

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

In the Matter of:

ELECTRONIC APPLICATION OF BLUEBIRD)	
SOLAR LLC FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY 100)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR)	2021-00141
GENERATING FACILITY IN HARRISON COUNTY,)	
KENTUCKY PURSUANT TO KRS 278.700 AND KAR)	
5:110)	

MOTION

Bluebird Solar LLC (“Bluebird”), by counsel, moves the Kentucky State Board on Electric Generation and Transmission Siting (the “Siting Board”) for an order (1) confirming that the planned transmission line between the project substation and utility switchyard is an accessory structure to the generating facility and does not need separate approval by the Siting Board and (2) approving a revised development plan containing three minor modifications to access ways and internal roads. Bluebird seeks to close on financing in the near future and, thus, respectfully requests a decision by **April 28, 2024**. In support of this Motion, Bluebird states as follows:

I. Transmission Line

Bluebird plans to construct a 138 kV transmission line that will be approximately 350 feet in length between the project substation and utility switchyard. This transmission line was discussed in the documents filed with the Siting Board during the processing of the case.

Bluebird filed its application for a construction certificate on February 4, 2022. As a part of its application, Bluebird requested approval “to construct the Bluebird Solar Facility.”¹ In the

¹ [Application Pleading](#) at 2.

first request for information, the Siting Board specifically asked “whether the transmission line connecting the switching station and the existing utility substation is a part of the project.”

Bluebird confirmed its interpretation that the transmission line was part of the project, stating:

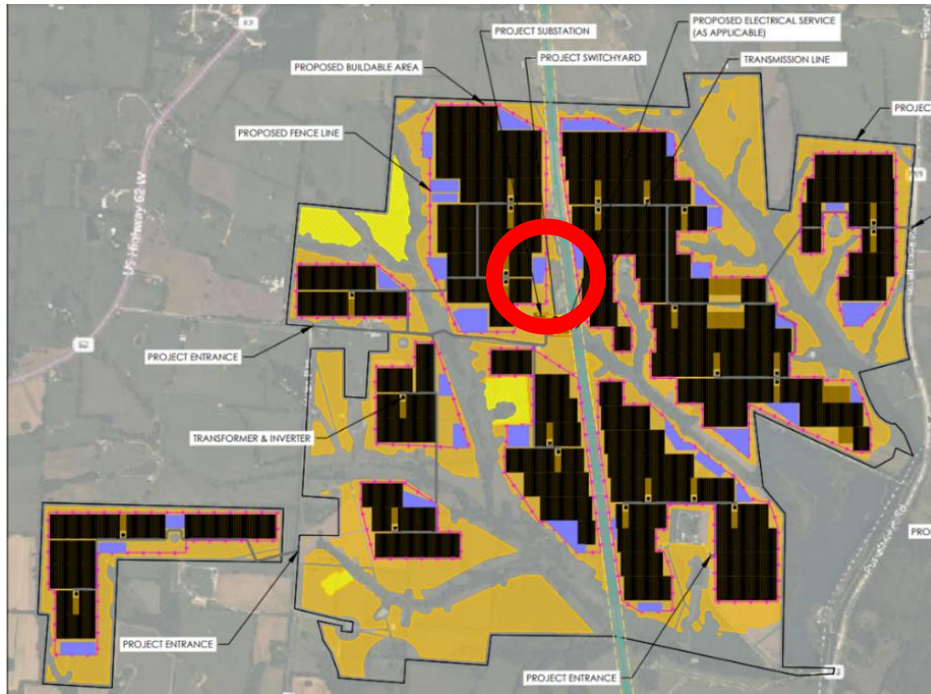
As a point of clarification, the project is not connecting to an existing utility substation. EKPC will build a utility substation to connect the project to the transmission line. This transmission) line will be considered part of the project until the physical location of the point of change in ownership, which is currently contemplated to be the last upright pole before the utility substation. After the last upright pole before the substation, EKPC will retain ownership of the transmission line.²

As shown in the preliminary site plan copied below that will be updated as a supplement to this motion, the transmission line connecting the project substation and utility switchyard will be located in the middle of the project,³ and will be approximately 2,000 feet from the nearest non-participating property boundary.⁴

