

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

IN RE:	:	
	:	
A PETITION FOR A DECLARATORY	:	PETITION NO. 1425
RULING THAT A CERTIFICATE OF	:	
ENVIRONMENTAL COMPATIBILITY AND	:	
PUBLIC NEED IS NOT REQUIRED FOR THE	:	
CONSTRUCTION, OPERATION AND	:	
MAINTENANCE OF A 1.9 MWAC SOLAR	:	
PHOTOVOLTAIC PROJECT AT 360	:	
GAYLORD MOUNTAIN ROAD IN	:	
HAMDEN, CONNECTICUT	:	FEBRUARY 8, 2021

**POST-HEARING BRIEF OF PETITIONER GAYLORD MOUNTAIN SOLAR  
PROJECT 2019, LLC**

**I. INTRODUCTION**

On August 7, 2020, Gaylord Mountain Solar Project 2019, LLC (“Petitioner”) filed with the Connecticut Siting Council (“Council”) a Petition (the “Petition”), pursuant to Section 16-50k(a) and Section 4-176(a) of the Connecticut General Statutes (“Conn. Gen. Stat.”) and Section 16-50j-38 *et seq.* of the Regulations of Connecticut State Agencies (“R.C.S.A.”) seeking a declaratory ruling that a Certificate of Environmental Compatibility and Public Need (“Certificate”) is not required for the construction, operation, and maintenance of a 1.9 megawatt (“MW”) alternating current (“AC”) ground-mounted solar photovoltaic (“PV”) electric generating facility at 360 Gaylord Mountain Road in Hamden, Connecticut (the “Project”). (Petitioner’s Exhibit 1 (“Pet. 1”))

This Post-Hearing Brief is filed on behalf of the Petitioner pursuant to R.C.S.A. Section 16-50j-31 and the Council’s directive and evaluates the Petition in light of the Council’s review

criteria and addresses other issues raised throughout the course of this proceeding. (January 7, 2021 Hearing Transcript (“1/7/21 Tr.”) at 60). Based on the information in the record and the characteristics of the Project, Petitioner requests that the Council find that the Project meets the standard of review and a Certificate is not required for the Project.

## **II. PROCEDURAL BACKGROUND**

### Municipal Consultation

Beginning in March of 2019, nearly a year and a half prior to the filing of the Petition, the Petitioner notified local officials in the Town of Hamden (“Hamden” or the “Town”) of its intent to develop the Project. The Petitioner’s efforts to meet with Hamden’s Mayor Curt Leng at that time were unsuccessful. The Petitioner did, however, meet with Hamden land use officials about the Project in March 2019 and again in May of 2019. At the time of these initial municipal consultation meetings, the Project layout and design included a substantially larger solar array footprint and limits of disturbance than is currently before the Council. Following these initial meetings with Hamden Officials, the Petitioner spent nearly a year redesigning the Project to reduce its overall environmental effect, resulting in a reduction of the overall Project footprint, a reduction of the energy output from the facility and reconfigured stormwater management system. (Pet. 1, Exhibit C; Pet. 11, Exh. 1B).

With this new design in hand, the Petitioner reached out again to Town officials in March of 2020 to discuss the new Project design and the Council’s Petition process. On May 21, 2020, the Petitioner held a Virtual Public Information Meeting (“VPIM”). Notice of the VPIM was sent to abutting landowners and Town officials. The VPIM was attended by Hamden Land Use Officials and twenty-four (24) Hamden residents. Following the VPIM, the Project design was further refined to address the concerns of abutting landowners and municipal officials, resulting

in an additional reduction in the number of solar modules to be installed, a reduction in the Project's overall limits of disturbance, an increase in perimeter buffers, the significant reduction of solar array development on slopes greater than 15 % and further improvements to the Project's stormwater management system. The Petitioner reached out again to abutting landowners in June of 2020 to discuss these additional Project design modifications, many of which were made in response to their comments and concerns. (Pet. 1 at 6-9).

Consultation with the Department of Energy and Environmental Protection

The Petitioner met with officials at the Connecticut Department of Energy and Environmental Protection (“DEEP”) Dam Safety Program in May of 2020 (Pet. 1 at 3-4). The DEEP Dam Safety Program evaluated the Project, particularly the stormwater basin to be constructed in the southeast portion of the Project Area, as hereinafter defined. As discussed further below, the Dam Safety Unit ultimately determined that the Project will not be required to obtain a dam construction permit. (Pet. 1, Exhibit D).

