

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

GRE GACRUX LLC petition for a declaratory ruling for the proposed construction, maintenance and operation of a 16.78-megawatt AC solar photovoltaic electric generating facility in Waterford, Connecticut. Reopening of this petition based on changed conditions.

Petition No. 1347A

September 24, 2020

POST-HEARING BRIEF OF PETITIONER GRE GACRUX LLC

I. INTRODUCTION

Through the course of the thousands of pages of information that has been exchanged during the course of this Petition and the hours of hearing time that has been spent on this matter, one thing has been proven clear – Greenskies’¹ redesigned Project meets the applicable standards of the Siting Council. Though the Project admittedly has its detractors, those detractors are limited to one small group who have not offered any proof or any calculations that the Project, as it is currently designed, will adversely affect the air or water resources of the State of Connecticut. The detractors pin their hopes of another denial of the Project on unsubstantiated innuendo, choosing to rely on scare tactics rather than perform the calculations and conduct the appropriate measurements that Greenskies has.

Greenskies, by way of contrast, has (like any good math student) “shown its work” to the Council and to the public. The main issue throughout this Petition has been the management of stormwater at the Project Site. After Petition 1347 was completed, Greenskies hired a new design team, redesigned the stormwater features, conducted additional wildlife studies and geotechnical

¹ For purposes of this Brief, the Petitioner GRE GACRUX LLC, shall be referred to as “Greenskies” or the “Petitioner.”

tests and provided the Council with a substantially improved project. In support of this Petition, Greenskies has provided the Council with reams of calculations and data that demonstrate that this Project will adequately manage stormwater discharges, minimize natural resource impact(s), and will incorporate any feedback it receives from the Siting Council, the Connecticut Department of Energy and Environmental Protection (“CTDEEP”), the Town of Waterford (the “Town”), or Save the River-Save the Hills (“STR-STH”).

In addition to undertaking the Petition process before the Siting Council, Greenskies has met with CTDEEP stormwater staff on several occasions (Petition, p.2) to ensure that stormwater issues will be appropriately addressed. Those meetings have been fruitful, as CTDEEP has provided the Project with sound advice as to what will be required for stormwater management at the Site. More importantly, these meetings have allowed CTDEEP to provide commentary to the Council that “the petition addresses concerns with solar development listed in [CTDEEP’s] January 2020 Guidance,” otherwise known as Appendix I.² In noting its approval of the responsiveness of Greenskies in altering its stormwater design in response to CTDEEP commentary, CTDEEP also stated that Greenskies’ “hydrologic analysis follows January 2020 Guidance” which results in “a conservative approach to sizing stormwater management basins.” CTDEEP Comments, p. 3.

The chief concern for this Project has been stormwater management, however, as CTDEEP itself has noted, Greenskies has been responsive to the stormwater staff’s requests and has designed its Project in accordance with the requirements of Appendix I. Put simply, the Project, as presently designed, meets the exacting standards set forth by the Council in its consideration of such projects,

² See June 17, 2020 comments from Linda Brunza of CTDEEP (“CTDEEP Comments”) that were provided to the Siting Council.

and will provide a multitude of environmental, economic, and societal benefits to the region. As such, Greenskies respectfully requests that the Siting Council approve this Project as designed.

II. BACKGROUND

A. Procedural Background

The Project was selected as part of the Department of Energy and Environmental Protection's ("DEEP") Clean Energy RFP and was found to be consistent with Connecticut's 2013 Comprehensive Energy Strategy ("CES"). On June 20, 2018, Greenskies submitted a Petition to the Council for a Declaratory Ruling pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance, and operation of the Project ("Petition 1347"; or the "Original Petition"), which was subsequently denied, without prejudice, by the Council. *See* Council Decision on Petition for Reconsideration dated December 11, 2018.