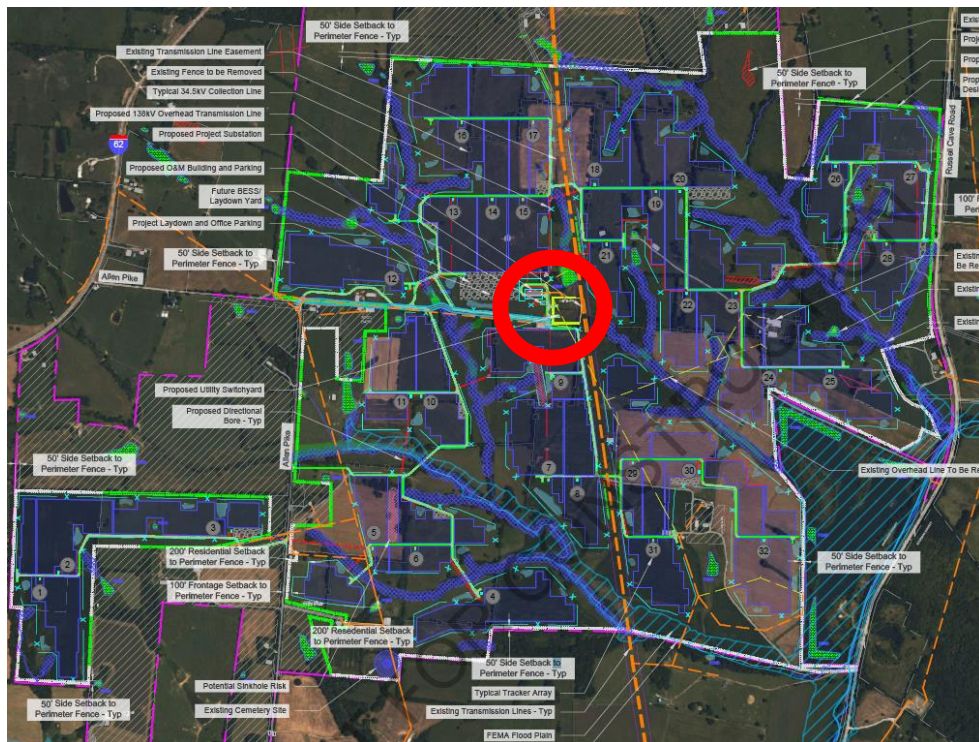
² Bluebird Response to [Item 19](#) of the Siting Board Staff’s First Request for Information.

³ See [Preliminary Site Plan](#) filed with the Application; see also [Revised Site Plan](#) filed on July 12, 2023. The red circle is added for emphasis.

⁴ See [Revised Site Plan](#) filed on July 12, 2023.



It is depicted on the revised site plan below as the small orange line between the project substation and the utility switchyard.



The Siting Board approved Bluebird’s construction certificate on August 3, 2022. It likewise approved Bluebird’s revised site development plan on September 12, 2023. Bluebird believes that the transmission line between the substation and switchyard was contemplated by the Siting Board’s approvals, particularly because it was the subject of discovery requests. In addition, the definition of a “merchant electric generating facility” includes “associated structures and facilities” to the generating facility,⁵ and the planned transmission line is necessary for the project to connect to the transmission system.

The Siting Board’s orders in this case, however, did not explicitly reference this transmission line. Out of an abundance of caution, Bluebird now seeks confirmation that the construction of this planned transmission line was approved by the Siting Board as an associated structure and that no further approval is necessary to complete construction of the project.

Siting Board decisions issued after the August 3, 2022, Order seemingly confirm Bluebird’s understanding. In February 2023, the Siting Board held that Golden Solar, LLC did not need separate approval for an approximately 300-foot transmission line that connected the project collector substation to the utility switchyard.⁶ It noted that the substation is on the boundary of the leased project property and the utility substation is directly adjacent to the project boundaries on three sides.⁷ The Siting Board also mentioned the fact that there was an existing overhead transmission line adjacent to the switchyard. Ultimately, it held that no separate approval was necessary because “[t]he nonregulated transmission line, in this instance, can be considered an associated structure of the project because of its minimal length and proximity to the project substation and LG&E/KU switching station.”⁸

⁵ KRS 278.700.

⁶ See *Golden Solar, LLC*, [Case No. 2020-00243](#) at 20-21 (K.S.B. Feb. 21, 2023).

⁷ *Id.* at 21.

