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September 20, 2023

VIA ELECTRONIC MAIL: siting.council@ct.gov and
melanie.bachman@ct.gov

AND HAND DELIVERY

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

**Re: Petition No. 1583; Petition Of TRITEC Americas, LLC For A
Declaratory Ruling That No Certificate Of Environmental Compatibility
And Public Need Is Required For The Construction, Operation,
Maintenance, And Decommissioning Of A 0.999 MW AC Solar
Photovoltaic Project In Bethany, Connecticut – Necessary Order of
Regulations and Restrictions entered by the Bethany Planning and
Zoning Commission pursuant to Conn. Gen. Stat. §16-50x (d)**

Dear Attorney Bachman:

On behalf of the Town of Bethany (the "Town"), I am enclosing the original and fifteen copies of the Necessary Order of Regulations and Restrictions entered by the Bethany Planning and Zoning Commission pursuant to Conn. Gen. Stat. §16-50x (d) related to Petition No. 1583. Electronic copies of the Order and Certificate of Service have been sent to the Council and the parties and intervenor of record.

If you have any questions or need additional information, please contact me

Sincerely


Vincent M. Marino

Enc.: Original plus fifteen copies

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**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

TRITEC Americas, LLC notice of election to	:	Petition No. 1583
waive exclusion from Connecticut Siting Council	:	
jurisdiction, pursuant to Connecticut General	:	
Statutes §16-50k(e), and petition for a declaratory	:	
ruling, pursuant to Connecticut General Statutes	:	
§4-176 and §16-50k, for the proposed construction,	:	
maintenance and operation of a 0.999-megawatt AC	:	
solar photovoltaic electric generating facility located	:	
at Parcel Nos. 113-1 and 113-1-A, 428 Bethmour	:	
Road, Bethany, Connecticut, and associated	:	
electrical interconnection	:	September 20, 2023

**NOTICE OF FILING CERTIFIED COPY OF TOWN OF BETHANY, PLANNING AND
ZONING COMMISSION ORDER OF REGULATIONS AND RESTRICTIONS
IN ACCORDANCE WITH CONN. GEN. STAT. § 16-50x (d)**

The Town of Bethany (the "Town") submits this Notice of Filing of a certified copy of the Town of Bethany, Planning and Zoning Commission Order of Regulations and Restrictions entered in accordance with Conn. Gen. Stat. § 16-50x (d) and a copy of a certification of service.

**Respectfully submitted,
THE TOWN OF BETHANY**

By: 

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657 Orange Center Road
Orange, CT 06477
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CERTIFICATION OF SERVICE

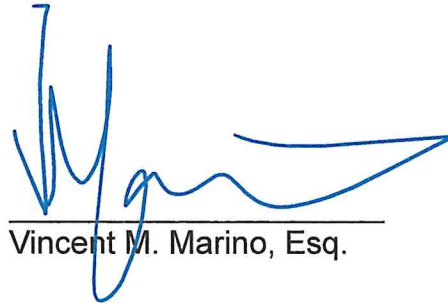
I hereby certify that on this date, a copy of the foregoing was delivered by electronic mail and/or US Mail, first class postage prepaid, to all parties and intervenors of record as follows:

Petitioner – TriTEC Americas, LLC

Paul R. Michaud, Esq.
Bernadette Antaki, Esq.
Dylan J. Gillis, Esq.
Michaud Law Group LLC
515 Centerpoint Drive, Suite 503
Middletown, CT 06457
pmichaud@michaud.law
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Intervenor – Rural Bethany Association

Joseph P. Mortelliti, Esq.
Daniel E. Casagrande, Esq.
Cramer & Anderson LLP
30 Main Street, Suite 204
Danbury, CT 06810
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Vincent M. Marino, Esq.

