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**VIA EMAIL TO [MELANIE.BACHMAN@CT.GOV](mailto:MELANIE.BACHMAN@CT.GOV) and [SITING.COUNCIL@CT.GOV](mailto:SITING.COUNCIL@CT.GOV)**

Melanie A. Bachman, Esq.  
Executive Director/Staff Attorney  
State of Connecticut Siting Council  
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**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**

Dear Ms. Bachman:

Pursuant to R.C.S.A. §§ 16-50j-6 and/or 16-50j-3, parties and/or intervenors, Town of New Milford (“Town”) and Rescue Candlewood Mountain (“Rescue”), hereby request that the Siting Council (“Council”) extend or waive (a) the 60-day period set forth in R.C.S.A. § 16-50j-60(d) for the Council to rule upon Candlewood Solar, LLC’s (“Candlewood Solar”) revised Development & Management Plan (“Revised D&M Plan”) submitted to the Siting Council on or about April 13, 2020 and (b) the rule set forth within § 16-50j-60(d) under which the Revised D&M Plan will be deemed approved if the Council does not act to approve, modify, or disapprove the Revised D&M Plan within 60 days of its receipt. The Town and Rescue specifically request that both rules be extended or waived until at least sixty (60) days after DEEP decides whether to issue an individual permit for the Project and that the Council schedule and hold a public hearing on the Revised D&M Plan within that period if an individual permit is issued. As explained further below, there is good cause for the extension or waiver sought herein under the circumstances, and the extension or waiver of these rules is not precluded by statute.

On April 26, 2019, the Council approved Candlewood Solar’s first D&M Plan, dated January 28, 2019, with two conditions requiring Candlewood Solar to submit for Council review (a) revised plans showing the solar array layout, clearing limits, fence design, and stormwater management plan and (b) a copy of the stormwater management and erosion control plans approved by DEEP under DEEP’s General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (the “General Permit”).

On or about March 11, 2020, Candlewood Solar filed its General Permit registration for the Project with DEEP consisting of over 2,000 pages, followed by its filing of the Revised D&M Plan with the Council on April 13, 2020. In a two-page decision dated May 12, 2020 backed up by a ten-page technical memorandum, DEEP disapproved Candlewood Solar's General Permit registration pursuant to Sections 4(h)(2) and 4(h)(3) of the General Permit, informed Candlewood Solar it would not process the registration further, and determined that the Project would only be approved by way of an individual permit pursuant to Conn. Gen. Stat. § 22a-430. In articulating this decision, the Director of DEEP's Bureau of Materials Management and Compliance Assurance stated that "[w]hile I have doubts, given the three prior attempts under the General Permit, that even an individual permit can be issued for the Project, I have determined that if a permit is to be issued, an individual permit will better protect the waters of the state from pollution."

It is unclear whether Candlewood Solar will now rework its stormwater management and erosion control plans prior to applying for an individual permit or whether it will resubmit the same plans and ask DEEP to approve an individual permit for the Project. Regardless of which approach is taken, the Revised D&M Plan will likely be significantly reworked or modified by either Candlewood Solar modifications or DEEP-imposed terms and conditions as referred to in the second page of DEEP's General Permit disapproval decision.

In view of these developments, it makes no sense for the Council, the Town, or RCM to dedicate their time and resources to the review and evaluation of the Revised D&M Plan and be pressured by the above-cited regulations while DEEP's individual-permit review process remains pending, Candlewood Solar's plans remain a "moving target," and the Project may not proceed if DEEP declines to issue an individual permit. If Candlewood Solar does not withdraw its Revised D&M Plan, the Council should extend or waive these regulatory provisions as sought herein.

Moreover, as the acting Chair of the Council indicated in the Council's May 14, 2019 hearing on visibility on remand in Rescue's appeal, interested parties were to be given an opportunity to comment on the Revised D&M Plan after DEEP finally approves a permit (if one is approved). In these circumstances, fundamental fairness dictates that the Council should take no action on the Revised D&M Plan unless and until DEEP issues an individual permit and the Town, Rescue and other interested persons have a meaningful opportunity to review any such individual permit and publicly comment on its effects on the Revised D&M Plan.

If the Council declines to grant the extension and/or waiver sought herein, the Town and RCM alternatively request that (a) they be given sixty (60) days from the date of any Council ruling on this request to submit written comments on the Revised D&M Plan and (b) when and if DEEP issues an individual permit for the Project, that they be given an additional period of thirty (30) days following issuance of such an individual permit to submit written comments on any revised D&M Plan Candlewood Solar thereafter submits to the Council.

Finally, if the Council denies the extension and/or waiver sought herein, the Town and RCM request that the Council disapprove the Revised D&M Plan for the many reasons recited within DEEP's General Permit disapproval decision and its accompanying technical memorandum.

In addition, the Revised D&M Plan contains at least two major changes that are materially different and deviate from the plans originally approved by the Council in its December 21, 2017 declaratory ruling approving this Project. First, prior to the filing of the Revised D&M Plan with the Council, Candlewood Solar had agreed, and the Siting Council had found, that no clear cutting of trees would occur between April 1 and October 31, in order to protect wildlife species. (See Revised Findings of Fact, ¶ 296 (June 7, 2019).) The revised D&M Plan, however, now proposes clearcutting throughout the year except for June 1 through July 31. (Revised D&M Plan, Att. 3, p.6). Second, the Revised D&M Plan shows that the limit of work (“LOW”) and location of the solar panels have shifted significantly to the east, encroaching into the 100 foot wetlands buffer; at points the LOW touches the wetlands boundary itself. Under the original plans, no tree clearing was proposed within this 100 foot wetlands buffer in order to protect the indicator species dependent on the vernal pools within these wetlands.

Both of these changes materially deviate from the Council’s December 21, 2017 declaratory ruling approving this Project and increase the threat to the species that depend on the critical terrestrial habitats in the eastern portion of the site for their survival. These changes further justify disapproval of the Revised D&M Plan.

Thank you for your consideration. Copies of this filing are being provided via electronic mail to the parties on the service list.

Very truly yours,

CRAMER & ANDERSON, LLP

By: /s/ Daniel E. Casagrande  
Daniel E. Casagrande, Esq., Partner

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