⁸ *Id.*

Approximately two months after the order for Golden Solar, the Siting Board made a similar holding for Thoroughbred Solar, LLC. It specifically stated that project did not have to file a separate application for a 100-foot transmission line.⁹

Later in the spring of 2023, the Siting Board also held that Pine Grove Solar LLC did not need to file a separate application for construction of a 150-foot nonregulated transmission line “because the transmission line proposed is an ancillary project for the proposed solar facility.” The Siting Board found that the transmission line is very short and is contained within parcels of property to be used for the Project.”¹⁰

These same findings apply equally to Bluebird’s planned transmission line. At 350-feet, the transmission line is relatively short. It will be located on the interior of the project site, and located on parcels to be used for the generating facility. In addition, it is located near the existing transmission line owned by East Kentucky Power Cooperative. Accordingly, Bluebird respectfully requests an order from the Siting Board confirming that this transmission line is an accessory structure or facility of the generating facility and no separate approval is needed for this transmission line.

II. Final Site Layout Plan

Bluebird also seeks an order approving a revised site development plan with three minor modifications to access ways and internal roads. As noted above, the Siting Board approved Bluebird’s construction certificate on August 3, 2022. It likewise approved Bluebird’s revised site development plan on September 12, 2023. When Bluebird sought approval of its revised site plan by motion filed in July 2023, it believed the layout plan was final. As the project has approached

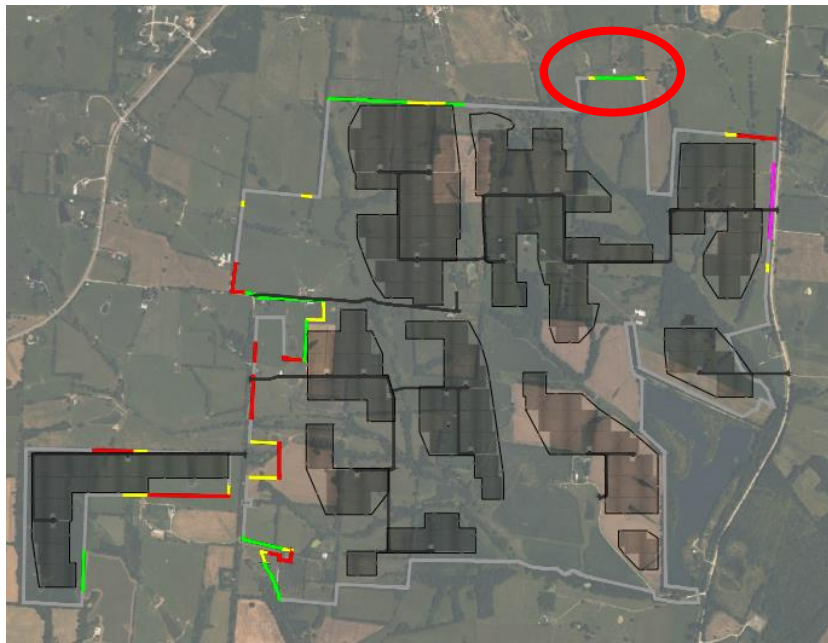
⁹ *Thoroughbred Solar, LLC*, [Case No. 2022-00115](#) at 21 (K.S.B. Apr. 10, 2023).

¹⁰ *Pine Grove Solar LLC*, [Case No. 2022-00262](#) at 17 (K.S.B. May 26, 2023).

construction, a few minor changes have been made to access ways and internal roads, of which Bluebird seeks to provide notice and for which it seeks to obtain Siting Board approval.