TOWN OF BETHANY

***Town of Bethany, Planning and Zoning Commission
Necessary Order of Regulations and Restrictions
in accordance with Conn. Gen. Stat. § 16-50x (d)***

RE: DOCKET NO.: 1583 - TRITEC Americas, LLC notice of election to waive exclusion from Connecticut Siting Council jurisdiction, pursuant to Connecticut General Statutes §16-50k(e), and petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 0.999-megawatt AC solar photovoltaic electric generating facility located at Parcel Nos. 113-1 and 113-1-A, 428 Bethmour Road, Bethany, Connecticut, and associated electrical interconnection.

CERTIFICATION OF MAILING

In accordance with Conn. Gen. Stat. § 16-50x (d), I hereby certify that a written notice of the Necessary Order of Regulations and Restrictions adopted by the Planning and Zoning Commission for the Town of Bethany at a duly noticed meeting held on Monday, September 11, 2023 was mailed to each party affected by said orders, via US mail, postage prepaid, or sent by electronic mail delivery as follows:

Petitioner

TriTEC Americas, LLC
c/o its counsel
Paul R. Michaud, Esq.
Michaud Law Group, LLC
515 Centerpoint Drive, Suite 503
Middletown, CT 06457
EMAIL - pmichaud@michaud.law

TriTEC Americas, LLC
c/o its Chief Executive Officer
EMAIL: david@tritec-americas.com
888 Prospect Street
Suite 200
LaJolla, CA 92037

Property Owner of Record

The Nevar Company
EMAIL: dbfiske.ravenswood@att.net
677 South Main Street
Cheshire, CT 06410

The Nevar Company
PO Box 743
Cheshire, CT 06410

The Nevar Company
c/o its agent James M. Miele
396 South Main Street
Cheshire, CT 06410



Lina Cortez-Frazier
Zoning Enforcement Officer / Land Use Administrator
Tel.: 203-393-2100 x. 1115
Email: LFrazier@bethany-ct.com



After recording, please return to:

Vincent M. Marino, Esq.
Marino, Zabel & Schellenberg, PLLC
657 Orange Center Road
Orange, Connecticut 06477

TOWN OF BETHANY

TO: Connecticut Siting Council (CSC)
FROM: Town of Bethany, Planning and Zoning Commission
DATE: September 12, 2023

Town of Bethany, Planning and Zoning Commission
Necessary Order of Regulations and Restrictions
in accordance with Conn. Gen. Stat. § 16-50x (d)

RE: DOCKET NO.: 1583 - TRITEC Americas, LLC notice of election to waive exclusion from Connecticut Siting Council jurisdiction, pursuant to Connecticut General Statutes §16-50k(e), and petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 0.999-megawatt AC solar photovoltaic electric generating facility located at Parcel Nos. 113-1 and 113-1-A, 428 Bethmour Road, Bethany, Connecticut, and associated electrical interconnection

WHEREAS, Conn. Gen. Stat. sec. 16-50i, subdivisions (3) defines a "Facility" as:

any electric generating or storage facility using any fuel, including nuclear materials, including associated equipment for furnishing electricity but not including an emergency generating device, as defined in subsection (f) of this section or a facility (A) owned and operated by a private power producer, as defined in section 16-243b, (B) which is a qualifying small power production facility or a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978, as amended, or a facility determined by the council to be primarily for a producer's own use, and (C) which has, in the case of a facility utilizing renewable energy sources, a generating capacity of one megawatt of electricity or less and, in the case of a facility utilizing cogeneration technology, a generating capacity of twenty-five megawatts of electricity or less.

WHEREAS, TriTEC Americas, LLC ("TriTEC") approached the Town of Bethany in August of 2022 proposing to construct, operate, maintain and decommission a 1.357 MW-AC ground mounted solar photovoltaic facility on property located in the Town at 428 Bethmour Road (the "Proposed Project"), and requested a meeting with the Town's officials in accordance with Conn. Gen. Stat. § 16-50I (e).

