

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

SR Litchfield, 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 19.8-megawatt AC solar photovoltaic electric generating facility on 6 contiguous parcels located both east and west of Wilson Road south of the intersection with Litchfield Town Farm Road in Litchfield, Connecticut, and both east and west of Rossi Road, south of the intersection with Highland Avenue in Torrington, Connecticut, and associated electrical interconnection.

Petition No. 1442

September 23, 2021

**REQUEST FOR PARTY STATUS AND NOTICE OF CEPA INTERVENTION
AND REQUEST FOR PUBLIC HEARING**

Ranald K. Nicholas and Robin L. Nicholas (“the Nicholas family”) are residents of Torrington residents who own and reside on property that directly abuts the solar generating facility proposed by SR Litchfield, LLC (“SR Litchfield”) for multiple parcels located in Litchfield and Torrington. Nicholas seeks party status in this proceeding and also hereby intervenes in this proceeding under the Connecticut Environmental Protection Act, Conn. Gen. Stat. §§ 22a-16 *et seq.* (“CEPA”). While the Nicholas family recognizes that to date, the Siting Council has not decided to hold a hearing on this petition, it has the authority, and indeed the obligation, to “add parties and intervenors at any time during the pendency of any proceeding,” even if a party or intervenor’s ability to participate is limited due to the timing of a party status or intervention request. (*See* R.C.S.A. § 16-50j-16(a)). The Nicholas family also requests that the Siting Council hold a public hearing on this petition, for the reasons set forth below.

Contact information for proposed party:

Proposed party: Ranald K. Nicholas and Robin L. Nicholas
Mailing address: 389 Wimbledon Gate N, Torrington, CT 06790
Phone: 203-376-5024
Email: rknicholas@protonmail.com

Contact information for representative of proposed party:

Name: Emily Gianquinto
Address: 363 Main Street, Hartford, CT 06106
Phone: (860) 785-0545
Email: emily@eaglawllc.com

I. Manner in which proposed party claims to be substantially and specifically affected

The proposed facility will substantially impact the Nicholas family because of their property's proximity to the facility. The Nicholas family lives off of Highland Avenue at 389 Wimbledon Gate North in Torrington, Connecticut. Their backyard directly abuts one of the facility parcels located to the east of Rossi Road, which appears to would be located about 60 feet from their property line. (Exhibit A attached; *see also* Petition Ex. I (abutter map).) The Nicholas family received the required notification as an abutter. (*See* Petition Ex. G at 12.) The Nicholas property is identified by SR Litchfield as one of 13 residences that will likely have year-round views of the facility. (*See* Petitioner's Interrog. Responses, dated Apr. 2, 2021, at 24 Q53; Petitioner's Supplemental Interrog. Responses, dated May 14, 2021, at 18-19, Q53.) The parcel on which the facility is proposed is currently an active hayfield through which runs the Gulf Stream, a Class A cold water stream that is home to a native trout population, along with its tributaries. This abutting field is otherwise surrounded by farmland and forestland. There is a wide variety of wildlife that calls this area home, including monarch butterflies, deer, bears, coyotes, foxes, opossum, raccoon, and bobcats. There is also a wide variety of birds in the area including many songbirds, turkeys, vultures, and hawks. The Nicholas family enjoys the wildlife and the peaceful scenery surrounding their property on a daily basis.

Given the Nicholas family's direct proximity to the proposed facility and the significant change the facility will make on the nature and character of the surrounding area, their rights will be substantially and specifically affected by the Siting Council's decision. Their year-round view

of field and forest and associated wildlife will change to a year-round view of an industrial facility. While SR Litchfield claims that the noise generated by the inverters for the facility will not violate noise laws, the surrounding area is incredibly quiet and peaceful, so the introduction of any mechanical noise is likely to be an intrusion on the Nicholas family's quiet enjoyment of their property.

