

JONATHAN H. SCHAEFER

280 Trumbull Street
Hartford, CT 06103-3597
Main (860) 275-8200
Fax (860) 275-8299
jschaefer@rc.com
Direct (860) 275-8349

Also admitted in Massachusetts
and Vermont

Via Hand Delivery and Electronic Mail (siting.council@ct.gov)

December 1, 2021

Melanie Bachman
Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: **PETITION NO. 1443 - SR North Stonington, LLC petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 9.9-megawatt AC solar photovoltaic electric generating facility on five parcels located north and south of Providence New London Turnpike (State Route 184), west of Boombridge Road and north of Interstate 95 in North Stonington, Connecticut, and associated electrical interconnection**

Motion to Reopen and Modify Due to Changed Conditions

Dear Attorney Bachman:

SR North Stonington, LLC hereby submits its Motion to Reopen and Modify the Decision for Petition No. 1443 Due to Changed Conditions (“Motion”).

Enclosed please find fifteen (15) copies of the Motion, including Attachments A through H. Due to the size, enclosed please find three (3) copies of the following:

1. Attachment I (Drainage Assessment)
2. Attachment J (Stormwater Pollution Control Plan)

Also enclosed please find one (1) copy of each of the following on 24” x 36”:

Robinson+Cole

Melanie Bachman

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1. Attachment A (Preliminary Site Layout Plan)
2. Attachment B (Overall Civil Plan)

Due to the file size of the Attachments (approx. 82 MB) a link¹ to download the Attachments is provided in the footnote below in order to access the electronic versions of these Attachments.

We respectfully request that the Motion be reviewed and be placed on the next available Siting Council agenda for approval. Please do not hesitate to contact me if you have any questions or there are any issues retrieving the bulk files from the link provided.

Sincerely,



Jonathan H. Schaefer

Enclosures

Copy to: Parties of Record

Bob Carlson, First Selectman, Town of North Stonington

¹ <https://transfer.rc.com/message/D9LJclsDTODnyxYjSnc50E> (expires May 30, 2022).

CONNECTICUT SITING COUNCIL

IN RE: :
 :
 :
 SR NORTH STONINGTON, LLC PETITION : PETITION NO. 1443
 FOR A DECLARATORY RULING, :
 PURSUANT TO CONNECTICUT GENERAL :
 STATUTES §4-176 AND §16-50K, FOR THE :
 PROPOSED CONSTRUCTION, :
 MAINTENANCE AND OPERATION OF A 9.9- :
 MEGAWATT AC SOLAR PHOTOVOLTAIC :
 ELECTRIC GENERATING FACILITY ON :
 FIVE PARCELS LOCATED NORTH AND :
 SOUTH OF PROVIDENCE NEW LONDON :
 TURNPIKE (STATE ROUTE 184), WEST OF :
 BOOMBRIDGE ROAD AND NORTH OF :
 INTERSTATE 95 IN NORTH STONINGTON, :
 CONNECTICUT, AND ASSOCIATED : DECEMBER 1, 2021
 ELECTRICAL INTERCONNECTION :

**MOTION OF SR NORTH STONINGTON, LLC
TO REOPEN AND MODIFY THE DECISION FOR PETITION NO. 1443
DUE TO CHANGED CONDITIONS**

I. INTRODUCTION

Pursuant to Connecticut General Statutes (“Conn. Gen. Stat.”) §4-181a(b),¹ SR North Stonington, LLC (the “Petitioner”) hereby moves to reopen the evidentiary record and modify, based on changed conditions, the decision of the Connecticut Siting Council (the “Council”) not to issue a declaratory ruling in Petition No. 1443.

Based on the changed conditions and new facts discussed herein, including substantial modification of the Project (as that term is defined below), the Petitioner respectfully requests the Council reopen the Petition No. 1443 proceeding, consider the changed conditions and new

¹ Conn. Gen. Stat. §4-181a(b) provides, in pertinent part that, “[o]n a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency's own motion.”

information presented, and issue a declaratory ruling that will allow for the construction, maintenance, and operation of the Modified Project (as that term is defined below).

