

MEMO

FROM: Joe Shanahan, Project Developer, Con Edison Clean Energy Businesses

TO: Richard Fon, Chairman, Planning Board, Town of Yorktown

SUBJECT: Proposed Solar Facility, 3849 Foothill Street
Response to TCAC Memo dated 3 January 2022

DATE: January 5, 2022

This is in response to each of the five comments noted in the Memo from the TCAC to the Planning Board dated 3 January 2022 in connection with the subject project:

1. The submittal includes a drawing C006 – LANDSCAPING & PLANTING FOR MITIGATION PLAN. This plan shows the developer is proposing to plant 179 evergreen trees and 33 evergreen shrubs. Considering that a very large number of trees are to be removed and significant protected woodlands will be disturbed, the TCAC's position is that this mitigation is inadequate. Chapter 270-10.B.(1) states "All nonadministrative permits require mitigation." Chapter 270-10.D.(1) states "The approval authority shall require the preparation of a mitigation plan". According to Chapter 270-4's definition of a MITIGATION PLAN states ".... The goal of such plan is to replace the functions carried out by the protected trees and woodlands affected by the proposed activity." A revised mitigation plan must be submitted. Chapter 270-10.C.(1) through (5) gives options for mitigation.

The applicant/developer has submitted a Mitigation Plan which should be deemed adequate by the Planning Board ("the approval authority") as it fully complies with the requirements of the Town Code and, more specifically, Section 270-10 D (4), which provides in part:

"A mitigation plan may include, but not be limited to, the following measures, either singly or in combination:

(a)

Planting replacement trees, understory shrubs and or herbaceous ground cover on-site and/or on Town-owned land, Town right-of-way lands or other public land subject to the owner's permission pursuant to this chapter.

...

(f) Payment into the Tree Bank Fund. In lieu of replacing a lost protected tree or disturbance to a protected woodland, the payment shall be \$100 for every protected tree removed and \$300 for every 5,000 square feet of protected woodland disturbed."

The Mitigation Plan submitted to the Planning Board on October 23, 2021 fulfills the above criteria as it:

1. Per Subsection (a) above, proposes the planting of 212 quality and well-developed "*replacement trees ... on site,*" at a cost of \$160,000, most of which will be visible along the Foothill Street corridor as compared to the trees to be removed, which are of poor quality and are not at all visible to the public.
2. Per Subsection (f) above, proposes a payment into the Tree Bank Fund of \$68,656 "*In lieu of replacing a lost protected tree or disturbance to a protected woodland, the payment shall be \$100 for every protected tree removed and \$300 for every 5,000 square feet of protected woodland disturbed.*" This calculation was based upon the following formula:
1871 trees to be removed @ \$100 (\$187,100) and the 15.90 acres of the 34.23-acre site to be disturbed @ \$300 for every 5,000 square feet (\$41,556) for a total of \$228,656, reduced by a credit of the \$160,000 to be paid for the "*replacement trees*" per Subsection (a) noted above.

Please note, however, that, as a result of the TCAC Memo, the applicant/developer has revisited the number of "protected trees to be removed ... within the proposed area of disturbance" and determined that the number of such "protected trees" is actually 1658, not 1871, or 213 fewer than was originally thought.

Based upon the reduced number of protected trees to be removed, under the formula set forth above, the payment into the Tree Bank Fund under the current Mitigation Plan should be reduced to \$47,356. However, as the applicant/developer has already offered a payment of \$68,656, if the Mitigation Plan is accepted, it will pay the amount originally proposed into the Tree Bank Fund. That is the equivalent of paying \$113 for every tree removed rather than the \$100 required under Section 270 of the Town Code.

2. Furthermore, drawing C006 shows the proposed plantings "INSTALLED SIZE" in heights not DBH. This needs to be corrected so that a mitigation ration (sic) can be calculated.

The average DBH of each protected tree to be removed is 14.21". The average DBH of each replacement tree is 3". The mitigation ratio is 4.74.

3. The submittal does not contain a tree removal plan. Chapter 270-8.A.(1)(b) requires that applications contain "A plan or sketch showing proposed tree removals and proposed mitigation" Chapter 270-8.C.(1)(c) requires a plan that shows "Within the proposed area of disturbance, the number, location and species of protected trees to be removed."

The enclosed Landscape Plan and Tree Inventory show "(w)ithin the proposed area of disturbance, the number, location and species of protected trees to be removed."

4. The Arborist has previously provided a 28 June 2021 tree inventory. The Arborist shows that 1871 trees are to be removed. However, he has not calculated the number of protected trees to be removed. He needs to provide this calculation.

The 213 "shaded" trees (or "Trees to remain") on the attached Tree Inventory are NOT within the proposed area of disturbance. Accordingly, there are 1658 "Trees to be removed."

5. The submittal does not contain a plan showing the protected woodlands to be disturbed. Chapter 270-8.C.(1)(b) requires that applications contain a plan that shows "Within the proposed area of disturbance the location of existing protected woodlands." Furthermore, Chapter 270-8.C.(1)(c) requires a plan that shows "The square footage and boundaries of protected woodlands that will be disturbed." The submittal does contain a drawing C002 – SITE PLAN that has notes on it that says "LIMITS OF TREE CLEARING (TYP.)" If this is the line of protected woodlands, it should say so.

The enclosed Landscape Plan clearly shows the Protected Woodland to be Disturbed/Protected Woodlands line.

I believe this fully addresses each of the TCAC's comments, but if the Planning Board has any questions, please do not hesitate to contact me at shanahanj@conedceb.com or 978.888.4088.

As always, the Planning Board's consideration of this matter is appreciated.

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