The Nicholas family is also concerned with the impact of the proposed facility on the environment, including with respect to stormwater issues, the protection of local wetlands and watercourses, and the protection of wildlife and other natural resources. The proposed facility is located on a site that includes a valuable wetlands system to the Gulf Stream. The significant grading and steep slopes proposed for the site, the clearing of at least 15 acres of trees, and the installation of at least 51,000 proposed panels themselves will dramatically change the nature of that habitat and the degree to which stormwater will leave the site. The creation of so many impervious surfaces will increase the amount of and flow rate of runoff significantly, and the proposed orientation of the panels will cause runoff to run parallel to the panels, channelizing the flow. The facility will negatively impact undisturbed wetlands and two high-value vernal pools, as well as the water quality of the Gulf Stream, a cold water fisheries stream.

Stormwater flow is a concern for the Nicholas family personally as well. At present, the water flow in the area is already excessively running off the proposed facility site and down into the area that includes the Nicholas property and the property of several of their neighbors, also abutting the proposed facility. Each spring, the south side of the Nicholas property is excessively muddy for many weeks as runoff water flows down the hill from the proposed project site into the Nicholas property. Steady rain also causes much of the Nicholas property to become boggy due to stormwater runoff from the proposed project site and from oversaturated land in the

surrounding parcels. The Nicholas family has battled erosion on their property by installing a significant amount of rocks to slow runoff. Generally, the runoff is always at a high volume as water surges through the culvert located in a small green belt between the second and third houses just north of the Nicholas property. (The Nicholas family believes that the culvert is diverting the Gulf Stream likely without the required individual permit from the Army Corp of Engineers.) Environmental abuse of natural resources down gradient has caused that land to absorb less water, causing flooding running south into the “massive wetland complex,” saturating substantial portions of land and causing flooding. The facility will also negatively impact undisturbed wetlands and two high-value vernal pools, as well as the water quality of the Gulf Stream.

All of the above, described in more detail below, gives the Nicholas family an interest in the proceeding, both as a party and as a CEPA intervenor.

II. Contention of the proposed party

The Nicholas family contends that the proposed solar facility will have a negative impact on their property rights given their proximity to the facility. They will have year-round views of the facility, are perhaps as little as 60 feet from the array, and will be directly impacted by the increased stormwater that will be associated with this facility, as outlined above.

The Nicholas family also contends that the proposed solar facility will have a negative impact on public health and safety, as well as the rights of residents in proximity to the facility to quietly enjoy their property. The Nicholas family believes that installing this solar array as proposed is irresponsible development, particularly given the proximity of the Gulf Stream and its surrounding wetlands complex.

The Nicholas family contends that the proposed solar facility will have a negative impact on the environment because SR Litchfield's site plans and the assumptions included in those and related plans do not comply with the water quality standards of the State of Connecticut and do not demonstrate that its project will not have a substantial adverse impact on the environment. The Nicholas family believes that installing this solar array as proposed is irresponsible development, particularly given the proximity of the Gulf Stream and its surrounding wetlands complex.

The proposed facility is located on 212 acres that encompass a significant portion of the Gulf Stream and its associated wetlands and tributaries – what is called a “massive wetlands complex” in Torrington's Plan of Conservation and Development (“POCD”). The Gulf Stream is noted in the Torrington POCD as a significant and sensitive resource. SR Litchfield's own surveys concede that the site hosts a “major riparian corridor” and two unnamed perennial tributaries as well as two Tier 1 vernal pools. Tier 1 pools are the most valuable vernal pools and are worthy of conservation planning. Gulf Stream is a Class A water per DEEP, meaning that it is an exceptionally high-quality cold-water habitat, assessed as “Fully Supporting for Aquatic Life use designation.” (*See* Petition Ex. U at 9.) The Class A designation means that the stream has the potential to meet the criteria for drinking water, as well as provide fish and wildlife habitat. SR Litchfield's own consultant documented the stream as supporting a wild brook trout population. (*Id.*) Such habitats are now very uncommon in Connecticut because they are so easily impacted by effects such as runoff of sediments and thermal changes. The same consultant also found dusky salamanders present “in moderate abundance” on the site. (*Id.*) Dusky salamanders are only found in high-quality seepage fed watercourses and wetlands, which is further evidence of the pristine nature of this wetlands system. They are also an indicator species for the threatened spring

salamander, as their presence indicates streams able to support spring salamanders and they serve as a major food source for the spring salamander.