In May of 2020, the Petitioner also met with DEEP Stormwater Division staff to review the proposed stormwater management plan for the Project. (Pet. 1 at 9-10). On June 10, 2020 DEEP Stormwater staff conducted a site visit with the Petitioner. Following these meetings and with additional input from DEEP Stormwater Division staff, the Petitioner made further Project refinements and design changes, specifically to improve the Project's stormwater management system. These design changes included:

- Rotating the solar modules so that they are parallel to the existing slopes on the Property;
- Including a series of filter socks along existing contours along the slope;
- Specifying phased construction that would allow a minimum of one (1) month between site clearing activity and racking installation to promote site stabilization;

- Proposing the use of hydroseeding with tackifier for all disturbed areas.  
(Pet. 1 at 9-10).

#### Public Notice

Pursuant to the requirements of R.C.S.A. § 16-50j-40(a), prior to filing the Petition, the Petitioner provided notice of its intent to file this Petition to: (a) Vertical Bridge Land Co., the owner of the Property; (b) each adjacent property owners and the municipal officials and government agencies (Pet. 1, Exhibit E and Exhibit F).

On November 3, 2020, the Petitioner posted a Public Hearing Notice Sign on the Property. (Pet. 3). The Council held an evidentiary and public hearing on the Petition on November 17, 2020. Additional evidentiary hearing sessions were held on December 15, 2020, and January 7, 2021. (11/17/20 Tr. at 4; 12/15/20 Tr. at 4; 1/7/21 Tr. at 4).

#### Parties and Intervenors

The Parties and Intervenors in this proceeding are the Petitioner, the South Central Connecticut Regional Water Authority (“RWA”) an abutting property owner to the west of the Property and Shawn O’Sullivan, an abutting property owner at 5 Hunting Ridge Road.

### **III. FACTUAL BACKGROUND**

#### The Property

The Project will be developed on a 12.3-acre portion (the “Project Area”) of a larger 33.88-acre parcel at 360 Gaylord Mountain Road in Hamden, Connecticut (the “Property”). (Pet. 1 at 2). The Property is bounded on the east by Gaylord Mountain Road, on the south by residential parcels along Hunting Ridge Road, on the west by undeveloped forest land owned by the RWA, and on the north by residential development along Gaylord Mountain Road and Deer Hill Road. An Eversource electric transmission line right-of-way (“Eversource ROW”) bisects

the Property from north to south to the west of the Project Area. (Pet. 1 at 2-3, Exhibit H, Figure 3 and Appendix A).

The Property is owned by Vertical Bridge Landco, LLC (the “Owner”). The Petitioner has entered into a Land Lease for the Project Area with the Owner. The Owner maintains a 625-foot guyed communications tower and associated equipment building in the northwest portion of the Property to the west of the Eversource ROW. Access to the Owner’s tower site extends from Gaylord Mountain Road to the north, near its intersection with Todd Street over a 40-foot wide access strip that runs parallel to the Eversource ROW. Much of the Property, including the Project Area, consists of undeveloped forest land. The area within the Eversource ROW has been cleared. (Pet. 1 at 2-3).

#### Project Description

The Project is a 1.9 MW solar electric generating facility consisting of approximately 6,292-Watt Peak Duo L-G5.3 400 W PV modules, one (1) pad mounted 3200 A Eaton Pow-R Line Switchboard, one (1) 2000 kVA Cooper Power Series Envirotran Solar Transformer, and one (1) point of interconnection to the United Illuminating electric distribution system along Gaylord Mountain Road. The solar panels will use a fixed tilt steel panel racking system attached to ground screw foundations to allow for optimal utilization of the Project Area. Permanent access to the Project Area will extend from Gaylord Mountain Road over a new gravel driveway in the southeast corner of the Project Area. During construction, the Petitioner will access the Project Area from the north, utilizing the Owners’ existing access driveway to its communications tower site.<sup>1</sup> This approach will significantly reduce impacts on abutting

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<sup>1</sup> The Petitioner will enter into a Permitted Use Agreement and Temporary License Agreement with Eversource to permit it to cross the Eversource ROW for construction access to the Project Area. (Pet. 2, Resp. 11).

property owners to the south and east and eliminate disruption of traffic along Gaylord Mountain Road during Project construction. (Pet. 1 at 4; Pet. 2, Resp. 11; Pet. 10, Resp. c).

#### Electrical Interconnection

Electrical interconnection for the Project will originate along Gaylord Mountain Road near the Project's permanent access driveway and extend approximately 150 feet to the west to the southeast corner of the Project Area. (Pet. 1, Exhibit A). The proposed interconnection will require the installation of five (5) new distribution poles on the Property. The Project will interconnect to the existing United Illuminating ("UI") distribution system at Pole No. 7369 on the FEEDER 169713.8 kV circuit.<sup>2</sup> The Project will require the extension of three-phase electric power along Gaylord Mountain Road approximately one-quarter mile to the Property. (Pet. 1 at 5).