WHEREAS on September 27, 2022, TriTEC sent notice to the Town of its intent to file a petition for a declaratory ruling with the Siting Council seeking approval for the Proposed Project and advised the Town that an informational meeting was scheduled for October 6, 2022. WHEREAS, the Town did not hear from TriTEC again until TriTEC mailed a letter dated April 7, 2023 to the Town defined by TriTEC as a "SECOND NOTICE" (the "Second Notice").

WHEREAS, on April 7, 2023, TriTEC sent the Second Notice to the Town wherein TriTEC stated its intent to file a petition for a declaratory ruling with the Siting Council seeking approval for a proposed 0.996 MW-AC ground mounted solar photovoltaic facility on property located in the Town at 428 Bethmour Road (the "Proposed Modified Project").

WHEREAS, the Town never received a first notice of the Proposed Modified Project. The Commission interprets the use of "SECOND NOTICE" by TriTEC in its April 7, 2023 as creating a nexus between the Second Notice and TriTEC's notice dated September 27, 2023.

WHEREAS, TriTEC failed to provide the Town with any documentation relating to the Proposed Modified Project with the exception of the Second Notice.

WHEREAS, TriTEC failed to provide the Town with any proposed plans or alternate sites for the Proposed Project or the Proposed Modified Project and failed to inquire with the Town as to the availability of any Town owned or other property that might have been available for the Proposed Project or the Proposed Modified.

WHEREAS, Conn. Gen. Stat. § 16-50x (a) gives the council exclusive jurisdiction over the location and type of facilities it regulates but requires the council to consider municipal regulations and other state laws as it finds appropriate when ruling on application.

WHEREAS, Conn. Gen. Stat. § 16-50x (d) allows a municipal zoning commission and inland wetland agency to make all orders necessary to regulate and restrict the location of an electric generation facility's proposed by entering such orders within 65 days after an application for the facility is filed with the Siting Council. The orders must be in writing and recorded in the records of their respective communities, and written notice of any order must be given to each affected party.

NOW THEREFORE, in accordance with the authority granted to it under Conn. Gen. Stat. § 16-50x (d), the Planning and Zoning Commission for the Town of Bethany enters the following written orders, which written orders shall be recorded as part of the Commission's meeting minutes with the Bethany Town Clerk, and a copy of these

written orders shall be given to each party affected by them, including TriTEC Americas, LLC and The Nevar Company, the owner of 428 Bethmour Road.

A. Preliminary findings – Authority to enter Orders necessary to regulate and restrict the proposed location of a facility, as defined in subdivisions (3) and (4) of subsection (a) of section 16-50i.

The Commission makes the following preliminary findings.

a. On July 11, 2023, TriTEC filed a petition for a declaratory ruling pursuant to Conn. Gen. Stat. § 16-50k.

b. Also on that date, TriTEC filed notice of election to waive the exclusion from jurisdiction in accordance with Conn. Gen. Stat. § 16-50k(e).

c. Subsection (e) of § 16-50k of the general statutes provides “any person intending to construct a facility excluded from one or more **provisions of this chapter** may, to the extent permitted by law, elect to waive such exclusion by delivering notice of such waiver to the council. **Such provisions** shall thereafter apply to each facility identified in such notice from the date of its receipt by the council.” (Emphasis added).

d. Subsection (d) of § 16-50k of the general statutes provides that “[**t**]his chapter shall apply to any facility described in subdivisions (1) to (3), inclusive, of subsection (a) of section 16-50i, the construction of which is commenced on or after April 1, 1972, . . .” (Emphasis added).

e. Subsection (d) of § 16-50x of the general statutes authorizes any zoning commission or inland wetland agency to make all orders necessary to regulate and restrict the proposed location of a facility defined under subdivisions (3) or (4) of subsection (a) of section 16-50i.

f. Subsection (d) of § 16-50x of the general statutes is made applicable in the present proceeding by virtue of the statutory language in subsections (d) and (e) of § 16-50k of the general statutes.

g. Additionally, subsection (d) of §16-50x does not place limitations on the grant of this authority. Specifically, subsection (d) provides in relevant part that:

[a]ny town, city or borough zoning commission and inland wetland agency may regulate and restrict the proposed location of a facility, as defined in subdivisions (3) and (4) of subsection (a) of section 16-50i. Such local bodies may make all orders necessary to the exercise of such power to regulate and restrict, which orders shall be in writing and recorded in the records of their respective communities, and written notice of any order shall be given to each party affected thereby.

h. Also, TriTEC related its current proposal, a proposed facility that is less than one (1) MW back with its original proposal, a proposed facility that was greater than one (1) MW when it defined its April 7, 2023 letter of notice sent to the Town as the "SECOND NOTICE". The Town only received two notices from TriTEC. The first notice was dated September 27, 2022. The second notice was dated April 7, 2023

The Town initially believed that TriTEC was proceeding subject to the provisions of § 16-50l rather than § 16-50k. Regardless, since § 16-50k provides that "***[t]his chapter*** shall apply to any facility described in subdivisions (1) to (3), inclusive, of subsection (a) of section 16-50i, the construction of which is commenced on or after April 1, 1972, . . .," (emphasis added); the Commission finds that TriTEC cannot circumvent its obligation to engage the Town in good-

faith and remains subject to the obligations under § 16-50I since it connected the present application with its original proposal.

i. Accordingly, the Planning and Zoning Commission of the Town of Bethany finds that it has the authority to enter all orders necessary to regulate and restrict the proposed location of a facility.

B. Orders deemed necessary by the Planning and Zoning Commission for the Town of Bethany to regulate and restrict the location of a facility, as defined in subdivisions (3) and (4) of subsection (a) of section 16-50i of the Connecticut General Statutes.

The Commission has reviewed the petition filed by TriTEC. The Proposed Modified Project is proposed to be located at 0 and 428 Bethmour Road (collectively the “Property”). The Property is in the Residential Zone. The Proposed Modified Project, as presented, does not comply with the Bethany Zoning Regulations or the Bethany Plan of Conservation and Development.

Pursuant to § 4.3 of the Bethany Zoning Regulations, permitted uses, including accessory and incidental uses, are limited to residential purposes; and farming purposes as defined by Conn. Gen. Stat. §1-1 (q). Any structure related to a farming use in a residential zone must be at least one hundred (100) feet from the property line. *See Bethany Zoning Regulations at 4.3.F(3).*

The use of solar equipment, as defined in Section 1.2, is encouraged, but the placement of Solar Energy Equipment is not permitted within the required front yard setback unless it is adequately screened from view from the public way so as to preclude any glare from the equipment which would adversely impact the vision of

motorists on the public way. It is understood that this equipment may on occasion, be visible from the public way even if located in the side or the rear yard. *Id. at 4.3.K.* Additionally, the zoning regulations provide that “the solar energy equipment must be adequately screened from view of residential neighbors by appropriate vegetative screening or appropriate and adequate solid fencing. Any proposed fencing must comply with all applicable height requirements.” *Id.*

Section 1.2 of the Bethany Zoning Regulations defined “Solar Energy Equipment” as items including panels, lines pumps, batteries, mounting brackets, framing and possibly foundations used for or intended to be used for collection of solar energy in connection with a building on residential or commercial property. Solar energy equipment and its use is accessory to the principal use of the property.”

If the Commission were acting solely on its own regulations and policies, a permit could not be granted for the Proposed Modified Project in a residential zone, and no order of regulation and restriction could make the Proposed Modified Project compliant with the Bethany Zoning Regulations.