SR Litchfield's petition, and the facility as redesigned, put this valuable ecosystem at significant risk. The plans will not adequately control and treat the stormwater that will be running off of the impervious panels of the solar array. As set forth in the report by Steven Trinkaus, a Connecticut-licensed professional engineer, the erosion/sedimentation control plan, stormwater management plan, and overall site plans do not comply with the requirements of the 2004 Connecticut Stormwater Quality Manual ("2004 Manual"), the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control ("2002 Guidelines"), the Connecticut General Permit for the Discharge of Stormwater and Dewatering Wastewaters Associated with Construction Activities ("General Permit"), or the recently proposed updates to the General Permit, including Appendix I, which is specific to the installation of solar arrays, or with civil engineering standards of care for design work.¹ The most significant finding in Trinkaus' technical review is that the runoff from most of the solar array is not occurring as overland sheet flow, which would be perpendicular to the rows of solar panels, but as shallow concentrated flow parallel to the downhill edge of each panel row. Given the natural and regraded steep slopes on the site, the concentrated runoff will cause erosion and result in sedimentation at the end of the panel rows. As set forth above, the Nicholas family is already contending with flooding issues on their property due to the natural sloping of the project site – the design flaws noted by Trinkaus will make the situation much worse for the Nicholas family and will cause erosion and sedimentation of the Gulf Stream, the two unnamed perennial tributaries that feed into it, and the surrounding wetlands and vernal pools.

The Nicholas family is also concerned about other environmental issues, including:

¹ The Nicholas family has reviewed a copy of the Trinkaus report originally submitted to the Siting Council by Erin McKenna and is aware that it has also been submitted by McKenna in connection with her request for party status.

- the overall small buffers from the project disturbances to wetlands and vernal pools;
- the absence of a final NDDDB determination or a final comment letter from DEEP;
- the failure of SR Litchfield to conduct any bat surveys despite being aware that both red and hoary bats are likely on site;
- SR Litchfield's cursory discussion about protected species that are its consultant found to be on site, including the bobolink, American kestrel and savannah sparrow;
- SR Litchfield's cursory dismissal of the likelihood that the species listed on the initial NDDDB review back in 2017 are actually present on the site;
- Clearcutting acres of a wooded wetlands habitat for the installation of solar panels; and
- Converting acres of prime farmland and statewide important farmland soils and removing active hayfield production from the site.

The Nicholas family is also aware that the proposed site abuts his home in a planned single-family development in Torrington known as Greenbriar Estates, which has been the subject of past enforcement action by the Army Corps of Engineers and has had years of documented non-compliance with water quality standards that has resulted in degradation of portions of this valuable wetland system and repeated flooding issues for adjacent residential properties and town roads. Dr. Michael Klemens, a well-known ecologist and former member of the Siting Council, has documented both the value of the Gulf Stream ecosystem and the challenges presented by developing in proximity to that system. He told the Torrington Planning and Zoning Commission last year, in its consideration of an application to build more residences in Greenbriar, that given the sensitivity and importance of the headwaters areas that collect surface runoff and the steep

topography of the area, a minimum buffer of 150 feet was required to protect the wetlands and watercourses from pollution by sedimentation, which is a very high risk. The same is true here.

SR Litchfield has simply not presented any sound basis for its claim that its facility will cause no significant environmental effects is true, which should by itself prevent the Siting Council from granting its petition. The petition should be vetted at a public hearing and should ultimately be denied, whether or not a hearing is held.

III. Relief sought by the proposed party

Nicholas asks that the Siting Council reverse its planned action and hold a public hearing on this petition, and ultimately seeks to have the Siting Council deny the petition with prejudice. With respect to the hearing, Nicholas notes that members of the general public have not had any chance to weigh in on this petition at any public forum, which is especially significant because the plan has been redesigned since the Siting Council's short 30-day public comment window. SR Litchfield did not hold any public information sessions due to COVID, as noted in its petition, and the plans submitted to the Siting Council vary significantly from the RFP originally submitted to DEEP, which included, among other things, a proposal to build a public park on one-third of the site that could be used by the community and would promote tourism.