#### Project Benefits

The Project will generate significant amounts of its power at peak times, when the demand for electricity is greatest, and will thereby provide the electrical system with flexible peaking capacity that is necessary to keep the electrical grid stable.

The Project supports the State's energy policies as set forth in CGS § 16a-35k, including the goal to "develop and utilize renewable energy resources, such as solar and wind energy, to the maximum practicable extent." The Project will provide clean, renewable, solar-powered energy to Southern Connecticut State University and assist the State in meeting its legislatively-mandated obligations under the Renewable Portfolio Standard.<sup>3</sup>

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<sup>2</sup> UI will be responsible for any required permits/approvals (if any) for interconnection improvements located off the Property.

<sup>3</sup> Virtual Net Metering credits may be allocated by the Connecticut State Colleges and University (CSCU) pursuant to Connecticut law. (Pet. 2, Resp. 4).

The Project will also assist the State of Connecticut in reducing greenhouse gas emissions and reducing criteria air emissions pollutants associated with the displacement of older, less efficient, fossil fuel generation. As part of larger state, national and global strategies, reductions in greenhouse gas emissions from this Project will have long-term secondary biological, social and economic benefits. Similarly, the advancement of renewable resources at a distributed level contributes to our Nation's desire for energy independence and reduces our dependency upon foreign countries where geo-political issues may not align with National policy. (Pet. 1 at 6).

The Project was selected in the Year 8 UI - Low Emission Renewable Energy Credit (“LREC”) program. To conform with the Petitioner’s LREC award the Project must be in commercial operation by January 1, 2022. (*See* Pet. 10, Resp. e; Pet. 2, Resp. 3).

#### **IV. LEGAL STANDARD**

Pursuant to Conn. Gen. Stat. §§ 16-50k(a) and 4-176(a), and 16-50j-38 et seq. of the Regulations of Connecticut State Agencies (“RCSA”), the Petitioner requests that the Council issue a declaratory ruling that no Certificate is required and approve the construction, maintenance and operation of the Project. Conn. Gen. Stat. § 16-50k(a) provides:

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 . . . 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: (i) Such project meets air and water quality standards of the Department of Environmental Protection [and] (ii) the council does not find a substantial adverse environmental effect. . . ,

Conn. Gen. Stat. §§ 16-50k and 4-176 and RCSA § 16-50j-38 et seq. provides the Council with authority to approve a petition for declaratory ruling so long as the proposed facility will not have a substantial adverse environmental impact and therefore would not require a Certificate. The Council has previously indicated that, in determining whether a facility has a substantial

environmental impact, the Council must consider the criteria laid out in Conn. Gen. Stat. § 16-50p, which includes the consideration of:

[t]he nature of the probable environmental impact of the facility . . . including a specification of every significant adverse effect, including, but not limited to, electromagnetic fields that, whether along or cumulatively with other effects, on, and conflict with the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife. (Conn. Gen. Stat. § 16-50p(3)(B)).

## **V. ARGUMENT**

The Project is a “grid-side distributed resources” facility, as defined in Conn. Gen. Stat. § 16-1(a)(43) as it involves the “generation of electricity from a unit with a rating of not more than sixty-five megawatts that is connected to the transmission or distribution system. . . .” As addressed in further detail below, the Council should find that no Certificate is required because the Project will not have a substantial adverse environmental effect. The Petitioner has engaged with state and local officials and the public in what has been a robust public process, and Petitioner has gone to great lengths to ensure that all significant concerns about the Project have been addressed through the redesign of the Project and necessary remedial measures. The Petition therefore, should be approved.

### **A. The Project Will Not Have a Substantial Adverse Effect on Public Health and Safety**

#### **Project Safety**

The Project will meet or exceed all health and safety requirements for a renewable energy power generation facility in Connecticut. All employees working on the Project will:

- Receive required general and Project Area-specific health and safety training;
- Comply with all health and safety controls as directed by local and state authorities;
- Understand and employ a Project health and safety plan while on the Property;

- Know the location of local emergency care facilities, travel times, ingress and egress routes; and
- Report all unsafe conditions to the construction manager.  
(Pet. 1 at 11-12; Pet. 10).

In addition to employees, the Petitioner will provide the Hamden Fire Department with training on Project operations, safety features and emergency shutdown before the start of commercial operation. The Petitioner will monitor operation of the Project 24/7 and be able to shut the Project down remotely if problems arise. (Pet. 10, Resp. c).

#### Noise

The Project will not produce significant noise during operation. Only the inverters and transformers will generate noise once the Project is operational, but the amount of noise is minimal, and the inverters and transformers will only be active during the daytime hours. (Pet. 1, Exhibit H, Section 3.9). Inverters and transformers will be 217 feet from the nearest residence and 96 feet from the nearest residential Property boundary. Therefore, the operation of the Project will not result in significant noise impacts to adjoining land owners.