As a result of that denial, Greenskies reviewed the design of its Project and made several substantive changes to its design. To ensure that the Project was reviewed with a fresh set of eyes, the Project hired a new third-party environmental and engineering consultant, VHB. VHB reviewed the original Project design and set to work improving stormwater management design while ensuring that Connecticut's natural resources would be adequately protected. To that end, VHB conducted additional onsite wildlife studies to confirm that the Project would have no negative impact to surrounding wildlife, which was confirmed by CTDEEP's NDDB staff on February 28, 2020. CTDEEP Comments, p. 3. VHB also met with CTDEEP's stormwater staff on several occasions and modified the design of the Project to comply with CTDEEP's new, stricter guidelines for stormwater runoff from solar PV facilities. *See* Testimony of Jean-Paul La Marche, dated January 23, 2020, p. 2. VHB also performed a number of additional sub-surface

investigations to confirm the Project's modified storm water design is correct. As a result of all this work, the Project scaled back the size of the system and the overall footprint of the Project. *Id.*

Based on these changes, the Council granted the Petitioner's Motion to Reopen Petition 1347 on February 28, 2020.

B. Greenskies Has Amended the Project's Design in Response to Stakeholder Input

Throughout the course of the Petition 1347 and Petition 1347A proceedings, Greenskies has proven its commitment to working with the Council, the Town, CTDEEP, STR-STH, and other interested stakeholders in the development of the Project. *See e.g.*, Petition, pp. 1 - 5 (summarizing the ways in which the feedback received during Petition 1347 informed the present design of the Project); GRE Responses to Council's Set One Interrogatories, dated April 6, 2020, A4 ("In response to the Town of Waterford's request, Greenskies only intends to clean up the 45 acres within the project area. Greenskies was informed by the Town that leaving the additional 21 acres in their current state will allow for greater habitat and biodiversity.")

To that end, the Petition's evidentiary record is rife with instances where Greenskies agreed to revise the Project in response to the input it received during the course of the Petition's proceedings to improve the Project and mitigate its impacts where feasible. *See e.g.*, August 4, 2020 Hearing Transcript, La Marche Testimony, p. 76 ("I can answer that in terms of we want our site to be as best as we possibly think it can be, and by relocating that road we see it as an improvement. Therefore, we're willing to do it and happy to do it"); *Id.*, p. 80 ("The project team is amenable to reviewing options and showing a list of options to the Siting Council as potential alternative for designs."); July 14, 2020 (Afternoon) Hearing Transcript, p. 88 ("This is Jean-Paul, I just want to add that we are also happy to do more frequent [site] inspections than is required"); GRE Responses to STR-STH Interrogatories, dated April 27, 2020, p. 10 ("The Petitioner is

amenable to working with both the Connecticut Siting Council and the CTDEEP to determine the most appropriate long-term maintenance plan for [the post-development stormwater basins] as needed”); July 14, 2020 (Afternoon) Hearing Transcript, p. 40 (“if the Council had a wish that the basins should be redesigned, the petitioner would be amenable to doing so.”). GRE Responses to STR-STH Interrogatories, dated April 27, 2020, p. 3 (“The Petitioner is amenable, however, to removing [the 300 solar panels proposed within 200 feet of an onsite wetland], if the Connecticut Siting Council so desires.”).

Greenskies listened to the feedback and made a number of substantive changes to the Project as a result. Some of the more significant examples of such changes include:

- The entrance road in the vicinity of Vernal Pool 3 and Stormwater Basin 1 has been revised such that daily construction activities will not use the existing road crossing the wetlands;
- A permanent sediment forebay capable of storing at least twenty-five percent (25%) of the water quality volume (“WQV”) for each basin has been added to the Site Plans upstream of each proposed basin;
- Stormwater Basin 5 has been revised in footprint to shift the bottom of the basin out of the approximate seasonal high groundwater depth;
- All 300 panels that were previously depicted within 200 feet of an onsite wetland have been removed from the Project’s Site Plans; and
- The proposed fence in the vicinity of Stormwater Basin 4 has been adjusted as requested by the Council.

See GRE GACRUX LLC’s Responses to the Siting Council’s LFE Requests, dated July 28, 2020, pp. 1-2.

Throughout this process, Greenskies has demonstrated its willingness to revise the Project's design to accommodate reasonable concerns. Greenskies will continue to do so, as it believes that by working collaboratively with all stakeholders, better project designs emerge. If this Petition is approved by the Council, Greenskies will continue to work collaboratively with the stakeholders associated with this Project, through the D&M Plan phase and beyond.

