

**COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD
ON ELECTRIC GENERATION AND TRANSMISSION SITING**

In the Matter of the Application of Mt Olive Creek)
Solar, LLC, for a Construction Certificate to Construct) Case No. 2020-00226
a Merchant Electric Generating Facility)

APPLICANT’S MOTION FOR DEVIATION FROM SETBACK REQUIREMENTS

Comes the Applicant, Mt Olive Creek Solar, LLC (“Mt Olive Creek”), by counsel, and pursuant to KRS 278.704(4), moves the Kentucky State Board on Electric Generation and Transmission Siting (the “Board”) to grant a deviation from the setback requirements of KRS 278.704(2). In support thereof, Mt Olive Creek states as follows:

I. INTRODUCTION

Mt Olive Creek filed its Application for a Certificate to Construct a Merchant Electric Generating Facility in Russell County, Kentucky (the “Application”) for a 60-megawatt alternating current (MWac) photovoltaic electricity generation facility (the “Project”) on May 7, 2021. The Project will consist of approximately 475 acres of solar photovoltaic panels and associated racking, approximately 15 inverters, a dc-coupled energy storage system to be co-located at each inverter as well as a Project substation transformer that will connect to East Kentucky Power Cooperative’s Sewellton Jct-Webbs Crossroads 69 kilovolt transmission line in Russell County, Kentucky.

Based on the limited impact the Project will have on the surrounding property as result of many factors, including existing terrain and trees, Project layout and design, and mitigation measures proposed by Mt Olive Creek, the Board should grant this motion seeking approval of deviation for a 150 foot setback (the “Requested Setback”) from six residential neighborhoods that lie within 2,000 feet of the Project site (as measured from the nearest home in the nearest Neighborhood).

II. SETBACK REQUIREMENTS AND DEVIATION STANDARDS

A. Setback Requirements

The setback requirements applicable to the Mt Olive Creek project (“Project”) are set forth in KRS 278.704(2), which states:

Except as provided in subsections (3), (4), and (5) of this section, no construction certificate shall be issued to construct a merchant electric generating facility unless the exhaust stack of the proposed facility and any wind turbine is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and all proposed structures or facilities used for generation of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility.

B. The 1,000-Foot Setback Requirement

As noted in the Application, the Project’s sources of generation are solar panels and associated infrastructure. Because the statutory language for the 1,000-foot setback is limited to those sources of generation with an exhaust stack or a wind turbine, the 1,000-foot setback is inapplicable to the Project.

C. The 2,000-Foot Setback Requirement

As shown in the Application, there are six residential neighborhoods (“Neighborhoods”), each as defined by KRS 278.700(6),¹ within 2,000 feet of the proposed “structures or facilities used for generation of electricity.” Without a deviation, all proposed structures or facilities used for generation of electricity must be located more than 2,000 feet from any residential neighborhood. Pursuant to KRS 278.704(4), the Board may grant a deviation from the 2,000-foot setback requirements in KRS 278.704(2) if “the proposed facility is designed to and, as located, would meet the goals of KRS 224.10-280, 278.010, 278.212, 278.24, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of this section.”

¹ Per KRS 278.700(6), a “residential neighborhood” is “a populated area of five (5) or more acres containing at least one (1) residential structure per acre.”

For the reasons set forth below, and applying guidance from prior Board actions interpreting KRS 278.704(4), Mt Olive Creek respectfully requests that the Board grant a deviation from the setback requirements of KRS 278.704(2) and approve the Requested Setback.

III. ARGUMENT

A. Description of the Area Subject to the Deviation Request.

Exhibit 1 provides a high-level context map showing the location of the Project, the Neighborhoods, a two-mile radius around the Project and the absence of any hospital or nursing home facility within the two-mile radius. There is one school within the two-mile radius, which is located 1.4 miles away from the Project. Exhibit 2 provides a close-up map of each Neighborhood. Exhibit 3 depicts the areas of the Project that would be permitted when the Board approves the Requested Setback.

The nearest distances from each of the Neighborhoods to the Project are as follows (as measured from the nearest home in each Neighborhood):

Neighborhood*	Minimum Distance from Project (ft)
A	150
B	160
C	550
D	720
E	180
F	1,030

* as defined in Exhibits 2-4

B. Minimal Impacts on Adjacent Landowners.

In the Board action styled, In the Matter of: Application of ecoPower Generation-Hazard,

LLC for a Certificate to Construct and Operate a Merchant Electric Generating Facility and a 69kV Transmission Line in Perry County, Kentucky, *Board Case No. 2009-00530 (hereinafter “ecoPower”)*, the Board enunciated the standards applicable to merchant generating facilities seeking a deviation from the setback requirements found in KRS 278.704(2). In *ecoPower*, the Board stated, “the setback provisions of KRS 278.704(2) were enacted to afford some level of protection for persons occupying a property adjacent to a property where a merchant generating plant is to be constructed and operated.” *ecoPower* at 31. The Board concluded that it must consider the effects of the planned facility on the adjacent residents when determining whether to grant a deviation pursuant to KRS 278.704(4). *See id.* at 32. The Board subsequently followed the *ecoPower* deviation procedure in approving the application in SunCoke Energy South Shore, LLC, Case No. 2014-00162.

The design of the Project minimizes the impacts on the environment and the Neighborhood. The Site Assessment Report included in the Application. (*See Application, Volume 2, entitled Site Assessment Report and referred to herein as the “SAR.”*) It describes the limited noise, visual and traffic impacts of the Project and provides adequate assurances to the Board that granting of the requested setback deviation is justified and warranted.

I. Noise.

The SAR contains at Attachment F a Noise and Traffic Study (SAR, Vol. 2, Page 174) that thoroughly evaluates and provides technical data regarding the expected noise levels from the proposed Project during the construction phase and during its operation and the impact of those noise levels on all property owners adjacent to the Project, including the Neighborhoods.

Construction activities are anticipated to be transient in nature and of a limited duration, ending once construction has been completed, and taking place daily during the hours of 7 AM to

9 PM. The loudest source from construction is expected to be pile driving equipment used in the construction of the solar panel racking system, but at the edge of each Neighborhood, based on the Requested Setback, sound level impacts from active pile driving operations would be equivalent to the sound level produced by the use of a household hairdryer.² This noise will be temporary as the pile drivers will be moved about the project site (and away from each Neighborhood) as post installation is completed. Other equipment used during construction has a lower sound impact than the pile drivers, and as such, the impact to the local sound environment due to construction is anticipated to be minor and temporary.

The SAR also examines noise levels during the operation of the Project and focuses on noise generated from inverters, HVAC units and the Project substation, which all have a minimum setback of 300 feet from neighboring residential homes (or 150 feet in the case of string inverters, if they are used). The substation, inverters, energy storage devices, and associated HVAC units will not have a material impact on the Neighborhoods at a 300-foot distance. Based on the

² A table in the Noise and Traffic Study (at page 161 of the SAR) provides the following noise levels for common household appliances:

Household Noise Levels (Typical)

Source	dBA
Air Conditioning	50 to 75
Clothes Dryer	50 to 75
Clothes Washer	60 to 75
Dishwasher	50 to 70
Electric Blender	80 to 90
Garbage Disposal	70 to 95
Hair Dryer	60 to 95
Refrigerator	50
Television	70
Toilet Flush	75 to 85

Source: Noise Levels of Common Household Sounds (Infographic)
<https://www.captel.com/2019/10/noise-levels-of-common-household-sounds-infographic/>

operational sound levels of this equipment as outlined in the Noise and Traffic Study and the anticipated ambient noise environment, at 300 feet, the sound level contribution from this equipment will be less than 1.5 dBA, below the average human ear's sensitivity to sound level changes.