During the construction of the Project, higher levels of noise are anticipated. Construction activity will occur only between the hours of 7 a.m. and 7 p.m. Monday through Saturday. (Pet. 1, Exhibit. H, Section 3.9; 11/17/20 Tr. at 119-123).

#### Glare

Solar panels are designed so that they reflect as little light as possible so that the maximum amount of solar radiation is absorbed and converted to energy. Thus, the solar panels will reflect very little light and will not create glare that could disrupt traffic along area roadways

or impact neighboring properties. (Pet. 1, Exhibit H, Section 3.12). There is no evidence in the record to refute this finding.

#### Site Access

To avoid disruption to its neighbors to the south and east and to reduce traffic impacts along Gaylord Mountain Road and Hunting Ridge Road, the Petitioner is making arrangements with the Owner and Eversource to access the Project Area from the north, utilizing the Owners' existing access driveway to its communications tower site during construction of the Project. (Pet. 2, Resp. 11). Permanent access to the Project Area will extend from Gaylord Mountain Road in the southeast corner of the Property. Due to topography on the Property, the proposed permanent access driveway grade will be 15%. At the request of the Council, the Petitioner met with Brian Dolan, Hamden's Fire Marshal to determine if he would have any concern with a 15% driveway grade. Mr. Dolan said that the 15% access driveway grade was acceptable to the Fire Department. (Pet. 10, Resp. c).

#### **B. The Project Will Not Have a Substantial Adverse Effect on Air Quality Standards.**

After construction is completed, the Project will not produce air emissions of any regulated air pollutants or greenhouse gases. Therefore, no air permit will be required and no adverse effect on air quality will occur. In fact, over the life of the Project, air quality will improve through an off-set equivalent to approximately 2,248 metric tons of CO<sub>2</sub> annually. Therefore, the Project will not have a substantial adverse effect on local air quality. (Pet. 1 at 13, Exhibit H, Section 3.5).

During construction, minor, temporary mobile source emissions will occur from construction vehicles and equipment. However, any potential air quality impacts will be de minimis and will be limited further by available mitigation measures such as limiting idling time

of vehicles and equipment, watering/spraying to reduce dust, and proper maintenance of all vehicles. (Pet. 1 at 13, Exhibit H, Section 3.5).

**C. The Project’s Stormwater Management Plan Will Prevent the Project from having a Substantial Adverse Environmental Effect.**

The Petitioners primary goal in the design of the Project is the development of an efficient and effective Stormwater Management Plan (the “Stormwater Plan”). The Stormwater Plan developed for the Project effectively manages the increase in post-development runoff created by site development activity, including the removal of approximately 12-acres of trees and brush and converting the Project Area to a grassy meadow ground cover, as needed for the installation of the solar arrays.<sup>4</sup> The Stormwater Plan, developed with significant input from DEEP, was initially designed to meet the requirements of DEEP’s Stormwater General Permit, January 2020 Guidance and Appendix I. Due to more recent changes to the DEEP Stormwater General Permit, effective on January 1, 2021, the Project will be required to apply for a Stormwater Individual Stormwater Permit.<sup>5</sup> (Pet. 5 at 3-4; 11/17/20 Tr. at 37).

The major components associated with this Stormwater Plan include the reductions in one full hydrologic soil group (HSG) within the proposed limits of disturbance,<sup>6</sup> the installation of a large stormwater management basin in the eastern portion of the Project Area; the use of twin outlet control structures with a low flow orifice and grate top; the installation of a rip-rap lined swale in the northeastern portion of the Project Area to facilitate the flow of stormwater to

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<sup>4</sup> Typically, stumps from cut trees would be removed from the ground because the stumps can rot and cause holes that make service and maintenance more difficult. However, because the topsoil layer is only about twelve (12) inches deep the Petitioner plans to leave the stumps in place so that they can further mitigate erosion. (11/17/20 Tr. at 52-53).

<sup>5</sup> The revised Appendix I requirement No. 2 of the current general permit requires solar panels to be at least 100 feet from a wetland that is down-gradient of the panel. As currently designed the Project does not comply with this requirement.

