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August 27, 2020

Sent via mail and email to: (sitingcouncil@ct.gov) and (melanie.bachman@ct.gov)

Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Attn: Ms. Melanie Bachman, Executive Director

RE: Docket No. 1424, Petition of Southington Solar One, LLC

Dear Ms. Bachman,

Please be advised that I represent Michael and Diane Karabin. Enclosed is an Application to Intervene filed on their behalf in the above matter.

If you have any questions, please contact me.

Sincerely yours,



Paul E. Zagorsky

PEZ/cd
Enclosures

STATE OF CONNECTICUT
SITING COUNCIL

DOCKET NO. 1424 – Petition of Southington Solar One, LLC for a Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is Required for the Proposed Construction, Operation and Maintenance of a 4.725 +/- MW AC Solar Photovoltaic Electric Generating Facility Located at 1012 East Street, Southington, Connecticut.

AUGUST 27, 2020

APPLICATION TO INTERVENE UNDER CEPA, §22a-19, §4-177a AND §16-50n

Michael and Diane Karabin (“Karabins”) are long time farmers who have leased 1012 East Street, Southington Connecticut (referred to as the “Project Site, @103 acres”) from the Catholic Cemeteries Association of the Archdiocese of Hartford, Inc., since 2014. They bale hay, rye, and Sorghum, and grow assorted vegetables. They currently have a Leasehold interest until 2024 of approximately 63 acres of the Project Site. They also own and operate Karabin Farms located at 894 Andrews Street, Southington, Connecticut.

The Karabin’s move and petition the Connecticut Siting Council (“CSC”) to become a party intervenor in this matter so that they may submit evidence and have it considered by the CSC.

Pursuant to Conn. Gen. Stat. §22a-19 (“CEPA”), §16-50n and §4-177a, the Karabin's seek party status as they have a direct interest in the proceedings which will be adversely and specifically impacted and substantially affected as they lease, use and farm all of the Project Site less the Project Area where the solar array is proposed.

The Karabin’s seek party status for the purpose of submitting testimony, briefs and other evidence relevant to the consideration of the Petition; specifically the Petition’s Habitat Enhancement Plan (pp. 21-22) which consists of two (2) areas outside the Project Area on land the Karabin’s lease until 2024. The Karabin’s assert Petitioner has no right to do any or all of such proposed Enhancements on their land.

In support of this Application, the Karabin’s state the following:

1. The Karabin’s as Lessee’s leased 1012 East Street, Southington Connecticut from the Catholic Cemeteries Association of the Archdiocese of Hartford, Inc. (Lessor) since 2014 for farming.
2. On or about June 15, 2020 an Amended Lease was executed whereby the leased premises was reduced from approximately 103 acres of land (Project Site referred to in Petition) to approximately 63 acres of land, with Lessor intending to lease the rest of the parcel (Project Area referred to in Petition) to VCP, LLC (Verogy) for the installation and operation of a solar photovoltaic system. Southington Solar One, LLC is an affiliate of Verogy (p.8).

3. The Petition (pp. 4-5) states the “Project Site” will be located at 1012 East Street, Southington, Connecticut, which is approximately 102.45 acres.
4. The “Project Area” is listed as total of ±37.45 acres (p.12).
5. Under the Karabin’s 2020 Amended Lease their leased premises was reduced from approximately 103 acres to approximately 63 acres of land, as more further detailed and described on Schedule 1 of their Lease (attached to this Application) with the Lessor (Catholic Church) leasing the rest to VCP, LLC for the installation of and operation of a solar photovoltaic system being proposed in Petition #1424.
6. Petitioner in its Habitat Enhancement Plan (pp. 21 and 22) lists two areas of the Project Site for Habitat Enhancement. Both areas are outside the Project Area on land leased to the Karabin’s. Petitioner has no right to clear such land for a Wildflower Pollination Area (claims area needs to remain clear of mature trees to prevent shading of the solar arrays and to provide a food source for sheep that will be grazing on the site) or to do Vernal Pool Mitigation on the wetlands.
7. Petitioner indicates the presence of 48.7 acres of Prime Farmland soils on the Project Site with 26.6 acres on the Project Area (p. 27, Table 3, Farmland Soils Assessment and Impacts Table).
8. The proposed solar array (and proposed Habitat Enhancement Plan) are likely to unreasonably impair the public trust in natural resources (Prime Farmland Soils) of the State and fail to promote conservation and agriculture and to protect the environment.

