

DOCKET NO. HHB CV-CV24-6085674-S	:	SUPERIOR COURT
	:	
USS SOMERS SOLAR, LLC	:	
<i>Plaintiff</i>	:	JUDICIAL DISTRICT
	:	OF NEW BRITAIN
v.	:	
	:	
CONNECTICUT SITING COUNCIL	:	
<i>Defendant</i>	:	MAY 16, 2024

**JOINT MOTION FOR VOLUNTARY REMAND**

Plaintiff USS Somers Solar LLC (“USS Somers Solar”) and Defendant State of Connecticut Siting Council (“CSC” or “Council”), hereby respectfully move that the Court remand CSC Petition No. 1589<sup>1</sup> to the CSC for clarification and/or reconsideration due to changed conditions. *See Commission on Human Rights & Opportunities v. City of Hartford*, 138 Conn. App. 141, 152-154, 50 A.3d 917 (2012), *cert. den.*, 307 Conn. 929, 55 A.3d 570 (2012); *Conn. Light & Power Co. v. Public Utilities Regulatory Authority*, 223 Conn. App. 136, 148, n. 9, 307 A.3d 967 (2023); Conn. Gen. Stat. § 4-181a(b) (reopening of final decision due to changed conditions). In support of this motion, both USS Somers Solar and the CSC advise the Court of the following:

- On August 23, 2023, USS Somers Solar filed a petition for a declaratory ruling with the Council that no Certificate of Environmental Compatibility and Public Need is Required for the Proposed Construction, Operation and Maintenance of a

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<sup>1</sup> Petition for a Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is Required for the Proposed Construction, Operation and Maintenance of a 3.0 +/- MW AC Solar Photovoltaic Electric Generating Facility Located at 360 Somers Road, Ellington, CT.

3.0 +/- MW AC Solar Photovoltaic Electric Generating Facility Located at 360 Somers Road, Ellington, CT. *See Complaint*, ¶ 4.

- After a hearing and the taking of evidence (in which there were no additional parties or intervenors), the CSC took a preliminary poll of CSC members resulting in three members voting in the affirmative (to approve the facility) and two members voting in the negative (to oppose the facility), with the presiding officer directing CSC staff to draft a favorable Opinion and Decision and Order to be reviewed at the next CSC meeting. *See CSC Minutes of January 18, 2024, Item No. 2, Exhibit A to this Motion.*<sup>2</sup>
- At the CSC meeting of February 1, 2024, the CSC “After reviewing the Draft Findings of Fact, Opinion, and Decision and Order, Presiding Officer Morissette took a final vote of each Council member with Mr. Silvestri, Mr. Golembiewski, and Dr. Near in favor of the proposed facility; Mr. Nguyen and Presiding Officer Morissette voting no; Mr. Lynch voting no with prejudice; and Mr. Carter abstaining. The final vote was tied. Therefore, it failed.” *See CSC Minutes of February 1, 2024, Item No. 3, Exhibit B to this Motion.*
- On February 5, 2024, the CSC issued a letter to counsel for USS Somers Solar stating, “At the energy/telecommunications meeting held on February 1, 2024, the Connecticut Siting Council (Council) did not issue a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed

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<sup>2</sup> The minutes of the Connecticut Siting Council “are public” and “the court can take judicial notice as the public minutes of a state agency”. *Town of Groton v. Connecticut Siting Council*, 2020 Conn. Super. LEXIS 1041 at \*5 (Conn. Super. August 11, 2020).

solar photovoltaic electric generating facility in Ellington, Connecticut. Due to a tie, the final vote failed; therefore, a declaratory ruling was not issued.” The CSC letter further stated, “Enclosed are the Council’s Findings of Fact, Opinion, and Decision and Order that were considered during the February 1, 2024 meeting.” *See CSC Letter of February 5, 2024 (with attachments), Exhibit C to this Motion.*