The Commission deems it necessary to make the following order of regulation and restriction to protect the integrity of the residential zone.

a. **SETBACKS.** Any structure or use related to a *Facility* as defined by Conn. Gen. Stat. sec. 16-50i, subdivisions (3) or (4) in a residential zone must be at least one hundred (100) feet from the front, rear and side property lines.

b. **SCREENING FROM THE PUBLIC RIGHT OF WAY.** Any structure or use related to a *Facility* as defined by Conn. Gen. Stat. sec. 16-50i, subdivisions (3) or (4) in a residential zone must be adequately screened from view from the public way to

preclude any glare from the equipment which would adversely impact the vision of motorists on the public way.

c. **SCREENING FROM ADJACENT RESIDENTIAL PARCELS.** Any structure or use related to a *Facility* as defined by Conn. Gen. Stat. sec. 16-50i, subdivisions (3) or (4) in a residential zone must be adequately screened from view of residential neighbors by appropriate vegetative screening or appropriate and adequate solid fencing.

d. **LIGHTING AND NOISE ABATEMENT.** § 4.3 (E)(3) provides that "Accessory uses shall not give rise to noise, or odors or create a nuisance or other objectionable or unsightly conditions which are likely to deteriorate property values."

- i. TriTEC shall provide the Town of Bethany staff with the name and contact information of key personnel to contact to resolve any noise complaints that may arise.
- ii. Acceptable lighting levels are to be as referenced in Section 10.2.K. of these regulations and as may be adopted by the Commission. Noise levels are to be in keeping with any local ordinance adopted by the Town.
- iii. The location, height, design and arrangement of outside lighting shall be done so as to avoid trespass lighting and direct glare on any other lot and to avoid hazards to traffic on any road. The source of the illumination (bulb) shall not be visible from off the property. The Commission may require full cut off fixtures.

e. **ACCESS:** Provision shall be made for vehicular access to the lot in such a manner as to safeguard against hazards to traffic and non-vehicular traffic on the road right-of-way and on the lot and to avoid traffic congestion on any road. Access shall also conform¹ to the following:

- i. For commercial uses, where reasonable alternate access is available, the vehicular access to the lot shall avoid use of roads in Residence Zones.
- ii. The road providing access to the lot shall be suitably improved and have the capacity to accommodate the traffic generated by the proposed use and development.

- iii. Provisions shall be made for turning lanes and traffic controls within the road right-of way if deemed necessary by the Commission.
- iv. Access driveways shall be of a design and have sufficient capacity to avoid back-up of entering vehicles on any road.
- v. Driveways onto the lot shall be constructed in accordance with the most restrictive of all applicable requirements and specifications and shall meet the travel way of the road in such a manner as to conform to the standards as established for the street as may be specified by the Board of Selectmen

f. **PARKING AND LOADING.** On-site parking and loading shall be provided in accordance with § 7 of the Bethany Zoning Regulations.

g. **DRAINAGE AND RUNOFF CONTROL.** Provision shall be made for the collection and discharge of stormwater on the lot to prevent flooding of on-site parking and loading spaces, to avoid hazards to pedestrian and vehicular traffic on the lot and on any road and to avoid stormwater flow from the lot onto property of others and to protect streams, wetlands and watershed lands from pollution.

- i. The design of drainage shall be based on sound engineering practices and judgment based on the best available data, and shall fully consider the predicted volume and rate of storm water runoff and the capacity of downstream watercourses, channels and other drainage structures to accept the drainage discharge. Calculations of runoff, hydro graphs and flow routing shall be performed in accordance with the standards and procedures established by the U.S.D.A. Soil Conservation Service. As a minimum, ten (10) year storm frequency shall be used as the design basis for the proposed on-site drainage systems, as approved by the Commission. However, when indicated by site conditions, the Commission may require larger design storm up to a 50 year storm. The Standards of the Bethany Road Specifications shall be considered as a guideline for cross culverts under access roads and for natural watercourses.
- ii. Provision shall be made for the protection or improvement of existing watercourses, channels and other drainage systems on the lot or downstream from the lot as needed to accept the proposed drainage discharge and taking into account the total watershed runoff and the effect of future development. When deemed necessary to protect downstream

areas, the Commission may require the construction of detention structures or other runoff control measures.