II. PROCEDURAL BACKGROUND

On February 25, 2021, Petitioner submitted to the Council a Petition for a Declaratory Ruling pursuant to Conn. Gen. Stat. §4-176 and §16-50k, for the proposed construction, maintenance, and operation of an approximately 9.9 megawatt alternating current (“MW(ac)”) ground-mounted solar photovoltaic (“PV”) electric generating facility (the “Project”) north and south of Route 184 Providence-New London Turnpike in North Stonington, Connecticut (the “Project Site”). The Project was selected in the Department of Energy and Environmental Protection’s (“DEEP”) Small-Scale Clean Energy Request for Proposal under Public Act 15-107 §§1(b) and 1(c) (the “RFP”). By statute there is a rebuttable presumption that there is a public benefit for electric generating facilities selected by DEEP through the RFP.²

The Project will support state energy policies as set forth in Conn. Gen. Stat. §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 Connecticut Light and Power Company d/b/a Eversource Energy (“Eversource”) and The United Illuminating Company (“UI”) and assist the state in meeting its legislatively-mandated obligations under the Renewable Portfolio Standard.³ The Project will also assist the state in reducing greenhouse gas emissions and reducing criteria air emissions pollutants associated with the displacement of older, less efficient, fossil fuel generation.⁴

² Public Act 05-1; Conn. Gen. Stat. §16-50k(a).

³ SRNS 1, p. 13.

⁴ SRNS 1, p. 13.

Before filing the Petition with the Council, the Petitioner undertook an extensive public outreach effort including meetings with North Stonington municipal officials and abutting landowners, a site walk with North Stonington residents interested in seeing the Project Site, and a virtual public information meeting with the Town's Planning and Zoning Commission. After receiving the Petition, the Council completed a thorough pre-hearing information gathering process and granted the Town of North Stonington ("Town") party status in Petition No. 1443. The Petitioner responded to more than 90 separate interrogatories and late-filed exhibits from the Council and the Town and made significant modifications to the Project's development plans. The Council conducted an evidentiary hearing and a public hearing on June 8, 2021. The evidentiary hearing was continued to July 8, 2021.

At its August 26, 2021 regular business meeting, the Council reviewed draft findings of fact and discussed the Project. Following that discussion, a non-binding straw poll was conducted with Mr. Edelson, Ms. Cooley, Mr. Nguyen (on behalf of Public Utilities Regulatory Authority Chairwoman Gillette) and Mr. Hannon (on behalf of DEEP Commissioner Dykes) voting in favor of the Project, subject to certain conditions and plan modifications. Mr. Silvestri, Mr. Lynch, and Mr. Morissette voted no. Based on the 4-3 straw poll in favor of the Project, Mr. Morissette directed Council staff to draft a favorable Opinion and Decision and Order for consideration at its next meeting. At the Council's next meeting on September 9, 2021, a motion to approve the Draft Findings of Fact, Opinion, and Decision and Order was made. Mr. Edelson, Mr. Nguyen (designee for Chairwoman Gillette), and Ms. Cooley each voted in favor of the motion and Mr. Silvestri, Mr. Lynch, and Mr. Morissette voted against the motion. Between the August 26 and September 9 Council meetings Mr. Hannon retired from his position at the DEEP and was no longer the designee for Commissioner Dykes. Neither Commissioner Dykes nor her

new Council designee was present at the Council's September 9 meeting to cast the Commissioner's vote in favor of the Project.

By correspondence dated September 14, 2021, the Council notified the Petitioner that due to a tie vote, the motion to approve the Findings of Fact, Opinion, and Decision and Order failed; therefore, a declaratory ruling was not issued.

For the reasons discussed in Section IV below, the Petitioner respectfully submits that the concerns expressed by the Council during the Petition No. 1443 proceeding and during its post-hearing deliberations and the concerns expressed by the Town, the only other party in the proceeding, have now been satisfactorily addressed. The Petitioner therefore requests that the Council grant its motion to reopen on a showing of changed conditions and approve the Petition.