- At the CSC meeting of February 29, 2024, the CSC considered a motion for reconsideration filed by USS Somers Solar, but “Mr. Lynch moved to deny the Petition for Reconsideration; seconded by Mr. Golembiewski. The motion passed with Mr. Nguyen voting no.” *See CSC Minutes of February 29, 2024, Item No. 3, Exhibit D to this Motion.*
- On March 1, 2024, the CSC issued a letter to counsel for USS Somers Solar stating, “During a public meeting of the Connecticut Siting Council (Council) held on February 29, 2024, the Council considered and denied, by a vote of five to one, USS Somers Solar, LLC’s February 16, 2024 Petition for Reconsideration, pursuant to the provisions of Connecticut General Statutes §4-181a(a), of the Council’s February 5, 2024 final decision not to issue a declaratory ruling for the above-referenced solar photovoltaic electric generating facility due to a tie vote.” *See CSC Letter of March 1, 2024, Exhibit E to this Motion.*

Subsequently, USS Somers Solar filed the pending administrative appeal. There is a lack of clarity in the administrative record as to whether the CSC’s action (or inaction) should be considered a denial of the approval sought by USS Somers Solar, in which case, the Court should

search the record to see if there is substantial evidence to support a denial. *D'Amato-Canterbury v. Town of Canterbury Planning and Zoning Commission*, 2009 Conn. Super. LEXIS 2074, at \*9-10, 2009 WL 2781527 (Conn. Super. July 23, 2009). If the CSC is considered to have failed to issue a declaratory ruling within 180 days of the filing of the petition, then, pursuant to Conn. Gen. Stat. § 4-176(i), the appropriate relief would be a declaratory judgment action pursuant to Conn. Gen. Stat. § 4-175, which would require this Court to hold a *de novo* proceeding.

Since the previous votes cited in this motion, additional Council members have joined the CSC. A remand would give additional members an opportunity to read the record and vote and avoid another tie. Given that there were no additional parties and intervenors, there is a reasonable opportunity that an agency action may be reached that will not require judicial review. Therefore, both Plaintiff and Defendant request that this motion for remand be granted.

Respectfully submitted,

DEFENDANT

STATE OF CONNECTICUT  
SITING COUNCIL

WILLIAM TONG  
ATTORNEY GENERAL

By: /s/ Robert L. Marconi  
Robert L. Marconi  
Assistant Attorney General  
Juris No. 404518  
10 Franklin Square  
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PLAINTIFF

USS SOMERS SOLAR, LLC

By: /s/ Lee D. Hoffman  
Lee D. Hoffman, Esq.  
Liana A. Feinn, Esq.  
Pullman & Comley, LLC  
Juris No. 409177  
90 State House Square  
Hartford, Connecticut 06103-3702  
Tel: (860) 424-4315  
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[lhoffman@pullcom.com](mailto:lhoffman@pullcom.com)  
[lfeinn@pullcom.com](mailto:lfeinn@pullcom.com)

**CERTIFICATE OF SERVICE**

Pursuant to Practice Book § 10-14, I hereby certify that a copy of the above was sent by email this 16<sup>th</sup> day of May 2024, to all counsel of record and pro se parties, who have consented to receive pleadings by email, at the following:

Lee D. Hoffman, Esq.  
Liana A. Feinn, Esq.  
Pullman & Comley, LLC  
90 State House Square  
Hartford, CT 06103-3702  
Juris No. 409177  
860-424-4315 (p)  
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*/s/ Robert L. Marconi*  
Robert L. Marconi  
Assistant Attorney General

## ATTACHMENTS

EXHIBIT A - CSC Minutes of January 18, 2024

EXHIBIT B - CSC Minutes of February 1, 2024

EXHIBIT C - CSC Letter of February 5, 2024 (with attachments)

EXHIBIT D - CSC Minutes of February 29, 2024

EXHIBIT E - CSC Letter of March 1, 2024

*Town of Groton v. Connecticut Siting Council*, 2020 Conn. Super. LEXIS 1041 (Conn. Super. August 11, 2020)

