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April 24, 2020

**DELIVERED BY U.S. MAIL AND E-MAIL**

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

**Re: PETITION NO. 1312 – Development and Management Plan - Objection to the Town of New Milford and Rescue Candlewood Mountain’s Request for a Consultant to Observe Construction of the Solar Array**

Dear Executive Director Bachman:

On April 20, 2020, the Town of New Milford (“Town”) and Rescue Candlewood Mountain (“RCM”) sent a letter to the Connecticut Siting Council (“Siting Council”) in which they request that Candlewood Solar, LLC (“Candlewood Solar”) be required to hire a full-time construction, engineering, and inspection services consultant. See letter enclosed. The Town and RCM request that this consultant (1) observe Candlewood Solar’s construction of the solar array in connection with stormwater management and erosion and sedimentation control and (2) observe whether construction of the solar array conforms with the approved Development and Management Plan (“D&M Plan”) and the conditions of the Department of Energy and Environmental Protection’s (“DEEP”) stormwater General Permit (together referred to as the “Request”). Candlewood Solar hereby opposes the Request, and requests that the Siting Council either take no action on the Request or alternatively, deny it, for the reasons below.

I. BACKGROUND

On December 21, 2017, the Siting Council, as a condition for approving the solar array, ordered Candlewood Solar to prepare a D&M Plan in compliance with §§ 16-50j-60 through 16-50j-62 of the Connecticut General Statutes (“C.G.S.”). On April 14, 2020, Candlewood Solar submitted its proposed revised D&M Plan to the Siting Council. The Siting Council has 60 days to either approve, modify, or reject the D&M Plan. C.G.S. § 16-50j-60. If the Siting Council approves the revised D&M Plan, Candlewood Solar is required by statute to comply with

specific reporting requirements to the Siting Council in connection with implementing the D&M Plan, and failure to comply with the reporting requirements could result in fines. C.G.S. § 16-50j-62.

## II. ARGUMENT

### A. DEEP Has Sole Jurisdiction Over Stormwater Management and Erosion and Sedimentation Control Enforcement Actions Under the D&M Plan and the Stormwater General Permit.

It is well established that DEEP has exclusive jurisdiction over stormwater management, erosion, and sedimentation control enforcement, as well as other environmental enforcement actions related to the construction of solar arrays. See C.G.S. §§ 22a-1-1 through 22a-905g. These environmental enforcement actions include oversight of solar array construction related to stormwater management, erosion, and sedimentation control under both the D&M Plan and the General Permit.

Accordingly, the Siting Council has no jurisdiction to decide the Request and should therefore take no action on it.

### B. DEEP Regularly Delegates the Oversight of Solar Project Stormwater Management and Erosion and Sedimentation Control Compliance, Relating to the Construction of Solar Arrays with the Regional Conservation Districts.

DEEP regularly delegates oversight of stormwater management and erosion and sedimentation control compliance activities involving solar array construction to one of five Connecticut Regional Conservation Districts – these include the Connecticut River Coastal Conservation District, the Eastern Conservation District, the North Central Conservation District, Northwest Conservation District, or the Southwest Conservation District pursuant to a Memorandum of Understanding (“MOU”) between DEEP and the Conservation Districts. The reason for the MOU is that DEEP does not have the human resources available to observe the several dozen solar arrays under construction in the state at any point in time, and the Conservation Districts have the expertise necessary to perform these functions. These functions are the same as are being requested by the Town and RCM which are to observe the construction of the solar arrays regarding stormwater management, and erosion and sedimentation control compliance.

Accordingly, because DEEP delegates its oversight over the construction of solar arrays to the Regional Conservation Districts and because they have the expertise to oversee solar array construction, the Siting Council should take no action on the Request.

### C. The Request is also Duplicative of Agency Oversight and Should Therefore be Denied.

Candlewood Solar is required by statute to comply with specific reporting requirements to the Siting Council in connection with implementing the D&M Plan for the solar array, and

failure to comply with the reporting requirements could expose Candlewood Solar to fines. C.G.S. § 16-50j-62. Also, Siting Council staff analysts conduct inspections during post-construction of the solar array for compliance with its Declaratory Ruling and the D&M Plan, but not for compliance with DEEP's stormwater General Permit. Regarding the stormwater General Permit compliance, the Regional Conservation Districts are already performing oversight of stormwater management and erosion and sedimentation control compliance activities involving solar array construction. Thus, requiring a consultant essentially to duplicate the oversight functions of the Siting Council and DEEP or the Regional Conservation Districts, would add no value while being unduly burdensome on Candlewood Solar.

Accordingly, the Request should be denied.

### III. CONCLUSION

For the above stated reasons, the Siting Council should take no action on the Request because the Siting Council has no jurisdiction over the Request. In addition, the Siting Council staff analysts conduct inspections during post-construction of the solar array for compliance with its Declaratory Ruling and the D&M Plan, and DEEP delegates its oversight of the stormwater General Permit to the Regional Conservation Districts. Thus, if the Siting Council decides that it has jurisdiction over the Request, it should deny the Request because it is duplicative and unduly burdensome on Candlewood Solar.

Respectfully submitted,

**CANDLEWOOD SOLAR, LLC**

Sincerely,



Paul R. Michaud

Its Attorney

Enclosed: April 20, 2020 Letter from Attorney Daniel E. Casagrande

**CERTIFICATION**

I hereby certify that a copy of the foregoing was emailed to the Connecticut Siting Council and sent to all participants on the service list for Petition 1312 on this 24<sup>th</sup> day of April 2020.

A handwritten signature in blue ink that reads "Paul R. Michaud". The signature is written in a cursive style with a large initial "P" and "M".

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Paul R. Michaud

cc: Service List





# CRAMER & ANDERSON<sup>LLP</sup>

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April 20, 2020

**VIA EMAIL: [Melanie.bachman@ct.gov](mailto:Melanie.bachman@ct.gov)**  
**AND FEDEX OVERNIGHT DELIVERY**

Melanie A. Bachman, Esq.  
Executive Director/Staff Attorney  
State of Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051

**RE: Petition No: 1312  
Candlewood Solar, LLC – 20 MW Solar Photovoltaic Project  
New Milford Assessor's Map Parcels 26/67.1, 9.6, and 34/31.1  
Candlewood Mountain Road, New Milford, Connecticut—  
Revised Development and Management Plan filed on or about April 14, 2020**

Dear Ms. Bachman:

Without prejudice to any remedies that the Town of New Milford and Rescue Candlewood Mountain may have regarding the revised development and management plan (D & M) filed on or about April 14, 2020, the Town and Rescue Candlewood Mountain respectfully request that Connecticut Siting Council place as a condition of approval of the D&M the requirement to have a full-time construction engineering and inspection services (CEI) for the duration of the project in order to protect the interests of the State of Connecticut, the Town, and Rescue Candlewood Mountain. As it has done on other significant projects where the environmental risks were significant, the Council should retain an independent, third party CEI experienced in site development, stormwater management, and erosion and sedimentation control who would observe whether construction is being undertaken in conformance with the approved D&M and the conditions of the Stormwater General Permit, and report on a weekly basis to the Council. The costs of the CEI would be paid by Candlewood Solar.



CRAMER & ANDERSON<sup>LLP</sup>  
Attorneys at Law

Melanie A. Bachman, Esq.  
April 20, 2020  
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Enclosed is the original of this letter and fifteen copies. Copies of this filing are also being provided to the parties on the service list.

Very truly yours,

CRAMER & ANDERSON, LLP

By   
Daniel E. Casagrande, Esq., Partner

DEC/smc  
Enclosures