The Karabin’s are entitled to party status pursuant to Section 4-177a, 6-50n, and 22-19 of the General Statutes. Section 14-177c (a)(2) states intervenor status shall be granted if the applicant states facts that demonstrate its legal rights, duties or privileges will be specifically affected by the agency’s decision. The Karabin’s have stated such facts.

The CSC must be mindful of the statutory requirements which apply to interventions under CEPA. The bar is quite low for filing an intervention and thus §22a-19 applications should not be lightly rejected. *Finley v. Town of Orange*, 289 Conn. 12 (2008) (an application need only allege a colorable claim to survive a motion to dismiss) citing *Windels v. Environmental Protection Commission*, 284 Conn. 268 (2007).

An allegation of facts that the proposed activity at issue in the proceeding is likely to unreasonably impair the public trust in natural resources of the State is sufficient. *See, Cannata v. Dept. of Environmental Protection, et al*, 239 Conn. 124 (1996) (alleging harm to flood plain forest resources).

The Connecticut Appellate Court has noted that statutes “such as the EPA are remedial in nature and should be liberally construed to accomplish their purposes.” *Avalon Bay*

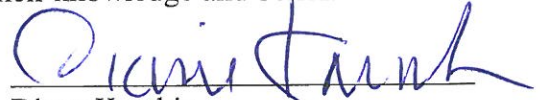
Communities, Inc. v. Zoning Commission of the Town of Stratford, 87 Conn. App. 537 (2005); *Keeney v. Fairfield Resources, Inc.*, 41 Conn. App. 120, 132-33, 674 A.2d1349 (1996). In *Red Hill Coalition, Inc. V. Town Planning & Zoning Commission*, 212 Conn. 7272, 734, 563 A.2d 1347 (1989) (“section 22a-19[a]makes intervention a matter of right once a verified pleading is filed complying with the statue, whether or not those allegations ultimately prove to be unfounded”); *Polymer Resources, LTD. V. Keeney*, 32 Conn. App. 340, 348-49, 629 A.2d 447 (1993) (“[Section] 22a-19[a] compels a trial court to permit intervention in an administrative proceeding or judicial review of such a proceeding by a party seeking to raise environmental issues upon the filing of a verified complaint. The statute is therefore not discretionary.”) *See Also, Connecticut Fund for the Environment, Inc. v. Stamford*, 192 Conn. 247, 248 n.2, 470 A.2d 1214 (1984).

The Karabin’s application for intervenor status should be granted so they may participate by presenting evidence for the record and meaningfully assist the CSC in reaching a decision which does not significantly and adversely impact the use of their leased farmland. The Project Site is 102.45 acres, the Project Area is ± 37.45 acres, and the rest of the Project Site is leased to the Karabin’s until 2024. Any proposed mitigation (pp. 20-22) on the Karabin’s land is impermissible.

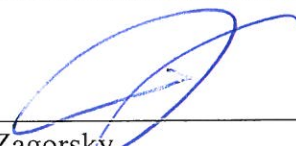
VERIFICATION

The undersigned, Michael Karabin and Diane Karabin, duly sworn hereby verify that the above application is true and accurate to the best of their knowledge and belief.


Michael Karabin

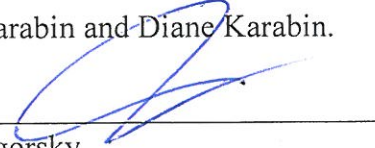

Diane Karabin

Sworn and subscribed before me this 27th day of August 2020.


Paul E. Zagorsky
Commissioner of the Superior Court

Respectfully Submitted,

Michael Karabin and Diane Karabin.

By: 
Paul E. Zagorsky
Zagorsky, Zagorsky & Galske, PC
73 East Main Street
Plainville, CT 06062
paul@zzglaw.com (intervenors request service by email)

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was deposited in the United States mail, first-class, postage pre-paid this 27th day of August 2020 and addressed to:

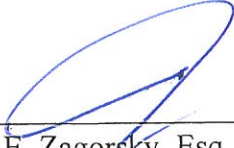
Ms. Melanie Bachman, Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (1 original, plus 1 electronic) US Mail/electronic to sitingcouncil@ct.gov and melanie.bachman@ct.gov).