III. LEGAL STANDARD

Pursuant to Conn. Gen. Stat. §§ 4-176 and 16-50k(a) and Regs. Conn. State Agencies §§ 16-50j-38 *et seq.*, Greenskies requested that the Council issue a declaratory ruling for the Petitioner's proposed Project. Conn. Gen. Stat § 16-50k(a) provides, in pertinent part, that,

Notwithstanding the provisions of this chapter or title 16a, the council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling . . . (B) the construction or location of any... grid-side distributed resources project or facility with a capacity of not more than sixty-five megawatts, as long as such project meets air and water quality standards of the Department of Energy and Environmental Protection...

The Project is a “grid-side distributed resources” facility, with a capacity of not more than sixty-five (65) megawatts, that meets the applicable air and water quality standards of the CTDEEP. In addition, and as discussed further below, the Project has been designed to minimize natural resource impact(s), to the greatest extent(s) feasible and will not result in an adverse impact to the surrounding environment. Therefore, Greenskies respectfully submits that its Petition should be approved.

IV. ARGUMENT

A. The Project Meets Applicable Air Quality Standards

The proposed Project is a solar PV energy generating facility, and, therefore, will generate no direct air emissions during operation and will not require an air permit from the CTDEEP. Petition, p. 29. While the Petitioner expects that air emissions will result from construction vehicles and related construction activities, these air emissions will be temporary and negligible in nature. *Id.* at pp. 28 – 29. Once operational, however, the Project will be generally unstaffed and only occasional vehicle trips to the Project Area will occur for routine maintenance activities, thereby limiting any potential for harmful emissions. *Id.* at 25.

Unlike traditional sources of electric generation, the Project will actually improve air quality. As is indicated in the Carbon Debt Analysis for the Project (Petition, Appendix E), the carbon debt of the Project is estimated to be 37,066.3 MT CO₂eq over a period of thirty (30) years. The Project is expected to produce 28,726.7MWh of energy in its first year of operation. Using emission factors provided by the U.S. EPA specific to the Project's eGrid region (NPCC New England), the estimated annual emissions avoided by the Project is anticipated to be 12,776.1 MT CO₂eq. This reduction is equivalent to the benefit of planting 16,685 acres of forest. Based on this analysis, it would take the Project approximately 2.9 years (or nearly 35 months) to have a net improvement with respect to greenhouse gas emissions. The Project's estimated annual emissions avoidance is equivalent to GHG emissions from 2,713 passenger vehicles driven for one year and CO₂ emissions from 1,474 homes' energy use for one year. Petition, p. 29.

Based on the foregoing, the Project will clearly meet and/or exceed the applicable air quality standards of the State of Connecticut. Indeed, there was no dispute that the Project, as

designed, meets Connecticut's air quality standards, by any of the parties who were involved in the Petition.

B. The Project Meets Applicable Water Quality Standards

There was, however, a difference of opinion as to whether the Project will meet Connecticut's water quality standards, particularly with respect to stormwater management. Upon closer examination, however, one sees that the balance of this disagreement tilts squarely to one side. On the one side, there are numerous undisputed calculations showing that the Project meets applicable stormwater standards and regulations, as well as the confirmation by CTDEEP that the Project as designed is compliant with CTDEEP's latest Guidance on the subject. CTDEEP Comments, p. 2. The other side of this argument took issue with both Petitioner's calculations and CTDEEP's approval. This would seem to make for a rather compelling standoff, however, rather than proffer calculations or provide concrete measurements of its own, the other side simply chose to hurl unsubstantiated vitriol at the Project. Thus, when one weighs calculations and CTDEEP approval on one side, and unsubstantiated commentary on the other, the choice becomes clear -- the Project will also meet applicable water quality standards.

Unfortunately, because the record in this Petition is clogged with such vitriol, additional explanation regarding the Project's compliance with water quality standards is warranted. Greenskies firmly believes that the measures articulated in its Stormwater Management Report coupled with CTDEEP's stormwater analysis for the Project will be more than sufficient to prevent undesired impacts to receiving waters or adjacent properties. Notwithstanding, STR-STH appeared to focus on other potential "issues" associated with runoff from the Project. Greenskies believes that said issues are without merit, as is discussed in greater detail below.