*D'Amato-Canterbury v. Town of Canterbury Planning and Zoning Commission*, 2009 Conn. Super. LEXIS 2074, 2009 WL 2781527 (Conn. Super. July 23, 2009)



STATE OF CONNECTICUT  
*CONNECTICUT SITING COUNCIL*

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Web Site: [portal.ct.gov/csc](http://portal.ct.gov/csc)

**Meeting Minutes**

**Meeting of January 18, 2024**

A Zoom remote conference meeting of the Connecticut Siting Council (energy/telecommunications) was held on Thursday, January 18, 2024. The meeting was called to order with a quorum present by Presiding Officer John Morissette at 1:00 p.m.

**Council Members Present:**

John Morissette  
Presiding Officer

Robert Silvestri  
Thomas Near, Ph.D.

Daniel P. Lynch, Jr.  
(Mr. Lynch was absent for Item Nos. 1 – 3)

Brian Golembiewski  
(designee for Commissioner Dykes)

Quat Nguyen  
(designee for Chairman Gillett)

**Staff Members Present:**

Melanie Bachman  
Executive Director/Staff Attorney

Robert Mercier  
Siting Analyst

Ifeanyichukwu Nwankwo  
Siting Analyst

Christina Walsh  
Supervising Siting Analyst

Michael Perrone  
Siting Analyst

Adam N. Morrone  
Siting Analyst

**Recording Secretary:**

Lisa Fontaine

**1. Minutes of January 4, 2024.**

Mr. Golembiewski moved to approve the Minutes of January 4, 2024; seconded by Dr. Near. The motion passed unanimously.



2. **PETITION NO. 1589 - USS Somers Solar, 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 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road, Ellington, Connecticut, and associated electrical interconnection. Draft Findings of Fact.**

Dr. Near stated that he read the record for this proceeding.

After reviewing the Draft Findings of Fact, Presiding Officer Morissette conducted a non-binding straw poll of the Council members with Mr. Silvestri, Mr. Golembiewski, and Dr. Near in favor of the proposed facility with the development and management plan conditions to implement the Department of Energy and Environmental Protection (DEEP)-recommended protective measures for the Savannah sparrow; submit a Spill Prevention, Control and Countermeasures Plan that includes contact information for regulatory agencies, spill cleanup contractors and local responders; submit the glare analysis that was conducted for the facility; submit a grounding study for the facility; and provide operations and emergency response training to local emergency responders; and Mr. Nguyen and Presiding Officer Morissette voting no.

Presiding Officer Morissette directed staff to draft a favorable Opinion and Decision and Order to be reviewed at the next meeting.

3. **PETITION NO. 1591 - KCE CT 5, 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 5.0-megawatt AC battery energy storage facility located at Village Hill Road, Stafford (Parcel No. 71-6) and Willington (Parcel No. 52-001-00), Connecticut, and associated electrical interconnection. Decision.**

Mr. Silvestri moved to approve this petition with the conditions noted in the staff report, as amended, and the additional conditions to submit a BESF operational noise study, with mitigation measures, if necessary, confirming compliance with DEEP Noise Control Regulations; submit a site construction plan consistent with the *2002 Connecticut Guidelines for Soil Erosion and Sedimentation Control* that contains a blue spotted salamander and Vernal Pool and Wetland Protection Plan; install temporary and permanent isolation barriers around the stormwater detention basin to reduce the potential for vernal pool obligate species from using the basin as a breeding area; submit a final access drive design sufficient to accommodate a tanker truck; submit a final stream crossing culvert design that conforms to DEEP and U.S. Army Corps of Engineers stream crossing guidelines with a weight limit sufficient to accommodate a tanker truck; and provide a signed certification by the Fire Chief confirming the access drive and stream crossing culvert designs are

sufficient to accommodate a tanker truck and emergency vehicles; seconded by Mr. Golembiewski.  
The motion passed unanimously.