As the data in the SAR demonstrates, allowing the Project to install equipment up to 150 feet away from the Neighborhoods (with noise generating equipment other than string inverters set back at least 300 feet) would generate noise levels similar to background or common noise levels typically present in residential areas. The Board should therefore conclude that the property owners in the Neighborhoods are adequately protected from any noise impacts from the Project and grant the requested setback deviation.

Visual Obstruction of Scenic Views.

The SAR (SAR, Vol. 2, Section 2 at Page 8 and Attachment B at Page 20) provides an in-depth analysis of the compatibility of solar projects with rural residential-agricultural surroundings, and their compatibility with scenic surroundings. The solar panels are all less than 15 feet high, which means that the visual impact of the solar panels will be similar in height to a typical greenhouse. Mt Olive Creek has also designed a planted vegetative buffer to obscure the view of the Project from adjacent neighbors.

Exhibit 4 contains street view images taken from each Neighborhood, and describes where the project will be located in relation to each image. The majority of the homes in the six Neighborhoods are separated from the Project by significant vegetative buffering or distance. Applicant believes that none of the homes in Neighborhoods C, D, and F will be able to see solar equipment from their properties, given existing vegetation and the location of the Neighborhoods. For a closeup of each of these Neighborhoods, please refer to Exhibit 2.

Neighborhood A and parts of Neighborhood B are located adjacent to the Project site. However, existing vegetation along W Sulpher Creek Road, and large (approximately 190 foot) setbacks from W Sulpher Creek Road due to the Russell County-Adair County line as shown on Page 1 of Exhibit 2, will reduce the visual impact of the Project on Neighborhood A. As shown on the site plan (SAR, Vol. 2, Attachment A at Page 19) and in Exhibit 2, the Project has proposed a planted vegetative buffer to reduce the visual impact of the Project from the 5 homes in Neighborhood B that do not have an existing vegetative buffer. Half of Neighborhood B will not have a view of the Project due to a large existing wooded area between the homes and the Project location. Images 1 and 2 in Exhibit 4 depict the viewshed of Neighborhoods A and B from the closest point in each Neighborhood to the Project.

Neighborhood E is located near the Project, along Carlos Foley Road. Due to topography and setbacks, the majority of the homes in Neighborhood E should have no view of the Project. There are 5 homes on the Western side of Neighborhood E, near Hwy 76, that are closer to the Project, however existing and planted vegetative buffers will help obscure any view of solar equipment. Image 5 in Exhibit 4 depicts the viewshed of Neighborhood E from the closest point in the Neighborhood to the Project.

Due to the number of neighbors at the Project, Mt Olive Creek spent a substantial amount of time in conversation with the landowners around the Project site, as described in the Application (Vol 1, Page 9 and Attachment E, page 38). Where adjacent landowners had concerns, Mt Olive Creek solved them to mutual satisfaction by either incorporating their properties into the Project footprint, or by modifying the placement of Project equipment as described in the Application (Vol 1, Page 9 and Attachment E, Page 38.) The Board should approve the Requested Setback as there would be limited to no visual impact on the residential structures in the Neighborhoods as a result

of such approval, as described above, and because Mt Olive Creek has taken steps to address adjoining neighbor's concerns about the visual impact of the Project when they were made known.

2. Traffic.

The SAR describes the road infrastructure surrounding the Project, provides current traffic statistics and includes specific information on the types of vehicles and the number of trips for each during construction and during operations.

Construction of the Project is expected to take eight to twelve months, with working hours from 7 AM to 9 PM daily. Trips to the Project during construction are anticipated to consist of workers commuting to the site in passenger vehicles and construction deliveries in larger trucks, including trucks with trailers. The daily total traffic would be less than 200 vehicles per day, with the majority of trips for workers (FHWA Class 2 and 3 vehicles). Two-way peak hour traffic volumes along nearby roads average fewer than 170 vehicles per hour (fewer than three vehicles per minute), and due to this low background traffic volume no adverse traffic impacts are anticipated as a result of construction.

The operation of the Project will not regularly require on-site employees. Approximately two employees may visit the site up to a few times a month for inspection and to perform or coordinate maintenance as needed. With only a few occasional employee trips per month, operation of the facility is not anticipated to adversely impact area traffic.

In addition to relatively low amount of traffic generated from the Project, safety precautions will be taken to reduce the risk of collisions by the temporary presence of flagmen and markings. Any significant degradation of the roadways resulting from project construction will be repaired in accordance with the transportation permits associated with the construction of the project.

Because of minimal additional traffic being added to currently low traffic volumes coupled with the preventative measures that will be taken, the Project will not adversely affect traffic and therefore the Board should approve the Requested Setback.

C. The Proposed Facility is Designed and Located to Meet the Goals of KRS 278.700, et seq.

In ecoPower's motion for a deviation, the Board stated that the applicant must satisfy the goals of certain statutes described in KRS 278.704(4) as follows:

1. KRS 224.10-280 - Cumulative Environmental Assessment.

KRS 224.10-280 provides that no person shall commence to construct a facility to be used for the generation of electricity unless that person has submitted a cumulative environmental assessment ("CEA") to the Energy and Environment Cabinet ("Cabinet") with its permit application and remits a fee which has been set pursuant to KRS 224.10-100(20). Mt Olive Creek will submit its CEA to the Cabinet contemporaneously with the filing of this motion.

Upon researching the statute and accompanying regulations, Mt Olive Creek is unaware of any regulations that have been promulgated regarding CEAs. At the time of the *ecoPower* Order, the Board concluded that there were no regulations involving CEAs (*see ecoPower* at 34) and Mt Olive Creek is unaware of any additional regulations since that order. Consequently, no fee has been established for Mt Olive Creek to pay "to defray the cost of processing the cumulative environmental assessment." KRS 224.10-280.

As described below, the Project is designed and located to meet the goals of KRS 224.10-280. Mt Olive Creek's CEA provides an in-depth analysis of the potential air which contains a description and analysis of anticipated air pollutants, water pollutants, wastes, and water withdrawal needs (see the Mt Olive Creek CEA, attached herein as Exhibit 5). The CEA also

references the substantial amount of planning, permitting, and assessments which have been completed for the facility and which are ongoing. The Project development team shall continue permitting as required to comply with all applicable regulations.

(a) Air Evaluation- KRS 224.10-280(3)(a).

As required by KRS 224.10-280(3)(a), the CEA evaluates the air pollutants to be emitted by the facility and the associated control measures. (See Exhibit 5, pp. 3-4.) The solar panels produce zero emissions. Therefore, the proposed Mt Olive Creek facility is not expected to emit any of the following criteria pollutants: Particulate Matter (PM), Particulate Matter 10 microns diameter and smaller (PM10), Particulate Matter 2.5 microns diameter and smaller (PM2.5), Carbon Monoxide (CO), Sulfur Dioxide (SO₂), Nitrogen Oxides (NO_x), Volatile Organic Contaminants (VOCs), or lead. Similarly, the facility is also not expected to emit Hazardous Air Pollutants (HAPs). The CEA describes the estimated emissions of each air pollutant. (See Exhibit 5, pp. 3-4).

Indirect air emissions from the Project would occur during construction from the use of vehicles and equipment and during facility operation from ancillary activities, such as mowing. No air quality permit is required for these construction or ancillary activities. The CEA describes the air pollution mitigation measures for construction and ancillary activity emission sources including construction equipment, worker vehicles, and maintenance equipment. (See Exhibit 5, pp. 3-4).

(b) Water Evaluation - KRS 224.10-280(3)(b).