Nicholas also notes that although the petition was submitted with a letter of support from the Town of Litchfield, both the Litchfield Board of Selectmen and the Litchfield Planning and Zoning Commission subsequently submitted letters raising concerns about setbacks and disturbance in such proximity to property lines, preservation of farmland, protecting watercourses, wetlands and natural habitats in light of the long downhill slope, and presence in an A-rated watershed and adjacent to an AA-rated watershed, cumulative noise impact and the use of oils in the inverters on site. Given the proposed facility's location in a massive and valuable watershed

feeding into a cold water stream and its tributaries, a public hearing process before the Siting Council is needed to permit the public to weigh in on this important proposed development. A public hearing would also permit the Town of Litchfield's concerns, as expressed in the two letters submitted by town officials, to be weighed and considered in a public forum where residents could also participate through their Town representatives, and would provide opportunity for both the Town of Torrington and its residents to participate as well.

As set forth above, a hearing would certainly be "helpful in determining any issue concerning" the petition. See R.C.S.A. § 16-50j-40(b). The Nicholas family urges the Siting Council to hold a hearing on this proposal to ensure that Litchfield and Torrington residents have at least one opportunity to express their thoughts on the petition and have the opportunity to listen to the Siting Council's vetting of the developer's significantly changed plans.

IV. Statutory or other authority therefore

The Nicholas family is entitled to party status pursuant to Sections 4-177a and 16-50n of the Connecticut General Statutes and Sections 16-50j-13 through 17, and 16-50j-40 of the Regulations of the Siting Council. The Nicholas family is also entitled to be a CEPA intervenor pursuant to the above authority and to Sections 16-50l and 22a-14 through 22a-20 of the Connecticut General Statutes and Section 16-50j-43 of the Regulations of the Siting Council. CEPA permits any person, including associations, to "intervene as a party upon the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." *See* Conn. Gen. Stat. §§ 22a-19, 22a-20.

As set forth above, a hearing would certainly be “helpful in determining any issue concerning” the petition. See R.C.S.A. § 16-50j-40(b). The Nicholas family urges the Siting Council to hold a hearing on this proposal to ensure that Litchfield and Torrington residents have at least one opportunity to express their thoughts on the project and have the opportunity to listen to the Siting Council’s vetting of the developer’s significantly changed plans.

V. Nature of the evidence that the petitioner intends to present

Viola intends to present evidence (whether at a hearing or by submission of written reports) including, but not limited to:

- Testimony by the Nicholas family about the impact this facility will have on them and their property rights, as well as their environmental concerns;
- Studies, surveys and expert opinion about the adverse impact of the solar facility on the vernal pools, wetlands, watercourses (including the Gulf Stream), prime farmland and important soils, forest, amphibians, bats, birds, and other natural resources located on and around the proposed site;
- Evidence, whether by testimony or otherwise, about other solar facility projects that contained the same flawed assumptions as are present in the plans presented by SR Litchfield and which led to the impairment and/or destruction of wetlands, watercourses and other natural resources both on and off the sites of the failed projects;
- Evidence, whether by testimony or otherwise, that the proposed solar facility will unreasonably impair and/or destroy the public trust in the waters of the state and in the natural resources of the state by clear cutting acres of forest and introducing

impervious surfaces, thereby disturbing or destroying wetlands and watercourses and wildlife habitats, including a Class A cold water stream.

**RANALD K. NICHOLAS and
ROBIN L. NICHOLAS**

By: /s/ Emily A. Gianquinto
Emily A. Gianquinto
EAG Law LLC
363 Main Street, Third Floor
Hartford, CT 06106
Tel: (860) 785-0545
Fax: (860) 838-9027
emily@eaglawllc.com

CERTIFICATION

I hereby certify that a copy of the foregoing document was delivered by e-mail to the following service list:

Ali Weaver
SR Litchfield, LLC c/o Silicon Ranch
Corporation
222 Second Avenue S., Suite 1900
Nashville, TN 37201
ali.weaver@siliconranch.com

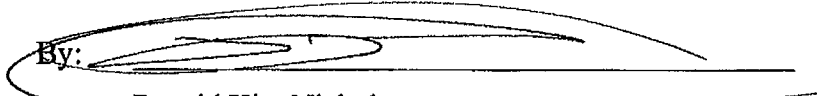
Dominick J. Thomas, Esq.
Cohen and Thomas
315 Main Street
Derby, CT 06418
djt@cohen-thomas.com

