

Final Decision Document

on NECEC, LLC's request of the Town of Starks Planning Board to concur with its assertions that no additional permits are required for the NECEC Project under the Site Plan Review and the Shoreland Zoning Ordinances for the Town of Starks notwithstanding the expiration of the current permit date of December 2, 2024.

Date: October 16, 2024

1. Name of Project: New England Clean Energy Connect

Applicant: NECEC LLC

Contact Person: Sam Rice

Address: Burns & McDonnell

83 Edison Drive

Augusta, Maine 04336

Telephone: (207) 800-9551

Cell Phone: (603) 988-1007

Email: sfrice@burnsmcd.com

2. Description of Proposed Requests:

Assertion One

Applicant asserts that significant delays in construction have resulted in NECEC, LLC's inability to fully complete the Starks portion of the Project by the current permit expiry of December 2, 2024. Nevertheless, NECEC, LLC asserts that the project will be "substantially complete" by December 2, 2024, as defined in the Town of Starks Site Plan Review Ordinance and therefore no further permitting is required.

NECEC, LLC seeks concurrence from the Planning Board for this position.

Assertion Two

Applicant asserts that notwithstanding the delays in overall construction, emplacement of the single pole located in the Resource Protection District as defined by the Shoreland Zoning Ordinance will be complete by December 2, 2024. While further work may take place in and above the Shoreland Zone, that work does not involve construction of any structures, nor will the activities comport with any activity defined and governed by the Shoreland Zoning Ordinance. That work will be confined to revegetation as required in the Ordinance and deployment of the power lines themselves which will be largely overhead. All work of that nature will be overseen by Maine DEP and the third-party inspector and will comply with all applicable laws. Therefore, no permitting under the Shoreland Zoning Ordinance is required for that work.

NECEC, LLC seeks concurrence from the Planning Board for this position.

3. Summary of Submissions:

Letter dated September 19, 2024 [hereinafter The Letter] detailing request for Planning Board confirmation that all permitting requirements have been satisfied, attached hereto and made a part hereof.

4. Process:

Date Board met to consider request: October 16, 2024

Date Board made a decision: October 16, 2024

5. Findings:

Does The Letter provide sufficient information for the Planning Board to concur that all conditions outlined in the Ordinances have been satisfied?

Findings for Assertion One:

The Applicant asserts that by the December 2, 2024, permit expiration date the Project will have “substantially completed” construction. Under the Site Plan Review Ordinance (Definitions) “substantially completed” is achieved upon *“the completion of no less than 70% of the costs of the proposed improvements within a development and shall include permanent stabilization and/or revegetation of areas of the site that were disturbed during construction.”* Moreover, NECEC LLC anticipates installation of all access roads, drilling activities, and the majority of pole setting to occur prior to December 2 putting the Project well above the 70% benchmark. The applicant confirms that thus far, the Project complies with both Starks’ SZO and SPRO and all other state and federal laws and permits.

The Planning Board has no evidence nor reason to believe these assertions to be untrue. Simple empirical observation within the town would lend credence to these assertions, therefore it accepts the assertions as fact.

Upon a motion and second the Planning Board concurs with Request Number One.

Findings for Request Two:

Findings: Only one ‘Structure’, as defined by the Town of Starks Site Plan Review Ordinance exists in the Resource Protection District of Lemon Steam. That Structure, pole 432-258, will have been fully emplaced by December 2, 2024, and therefore no further construction will occur within the Resource Protection District. Transmission line conductors will be pulled aerially on pole 432-258 after the permit expiration; however, no construction work will remain on the ground that impacts the shoreland zone. Absent any construction in the RPD, Shoreland Zoning Ordinance no longer applies.


Upon a motion and second the Planning Board concurs with Request Number Two

Upon a motion and second the Planning Board waived a public hearing.

6. Conclusions: Because the Planning Board concludes that the applicant has satisfied the requirements outlined in both the Site Plan Review Ordinance and the Shoreland Zoning Ordinance pertaining to the satisfactory completion of work prior to the December 2, 2024, expiration date, it concurs with the assertions in The Letter.

Upon a motion and second the Planning Board concurs that no additional permitting is necessary for the Project.