From the outset of designing this Project and throughout the Petition process, Greenskies has incorporated various protective features into the Project’s design (*see* Greenskies Responses to STR-STH Interrogatories, dated April 27, 2020). Moreover, the proposed stormwater management system for the Project has been designed in accordance with the 2004 CTDEEP Stormwater Quality Manual, draft CTDEEP Solar Appendix I, and Minnesota stormwater guidelines. Petition, p.32. *See also* pp. 2-3 of the CTDEEP’s Comments regarding the measures being taken by the Project to address stormwater runoff.

These designs and approvals do not appear to satisfy STR-STH, however. The core of the issue, as Greenskies understands it, is that STR-STH believes that the Project’s proposed stormwater management system is “fundamentally flawed” because of Greenskies’ alleged “refusa[l] to acknowledge in its stormwater design that the solar panels are impervious.” Moshier-Dunn PFT, p.6. Consequently, STR-STH contends that the Project’s estimations for peak runoff are off by approximately 40 percent and will adversely impact the area(s) surrounding the Project Site and the wildlife/habitat that occur therein. *See, e.g.*, August 25 Public Hearing Transcript, pp. 35 – 36, 41. As set forth in greater detail below, these purported “issues” are largely speculation or based on outdated, irrelevant, and/or inaccurate information, and should therefore not be considered by the Council in its review of the Project.

As an initial matter, aside from the work of Mr. Trinkaus—who, by his own admission, has neither a degree in engineering nor meaningful experience in developing stormwater management for solar projects (*see e.g.*, August 25 Public Hearing Transcript, pp. 47 – 49, 79)—STR-STH has been unable to cite to any legitimate authority that instructs, for purposes of computing post-construction peak rates and volumes of stormwater runoff, that solar panels should be considered impervious under Connecticut laws and regulations. Greenskies surmises that the

reason therefor is because STR-STH could find no such third-party information demonstrating that the Project should consider the totality of the project as impervious under Connecticut's programs. Nor, as noted by Greenskies, is considering solar panels as impervious for purposes of computing post-construction peak rates and volumes of stormwater runoff a requirement for CT DEEP stormwater permitting, either under the CTDEEP General Permit, nor under the January 2020 CTDEEP Guidance document related to solar projects. *See* Testimony of Steve Kochis, p. 2.

Notwithstanding, as the Project's engineer testified during the August 4th Public Hearing, the Site Plans, as designed, are able to meet the water quality requirements, even assuming that the panels are impervious. *See* August 4, 2020 Public Hearing Transcript, pp. 73 - 74. To that end, rather than amounting to what STR-STH attempted to cast as a fatal flaw/glaring omission in the Project's stormwater design, the Project's stormwater design was actually comprised of deliberate, conservative design decisions on behalf of the Petitioner:

MS. GIANQUINTO: What would happen if -- have you ever run the numbers assuming that the panels are impervious?

MR. KOCHIS: Is that question for the sake of peak rate analysis or the water quality volume?

MS. GIANQUINTO: Let's start with peak rate. Have you ever done that?

MR. KOCHIS: No, we have not run the numbers for peak rate analysis assuming the panels are impervious. However, we have run the numbers assuming that the panels are impervious to the water quality volume, and what we actually found was that the site plan as designed is able to meet the water quality volume requirements even assuming that the panels are impervious and into each subwater shed and stormwater basin.

MS. GIANQUINTO: Then why wouldn't you just go ahead and make that assumption if it works?

MR. KOCHIS: Well, to answer that question, we started off by trying to be more conservative and looking at things like hydroseeding within 72 hours and providing a lot of those extra conservation measures within the site plan rather than just relying on just providing the water quality volume as an end-of-treatment plan.

MS. GIANQUINTO: So you're saying that rather than just assuming they're impervious and designing it that way which you just said would work for at least water quality volume, instead you're jumping through all the hoops of Appendix I that require different things for the different slopes?

MR. KOCHIS: That's correct. That's where we started our analysis to try to jump through the hoops, but as a backup the site plan does work and provides the required water quality volume, even assuming the panels are impervious.

Id. In spite of the above, STR-STH fervently attests that the Project's estimations for peak runoff rates are off by approximately forty percent. Greenskies found such an allegation alarming as a forty percent error would be quite problematic. Therefore, Greenskies sought proof of this error, so that it might better understand the Project's shortfall. However, no proof, not even one calculation, was forthcoming.