As required by KRS 224.10-280(3)(b), the CEA evaluates the water pollutants to be emitted by the facility and the associated control measures. (See Exhibit 5, pp. 4-6). Mt Olive Creek expects the project to result in the discharge of stormwater during construction. Mt Olive

Creek intends to comply with the Kentucky Division of Water's (KDOW) Construction Storm Water Discharge General Permit for those construction activities that disturb one acre or more. (See Exhibit 5, p. 5). Mt Olive Creek intends to submit a Notice of Intent prior to the commencement of construction and a notice of termination upon completion. To manage stormwater during construction, use of stormwater Best Management Practices (BMPs), such as silt fences, will be implemented. A stormwater pollution prevention plan (SWPPP) also will be prepared and implemented to comply with KDOW requirements.

(c) **Waste Evaluation - KRS 224.10-280(3)(c).**

As required by KRS 224.10-280(3)(c), the CEA evaluates the waste to be generated by the facility and the associated control measures. (See Exhibit 5, pp. 6-7). Construction activities will generate solid waste consisting of construction debris and general trash, such as wooden crates, pallets, flattened cardboard module boxes, plastic packaging, and excess electrical wiring. To the extent feasible and practicable, construction waste will be recycled and material that cannot be recycled will be disposed offsite at a permitted facility. The Project will also generate very small amounts of hazardous waste (See Exhibit 5, p. 7). The project would be considered a conditionally exempt small quantity generator (CESQG). Any hazardous waste will be managed offsite at a permitted facility. In addition, operation-generated trash and other solid waste will also be disposed offsite at a permitted facility. Finally, portable chemical toilets will be provided for construction workers during development. (See Exhibit 5, pp. 6-7).

(d) **Water Withdrawal Evaluation - KRS 224.10-280(3)(d).**

As required by KRS 224.10-280(3)(d), the CEA identifies the source and volume of anticipated water withdrawal needed to support facility construction and operations, and the CEA describes the methods to be used for managing water usage and withdrawal. (See Exhibit 5, pp.

8). As described in the CEA, the proposed facility would primarily utilize groundwater from existing onsite wells to provide water needed for construction activities. Construction-related water use would support site preparation (including dust control, if applicable) and grading activities. Operation of solar facilities is not water-intensive. Precipitation in the region is adequate to remove dust from the PV panels while maintaining energy production; therefore, manual panel washing with water or other substance is not part of regular solar project maintenance.

2. KRS 278.010.

KRS 278.010 provides a list of definitions to be used in conjunction with KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and 278.990. The Board's authority begins with KRS 278.700 and extends through KRS 278.716 and any applicable provision of 278.990. In filing a complete Application pursuant to the applicable statutes in this proceeding, Mt Olive Creek has satisfied the goal of providing the required information utilizing the definition of any applicable term defined in KRS 278.010.

3. KRS 278.212. *Filing of plans for electrical interconnection with merchant electric generating facility; costs of upgrading existing grid.*

Mt Olive Creek has met the goals of KRS 278.212 because Mt Olive Creek will comply with all applicable conditions relating to electrical interconnection with utilities by following the PJM interconnection process. Additionally, as described in the Application, Mt Olive Creek will pay for costs which result from its interconnecting with the electricity transmission grid, as calculated by the local utility, PJM Interconnection, and any neighboring utilities with affected systems, through interconnection study agreements executed by the Project. With Mt Olive Creek's commitment to comply with KRS 278.212, the proposed facility has been designed and located to meet the goals of KRS 278.212.

4. KRS 278.214. Curtailment of service by utility or generation and transmission cooperative.

The goal of this statute is to establish the progression of entities whose service may be interrupted or curtailed pursuant to an emergency or other event. Mt Olive Creek will abide by the requirements of this provision to the extent that these requirements are applicable. By committing to comply with these requirements Mt Olive Creek has met the goals anticipated by the statute.

5. KRS 278.216. Site compatibility certificate; site assessment report; commission action on application.

KRS 278.216 requires a jurisdictional utility, as defined by KRS 278.010(3), which seeks to construct an electric generating facility to comply with many of the requirements that are included within KRS 278.700 to 278.716, including the submission of a site assessment report. However, KRS 278.216 specifically applies to jurisdictional utilities, as defined in KRS 278.010(3), and Mt Olive Creek is not such a defined utility. Therefore, by complying with the requirements of KRS 278.700 *et seq.*, Mt Olive Creek has met the requirements and goals of KRS 278.216.

6. KRS 278.218. Approval of commission for change in ownership or control of assets owned by utility.

This statute specifically applies to utilities as those defined pursuant to KRS 278.010(3). The statute prohibits acquisition or transfer without prior approval of the Commission. Mt Olive Creek is not a utility as described in 278.010(3), and therefore this statute does not apply to Mt Olive Creek. However, to the extent Board approval may at some time be required for change of ownership or control of assets owned by Mt Olive Creek, Mt Olive Creek will abide by the

applicable rules and regulations which govern its operation.

7. KRS 278.700 - 278.716. Electric Generation and Transmission Siting.

These provisions of the Kentucky Revised Statutes govern the application of a merchant electric generating facility such as the one proposed by Mt Olive Creek in its Application to the Board. According to the Board itself, the goals of these provisions include the following: to provide for the location of merchant electric generating facilities in a fashion which will not intrude upon or unnecessarily disrupt surrounding land uses including hospitals, nursing homes, residential areas, schools, parks or otherwise have adverse environmental impacts which are not otherwise regulated; to include an evaluation of the economic impact of the proposed facility (KRS 278.710(l)(c)); to determine whether the facility is to be located at a site where existing generating facilities are located (KRS 278.710(l)(d)); to determine whether the facility will meet all applicable local planning and zoning requirements (KRS 278.710(l)(e)); to determine whether the facility will adversely impact the reliability of electrical service for retail customers of utilities regulated by the Public Service Commission (KRS 278.710(l)(f)); to determine the efficacy of any proposed mitigation measures (KRS 278.710(l)(h)); and to provide the applicant's history of environmental compliance (KRS 278.710(l)(i)). *ecoPower* at 39.

In summary, Mt Olive Creek has met the goals set forth in these provisions as evidenced by the Application in its entirety. Mt Olive Creek has provided a comprehensive Application with a detailed discussion of all of the criteria applicable to its proposed facility under KRS 278.700-278.716.

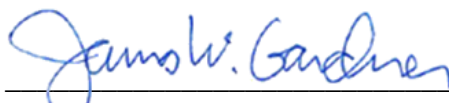
III. CONCLUSION

Mt Olive Creek has engaged in public education and public notification about the Project, including proactive and responsive outreach to the adjacent neighbors of the Project as described

in the Application. (See Application Vol. 1, Page 9 and Attachment E, Page 38.) Mt Olive Creek additionally held two public meetings concerning the Project, and has mailed letters to the Project's adjacent neighbors regarding the public meetings and this application. Because of the outreach in person and the various steps taken by Mt Olive Creek to minimize the impact of the Project on the surrounding area, including the use of setbacks, existing vegetation, and new vegetative buffers, the neighboring landowners are aware of and have not objected to the Project. Furthermore, Mt Olive Creek has clearly met the goals of KRS 278.700 *et seq.* in locating the proposed Project in an environmentally compatible location, disclosing the facts surrounding its proposed operation, responding to inquiries, and obtaining the proper permits for the Project.

WHEREFORE, Mt Olive Creek respectfully requests the Board to approve a deviation from the setback requirements contained in KRS 278.704(2) and establish a new setback requirement that will allow Mt Olive Creek to equipment as close as 150 feet from the Neighborhoods as measured from the nearest home in the nearest Neighborhood, as proposed in the Application.