And electronic copies to the service list as listed below:

William Herchel
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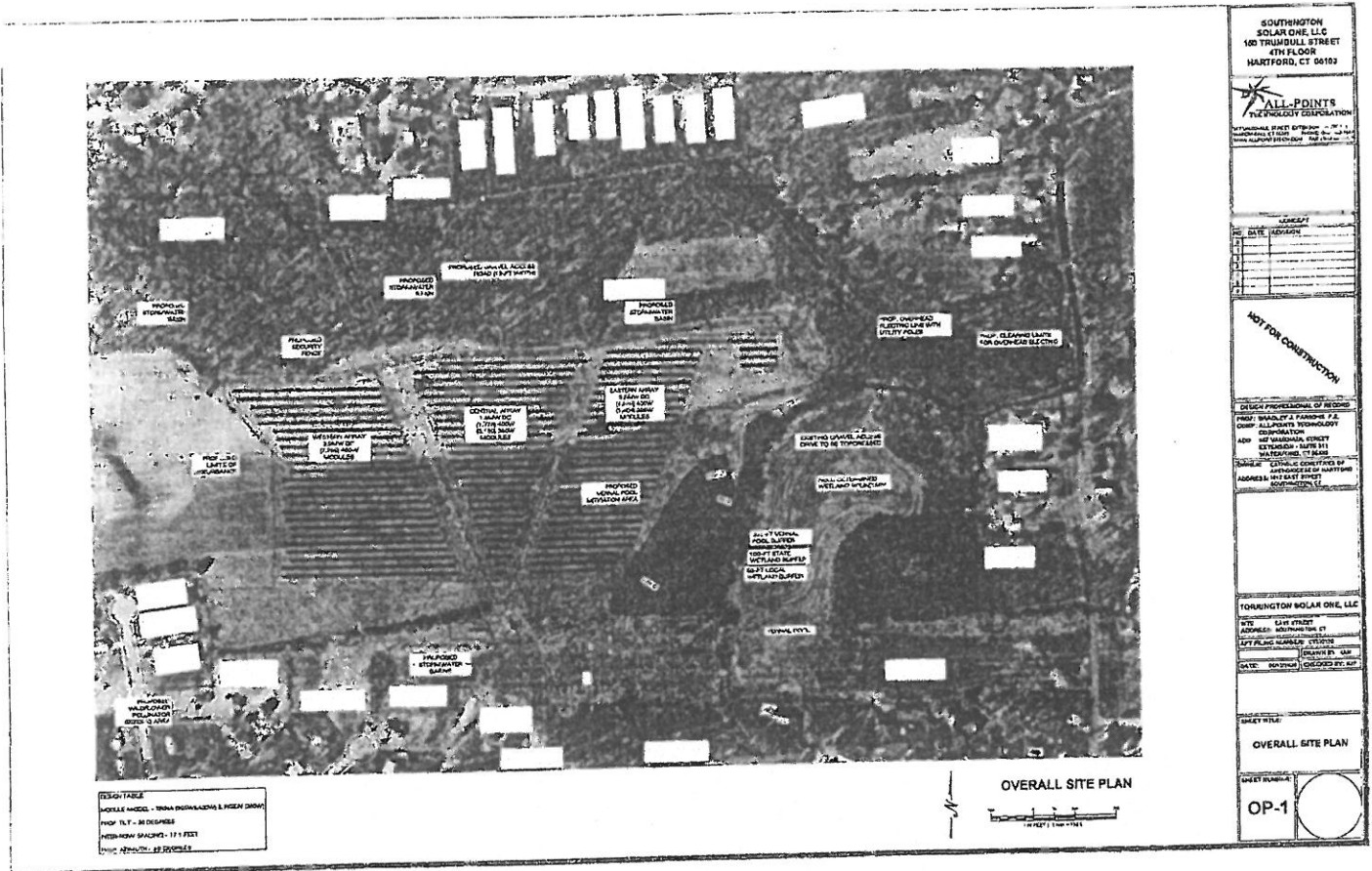


Paul E. Zagorsky, Esq.

Schedule 1
Description of the Premises

Site Address: 1012 East Street, Southington, CT 06489

Aerial View of Premises:



The "Premises" leased to the Lessee is the portion of the parcel outside of the area enclosed in red above, containing approximately 63 acres of land. A running description of the Premises will be substituted upon the completion of any engineering and site survey work.

For the avoidance of doubt and notwithstanding anything to the contrary contained herein or in the Lease, the "Premises" leased to the Lessee is the area of the parcel that is not otherwise leased to VCP, LLC (and its affiliates) for the purposes of the development, construction, installation, interconnection, operation and maintenance of a solar photovoltaic system on the parcel. Lessee agrees to further amend the Lease at the request of Lessor to reflect the final boundaries of the solar photovoltaic system upon completion of the project and any necessary adjustments to the definition of the "Premises" area leased to Lessee.