III. STATUTORY AUTHORITY

Pursuant to Conn. Gen. Stat. §4-181a(b), the Council has the authority to reopen and modify the Decision due to changed conditions that have occurred since the Decision was issued. Conn. Gen. Stat. §4-181a(b) provides, in relevant part that, “[o]n a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency's own motion.” Changed conditions may exist when there is “new information or facts, identification of any unknown or unforeseen events or evidence . . . that were not available at the time of the final decision.”⁵

Consistent with this authority, the Council has reopened a number of dockets and petitions involving solar and other electric generating facilities and modified final decisions

⁵ See Docket No. 190B, Conclusions of Law (September 19, 2012), p. 4 (citing *Town of Fairfield, et al v. Connecticut Siting Council*, 238 Conn. 361, 372; 679 A.2d 354, 359 (1996)).

based on changed conditions and new facts.⁶ As the discussion of changed conditions and new facts and evidence below demonstrates, the Petitioner satisfies the applicable standards with respect to reopening this proceeding and modifying the Decision.

IV. CHANGED CONDITIONS

The Petitioner listened carefully to the Council’s deliberations and the concerns expressed during the Council’s August 26, 2021 regular business meeting. The Petitioner also reviewed the Draft Decision and Order prepared by Council staff, including the proposed conditions of approval and took to heart the guidance this document provided. The Petitioner also listened to the Town’s concerns expressed throughout the proceeding. Taking these and other factors into consideration the Petitioner has made the decision to significantly modify the Project’s size and layout. The Project will now provide approximately 8.35 MW(ac)⁷ of energy at the point of interconnection under nominal conditions from two solar arrays located south of Providence-New London Turnpike (the “Modified Project”). The Petitioner made these modifications through the elimination of the northern arrays and additional modifications to the two remaining solar arrays located south of Providence-New London Turnpike (former Area 3 and Area 4) (the “Modified Project Site”).

The Petitioner has spoken to and met with representatives of the Town on several occasions since the Decision and made a formal presentation to the Town’s Board of Selectman and members of the public on November 30, 2021 about the Petitioner’s plans to move forward with the Modified Project described below. Following the Petitioner’s presentation, the Town’s Board of Selectman voted to support the Modified Project. As the Petitioner did twice during the proceedings, it has devoted significant time and resources to reevaluate the Project in order to address the Council’s and the Town’s

⁶ See, e.g., Docket No. 187; Docket No. 265A, Petition No. 1222, Petition No. 1310, Petition No. 1347, Petition No. 1398, and Petition No. 1406.

⁷ 12.06 MW (dc), utilizing a DC/AC ration of 1.44.

concerns, while still complying with DEEP stormwater, soil erosion and sediment control, and Natural Diversity Database (“NDDB”) regulations and requirements.

A. MODIFIED PROJECT

Compared to the Project, the Modified Project will utilize:

- a. 480-Watt modules rather than the 475-Watt modules;⁸
- b. 4,550 fewer modules overall, due to the removal of the modules from the northern parcel (former Areas 1 and 2);⁹
- c. 182 fewer strings of modules, due to the removal of the modules from the northern parcel;¹⁰ and
- d. a larger quantity, but smaller, string inverters throughout the Modified Project Area.¹¹

With the elimination of the solar arrays on the northern parcel, the Modified Project also involves a significant reduction in tree clearing and the amount of grading and fill required. In addition, the Modified Project will not involve any impacts to the old Providence-New London Turnpike on the northern parcel.

Further details on the Modified Project may be found in a modified Preliminary Site Layout Plan attached hereto as **Attachment A**, a modified Overall Civil Plan attached hereto as **Attachment B**, and a comparison map showing the changes made since the July 1, 2021 design submitted to the Council attached hereto as **Attachment C**.

The Modified Project reflects:

- i. a complete elimination of impacts associated with the parcels north of Providence-New London Turnpike (former Area 1 and Area 2);

⁸ This module is similar in all other aspects to the 475W model for which the Petitioner previously provided information.

⁹ 29,675 v. 25,125.

¹⁰ 1,187 v. 1,005.

¹¹ 45 250 kW string inverters v. 76 125 kW string inverters.

- ii. a reduction in the total Limits of Disturbance (“LOD”);
- iii. a reduction in tree clearing;
- iv. a reduction in site grading and fill;
- v. a reduction in impacts to wetlands and encroachments into wetland buffers;¹²
- vi. an increased setback from the shared property boundary with 476 Providence-New London Turnpike; and
- vii. installation of 490 linear feet of a 6-foot wooden screening fence along a portion of the shared property line with 476 Providence-New London Turnpike.