Respectfully submitted,



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



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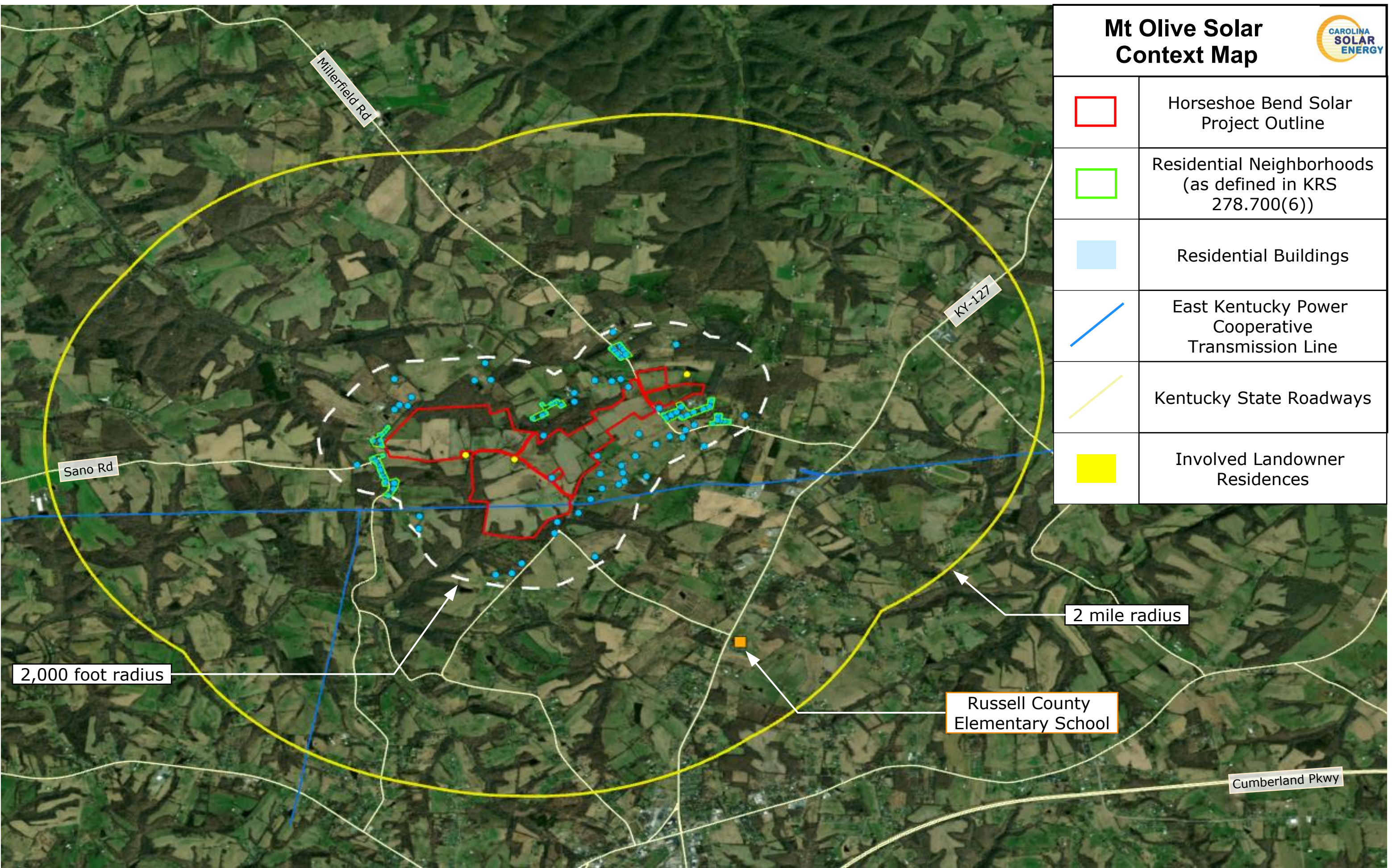
Counsel for Mt Olive Creek Solar, LLC

Exhibit 1

Mt Olive Solar Context Map



	Horseshoe Bend Solar Project Outline
	Residential Neighborhoods (as defined in KRS 278.700(6))
	Residential Buildings
	East Kentucky Power Cooperative Transmission Line
	Kentucky State Roadways
	Involved Landowner Residences



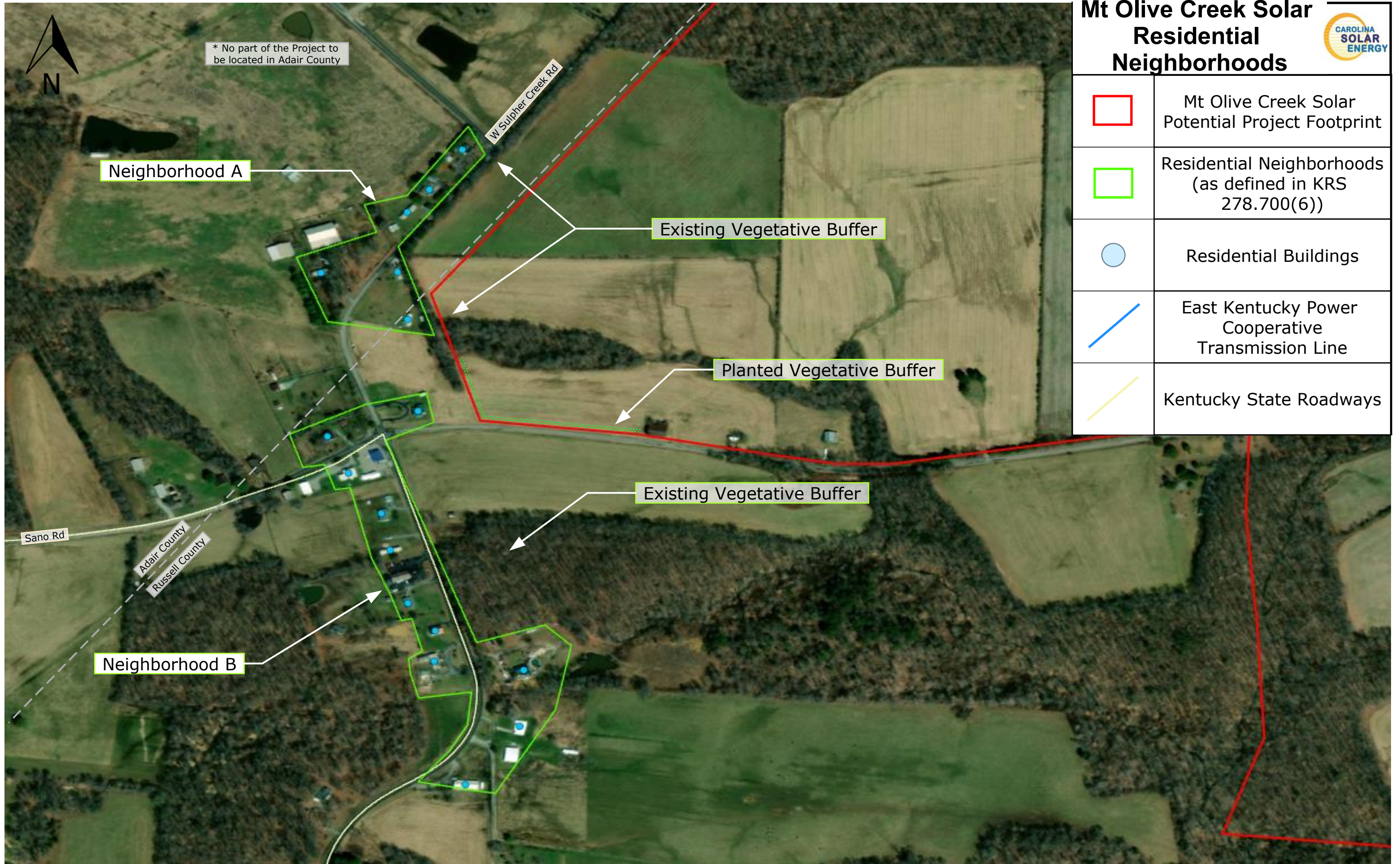
2,000 foot radius

2 mile radius


Russell County Elementary School






Cumberland Pkwy

Exhibit 2



Mt Olive Creek Solar Residential Neighborhoods



	Mt Olive Creek Solar Potential Project Footprint
	Residential Neighborhoods (as defined in KRS 278.700(6))
	Residential Buildings
	East Kentucky Power Cooperative Transmission Line
	Kentucky State Roadways