Kenneth C. Baldwin, Esq.
Jonathan H. Schaefer, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
kbaldwin@rc.com
jschaefer@rc.com

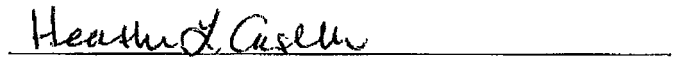
/s/ Emily A. Gianquinto
Emily Gianquinto

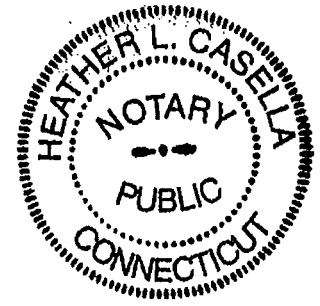
VERIFICATION

I, Ranald K. Nicholas, being duly sworn, depose and say that I have read the foregoing Request for Party Status and Notice of Intervention and Request for a Hearing, and that the allegations contained therein are true to the best of my knowledge.

By: 
Ranald Kim Nicholas

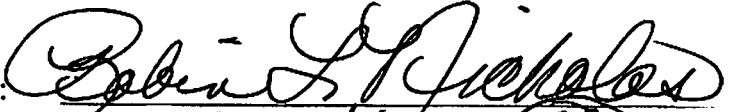

Subscribed and sworn to before me this 19th day of September, 2021.


Notary Public / ~~Commissioner~~ of the Superior Court
My Commission Expires: 12-31-2021


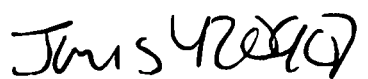


VERIFICATION

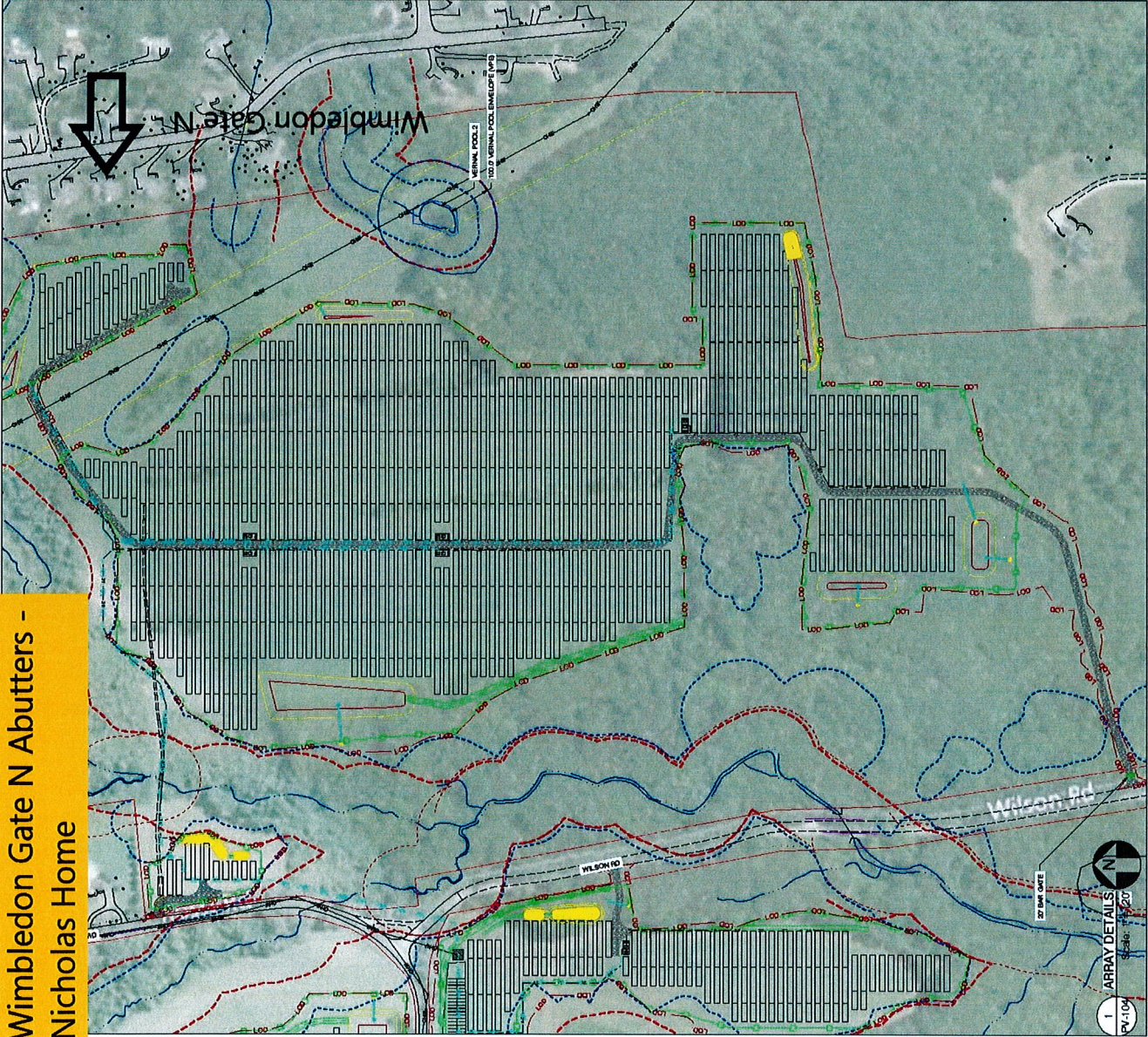
I, Robin L. Nicholas, being duly sworn, depose and say that I have read the foregoing Request for Party Status and Notice of Intervention and Request for a Hearing, and that the allegations contained therein are true to the best of my knowledge.