In addition to eliminating the solar arrays north of Providence-New London Turnpike, the Modified Project also includes additional modifications to the remaining solar arrays – Western Array (former Area 3) and Eastern Array (former Area 4).

Western Array

In part due to questions from the Council and the Town during the July 8, 2021 hearing, the Petitioner reduced the size of the laydown yard (i.e., construction trailer(s) area, temporary parking area, and laydown and delivery area) by approximately 0.4 acres. This created the space necessary to relocate a row of solar panels from the Eastern Array. In addition, the access roadway was relocated approximately 325 feet to the west and now travels down the middle of this array rather than along the eastern side. This will reduce potential impacts to the adjoining property to the east and create easier access for construction, maintenance, and emergency vehicles. As a result of the relocation of the access roadway the eastern portion of the Western Array shifted to the east.

¹² The Modified Project eliminates all impacts to wetlands on the northern parcel that would have occurred with the Project. The remaining wetland impacts are related to the installation of the culvert to cross Wetland B/1B on the access roadway off of Boombridge Road, which is an existing wetland crossing. A culvert will also be installed on this access roadway to cross Wetland A/1A. The wetland impact from these culverts remains the same as it was for the original Project proposal. The culvert crossing Wetland B/1B will have approximately 2,092 square feet of wetland impacts. The culvert crossing Wetland A/1A will have no wetland impacts. The overall wetland impacts for the Modified Project will decrease from approximately 2,720 square feet to 2,092 square feet. The Modified Project will include a minimum 100-foot buffer between all solar arrays and wetlands and vernal pools on the Modified Project Site; whereas, the Project included buffers less than 100-foot on the northern parcel.

The LOD for the Western Array is increased by approximately one-half acre. These increases are located along the southern and western sides of the Western Array. The modestly expanded LOD is necessary as a result of the above-described modifications to the Western Array and allows for additional grading needed to construct a stormwater ditch to convey stormwater to Stormwater Basin 1C and ensure compliance with DEEP's 90% sediment removal requirement. The discharge location for Stormwater Basin 1C was also relocated to the east to address concerns that stormwater would be directed towards the private cemetery located to the southwest of this basin. The new location eliminates this concern and ensures that stormwater will continue to travel to the wetlands and vernal pools south of the Western Array.

The modifications to the Western Array do not significantly reduce any of the wetland or vernal pool buffers previously described and detailed in the Petition. All such buffers remain at least 100 feet.

Eastern Array

The Petitioner listened to the Council's and the Town's comments and concerns related to the limited setback to the property line with 476 Providence-New London Turnpike. The Modified Project pushes the LOD to the south and at least 9.5 feet away from this shared property line. As part of this modification, the distance between the security fence and the property line increased from 0.5 feet to approximately 14.5 feet. This increased setback for the LOD and security fence will reduce the visual impacts on 476 Providence-New London Turnpike.

In order to accommodate this increased setback, the northern most row of solar panels in this array was removed and relocated to the Western Array, as noted above. This modification also allowed the relocation of the access roadway that travels along the northern portion of the Eastern Array. This portion of the access roadway shifted to the south, further away from the shared

property line with 476 Providence-New London Turnpike. This portion of the access roadway is now setback a minimum of 28 feet from this property line.

The location of the portion of the access roadway between Boombridge Road and the Eastern Array now reflects the Petitioner's intention to follow the existing dirt driveway. This approach reduces the need for additional wetland impacts. The portion of the access roadway that runs north to south along the west side of the Eastern Array has been modestly adjusted to allow for additional grading and ditching to assist with stormwater flow.

These modifications to the Eastern Array do not reduce any of the wetland or vernal pool buffers previously described and detailed in the Petition.

B. COMPLETED NDDB FIELD SURVEYS

On November 24, 2021, All Points Technology, on behalf of the Petitioner, submitted a NDDB Review Request. Based on the results of the rare species surveys, proposed mitigation strategies, and assurances such mitigation measure will be properly implemented and monitored development of the Modified Project will not result in an adverse impact to State-listed species. Petitioner has not yet received a NDDB Determination Letter but will submit a copy to the Council upon receipt.