Millerfield Rd
(HWY 76)

Neighborhood D

Existing Vegetative Buffer

Existing Vegetative Buffer






Planted Vegetative Buffers

Planted Vegetative Buffers

Miller-Short Rd

Mt Olive Creek Solar Residential Neighborhoods



	Mt Olive Creek Solar Potential Project Footprint
	Residential Neighborhoods (as defined in KRS 278.700(6))
	Residential Buildings
	East Kentucky Power Cooperative Transmission Line
	Kentucky State Roadways



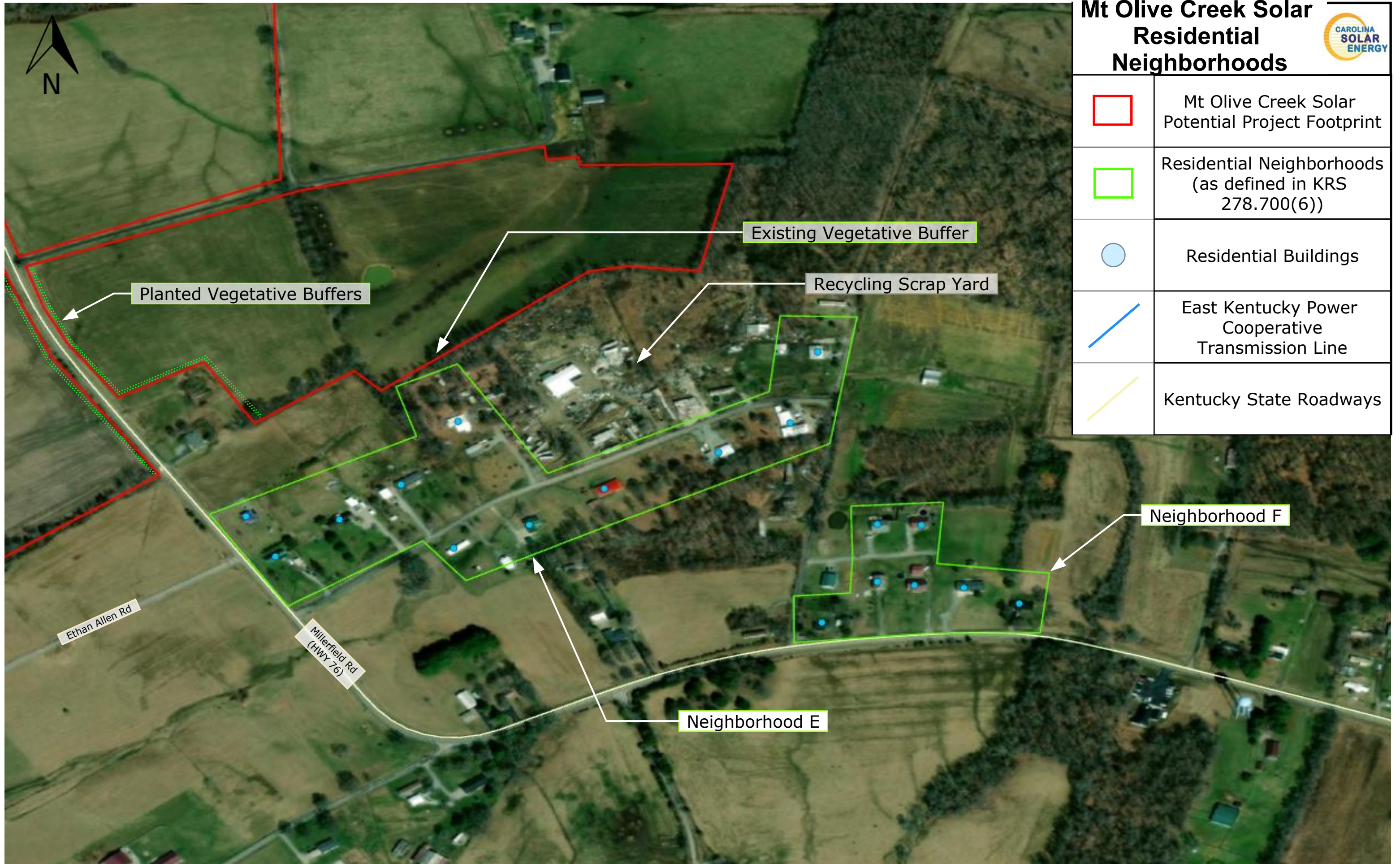


Exhibit 3

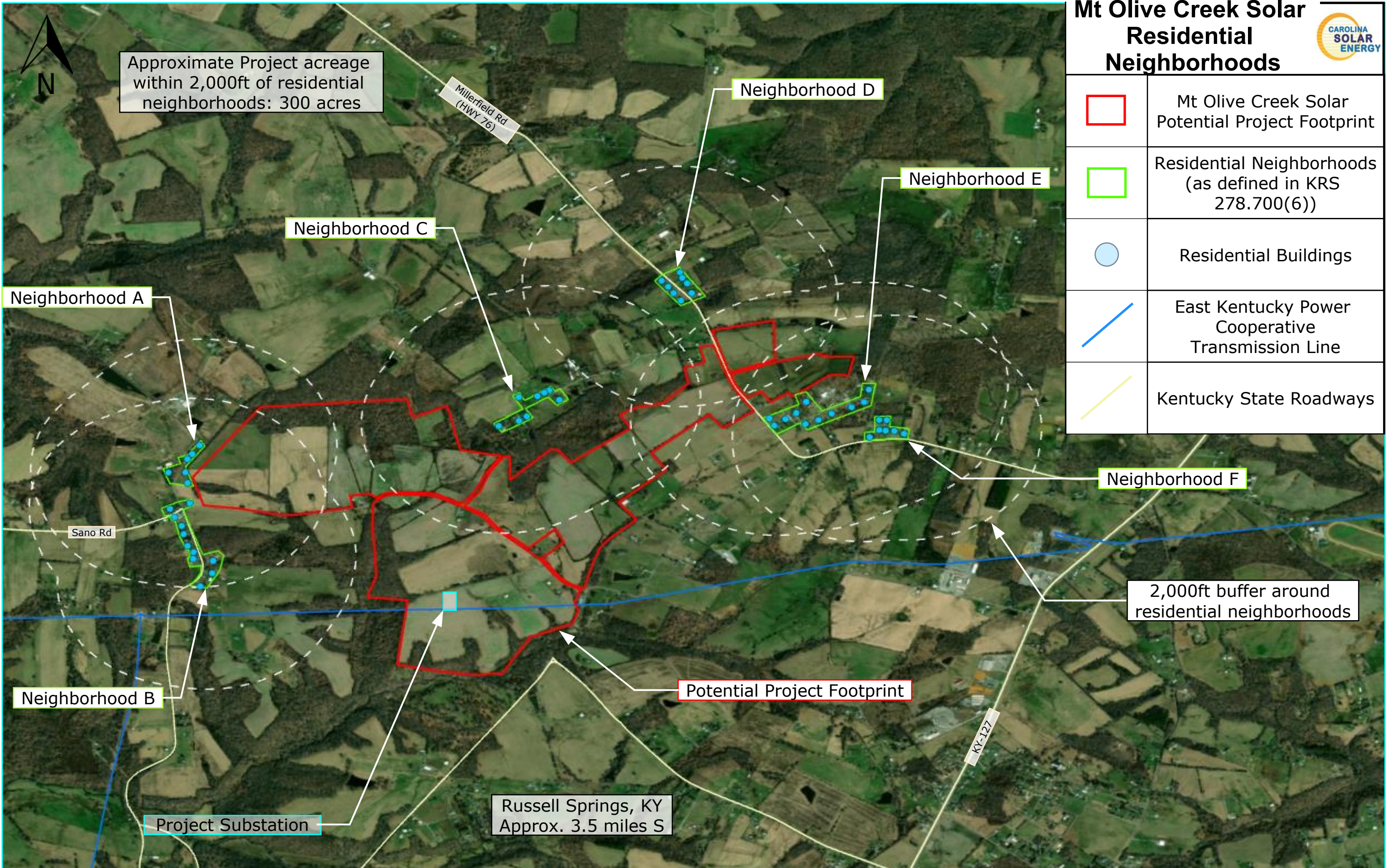


Exhibit 4

Mt Olive Creek Solar Neighborhood Image Key



Potential Project Footprint

Russell Springs, KY
Approx. 3.5 miles S

Neighborhood A

Image 1

Image 2

Sano Rd

Neighborhood B

Neighborhood C

Image 3

Miller Short Rd

Neighborhood D

Image 4

Neighborhood E

Neighborhood F

Ethan Allen Rd

Image 5

Image 6

Mt Olive Creek Neighborhood streetview images

Image 1 - Neighborhood A

Facing Northeast from W Sulpher Creek Rd, from Neighborhood A. Due to the location of the County line as shown on Exhibit 2, solar panels will be set back into the field by approximately 190 feet. This large setback, combined with the trees seen in this image, will reduce the visual impact of the Project on Neighborhood A.



Mt Olive Creek Neighborhood streetview images

Image 2 - Neighborhood B *Image from Google Streetview*

Facing Northeast from Sano Rd, from Neighborhood B. The project will be located in the field marked with the red arrow, behind a planted vegetative buffer.



Mt Olive Creek Neighborhood streetview images

Image 3 - Neighborhood C

Taken along Miller Short Rd, facing Southwest, near Neighborhood C. The project will not be visible from Neighborhood C due to the amount of forested area between the project and the Neighborhood.



Mt Olive Creek Neighborhood streetview images

Image 4 - Neighborhood D *Image from Google Streetview*

Facing Southeast along Millerfield Rd (HWY 76) with J McQueary Rd in the foreground to the left, from Neighborhood D. Due to the bend in the road, topography and existing vegetation, solar equipment will not be visible from Neighborhood D.



Mt Olive Creek Neighborhood streetview images