<sup>6</sup> The reduction of a full HSG exceeds industry standards and currently proposed DEEP guidance, resulting in an increase in the size of the stormwater basin to hold more water, further protecting Gaylord Mountain Road and properties downgradient. (Pet. 5, Resp. 7).

the basin; and the installation of extensive soil erosion and sedimentations (“E&S) controls throughout the Project Area.<sup>7</sup> The stormwater basin has been designed to provide the necessary water quality treatment volume for the additional “impervious area”, as required by the DEEP Stormwater Guidelines. A rip-rap swale and level spreader will also be installed in the southwest portion of the Project Area to intercept potential over-land flows from an existing culvert within the Eversource ROW and promote sheet/shallow concentrated flows down the existing slope. These proposed stormwater control improvements have been designed such that the post-development peak discharges for the 2-, 25-, 50- and 100-year storm events are less than the existing (pre-development) peak discharges. (Pet. 1, Exhibit H, Section 3.4.3; Pet. 5 at 2-3; Pet. 9 at 3; 11/17/20 Tr. at 39).

In addition to these physical stormwater controls, and in response to comments it received from DEEP, the Petitioner agreed to the reorientation of the solar panels from south to east so that the drip edge would be parallel to the general slope of the Project Area. (11/17/20 Tr. at 64-66). The Petitioner also significantly reduced the number of panels to be placed on grades of fifteen (15) percent or more in response to concerns about the grades in portions of the Project Area.<sup>8</sup> (11/17/20 Tr. at 46; Pet. 10, Resp. b).

DEEP also recommended that the Petitioner contact the DEEP Dam Safety division for a review of the stormwater basin. The DEEP Dam Safety Program evaluated the Project, particularly the stormwater basin proposed to be constructed in the southeast portion of the

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<sup>7</sup> All E&C controls will be installed and maintained in accordance with the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control. (Pet. 1, Exhibit H, Section 3.6).

<sup>8</sup> In a series of maps the Petitioner demonstrated to the Council how the Project design and stormwater management system has evolved over time in direct response to concerns raised by DEEP, the Town and neighbors. (Pet. Exh. 10, Exhibit 2).

Project Area. The Dam Safety Unit determined that the Project will not be required to obtain a dam construction permit. (Pet. 1, Exhibit D; Pet. 2, Resp. 56; 11/12/20 DEEP Comments at 3).

Finally, during the Council's proceeding, Intervenor Shawn O'Sullivan introduced a video showing stormwater conditions along Gaylord Mountain Road on December 25, 2020, during a significant rain event and corresponding snow melt in the area. During cross examination by the Council's staff, Mr. O'Sullivan admitted that the stormwater drainage condition shown in the video has been a problem in this area for twenty-seven years. (1/7/21 Tr. at 23). The evidence in the record is clear that the drainage area that contributes to the existing stormwater condition along Gaylord Mountain Road near the Property is approximately 37.6 acres (Pet. 9, Appendix B; 01/07/21 Tr. at 37-38); the Project Area is approximately one-third the size of the total drainage area that currently contributes to the drainage condition along Gaylord Mountain Road; and, according to the Petitioner's Engineer, the stormwater management basin and other related stormwater improvements that the Petitioner will install in the Project Area will alleviate some of these existing stormwater problems along Gaylord Mountain Road by holding back stormwater coming from Project Area. (Pet. 1, Exhibit H, Section 3.4.3; Pet. 5 at 2-3; Pet. 9 at 2-4; 12/15/20 Tr. at 52-57).

Therefore, there is ample evidence in the record to support a finding by the Council that the Project will have no substantial adverse environmental impacts related to the stormwater management from the Project.

**D. The Project will not have a Substantial Environmental effect on Wetlands on the Project Site**

The Petitioner identified a total of five (5) isolated wetland areas on the Property. Collectively, these wetland areas comprise approximately 0.44 acres. With the exception of

Wetland No. 5, none of the identified wetland areas will be adversely impacted by any Project development activity. (Pet. 1 at 16, Exhibit H, Section 3.3.1; Pet. 5 at 9-10).

Only one wetland area (Wetland 5) is located within the limits of the Project Area.

Wetland 5 consists of an isolated wetland pocket formed at the base of a hillside seep outbreak within the Project Area. This feature loses the hydrology supporting the wetland as it discharges into the surrounding slope to the east. In addition, a woods road forms the eastern boundary of Wetland 5 further conveying surface flows away from this small wetland feature. (Pet. 1 at 16, Exhibit H, Section 3.3.1; 11/17/20 Tr. at 58).

Proposed impacts to Wetland 5 will be limited to tree clearing to prevent shading of the proposed solar arrays. No ground disturbance is proposed within the limits of Wetland 5. Tree stumps within Wetland 5 will be left in place and no grading, solar panels, stormwater controls or other Project improvements are proposed within the limits of Wetland 5. As such, no direct permanent impacts are proposed within the limits of Wetland 5. (Pet. 1 at 16; Pet. 2 Resp. 42, 47 and 61; Pet. 5 at 9-10; 11/17/20 Tr. at 42, 57-58; 12/15/20 Tr. at 58-59).