- PETITION NO. 1596 - USS Torrington Solar, 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 1.99-megawatt AC solar photovoltaic electric generating facility located on the former Torrington Landfill at 105 Vista Drive, Torrington, Connecticut, and associated electrical interconnection. Decision.**

Mr. Silvestri moved to approve this petition with the conditions noted in the staff report; seconded by Dr. Near. The motion passed unanimously.

#### **Tower Share Request Consent Calendar - Item Nos. 5 - 6**

Presiding Officer Morissette introduced the Tower Share Request Consent Calendar as Item Nos. 5 – 6. The Consent Calendar was adopted.

- TS-VER-069-231108 - Cellco Partnership d/b/a Verizon Wireless request for an order to approve tower sharing at an existing telecommunications facility located at 1249 Hartford Pike, Killingly, Connecticut. Decision.**
- TS-VER-059T-231122 - Cellco Partnership d/b/a Verizon Wireless request for an order to approve tower sharing at an existing telecommunications facility located at 130 Welles Road, Groton, Connecticut. Decision.**
- Administrative Matters**

The following public hearings and energy/telecommunications meeting dates were discussed:

- Docket No. 517, Tuesday, January 23, 2024, **continued evidentiary hearing session** beginning at 2:00 p.m. via Zoom remote conferencing.
- Energy/Telecommunications Meeting, Thursday, February 1, 2024, beginning at **1:00 p.m.** via Zoom remote conferencing.
- Petition No. 1598, Thursday, February 8, 2024, **evidentiary hearing session** beginning at 2:00 p.m. and **public comment session** beginning at 6:30 p.m. via Zoom remote conferencing.
- Energy/Telecommunications Meeting, Thursday, February 15, 2024, beginning at **1:00 p.m.** via Zoom remote conferencing.
- Docket No. 519, Tuesday, February 27, 2024, **evidentiary hearing session** beginning at 2:00 p.m. and **public comment session** beginning at 6:30 p.m. via Zoom remote conferencing.

**Adjournment.**

Dr. Near moved to adjourn the meeting; seconded by Mr. Silvestri. The motion passed unanimously.

Presiding Officer Morissette adjourned the meeting at 1:40 p.m.

**Respectfully submitted,**

A handwritten signature in cursive script, appearing to read "Melanie A. Bachman".

**Melanie A. Bachman**  
**Executive Director**

MAB/laf



STATE OF CONNECTICUT  
*CONNECTICUT SITING COUNCIL*

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Web Site: [portal.ct.gov/csc](http://portal.ct.gov/csc)

**Meeting Minutes**

**Meeting of February 1, 2024**

A Zoom remote conference meeting of the Connecticut Siting Council (energy/telecommunications) was held on Thursday, February 1, 2024. The meeting was called to order with a quorum present by Presiding Officer John Morissette at 1:00 p.m.

**Council Members Present:**

John Morissette  
Presiding Officer

Robert Silvestri

Thomas Near, Ph.D.

Daniel P. Lynch, Jr.

(Mr. Lynch was absent for Item No. 1.)

Brian Golembiewski

(designee for Commissioner Dykes)

Quat Nguyen

(designee for Chairman Gillett)

Chance Carter

**Staff Members Present:**

Melanie Bachman

Executive Director/Staff Attorney

Robert Mercier

Siting Analyst

Ifeanyichukwu Nwankwo

Siting Analyst

Christina Walsh

Supervising Siting Analyst

Michael Perrone

Siting Analyst

Adam N. Morrone

Siting Analyst

**Recording Secretary:**

Lisa Fontaine

**Introduction.**

Presiding Officer Morissette welcomed Mr. Chance Carter to the Connecticut Siting Council.

**1. Minutes of January 18, 2024.**

Mr. Silvestri moved to approve the Minutes of January 18, 2024; seconded by Dr. Near. The motion passed with Mr. Carter abstaining.