Image 5 - Neighborhood E *Image from Google Streetview*

Facing Northwest along Millerfield Rd (HWY 76), from Neighborhood E. Solar equipment will be located behind the trees at the end of the red arrow on the left, and in the field marked by the red arrow on the right. A planted vegetative buffer will obscure the view of the panels in the field marked by the red arrow on the right.



Mt Olive Creek Neighborhood streetview images

Image 6 - Neighborhood F *Image from Google Streetview*

Taken from Millerfield Rd (HWY 76) facing Northwest, from Neighborhood F. Due to the distance between Neighborhood F and the project, no equipment will be visible from the homes in Neighborhood F.



Exhibit 5



COPPERHEAD
ENVIRONMENTAL CONSULTING

Cumulative Environmental Assessment for Proposed Mt Olive Creek Solar, LLC Project Russell County, Kentucky



Prepared for:

Mt Olive Creek Solar, LLC

Marty Marchaterre
Senior Environmental Planner
Copperhead Environmental Consulting, Inc.

18 May 2021

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Introduction

KRS 224.10-280 provides that no person shall commence to construct a facility to be used for the generation of electricity unless that person submits a cumulative environmental assessment (CEA) to the Kentucky Energy and Environment Cabinet with the permit application. The Mt Olive Creek Solar, LLC Project (Mt Olive Creek or Project) is a proposed 60 megawatt (MW) solar farm sited on up to 475 acres that will generate electricity through the use of photovoltaic (PV) solar panels and associated racking, inverters, dc-coupled energy storage system, and a project substation transformer. Mt Olive Creek is located to the North and South of Sano Road, West of Mt Olive Creek Road, approximately 5 miles north of Russell Springs, in Russell County. The proposed project site is currently farmland (primarily row crops and hayfields) and rural residential properties.

Upon researching the statute and accompanying regulations, Mt Olive Creek is unaware of any regulations that have been promulgated regarding CEAs.

To comply with KRS 224.10-280, the cumulative environmental assessment will evaluate project impacts to four areas:

- 1) Air Pollutants
- 2) Water Pollutants
- 3) Wastes
- 4) Water Withdrawal



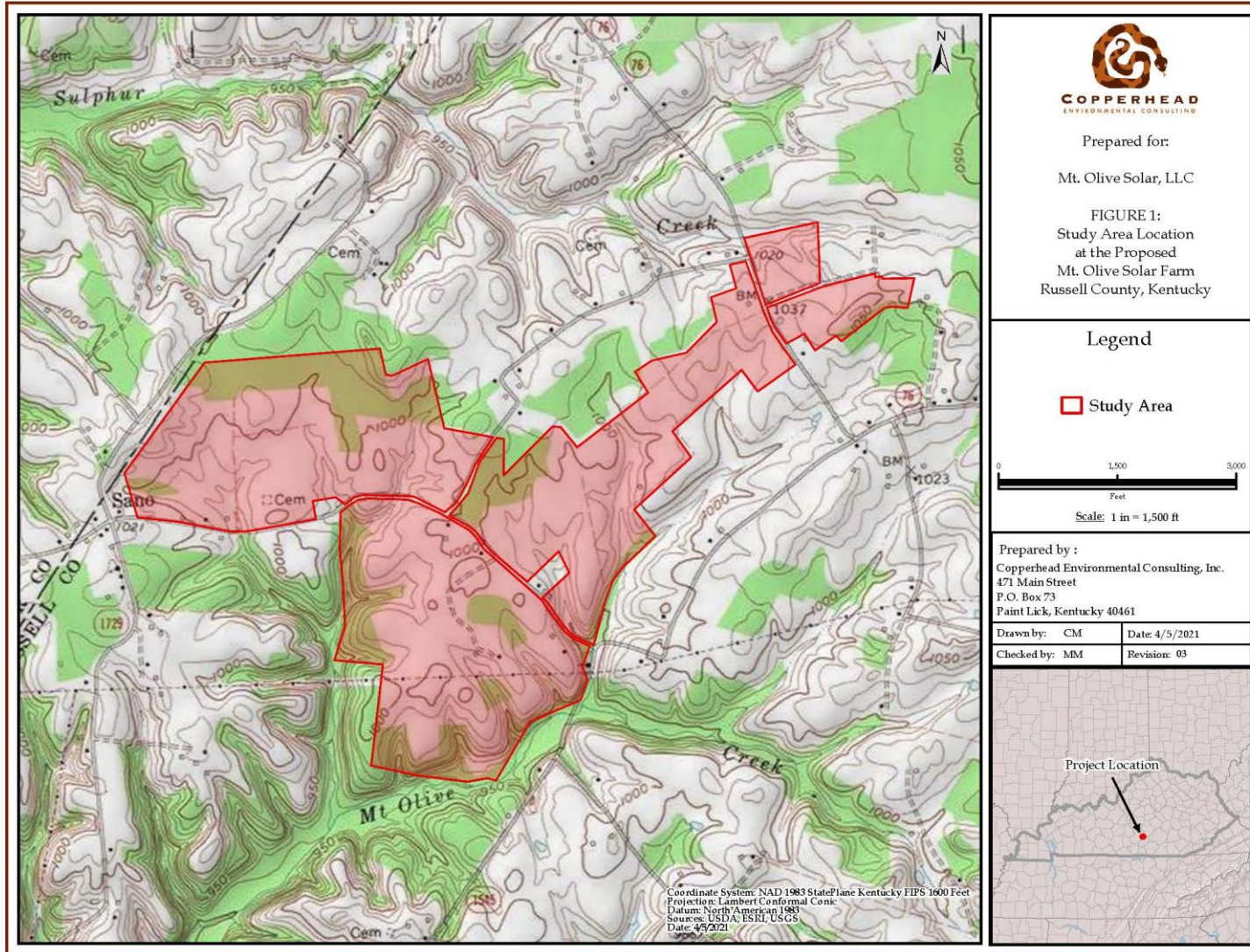


Figure 1. Project Location

Air Pollutants

The Clean Air Act regulates the emission of air pollutants and, through its implementing regulations, establishes National Ambient Air Quality Standards (NAAQS) for several “criteria” pollutants that are designed to protect the public health and welfare with an ample margin of safety. The criteria pollutants are ozone, particulate matter (PM), carbon monoxide (CO), nitrous oxides (NO_x), sulfur dioxide (SO₂), and lead.

Specified geographic areas are designated as attainment, nonattainment, or unclassifiable for specific NAAQS. Areas with ambient concentrations of criteria pollutants exceeding the NAAQS are designated as nonattainment areas and new emissions sources in or near these areas are subject to more stringent air permitting requirements.

Russell County and all surrounding counties (Adair, Casey, Clinton, Cumberland, Pulaski, and Wayne) are in attainment for all criteria pollutants (EPA 2021). Russell County is also protected by Air Quality Regulations found in Title 401, Chapters 50–68 of the Kentucky Administrative Regulations (KAR).

The solar project will generate transient air pollutant emissions during construction and operation activities. Air quality impacts will primarily result from the staging and operation of construction vehicles, equipment, supplies, and worker personnel vehicles. The daily workforce for the Project during construction will vary depending on specific construction activities occurring on individual days. It is estimated that the work force will comprise up to 150 workers onsite at any time during the 8- to 12-month construction period. Construction and operation equipment will include, but not be limited to, bulldozers, backhoes, generators, flatbed trucks, forklifts, bobcats and/or specialized tractors with extender or drill with auger or pile driver for installation of solar panel array posts, and concrete trucks.

Combustion of gasoline and diesel fuels by internal combustion engines will generate local emissions of PM, NO_x, CO, volatile organic compounds (VOCs), and SO₂. Emissions associated with these vehicles and equipment are expected to result in minor impacts to air quality because the sizes, number of vehicles, and hours each piece of equipment will operate will be small. For example, combustion emissions from a 200-horsepower diesel truck operating eight hours every day for three months will include less than one ton each of NO_x, CO, and PM. Emissions of SO₂ will be negligible because of the ultralow sulfur diesel fuel available on the market.

Tree clearing or vegetative debris is anticipated to be limited as much of the land planned to be used for the Project is open as it is used for pasture, hayfields, and cultivated crops. Tree clearing or vegetative debris will either be burned onsite in accordance with Kentucky’s Open Burning regulations (401 KAR 63:005) and applicable local regulations, or will be chipped, ground, and composted on-site or managed offsite at a permitted facility.

Construction activities will result in temporary fugitive air pollutant emissions (e.g., small particles suspended in the air or dust). Vehicles and construction equipment traveling over unpaved roads

and the construction site will result in the emission of fugitive dust. A large fraction of fugitive emissions from vehicle traffic in unpaved areas will also be deposited near the unpaved areas. To minimize air impacts, the Project will require all contractors to keep construction equipment properly maintained and to use best management practices (BMPs), such as covered loads and wet dust suppression if needed, which can reduce fugitive dust emissions by as much as 95 percent.

Air quality impacts from construction activities will be temporary and will depend on both man-made factors (intensity of activity, control measures, etc.) and natural factors such as wind speed and direction, soil moisture, and other factors. However, even under unusually adverse conditions, these emissions will have, at most, a minor transient impact on off-site air quality and will be well below the applicable ambient air quality standard. The effects to air quality from construction-associated activities will be temporary and localized. Overall, the potential impacts to air quality from construction-related activities for the project will be minor.

During operation, the solar panels produce zero emissions, and therefore, the solar facility is not expected to emit any of the following criteria pollutants: PM, CO, SO₂, NO_x, VOCs, or lead. Similarly, the facility is also not expected to emit Hazardous Air Pollutants (HAPs).

The solar facility will only generate air emissions from worker vehicles and equipment for maintenance activities, such as mowers to control growth of vegetation. The Project will be monitored offsite 24/7, and maintenance workers will be sent to the site if any changes in production or equipment errors are detected remotely. Inspections will include identifying any physical damage to panels, wiring, inverters, pad mount transformers, and interconnection equipment. Additionally, maintenance will occur on a regular schedule. Vegetation on developed portions of the Project Site will be maintained to control growth and prevent overshadowing or shading of the PV panels. Regular trimming and mowing will prevent vegetation from shading the panels. There will also be benefits to air quality because the solar panels produce zero emissions while generating electricity. This benefit to local and regional air quality will occur over the life of the Project. No air quality permit is required for construction or ancillary operation activities, such as mowing.

Water Pollutants

Surface water

The Project is located within the Russell Creek Sub Watershed (Hydrologic Unit Codes 051100010401 and 051100010402) and drains to the Green River. Much of the hydrology within the Green River Watershed is influenced by karst geology, ditching, and drainage for agriculture. No waterways in or adjacent to the Project are designated as Outstanding State Resource Waters or other Special Use Waters as defined by the Kentucky Division of Water (KDOW).

Wetlands, ponds, and streams are present within the Project Site. During construction activities, stormwater erosion and sedimentation may affect onsite surface water features (i.e., streams and wetlands). The Project will work with the existing landscape (e.g., slope, drainage, utilization of

existing roads) where feasible and minimize or eliminate grading work to the extent possible. Typically, land that has been previously farmed for row crops does not require grading and posts can usually be installed onto these areas of the Project site without earth disturbance. Any required grading activities will be performed with portable earthmoving equipment and will result in a consistent slope to the local land.

Mt Olive Creek expects the project to result in the discharge of stormwater during construction. Mt Olive Creek intends to comply with the KDOW's Construction Storm Water Discharge General Permit for those construction activities that disturb one acre or more. Mt Olive Creek will submit a Notice of Intent to KDOW at least seven days prior to the commencement of construction and KDOW will review the notice of intent and provide notification of authorization to discharge. When construction is completed, Mt Olive Creek will provide a notice of termination upon completion.

To manage stormwater, use of BMPs, including silt fences, on-site temporary sediment basins, sediment traps, and/or buffer zones (e.g., 25 feet) surrounding jurisdictional streams and wetlands will be implemented. A site-specific stormwater pollution prevention plan (SWPPP) will be prepared and a copy will be kept available on site. These stormwater BMPs will minimize sediment from entering Waters of the Commonwealth and sediment migration off site during construction, prior to achievement of final vegetative stabilization.