During the cross examination of Mr. Trinkaus, Mr. Trinkaus maintained that the construction of the Project will result in increased runoff. *See* August 25, 2020 Public Hearing Transcript, p. 86. When counsel for Greenskies inquired as to how much runoff Mr. Trinkaus expected to see, he responded that, “[s]imilar to what I calculated in East Lyme, you would see expected 40 percent higher values than reported in the stormwater report by VHB.” *Id.* at 86. Bewilderingly, however, Mr. Trinkaus did not attempt, at any time during the course of the Petition's proceedings, to introduce these calculations into the instant evidentiary record, nor were Mr. Trinkaus' calculations for East Lyme, as Greenskies presently understands, ever publicly disclosed. *See Id.*

Given how highly probative these calculations would be, Greenskies cannot understand STR-STH's decision to withhold them from the Council's and other Parties' review. Indeed, the Petitioner submits that the only logical conclusion that can be drawn from this decision is that either: (a) these calculations were never actually done, or (b) the calculations were performed and

were inapposite to the “stormwater disaster” narrative STR-STH purported to spin. As such, the Intervenor’s claims regarding the perceived “inadequacy” of the Project’s stormwater management system and its “40 percent estimation” must fail on this basis alone. *See Id.*, pp. 35 – 36.

STR-STH was similarly unable to provide the parties to this Proceeding with any calculations to substantiate its claim(s) regarding the Project’s expected “increase” to the Site’s flow path(s)—notwithstanding that this issue appeared to be one of STR-STH’s primary concerns with the Project. The reason being, as the parties subsequently discovered, was because, yet again, STR-STH did not perform the calculations for same:

MR. HOFFMAN: Okay. But you still haven't answered my question. By how much will the flow path increase, where are your calculations?

THE WITNESS (Trinkaus): I have not done any. You would have to look at every one of your watersheds and spend time doing that.

MR. HOFFMAN: And we'd have to look at every one of our basins, too, I'd imagine.

THE WITNESS (Trinkaus): That's where the design points are, yes.

Id. at 89. Needless to say, these are not isolated incidences. Throughout the entirety of the Petition’s proceedings, STR-STH has done nothing but disparage the evidentiary record with baseless and unfounded conclusions, devoid of any scientific or mathematical support. *See e.g.*, August 25, 2020 Public Hearing Transcript, p. 79 (wherein, Mr. Trinkaus was asked to provide supporting data for his runoff rate estimations, only to point to his “40 years of engineering experience designing stormwater management systems”); *Id.* at 76 (where, STR-STH was unable to provide the Project’s expected water temperature increase to these resources).

The only other “evidence” that STR-STH purported to introduce in support of its criticism of the Project’s stormwater management system is the abovementioned Antares Solar Project (“Antares”). However, the Intervenor’s reliance on Antares is misplaced, and its haphazard

attempts to analogize that site to the instant Project is entirely improper. Neither the current iteration of the Petitioner nor the Project's engineering firm (VHB) were involved with the development of Antares. *See* August 25, 2020 Public Hearing Transcript, p. 94. Even STR-STH's witness, Mr. Trinkaus, conceded this point during cross examination. *See Id.* at p. 79.

Moreover, as the Petitioner previously informed the Intervenor, the engineering designs for stormwater management have evolved and improved significantly since the time that Antares was constructed. *See* GRE Response to STR-STH's Set One Interrogatories, dated April 27, 2020, p. 3. The present Project is designed to conform not only to those requirements contained in the CTDEEP's General Permit, but also to Appendix I, as codified by the CTDEEP's January 2020 Guidance. As both the Council and STR-STH are both well aware, this Guidance was not in existence at the time that the Antares was constructed.

In all candor, STR-STH's line of attack on this issue borders on the improper. It is one thing to provide a figure, such as the forty percent discrepancy Mr. Trinkaus cites, and then support that figure with calculations and data. Those calculations and data can then be examined by the Council and Greenskies to determine whether they are accurate. STR-STH did not choose to proceed in this fashion, which is certainly within its rights. However, STR-STH's failure to provide any corroborating evidence means that the Siting Council is not only well within its rights to ignore such unsubstantiated contentions, it is obligated to do so under Connecticut law.