The limits of grading and associated Project Area improvements will maintain a minimum setback of at least 20 feet from Wetland Areas 1, 2 and 4. The nearest point of Project development activity to Wetland 3 (the highest quality wetland on the Property) is 47 feet. Therefore, the development and operation of the Project will not significantly impact the functions or values of these wetland resources. (Pet. 1, Exhibit H, Section 3.3.2; Pet. 2, Resp. 64; 11/17/20 Tr. at 78-79).

Finally, The Petitioner has proposed a Resource Protection Plan which includes an educational training session focused on identifying where sensitive wetland resources are located on the Property, how to avoid unintentional impacts, and stressing the importance of

installing and maintaining erosion and sedimentation controls proximate to these resources. In addition, routine monitoring is proposed as part of this plan which will focus on ensuring proper controls are installed and maintained to protect nearby wetland resources (including but not limited to Wetland 5). (Pet. 1, Exhibit. H, Appendix B; Pet. 2, Resp. 61; 11/17/20 Tr. at 54-55). There is no evidence in the record to refute the Petitioner's conclusions.

#### **E. The Project's Erosion Control Measures Will Prevent a Substantial Adverse Environmental Effect.**

Due to the slopes in some portions of the Project Area, the Petitioner has revised its plans and proposed additional measures to control the potential for increased soil erosion. For example, installation of solar panels has been scaled back significantly and pulled away from the steepest slopes within the Project Area. Solar panels have been reoriented from south to east so that the drip edge would be parallel to the general slope of the Project Area. Filter socks will be placed on contour every 75 feet and maintained throughout construction to further break up the potential channelization of stormwater runoff down the slope. No grading will occur at all within the array area itself. To further reduce the potential for erosion within and from the Project Area, the Petitioner intends to flush cut all trees at grade and will leave the stumps in the ground even after the solar panels are installed.<sup>9</sup> (Pet. 1, Exhibit. H; Pet. 2 Resp 56; Pet. 5 at 5; 11/17/20 Tr. at 41, 100).

Finally, as discussed at length during the Council's proceeding, the Petitioner has committed to complete the construction of the Project in phases in further support of its soil erosion control measures. The proposed sequence of construction is consistent with the DEEP

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<sup>9</sup> According to John Bamman, Project Manager for Gaylord Solar, based on the geology at the Property (cobbles, glacial till and boulders) leaving the stumps in place following tree removal, will help to stabilize the site and eliminate unnecessary risk of additional soil erosion. Because the top soil layer at the Property is so thin, decaying tree stumps would not create holes that might otherwise impact Project development. (11/17/20 Tr. at 52-53).

2002 Erosion and Sedimentation Control Guidelines. Phase 1 requires that the contractor only clear those trees required to install perimeter soil erosion and sediment controls, followed by the installation of the perimeter controls. After the perimeter controls are in place, the contractor will secure the remaining areas where erosion control measures are required (including the swales and sediment/stormwater control basin). After completion of the installation of the sediment basin and associated swales the contractor would be able to move onto Phase 2. (Pet. 5 at 7; 11/17/20 Tr. at 38-40).

In Phase 2 the contractor would clear and grub the remainder of the of the Project Area and then temporarily hydroseed all the disturbed areas and allow for a minimum of thirty (30) days of stabilization. (Pet. 5 at 7). Phase 3 involves the installation of the solar panels, electrical conduit, and electrical equipment. Upon completion of the installation of the Project's solar components, any remaining site work would occur, and the final grade would be established and stabilized. The Project Area would not be considered "stabilized" by DEEP and the Stormwater Permit, until grass growth had achieved 70% coverage in the Project Area. Additionally, the Project would not be able to issue a Notice of Termination of said permit until the site had been permanently stabilized, with no active erosion, for a period of three months after the Project had achieved initial stabilization. (Pet. 1, Exhibit. H, Appendix A; Pet. 5 at 6-7; 11/17/20 Tr. at 44-45).

Therefore, the evidence in the record supports a Council finding that soil erosion and sedimentation control measures presented in the Petition are appropriate and will adequately protect against the occurrence of any adverse environmental effects.

## **F. The Project Will Not Have a Substantial Adverse Effect on Water Quality.**

The Project will use no water during the generation of electricity. Any water utilized during the construction of the Project for dust suppression will be minimal and have no impact on the water quality on or near the Property. The groundwater underlying the Property is classified as GAA and will not be impacted by the Project. The Project Area is not located within a mapped primary or final Aquifer Protection Area and there are no surface waterbodies proximate to the Property. The Property is in an unshaded Flood Zone X, defined as an area of minimal flooding and outside the 500-year floodplain, as designated by the Federal Emergency Management Agency (“FEMA”). (Pet. 1 at 18, Exhibit H, Sections 3.4 and 3.3.4).