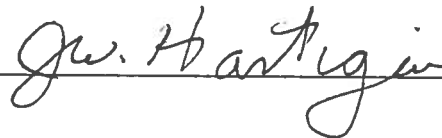
Gwen Hilton, Chair (recused)

Ken Lust, Acting Chair 


Date 16 Oct 2024

Claire Nelson, Secretary 

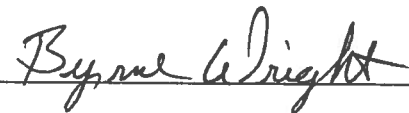
Date 10-16-24

Joe Hartigan 

Date 10-16-24

Tiffany Bellefleur 

Date 10-16-24

Byrne Wright 

Date 10-16-24

September 19, 2024

Mr. Ken Lust
Acting Planning Board Chair
Town of Starks
57 Anson Road
Starks, ME 04911

Dear Ken:

Thank you for speaking with me about NECEC Transmission LLC's (NECEC LLC's) permit to construct the New England Clean Energy Connect (NECEC) Project ("the Project") in Starks. As we discussed, the Project has faced significant delays caused by a change in construction sequence due to posted roads during the spring of 2024, and therefore construction in Starks will not be completed prior to the December 2, 2024 expiration of the Project's Site Plan Review and Shoreland Zoning approvals.¹ Nevertheless, substantial progress in construction has been made, and in Starks the Project will be complete in the shoreland zone and "substantially complete" by the permit expiration date.

Accordingly, and pursuant to the Town of Stark's Site Plan Review Ordinance (SPRO) and Shoreland Zoning Ordinance (SZO), no additional permitting is necessary for the reasons summarized herein. Out of an abundance of caution, we are writing to seek the Planning Board's concurrence with this conclusion.

Shoreland Zoning Approval:

Construction of the Project in the shoreland zone will be complete prior to December 2, 2024.² As you are aware, only one pole (pole 432-258) is located within the Resource Protection District of Lemon Stream. After the permit expiration, transmission line conductors will be pulled aerially over the shoreland zones in Starks; however no construction work will remain that impacts the shoreland zone, such as the permanent placement of any of the Project's features on the ground within the shoreland zones.

Site Plan Review Approval:

While construction in the shoreland zone will be complete by the permit expiration, some construction will remain in the remainder of the Project in Starks. However, by the December 2, 2024, permit expiration date, the Project will have "substantially completed" construction. Under the Site Plan Review Ordinance, "substantial completion" is achieved upon *"the completion of no less than 70% of the costs of the proposed improvements within a development*

¹ See Starks Board of Appeals Final Decision Document, dated November 20, 2023, setting a SPRO Section 9.1 and SZO Section 16.F construction deadline of December 2, 2024.

² Pursuant to SZO Section 16. F, Expiration of Permit, construction subject to shoreland zoning approval must be complete by December 2, 2024.

and shall include permanent stabilization and or revegetation of areas of the site that were disturbed during construction.”³

Completion of at least 70% of the total cost will be completed by the December 2, 2024 permit expiration and areas of the site that were disturbed will have been permanently stabilized. In fact, the NECEC LLC anticipates installation of all access roads, drilling activities, and the majority of pole setting to occur prior to December 2, which will put the Project well above the 70% cost threshold. In other words, there is no doubt that far less than 30% of the Project’s costs will remain after December 2.

Additionally, destabilized areas will be stabilized, and additional stabilization measures will continue in concert with any construction that remains. This work will continue to be monitored by both the Project’s Environmental Inspector and the MDEP Third-Party Inspector. This is consistent with the SPRO, which necessarily allows construction and resulting stabilization to continue by allowing “substantial completion” but not full completion by the SPRO deadline. As stated in our initial application materials, NECEC will follow its Environmental Guidelines, which are implemented during construction of all transmission and substation projects and contain erosion and sedimentation control requirements, standards, and methods. The manual was developed in consultation with MDEP and is based on MDEP’s Maine Erosion and Sediment Control BMPs and MDEP’s Chapter 500. The guidelines, approved as part of the MDEP’s permits, include site restoration standards, specifications for permanent stabilization measures, overwinter construction considerations, site restoration standards, and inspection and monitoring requirements, which NECEC will fully comply with.

While the Project therefore will be constructed to the levels required in the SZO (full completion in that zone per Section 61:F) and the SPRO (substantial completion overall), out of an abundance of caution we are seeking the Planning Board’s concurrence that no additional permitting is necessary for the Project for the above-stated reasons.

Thank you for your consideration.

Best regards,


Samuel F. Rice

Signed and Agreed To (signature):

Date:

³ SPRO Section 4 Definitions: “Substantially Completed.”