Connecticut law is quite clear on the level of evidence upon which an administrative agency is entitled to rely. For example, the court in *Toll Bros. v. Inland Wetlands Comm'n of Town of Bethel*, 101 Conn. App. 597, 600, 922 A.2d 268, 270 (2007) noted that when a court examines an agency decision, for the reviewing court to sustain the agency's determination, the evidence supporting that agency's rationale "must be substantial." The court went on to note on page 600,

that the “substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred.... *Evidence of general environmental impacts, mere speculation, or general concerns do not qualify as substantial evidence.*” (Emphasis added; citations omitted; internal quotation marks omitted.); *citing River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission*, 269 Conn. 57, 70–71, 848 A.2d 395 (2004). In the *River Bend* case, the Supreme Court held that a trial court’s reliance on speculative evidence and failure to cite “any specific evidence to support the conclusion that the plaintiffs’ proposed actions were likely to have an actual adverse impacts on the wetlands or watercourses on the proposed site of development” was a fatal error that resulted in the Supreme Court overturning the trial court’s decision.

These cases and their progeny have a direct bearing on the matter currently before the Council. Because STR-STH failed to provide any substantial evidence upon which the Council can rely, the Council has no choice but to deny STR-STH’s requested relief.

C. The Project Will Not Adversely Impact Stony Brook or Oil Mill Brook

The Siting Council should similarly ignore STR-STH’s contentions regarding alleged impacts to streams for much the same reason. The closest that any proposed stormwater basin is to Stony Brook is approximately 600 feet and the closest that any basin is to Oil Mill Brook is 3,000 feet. *See* July 14, 2020 (Afternoon) Public Hearing Transcript, p. 93. As Greenskies witness Mr. Shamas testified during the July 14, 2020 Public Hearing (Transcript, pp. 90-91), such distances far exceed that which is typically expected of solar developments:

MR. SILVESTRI: So in a case such as that, what would be the distance between, say, basin output and the nearest water body wetland or whatever it might be discharging to?

MR. SHAMAS: So, on the plans we have, at closest point, in particular, Stony Brook, is about 600 feet from the property line. It's probably, it's further from the actual discharge point of the basins. And some of the basin paths to Stony Brook are meandering. So vertically, you may have a 600 foot path, but in reality by the time it gets there in some cases it could be 1,000, 1,100 feet. So the distances that we have in all of the literature talks about what is appropriate riparian buffers to protect against urban storm water runoff getting to these receiving waters. And it breaks it down to headwater streams, larger streams, and they all talk about minimum of 50 feet, if not 100 feet, which is, I really don't care for 50 feet. 100 feet is really what is kind of standard. Anything beyond that, is a benefit. And some of the guidelines and the documents, Niantic River Watershed, we worked in coordination with DEEP, have these standard design standards that they recommended and those design standards talked about 100 feet for larger streams, 50 feet of riparian buffer for the smaller headwater streams. So, we feel that the design is perfectly appropriate and meets the recommendations that have been studied through, not only Connecticut, but beyond in all really talking about 100 foot is an appropriate buffer for fisheries protection, wildlife habitat and the food chain.

These distances, in conjunction with the Project's proposed stormwater design, ensures that, "the receiving streams aren't impacted, wildlife isn't impact [sic], fisheries aren't impacted by sediment and erosion, or temperature." Testimony of Mr. Shamas, July 14, 2020 (Afternoon) Hearing Transcript, p. 89. Nonetheless, the Intervenor asserts that development of the Project will impact these resources and the wildlife that occurs within.

Specifically, STR-STH claims that the Project will result in an increase in thermal temperature to the receiving waterbodies. Unsurprisingly, however, STR-STH was yet again unable to proffer any support for such contention, including the calculations therefor:

MR. HOFFMAN: What would be the increase to the surrounding receiving water streams from this project?

THE WITNESS (Danila): Sir, I could not hear the entire question. Could you repeat?

MR. HOFFMAN: Absolutely. What will be the increase in temperature as a result of this project being developed to the receiving water bodies?

THE WITNESS (Danila): I can't answer that at this time.

August 25, 2020 Public Hearing Transcript, p. 76.