During the proceeding, the intervenor, RWA expressed concern that the Project may impact the public drinking water supply watershed of the Lake Whitney Reservoir. The RWA’s Environmental Planning Manager, John Hudak, testified that the 12.3-acre Project Area is in the watershed of Eaton Brook. Eaton Brook flows into Mill River and Mill River flows into Lake Whitney. (RWA 2 at 4-5). As the water flows, Lake Whitney is more than eight (8) miles from the Project Site. (12/15/20 Tr. at 121-123). The Petitioner’s engineer testified that the total drainage area that can reach Eaton Brook is 524.8 acres (including the 12.3-acre Project Area) and that the Project’s drainage area (37.6 acres) represents only 7.2% of the entire drainage area that reaches Eaton Brook. The drainage area for the Mill River is 1,504 acres. The Project’s drainage area (37.6 acres) constitutes only 2.5% of the Mill River drainage basin. The evidence in the record and the testimony of the Project’s Professional Engineer confirm that it is very unlikely that development of the 12.3-acre Project Area will adversely impact water quality in Lake Whitney. (Pet. 1, Exhibit H, Section 3.4; Pet. 5, at 7-10).

That said, the Petitioner does not take the concerns expressed by the RWA lightly. As described in the Petition and discussed at length during the evidentiary hearings, the Petitioner has developed a comprehensive soil erosion and sedimentation control plan and a robust on-site stormwater management system that will substantially limit and perhaps eliminate altogether the potential that the Project will have any impact on Lake Whitney. (Pet. 1, Exhibit. H; Pet. 9; Pet. 5 at 7-10; 11/17/20 Tr. at 37-48). Once construction of the Project is completed, the Petitioner will have converted 12.3 acres of forest into meadow/open field and/or early successional scrub/shrub habitat. The net impact to water quality leaving the Project Area under these post-development conditions will be negligible.<sup>10</sup> (Pet. 1, Exhibit H, Section 3.4; Pet. 5, at 7-10; Pet. 9 at 3-4; 11/17/20 Tr. at 37-48).

Gas- and diesel-powered vehicles will be used and stored on the Property during construction and may require some on-Property fuel storage. Once construction is complete, the use and storage of these fuels will cease. No hazardous substances will be used during normal operations of the Project. The Petitioner has developed and will implement a detailed Spill Prevention, Control, and Countermeasure plan as part of the Project's Operations and Maintenance Plan. (Pet. 1 at 11, Exhibit G; Pet. 5 at 10; 11/17/20 Tr. at 54-55).

The Petitioner has taken every precaution to ensure that the construction of the Project and the operation of the solar facility will not impact water quality. To address concerns raised by the RWA and as recommended by the Connecticut Department of Public Health, the Petitioner would agree to allow the RWA to inspect the Project Area prior to and during

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<sup>10</sup> It is important to note that the meadow/open field habitat proposed at the Project is not like the manicured lawns that you might find in a developed residential or commercial area. Meadows, just like forests, can have similar beneficial effects on storm water quality. In fact, from a stormwater engineering perspective, the values used for predicting direct runoff and/or infiltration from forests and meadow/open field habitat are equal or nearly equal in all hydrologic soil groups.

construction to ensure all appropriate measures are taken within the Project Area to protect against the potential for impacts to drinking water quality. (Pet. 1, Exhibit G; Pet. 5 at 7-10; 11/17/20 Tr. at 55). The overwhelming evidence in the record supports a finding by the Council that the Project will not have an adverse effect on water quality.

**G. The Project Will Not Have a Substantial Adverse Effect on Scenic and Recreational Values.**

No State or local designated scenic roads or scenic areas are located near or impacted by the Project. The nearest scenic road is Hillfield Road located approximately one (1) mile east of the Property. The nearest recreational area, the Quinnipiac Trail, is located approximately 0.12 miles west of the Property. Neither Hillfield Road nor the Quinnipiac Trail will be visually or physically impacted by the Project. (Pet. 1 at 14, Exhibit H, Section 3.8). This evidence is unrefuted.

Despite this lack of impact on scenic roads or areas, the Petitioner made several significant changes to the Project design to reduce the perceived visual impact on neighboring residential properties. These changes included the addition of a 50-foot non-disturb buffer on the southern Property boundary. To further soften views through the 50-foot buffer the Petitioner will install a landscaped screening berm south of the Project Area fence line. No visual receptors (e.g. residences, roadways) are located to the north or west of the Project Area. In general, views beyond the immediate area would be minimized by a combination of the Project's low height and the presence of intervening vegetation and topography. Therefore, the Project will not have any effect, let alone a substantial adverse effect on scenic or recreational values. (Pet. 1 Exhibit H, Section 3.8 and Appendix G).