C. INCREASED PROPERTY LINE SETBACKS

During its deliberations the Council expressed concerns about the property line setbacks in several locations. The Council's Draft Decision and Order Item #2(1) requests plans to further increase property line setbacks. The Modified Project has eliminated all property line setback concerns related to the properties north of Providence-New London Turnpike. As noted above, Petitioner increased the property line setback with 476 Providence-New London Turnpike from

approximately 0.5 feet to approximately 14.5 feet. Thus, Petitioner believes the Modified Project addresses the Council's concerns regarding increasing property line setbacks.

D. ABUTTING PROPERTY VISUAL MITIGATION PLAN

Since the Decision, the Petitioner has continued an open and active dialogue with several abutting property owners who expressed concerns regarding the visual impact of the Project. As the Modified Project will no longer abut any properties north of Providence-New London Turnpike, visual mitigation measures for 477 Providence-New London Turnpike, 435 Providence-New London Turnpike, and 116 Boombridge Road are no longer necessary.

The Petitioner is in regular communication with the property owner at 476 Providence-New London Turnpike. After discussions with this property owner, the Petitioner has offered to install 490 linear feet of 6-foot tall wooden fence between the Eastern Array and the property line, as well as along the southwest corner of the 476 Providence-New London Turnpike property line. The Petitioner shared a visual rendering with the property owner showing the anticipated view from the property owner's back deck facing south towards the Modified Project. This rendering is attached hereto as **Attachment D**. In this rendering the wood fence is located on the property line and the northern most row of solar panels is only partially visible above the top of the fence. As described above, with the Modified Project both the wooden fence and the northern most row of solar panels would be located further south and away from the deck – approximately 14 feet and approximately 22 feet, respectively. The wooden screening fence would be located on the property owner's side of the Eastern Array's security fence.

E. CONSULTATIONS WITH DEEP STORMWATER

The Petitioner continues to have discussions with members of the DEEP Stormwater Management Bureau. However, until the Petitioner receives its final NDDB determination letter the formal process to apply for a stormwater permit cannot begin. The Petitioner remains

committed to fully complying with all of the requirements of the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (“Stormwater Permit”). The Modified Project will be in full compliance with Appendix I of the Stormwater Permit, including maintaining at least a 100-foot buffer from all wetlands and vernal pools on the Modified Project Site.

F. CONSULTATIONS WITH DEEP DAM SAFETY

As requested in the Council’s Draft Decision and Order Item #2(r), Petitioner has consulted with the DEEP Dam Safety division regarding any permitting requirements for the proposed stormwater basins. It was the Petitioner’s understanding, and the DEEP Dam Safety division confirmed via a teleconference, that “[a]ny dam which impounds less than three acre-feet of water (when assuming the water level at the crest of the dam) will not require a Dam Safety Construction Permit.” For the Modified Project, Stormwater Basins 1A, 1B, and 1C will meet this standard. However, Stormwater Basin 5 will impound more than three acre-feet of water when assuming the water level at the crest of the basin. Therefore, the Petitioner will work with the DEEP Dam Safety division to secure a Dam Safety Construction Permit for Stormwater Basin 5 prior to construction.

G. UPDATED INTEGRATED VEGETATION MANAGEMENT PLAN

The Council’s Draft Decision and Order Item #2(d) requested final plans for hosting sheep at the Project Site. The Petitioner has not yet secured a local rancher to finalize the plans for hosting sheep, however, the Petitioner has modified its Integrated Vegetation Management Plan to reflect several changes. During the Petitioner’s continued dialogue with the Town, the Town has expressed its support for and strong interest in sheep being hosted at the Project Site.

The Council’s Draft Decision and Order Item #2(j) requested a “[f]inal landscaping plan, including but not limited to, landscaping plantings, pollinator plantings and final seed mix.” The Petitioner has modified the Integrated Vegetation Management Plan to include additional

information on the seed mixes that may be used on the Modified Project Site post-construction, including pollinator plantings. The pollinator plantings will only be established in the temporary construction laydown yard area post-construction. This area has the open area that is best suited to establish the pollinator plantings and promote and enhance biodiversity on the Modified Project Site. A copy of the modified Integrated Vegetation Management Plan is attached hereto as **Attachment E**.