Not only did STR-STH fail to answer the question at that time, it never provided the answer to that question at any point during the proceedings. Perhaps even more troubling, however, is the fact that the concerns STR-STH's witness, Mr. Danila, raised regarding these resources "relied, at least in part, on Mr. Trinkaus' critiques of the Project's Stormwater Management Plan." *Id.* Such reliance, as Greenskies demonstrated in Section B above, is not only inherently flawed, but undoubtedly inaccurate as it lacks any mathematical or scientific predicate.

At bottom, the majority of STR-STH's criticisms of the Project are grounded in the perceived inadequacy of the Stormwater Management Plan. While STR-STH did state that a 100-foot buffer for the Site would be inappropriate, STR-STH was uncannily silent as to whether the Project's proposed buffer, which far exceeds 100 feet, is sufficient. *See* Supplemental PFT of Donald J. Danila, dated June 24, 2020.

The reality is that STR-STH appears unwavering in its opposition to the Project, even when confronted with evidence that such opposition is not reasonable. By way of example, although STR-STH maintains that the Project would result "in more nutrients and other pollutants being discharged due to less than adequate stormwater controls," this sentiment was later rebutted by its own expert witness, Mr. Trinkaus, when he implicitly conceded that a stormwater treatment system designed "in accordance with the DEEP manual," as the Petitioner did with the instant Project,³

³ Such features have been incorporated in the Project's design. *See* GRE's Responses to STR-STH (Set One) Interrogatories, dated April 27, 2020, A.1, A.2, A.3).

mitigates the potential for such releases. *See* August 25, 2020 Public Hearing Transcript, pp. 51 – 52 (Trinkaus: “You design your stormwater treatment systems in accordance with the DEEP manual. There's several different practices, mostly wet bottom basins, such as a constructed wetland or an extended detention shallow wetland system, where you have lots of contact time between the vegetation, the soil and the stormwater, and the nutrients are attenuated because of the long flow path that it takes to go from the inlet to the outlet and then your nutrient loads are reduced”).

Additionally, STR-STH has consistently characterized the subject parcel as an “environmentally sensitive area” and “inappropriate for a solar development,” even when informed that the NDDDB at CTDEEP determined that the site would be an appropriate location for the Project and would not adversely impact the surrounding environment. GRE Responses to STR-STH Interrogatories, April 27, 2020, p. 1; *see also* CTDEEP Comments.

Based on the foregoing, STR-STH’s concerns regarding the Project’s anticipated impact(s) to Stony Brook and Oil Mill Brook are without merit, and the Project will not harm these resources.

D. The Project Will Not Have an Adverse Impact on Wildlife

The Petitioner similarly does not anticipate any adverse impacts to other wildlife on or near the Project Site. Greenskies knows that this is the case because Greenskies undertook additional (extensive) wildlife surveys at the Site to address all of the species that were listed in CTDEEP NDDDB’s Preliminary Assessment, which included amphibians and reptiles, breeding birds, and plants of conservation concern within the State of Connecticut. *See* Petition, pp. 34 – 35; GRE Responses to STR-STH (Set 2) Interrogatories, dated, June 18, 2020, pp. 8 -9.

As a result of these surveys, and in consultation with the NDDDB staff, Greenskies incorporated various conservation measures into the Project's design, including *inter alia*, monitoring protocols for the Eastern Ribbon Snake and stormwater wet ponds 1 and 16. See GRE Responses to Council's Late-Filed Exhibit Requests, dated July 28, 2020, Attachments D and E.

Specifically, for the Eastern Ribbon Snake, the Project will include the following protective features:

- A 100 foot no disturbance buffer to wetlands.
- No planned disturbance within the utility Right-of-Way.
- Limited disturbance in the 100 to 200-foot wetland buffer in order to install the soil erosion and sedimentation measures, grading and installation of stormwater management measures (e.g., swales and basins).

In addition, for proposed activities occurring within the 300-foot wetland buffer of Wetland 1 during the snake's active season (April 1- Oct 15), the following avoidance measures will be implemented:

- A contractor awareness program will be developed and implemented to ensure that contractors working in the area have been instructed on the proper response in the event that an eastern ribbon snake is observed in the work area;
- If any snakes are observed, construction personnel will safely relocate them to an area immediately outside of the work area;
- Any silt fence utilized will be removed after clearing is complete and soils are stabilized; and
- Any confirmed eastern ribbon snake sightings will be reported to the NDDDB.

