. All proposed development within the Expansion Area will be set back at least 75 feet from the 75-00-0 Road or 20 feet from an internal road. The existing roads within the Expansion Area are proposed to be revegetated.

2) *Maximum structure height:*

- a) Criteria: Beyond 500 feet from the normal high water mark of a body of standing water 10 acres or greater or coastal wetland, the maximum structure height of commercial, industrial, and other non-residential uses involving one or more structures shall be 100 feet. Chapter 10, § 10.26(F).
- b) Analysis: The maximum proposed structure height within the Expansion Area would be 20 feet for PV panels.

- B. Finding: The Commission finds that the Project and Expansion Area meet the dimensional requirements of Chapter 10, §§ 10.26(D)(3) and 10.26(G)(10)(b) for minimum setback requirements, and Chapter 10, § 10.26(F) for maximum structure height.

FINAL CONCLUSION FOR THE CERTIFICATION OF COMPLIANCE WITH THE COMMISSION'S LAND USE STANDARDS

Based on the findings set forth above, the Commission concludes that, with respect to the proposed Expansion Area, Three Rivers Solar Power, LLC has met its burden of demonstrating that the

proposal conforms with the applicable statutory and regulatory requirements and plans adopted pursuant to 12 M.R.S Chapter 206-A and meets the Commission's Land Use Standards applicable to the Expansion Area that are not considered in any MDEP review.

CONDITIONS

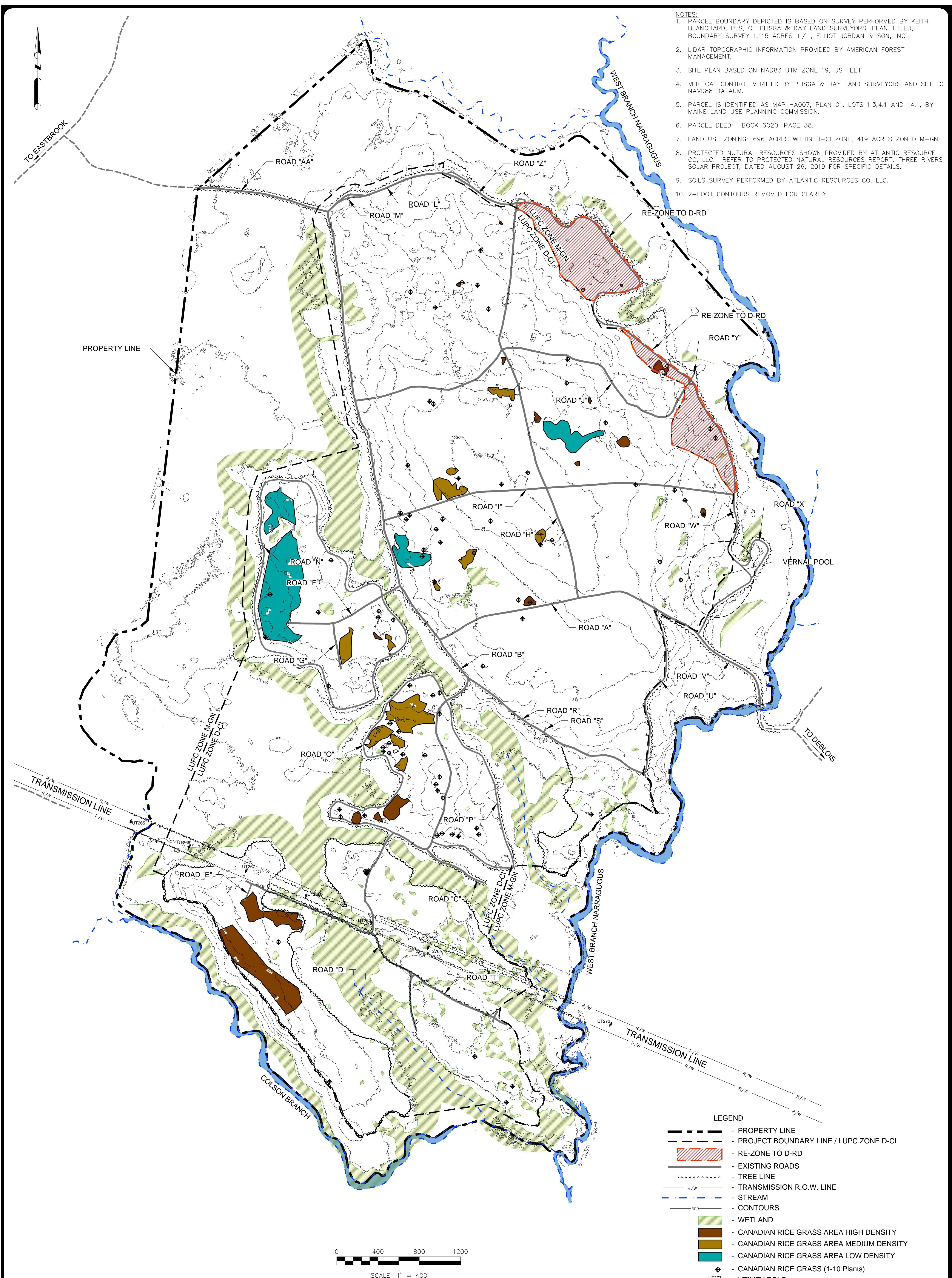
Therefore, the Commission CERTIFIES that Amendment A to Site Law Certification SLC 12, submitted by Three Rivers Solar Power, LLC for the Expansion Area of a grid-scale solar energy generation facility, complies with the relevant provisions of the Commission's Land Use Standards, subject to the findings of fact and conclusions contained herein, and the following conditions:

1. *Right, title or interest.* The MDEP finds in its Site Law permitting decision that Three Rivers Solar Power, LLC possesses sufficient right, title or interest to develop the Project and Expansion Area.
2. *Dimension requirements.* All project structures, both temporary and permanent, must be designed and located in accordance with the requirements of Chapter 10, § 10.26 of the Commission's Land Use Standards.
3. *Lighting.* All project lighting, including temporary lighting, must comply with the requirements of Chapter 10, § 10.25(F)(2) of the Commission's Land Use Standards.
4. The Project and Expansion Area are otherwise designed, constructed, and operated as proposed in the materials submitted to the Commission.
5. All conditions of the previously issued Commission Site Law Certification SLC 12 shall remain in effect, except as specifically modified by this certification.

Pursuant to Chapter 4 § 4.05(F)(1)(f), a Commission determination to approve or deny a request for certification of a Site Law application pending before the Maine Department of Environmental Protection (MDEP) is not a final agency action and is not appealable except as part of the Department of Environmental Protection permitting decision.

DONE AND DATED AT BANGOR, MAINE, THIS 13TH DAY OF DECEMBER 2022.

By: SR Beyer
Stacie R. Beyer, Acting Executive Director



- NOTES:
1. PARCEL BOUNDARY DEPICTED IS BASED ON SURVEY PERFORMED BY KEITH BLANCHARD, PLS, OF PLISGA & DAY LAND SURVEYORS, PLAN TITLED, BOUNDARY SURVEY 1,115 ACRES +/-, ELLIOT JORDAN & SON, INC.
 2. LIDAR TOPOGRAPHIC INFORMATION PROVIDED BY AMERICAN FOREST MANAGEMENT.
 3. SITE PLAN BASED ON NAD83 UTM ZONE 19, US FEET.
 4. VERTICAL CONTROL VERIFIED BY PLISGA & DAY LAND SURVEYORS AND SET TO NAVD88 DATUM.
 5. PARCEL IS IDENTIFIED AS MAP HA007, PLAN 01, LOTS 1.3,4.1 AND 14.1, BY MAINE LAND USE PLANNING COMMISSION.
 6. PARCEL DEED: BOOK 6020, PAGE 38.
 7. LAND USE ZONING: 696 ACRES WITHIN D-CI ZONE, 419 ACRES ZONED M-GN.
 8. PROTECTED NATURAL RESOURCES SHOWN PROVIDED BY ATLANTIC RESOURCE CO, LLC. REFER TO PROTECTED NATURAL RESOURCES REPORT, THREE RIVERS SOLAR PROJECT, DATED AUGUST 26, 2019 FOR SPECIFIC DETAILS.
 9. SOILS SURVEY PERFORMED BY ATLANTIC RESOURCES CO, LLC.
 10. 2-FOOT CONTOURS REMOVED FOR CLARITY.

- LEGEND
- - - - - PROPERTY LINE
 - — — — — PROJECT BOUNDARY LINE / LUPC ZONE D-CI
 - ▨ RE-ZONE TO D-RD
 - — — — — EXISTING ROADS
 - — — — — TREE LINE
 - R/W — TRANSMISSION R.O.W. LINE
 - — — — — STREAM
 - 600 — CONTOURS
 - WETLAND
 - CANADIAN RICE GRASS AREA HIGH DENSITY
 - CANADIAN RICE GRASS AREA MEDIUM DENSITY
 - CANADIAN RICE GRASS AREA LOW DENSITY
 - ⊕ CANADIAN RICE GRASS (1-10 Plants)
 - ⊕ UT273 UTILITY POLE

Do Not Use for Construction
For Regulatory Review Only



Job Number:
80900

Drawing No:
C-1

Sheet 1 of 1

Three Rivers Solar Project
Existing Conditions Site Plan

Three Rivers Solar
Township 16 MD
Hancock County, ME.

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Drwn By: BPG
Desg By: BPG / KJB
Chkd By: KJB
Aprvd By: KJB
Date: 01/06/22

No.	Revision Description	Drwn	Chkd	Date