By: 
Robin L. ~~XXXXXX~~ Nicholas 

Subscribed and sworn to before me this 21st day of September, 2021.

By: 
Catherine D. Mollica 

**Wimbledon Gate N Abutters -
Nicholas Home**



LEGEND	
[Symbol]	3P/3Ø HAWKVA G CELLS 40W @80TUD
[Symbol]	3P/3Ø HAWKVA G CELLS 40W @80TUD
[Symbol]	3P/3Ø HAWKVA G CELLS 40W @80TUD
[Symbol]	EQUIPMENT RACK (10' BY SWITCHGEAR & (10' BY TRANSFORMER) (11' BY 20' CENTER)
[Symbol]	SANCTION ZONE STRING RACKS (11' BY 20' CENTER)
[Symbol]	EQUIPMENT RACK WITH STRINGMETER (11' BY 20' CENTER)
[Symbol]	EQUIPMENT RACK WITH STRINGMETER (11' BY 20' CENTER)
[Symbol]	EQUIPMENT RACK WITH STRINGMETER (11' BY 20' CENTER)
[Symbol]	WETLANDS
[Symbol]	UNDERGROUND CABLE
[Symbol]	UNDERGROUND MEDIUM VOLTAGE CABLE
[Symbol]	OVERHEAD BLUE TRICAL LINES
[Symbol]	PERMANENT FENCE LINE
[Symbol]	LIMIT OF DISTURBANCE
[Symbol]	STORMWATER BASIN
[Symbol]	100' ACCESS ROADS
[Symbol]	100' ACCESS ROADS
[Symbol]	TEMPORARY EXCAVATION AREA (TO BE RELOADED FOLLOWING COMPLETION OF CONSTRUCTION ACTIVITIES)
[Symbol]	20' WETLAND BUFFER
[Symbol]	WETLAND SETBACK
[Symbol]	100' GULL STREAM BUFFER
[Symbol]	LANDSCAPING

SOLVIDA
DESIGN - ENGINEERING
1641 Kosta Avenue, Berkeley, California 94702

SILICON RANCH

MILLER BROS.

**LITCHFIELD
SOLAR**
2-298 ROSSI RD
TORRINGTON, CT 06790, USA.
LAT: 41.794157°N
LON: 73.168028°W

REV.	NO.	DESCRIPTION	DATE
0		PRELIMINARY	05/02/21

ARRAY DETAILS

SHEET TITLE:

PROJ. NO.	PROJ. NAME	DATE
06/21	06/21	05/02/21
DRAWN BY	CHECKED BY	SCALE
		AS SHOWN
DRAWING NO.		

PV-104