Disturbed areas will be seeded after construction using a mixture of certified weed-free, low-growing grass and herbaceous plant seed obtained from a reputable seed dealer. Erosion control measures will be inspected and maintained until vegetation in the disturbed areas has returned to the preconstruction conditions or the Project Site is stable. Water may be used for soil compaction and dust control during construction.

Following the establishment of vegetation on disturbed areas and to minimize potential for water impacts, only USEPA-registered and approved herbicides will be used in accordance with label directions designed in part to restrict applications near receiving waters and to prevent unacceptable aquatic impacts. All herbicides will be applied by Kentucky licensed and certified commercial pesticide applicators. Most vegetation control on solar farms is performed mechanically (i.e., mowing); however, limited amounts of herbicides are used around posts or in areas that are not able to be mowed.

Approximately 10-15 acres of the Project Site will be used as construction assembly areas (also called staging or laydown areas) for worker assembly, vehicle parking, and material storage during construction. Some of these areas will be staged within the areas proposed for the solar or PV arrays. The laydown areas will be on site for the duration of construction. Temporary construction trailers intended for material storage and office space will be parked on site. Following completion of construction activities, trailers, unused materials, and construction debris will be removed from the Project Site. An operations and maintenance building will remain on site during the life of the Project.

The operations and maintenance of the solar facility will have little impact on surface water, and BMPs will be used during any maintenance activities that have the potential to cause runoff of sediment and pollutants. Beneficial indirect impacts to surface water are anticipated due to reduction in fertilizer and pesticide use compared with current agricultural use.

Groundwater

Groundwater is water located beneath the ground surface, within soils and subsurface formations known as hydrogeological units, or aquifers (USGS 1995). Aquifers have sufficient permeability to conduct groundwater and to allow economically significant quantities of water to be produced by man-made water wells and natural springs.

No direct adverse impacts to groundwater will be anticipated as a result of the Project. The PV panels will have a relatively minor effect on groundwater infiltration and surface water runoff because the panels will not include a runoff collection system. Rainwater will drain off the panels to the adjacent vegetated ground.

Hazardous materials that could potentially contaminate groundwater will be stored on the Project Site during construction. The minimal use of petroleum fuels, lubricants, and hydraulic fluids during construction and by maintenance vehicles will result in the potential for small on-site spills. However, the use of a spill prevention, control and countermeasure (SPCC) plan will reduce leaks and spills and minimize the potential for adverse impacts to groundwater.

Fertilizers and herbicides will be used sparingly and in accordance with the manufacturer's recommendations to avoid contamination of groundwater. Additionally, beneficial indirect impacts to groundwater could result from the change in land use from agricultural uses due to reduction in fertilizer and herbicide use.

No direct adverse impacts are anticipated as a result of project development due to the use of a SPCC plan; there will be minor beneficial indirect impacts to groundwater due to the reduction in fertilizer and herbicide use as land use changes from agriculture to solar energy generation.

Waste

Waste will be generated during construction and operation of the solar facility and will be handled and disposed of in accordance with local, state, and federal regulations. Construction activities will generate solid waste consisting of construction debris and general trash, including wooden crates, pallets, flattened cardboard module boxes, plastic packaging, and excess electrical wiring. To the extent feasible and practicable, construction waste will be recycled and material that cannot be recycled will be disposed of offsite at a permitted facility to be determined by the designated contractor(s). No waste will be disposed of on the Project Site. Designated construction contractor and subcontractor personnel will be responsible for daily inspection, cleanup, and proper labeling, storage, and disposal of all refuse and debris produced. Disposal containers such as dumpsters or roll-off containers will be obtained from a proper waste disposal

contractor and will be located in the on-site staging area or other areas, as appropriate. Records of the amounts generated will be maintained by Mt Olive Creek.

During construction of the proposed solar facility, materials will be stored on site in storage tanks, vessels, or other appropriate containers specifically designed for the characteristics of these materials. The storage facilities will include secondary containment in case of tank or vessel failure. Construction-related materials stored on site will primarily be liquids such as used oil, diesel fuel, gasoline, hydraulic fluid, and other lubricants associated with construction equipment. Safety Data Sheets for all applicable materials present on site will be made readily available to on-site personnel.

Construction activities will involve use of machinery (e.g., backhoes, generators, pile drivers, flatbed trucks, field trucks, tractors) fueled by petroleum products. Fueling of some construction vehicles will occur in the construction area. Other mobile equipment will return to the on-site laydown areas for refueling. Construction contractors will be responsible for preventing spills by implementing proper storage and handling procedures. Special procedures will be identified to minimize the potential for fuel spills, and spill control kits will be carried on all refueling vehicles for activities such as refueling, vehicle or equipment maintenance procedures, waste removal, and tank clean-out.

Small quantities (less than 55 gallons, 500 pounds or 200 cubic feet) of janitorial supplies, paint, degreasers, herbicides, pesticides, air conditioning fluids (chlorofluorocarbons [CFCs]), gasoline, hydraulic fluid, propane, and welding rods typical of those purchased from retail outlets may also be stored and used at the facility. Due to the small quantities involved and the controlled environment, a spill could be cleaned up without significant environmental consequences.

Facility personnel will be supplied with appropriate personal protective equipment (PPE) and will be properly trained in the use of PPE as well as the handling, use, and cleanup of hazardous materials used at the facility and the procedures to be followed in the event of a leak or spill. Adequate supplies of appropriate cleanup materials will be stored on site.

Waste generation during operation will be minimal and will mainly result from the maintenance and/or replacement of worn or broken equipment and defective or broken electrical materials. All wastes will be managed by designated waste management company(ies) and disposed of in accordance with applicable federal and state requirements to minimize health and safety effects.

Portable chemical toilets will be provided for construction workers during Project development. Sewage will be pumped out by a licensed contractor and the sewage waste will be disposed at the Russell County Regional Wastewater Treatment Plant or other appropriate facility. No adverse effects are anticipated from wastewater treatment and disposal. Due to the size of the facility, no additional or permanent bathroom facilities are anticipated.

Based on a review of Project waste generation activities, no adverse effects from waste are anticipated.

Water Withdrawal

Water service in the Project area is provided through private wells that provide water to the barns and fields. Aquifers beneath the Project have sufficient permeability to conduct groundwater and to allow economically significant quantities of water to be produced by man-made water wells. The Project anticipates using these existing wells to provide water needed during construction and may either use these existing wells for the construction manager trailer or develop a new water well.

Construction-related water use will support site preparation (including dust control) and grading activities. During earthwork for the grading of access roads, foundations, equipment pads, and other components, the primary use of water will be for compaction and dust control. Smaller quantities will be required for preparation of the equipment pads and other minor uses. The SWPPP will include requirements for using water to clean equipment and appropriately disposing of this wastewater. The expected water volume needed for construction activities is not expected to adversely affect local or regional groundwater resources.

The internal access roads will not be heavily traveled during normal operation, and consequently, water use for dust control is not expected. Equipment washing and any potential dust control discharges will be handled in accordance with BMPs described in the SWPPP for water-only cleaning.

Operation of solar electricity generating facilities is not water-intensive. Precipitation in the region is adequate to remove dust and other debris from the PV panels while maintaining energy production; therefore, manual panel washing with water or any other substance is likely not part of regular solar project maintenance. Water will be used for ongoing vegetation management needs, including: during screening vegetation installation; during prolonged times of drought; and for effective integrated vegetation management.