A. Access Easement

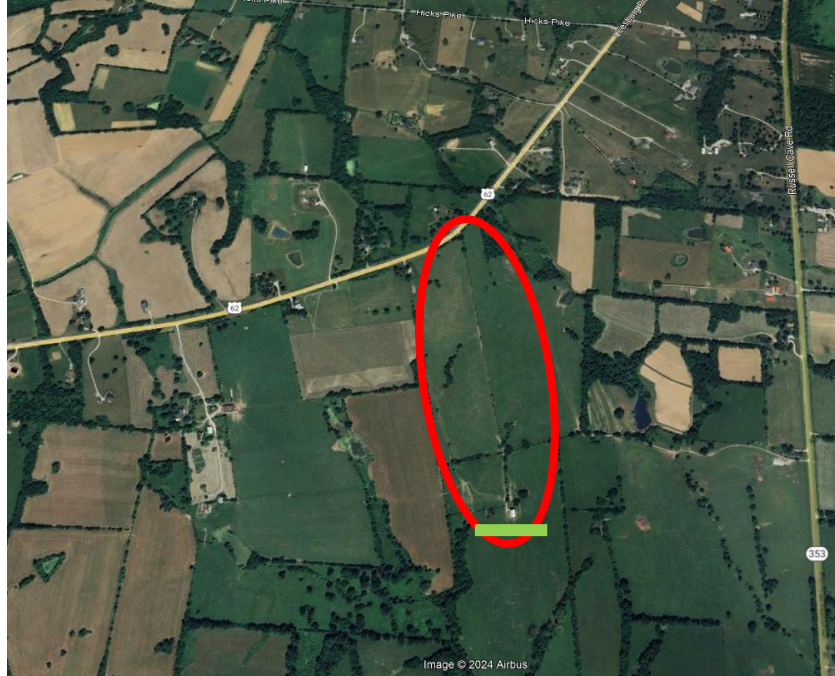
The first minor change to the layout plan relates to the addition of an access way from US 62 to the project's northern-most property boundary, which has been formalized in an easement.¹¹ As depicted below, Bluebird's landscape plan¹² calls for less than 1,000 linear feet of vegetative screening on the northern-most segment of the property boundary.



In order to have the most efficient means of maintaining this vegetative buffer, Bluebird negotiated an access easement along an existing dirt path with the adjoining landowner to the north of that vegetative buffer. This access is anticipated to be used only one or two times a year during operations for maintenance of the vegetative screen. The dirt path is depicted below inside the red oval with the approximate location of the vegetative buffer shown in green.

¹¹ A copy of the recorded easement is attached as Exhibit A.

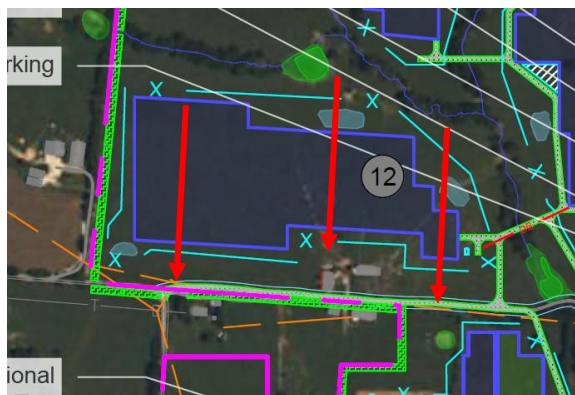
¹² See [Attachment B](#) to the Application, filed Feb. 4, 2022.



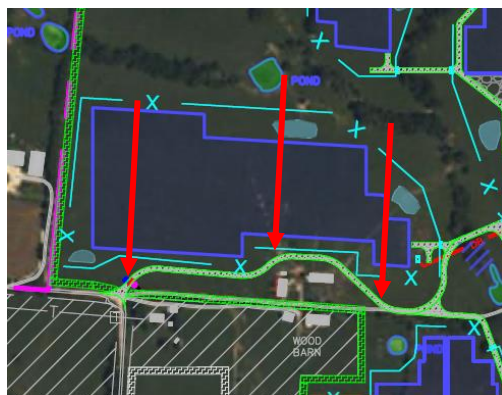
B. Internal Road Routing Change off Allen Road

The second change relates to minor rerouting of an internal road, which comes from Allen Pike to the west and runs south of Panel Array 12. Initially, the project planned to locate the internal road along an existing gravel road, but the existing gravel road travels through buildings. Accordingly, the layout plan has been revised to have the internal road go to the north of all the buildings in that location, but still south of Panel Array 12. This shift is less than 200 feet northward, and is depicted below when comparing the prior layout plan on the left and the revised layout plan on the right.