H. ASSESSMENT OF TREE REMOVAL

Some members of the Council expressed concerns regarding the level of tree removal required for the construction of the Project. Throughout this proceeding the Petitioner has gone to great lengths to limit the number of trees that will be removed. The redesigns of the Project during the earlier proceedings has already resulted in a significant reduction in the number of trees that will be removed. The Modified Project further reduces the number of trees that will be removed.

The Modified Project will only require less than 35 acres of tree removal; a reduction from approximately 45 acres for the Project. Based on the previously provided Tree Analysis, which assumed an average of 76 trees with at least a 6-inch diameter at breast height per acre, it is estimated that approximately 2,660 trees (down from 3,420 trees) will be removed to construct the Modified Project. The Modified Project also eliminates all tree removal in the limited “core forest” area on the parcel north of Providence-New London Turnpike. Petitioner’s environmental consultants have reconfirmed that the tree removal for the Modified Project will not have an adverse effect on any of the wetlands or vernal pools on the Modified Project Site.

I. FINAL SPILL PREVENTION, CONTROL AND COUNTERMEASURE PLAN

Council’s Draft Decision and Order Item #2(g) requested a final Spill Prevention, Control, and Countermeasure (“SPCC”) Plan. A copy of a final draft SPCC Plan is attached hereto as

Attachment F. The SPCC Plan will be finalized with the names and phone numbers for Miller Brothers designees prior to construction commencing.

J. SUPPORTING DOCUMENTATION

The following submittals have been updated to reflect the Modified Project and replace the prior submissions provided in support of the Petition:

- Draft Emergency Action Plan (attached hereto as **Attachment G**)¹³
- Operations & Maintenance Plan (attached hereto as **Attachment H**)
- Drainage Assessment (attached hereto as **Attachment I**)
- Stormwater Pollution Control Plan (attached hereto as **Attachment J**)

The Petitioner has not updated the Carbon Debt Analysis previously provided but anticipates the calculation to be approximately the same or slightly better due to the reduced tree removal and solar array capacity.

The Modified Project represents a significant reduction in size from the Project. As such, the noise impacts will be less than the noise impacts analyzed in the previously provided Noise Impact Assessment. The Modified Project does not include any changes that would require an update to the FAA Notice Criteria Tool previously provided. The previously provided State Historic Preservation Office reports and approvals thoroughly covered the Modified Project Area and do not require any updating.

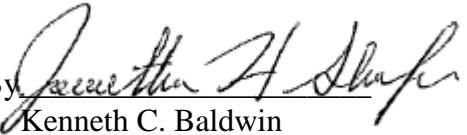
V. CONCLUSION

For all of the foregoing reasons, Petitioner respectfully requests that the Council reopen the Petition No. 1443 proceeding, modify its Decision and Order, and issue a Declaratory Ruling

¹³ The final EAP will be submitted prior to construction with the emergency contact information completed.

for the Modified Project based on the changed conditions and new facts summarized in this Motion.

Respectfully submitted,
SR North Stonington, LLC

By 

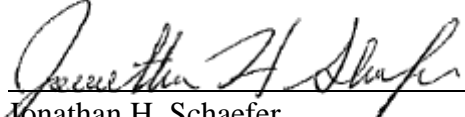
Kenneth C. Baldwin
Jonathan H. Schaefer
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Phone: (860) 275-8200
Fax: (860) 275-8299
Email: kbaldwin@rc.com
jschaefer@rc.com

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing document was delivered by e-mail on
December 1, 2021 to the following:

Robert A. Avena
North Stonington Town Attorney
Suisman Shapiro
20 South Anguilla Road
P.O. Box 1445
Pawcatuck, CT 06379
ravena@sswbgg.com

Nathan Reichert
Planning, Development & Zoning Official
Town of North Stonington
40 Main Street
North Stonington, CT 06359
nreichert@northstoningtonct.gov


Jonathan H. Schaefer