h. **WETLANDS:** Provision shall be made for the protection of swamps, floodplains and other wetlands on the lot.

i. **OUTSIDE STORAGE.** Outside storage (including without limitation, storage of merchandise, goods, supplies, wastes, machinery, motor vehicles and equipment and processing or assembling of goods) shall be limited as follows unless stated otherwise for the zone:

- j.
 - i. No outside storage area shall extend into the area required for setback from a street line or a Residence District boundary line.
 - ii. No outside storage shall extend into the area required for setback from a property line nor into the area required for a landscaped buffer as may be required by these regulations.
 - iii. The maximum permissible outside storage area shall not be more than 10% of the building area.
 - iv. All outside storage areas shall be enclosed, except for access drives, by buildings and/or fences, walls, embankments or evergreen shrubs or trees in order to screen the storage area from view from any other lot or from any street. The Commission, in its sole discretion, may allow an increase in outside storage of up to 10% of the lot area provided that any hazardous or toxic materials stored on the property are adequately contained to meet D.E.P. standards for storage of hazardous or toxic material.

j. **LANDSCAPE DESIGN PLAN.** Landscaping shall comply with § 10.2 (L).

k. **BONDS.** TriTEC shall post a bond in accordance with § 10.2 (P) and § 12 of the Bethany Zoning Regulations.

l. **SOIL AND EROSION CONTROL.** TriTEC shall comply with § 11 of the Bethany Zoning Regulations, Bethany Erosion and Sediment Control Regulations.

- THIS ORDER IS BEING ENTERED BY THE TOWN PLANNING AND ZONING COMMISSION FOR THE TOWN OF BETHANY NOT
- MORE THAN SIXTY-FIVE (65) DAYS AFTER AN APPLICATION HAS BEEN FILED WITH THE SITING COUNCIL FOR THE SITING OF A FACILITY DESCRIBED IN SUBDIVISION (3) OF SUBSECTION (a) OF SECTION 16-50i OF THE GENERAL STATUTES OF THE STATE OF CONNECTICUT.
- A COPY OF THIS ORDER SHALL BE RECORDED AS PART OF THE RECORD OF THE TOWN PLANNING AND ZONING COMMISSION FOR THE TOWN OF BETHANY, RECORDED ON THE BETHANY LAND RECORDS AND MAINTAINED IN THE OFFICE OF THE TOWN CLERK OF THE TOWN OF BETHANY IN ACCORDANCE WITH SUBSECTION (D) OF SECTION 16-50x OF THE GENERAL STATUTES OF THE STATE OF CONNECTICUT.
- WRITTEN NOTICE OF THIS ORDER SHALL BE GIVEN TO EACH PARTY AFFECTED BY IT, INCLUDING ALL APPLICANTS AND PROPERTY OWNERS.
- THIS ORDER IS SUBJECT TO THE RIGHT OF APPEAL. ANY AGGRIEVED PARTY MUST APPEAL TO THE CONNECTICUT SITING COUNCIL ("CSC"). ANY APPEAL MUST BE FILED WITH THE CSC WITHIN THIRTY DAYS AFTER THE GIVING OF NOTICE OF THE ENTRY OF THIS ORDER. THE CSC MAY AFFIRM, MODIFY OR REVOKE THIS ORDER OR MAKE ANY ORDER IN SUBSTITUTION THEREOF BY A VOTE OF SIX OF ITS MEMBERS.

BETHANY PLANNING AND ZONING COMMISSION

BY:



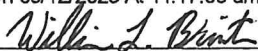
Kim McClure Brinton

Its Chair, duly authorized

Dated: September 11, 2023

Adopted at a duly noticed meeting of the Planning and Zoning Commission held on September 11, 2023.

Received for Record at Bethany, CT
On 09/12/2023 At 11:17:00 am



Received for Record September 12, 2023
at 11:17 AM
and recorded in Vol. 224 of
Bathany Land Records page 1007
by Stephanie Howard
ASS'T TOWN CLERK