See GRE Responses to Council’s Late-Filed Exhibit Requests, Attachment D, dated July 28, 2020.

As a result of the Project’s proposed conservation measures, a Final Determination, dated February 28, 2020, was provided by NDDDB for the Project. *See* GRE Responses to STR-STH (Set 2) Interrogatories, dated, June 18, 2020, pp. 8-9 as well as the CTDEEP Comments. Based on the foregoing, the Petitioner does not foresee any adverse impact(s) to the Site’s wildlife or wildlife in the area.

E. The Project Will Not Have A Material Impact on Forest

The Petitioner similarly wishes to address any lingering concerns regarding the impact that clear-cutting the timber that remains on the Site after the Site owner’s previous, permitted logging activities occurred, would have on “quality forest land” in Connecticut. As the Petitioner indicated in its Response to STR-STH Interrogatories, dated April 27, 2020 (p. 13), such impacts are arguably *de minimis*. Moreover, the quality of the forest is already in a compromised condition, as a result of the logging activities that have historically been conducted onsite. Indeed, even STR-STH acknowledged that the Site has been subject to significant deforestation. *See* August 25 Public Hearing Transcript, p. 38 (Trinkaus: “You will not see bare areas of soil, which is what you can easily see here using a GIS or the Google Map, you can see broad areas of bare skidded soil... There would not be raw bare soil as is currently visible on the site.”). As such, the narrative that STR-STH purported to spin regarding the environmental benefits that will be lost as a result of the Project’s anticipated clear-cutting is not necessarily an accurate portrayal.

Lastly, Greenskies notes that the Project Site is privately owned. As such, the present landowner has the right to develop the property, continue its logging activities or lease the Site to

a solar developer. It is simply an unrealistic assumption to believe that the land will remain, perpetually, in its current undeveloped state. To that end, Greenskies believes that the development of a solar facility is an attractive use of this property considering it is temporary in nature and will preserve the land such that reforestation can occur in the future.

F. The Project Will Provide Environmental and Economic Benefits to the State and the Area

As articulated in Section 4 of the Petition, the Project will provide a number of environmental and economic benefits to the State of Connecticut and local community. By way of example, the Project will provide the State's electrical system with additional generating capacity that will meet demand using renewable energy, contribute to grid stability, and will provide clean, renewable solar-powered electricity that will further the State's goal to "develop and utilize renewable energy resources, such as solar and wind energy, to the maximum practical extent."⁴

In addition to the direct contribution the Project will make to increase the deployment of renewable energy, the Project will be a source of both direct and indirect revenue contribution to the local community. Because the Project anticipates using local and regional labor, as practical, during construction and throughout various phases of Project development, approximately 75 to 100 jobs will be created.

IV. CONCLUSION

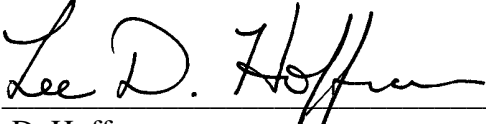
It cannot be overstated. Greenskies took the commentary it received from the Siting Council, the Town, STR-STH and others on its original project design that was the subject of Petition 1347 and took those comments to heart. It hired a new design team, redesigned the Project

⁴ CGS §16a-35k.

from a stormwater management perspective, and actively sought feedback from CTDEEP regarding the stormwater design. Greenskies conducted additional geotechnical testing and wildlife studies to be able to document and prove that this Project was sound and would minimize environmental impacts. Greenskies further modified its Project design in response to the comments it received during the process of this Petition. That is what the Siting Council's processes are designed to do – solicit feedback on a project's design and improve the project. Greenskies listened to that commentary and incorporated the feedback it received into the design that is currently before the Council. The Project that now sits before the Council has fully addressed all legitimate concerns that have been raised; is compliant with the air and water quality standards of the State of Connecticut; and is protective of the environment and Connecticut's natural resources. For the foregoing reasons, Greenskies respectfully requests that the Council approve Petition No. 1347A.

Respectfully submitted,

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CERTIFICATION

I hereby certify that a copy of the foregoing document was delivered by e-mail on September 24, 2020 to the following service list:

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