Previous Plan

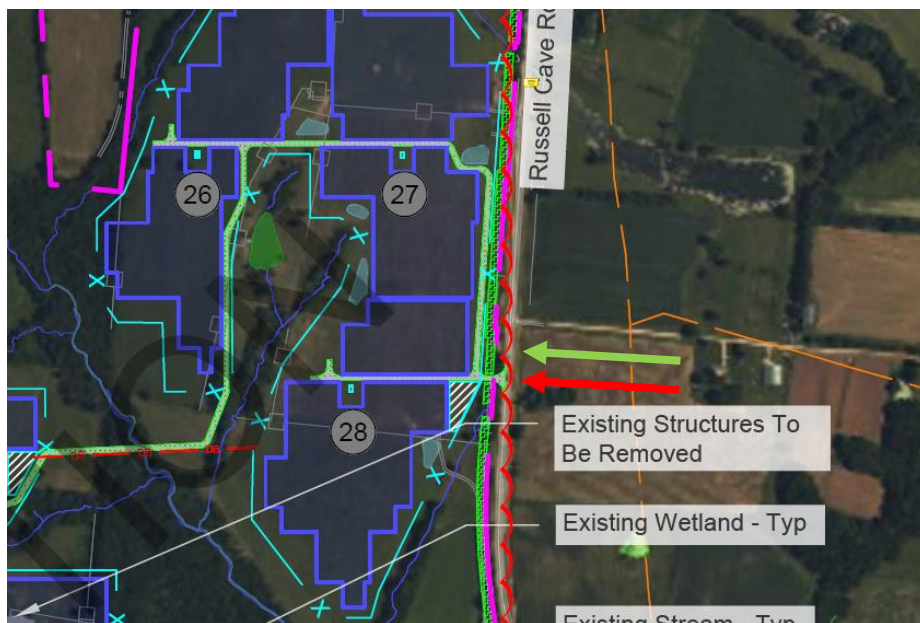


Revised Plan



C. Access Point and Internal Road Routing Change off Russell Cave Road

The third change relates to a minor shift of an access point off of Russell Cave Road and a related routing change to that internal road. Specifically, the entrance located on Russell Cave Road between Panel Arrays 27 and 28 will be moved approximately 129 feet to the north. In the depiction below, the red arrow points to the location of the entrance where it was previously planned and the green arrow points to the location of the entrance for the revised plan.



D. Analysis on Layout Changes

In its August 3, 2022, Order approving a construction certificate to Bluebird, the Siting Board required that Bluebird submit a final site layout plan with deviations from the preliminary site layout plan clearly indicated on the revised plan. The Siting Board indicated that it would “determine whether any deviation in the boundaries or site-layout plan is likely to create a materially different pattern or magnitude of impacts.” As discussed and depicted herein, Bluebird’s changes between the preliminary site layout plan and the revised plan do not create a materially different pattern or magnitude of negative impacts.

Each of the changes is minor. The new access easement was negotiated with the adjoining property owner and is only anticipated to be used one or two times a year during operations. It will offer easier access to the vegetative buffer at that location, enabling the project to avoid more remote paths that potentially cross waterways. The modification to the internal road off Allen Pike will not impact any feature of the project other than the location of an internal road. It will enable the project to minimize impact to existing structures. The shifting of the entrance along Russell Cave Road and correlated modification to the internal road will not impact non-participating properties, as the entrance will still be to the south of the private drive on the east side of Russell Cave Road.

These changes have been submitted for final engineering drawings and a corresponding revised site layout plan. Bluebird anticipates the revised plan to be complete by mid-April, and Bluebird will promptly file it with the Siting Board on completion. Because Bluebird desires to close on financing in the near future, it is submitting this motion prior to finalization of this layout plan, in order to give the Siting Board additional time to consider the issues raised herein.

Based on the foregoing information, Bluebird respectfully requests an order from the Siting Board confirming that Bluebird's revised site development plan as described herein complies with the conditions imposed in the August 3, 2022, Order. The changes to the site plan have not materially changed the Project and do not create a magnitude of impact different from the impacts the Siting Board addressed in the original consideration of the case.

III. Conclusion

Accordingly, Bluebird respectfully requests an order from the Siting Board (1) confirming that the planned transmission line between the project substation and utility switchyard is an accessory structure to the generating facility and does not need separate approval by the Siting Board and (2) approving a revised development site plan with three minor modifications to access ways and internal roads described herein.

RESPECTFULLY SUBMITTED,

STURGILL, TURNER, BARKER & MOLONEY, PLLC

M. Todd Osterloh

James W. Gardner

M. Todd Osterloh

333 West Vine Street, Suite 1500

Lexington, KY 40507

Phone: (859) 255-8581

E-mail: jgardner@sturgillturner.com

E-mail: tosterloh@sturgillturner.com

Counsel for Bluebird Solar LLC