## **H. The Project Will Not Have a Substantial Adverse Effect on Historic and Archeological Resources.**

There is no evidence in the record to suggest that the Project will have an adverse impact on historic or archeological resources. Heritage Consultants LLC (“Heritage”) conducted an extensive review of the relevant historic and archeological information and completed a Phase 1A/1B Cultural Resources Reconnaissance Survey of the Property. Neither of these efforts yielded anything to suggest that the Project will have an adverse impact on historic or archeological resources. There are no historic structures or resources listed on or eligible for listing on the National Registry of Historic Places (“NRHP”) near the Property. Heritage also conducted an archeological investigation of the Project Area including pedestrian surveys, photo-documentation and actual excavated soils testing to identify any cultural resources. No such resources were identified, and no additional investigation was recommended. Therefore, the Council should find that the Project will not have a substantial adverse environmental impact on historic or archeological resources. (Pet. 1, Exhibit. H, Section 3.7 and Appendix D).

## **I. The Project Will Not Have a Substantial Adverse Effect on Habitat and Wildlife.**

As described in the Petition, there are three habitat types (Forested; Early Succession; Developed) on the Property, all of which also occur within or proximate to the Project Area. (Pet. 1, Exhibit. H, Section 3.1.1).

The forest habitat makes up much of the Property and the Project Area and generally consists of mature hardwoods such as red oak, white oak, pignut hickory, and shagbark hickory. The Petitioner, in an excess of caution, identified a small, approximately one-acre portion of the Project Area as core forest. Due to development surrounding this Property, with Gaylord Mountain Road, Hunting Ridge Road and the Eversource ROW, DEEP determined that this area is “likely not considered to be core forest”. As discussed at length during the evidentiary

hearings, the forested portion of the Project Area will be converted into a meadow ground cover habitat, resulting in virtually no permeant impact on wildlife. In addition, the Petitioner intends to establish a Habitat Enhancement area around the periphery of the Project Area. Where feasible, mowing shall be performed on a 4 to 7-year basis during late summer/early fall to reduce the impact to nesting birds and other wildlife. (Pet. 1 Exhibit. H Section 3.1.3; Pet. 2, Resp 68; 12/15/2020 Tr. at 47-49; 11/12/20 DEEP Comments at 4).

The early successional habitat is limited to an area in the west-central portion of the Property. This habitat is associated with the Eversource ROW and can naturally revegetate between clearing and management activities. Installation of a construction access road, crossing the Eversource ROW near the communications tower site will create some minor temporary impacts on this habitat. (Pet. 1, Exhibit H, Section 3.1.1).

The developed habitat on the Property consists of impervious gravel surfaces and the infrastructure associated with the Owner's communication facility. The Project does not call for any changes to or work within the developed habitat. Construction vehicles will pass along the existing access road in the north of the Property. The Project will not create any substantive adverse effects on the developed habitat. (Pet. 1, Exhibit H, Section 3.1.1).

According to the Natural Diversity Database ("NDDB") there are no Threatened, Endangered, or Special Concern species or critical habitats within 0.25 miles of the Property. Although none of the commenters expressed concern over the impact of the Project on the northern long-eared bat ("NLEB"), Petitioner conducted a compliance review under Section 7 of the Endangered Species Act since the NLEB's range does include the Project Area. Based on this compliance determination, Petitioner is not required to obtain a permit from the U.S. Fish and Wildlife Service for any adverse effects or incidental take in relation to the northern long-eared

bat. Therefore, there will not be a substantial adverse effect on any threatened or endangered species. (Pet. 1, Exhibit. H, Section 3.2.1, 3.2.2).

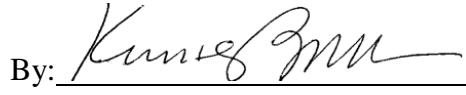
## **VI. CONCLUSION**

Pursuant to Conn. Gen. Stat. § 16-50k(a) the Council shall approve, by declaratory ruling, the construction or location of a grid-side distributed resources project or facility with a capacity of not more than 65 MW, if the project meets DEEP air and water quality standards and will not have a substantial adverse impact on the environment. The evidence in the record shows that the Project meets these criteria and that Petitioner has made every effort to ensure that any significant environmental concerns have been addressed.

Therefore, the Petitioner respectfully requests that the Council issue a declaratory ruling that the Project will comply with DEEP air and water quality standards, will not have a substantial adverse environmental effect, and does not require the issuance of a Certificate by the Council.

Respectfully submitted,

**Gaylord Mountain Solar Project 2019, LLC**

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## CERTIFICATION

I hereby certify that a copy of the foregoing document was delivered by e-mail on February 8, 2021 to the following:

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