2. **DOCKET NO. 516 – The United Illuminating Company (UI) application for a Certificate of Environmental Compatibility and Public Need for the Fairfield to Congress Railroad Transmission Line 115-kV Rebuild Project that consists of the relocation and rebuild of its existing 115- kilovolt (kV) electric transmission lines from the railroad catenary structures to new steel monopole structures and related modifications along approximately 7.3 miles of the Connecticut Department of Transportation’s Metro-North Railroad corridor between Structure B648S located east of Sasco Creek in Fairfield and UI’s Congress Street Substation in Bridgeport, and the rebuild of two existing 115-kV transmission lines along 0.23 mile of existing UI right-of-way to facilitate interconnection of the rebuilt 115-kV electric transmission lines at UI’s existing Ash Creek, Resco, Pequonnock and Congress Street Substations traversing the municipalities of Bridgeport and Fairfield, Connecticut. Draft Findings of Fact.**

Dr. Near stated that he acquainted himself with the issues raised and the evidence and arguments presented at the public hearings on this application in order to exercise an informed judgment.

After reviewing the Draft Findings of Fact, Presiding Officer Morissette conducted a non-binding straw poll of the Council members with Mr. Silvestri, Mr. Golembiewski, Dr. Near, and Presiding Officer Morissette in favor of the Hannon-Morissette Alternative configuration with the development and management plan conditions to construct the Project in accordance with the 2023 National Electrical Safety Code; submit a Materials Management Plan; relocate Structure P723S fully off of the BJ’s Wholesale Club, Inc. (BWC) property and onto the railroad ROW; relocate Structure P724S (as a deadend structure) fully off of the BWC property and onto the railroad ROW or relocate Structure P724S (changed to a suspension type structure) fully off of the BWC property and onto the railroad ROW; avoid access across the BWC parking deck, or alternatively, if the parking deck must be accessed by UI equipment, include a structural review/analysis stamped by a Professional Engineering duly licensed in the State of Connecticut; implement EMF Mitigation Option 1 for 79 Unquowa Place, Fairfield; implement EMF Mitigation Option 1 for the Windward Apartment Building Complex at 20 Johnson Street, Bridgeport; submit results of any further consultations with SHPO regarding possible mitigation measures for historic resources; submit a final Wetland Invasives Species Control Plan; submit the final conductor types, structure designs with heights and finishes, and structure foundation types and dimensions; submit the remaining portion of the 1130 line to be rebuilt from between approximately P714WS (Ash Creek Connection) eastwards to approximately TP734S (near I-95) as a separate petition for a declaratory ruling; implement protective measures for the peregrine falcon and blueback herring; install a new pole or platform for osprey nesting in the area of the island in Ash Creek; and submit written confirmation from DEEP for any in-water work, including, but not limited to the barge, to ensure the protection of the blueback herring;

Mr. Nguyen voting no; Mr. Lynch not voting; and Mr. Carter abstaining.

Presiding Officer Morissette directed staff to draft a favorable Opinion and Decision and Order to be reviewed at the next meeting.

- PETITION NO. 1589 – USS Somers Solar, 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 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road, Ellington, Connecticut, and associated electrical interconnection. Draft Findings of Fact, Opinion, and Decision and Order.**

After reviewing the Draft Findings of Fact, Opinion, and Decision and Order, Presiding Officer Morissette took a final vote of each Council member with Mr. Silvestri, Mr. Golembiewski, and Dr. Near in favor of the proposed facility; Mr. Nguyen and Presiding Officer Morissette voting no; Mr. Lynch voting no with prejudice; and Mr. Carter abstaining. The final vote was tied. Therefore, it failed.

- PETITION NO. 1602 - Glastonbury Solar One, LLC and VCP, LLC d/b/a Verogy, 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 3.0-megawatt AC solar photovoltaic electric generating facility located at 17 Wickham Road, Glastonbury, Connecticut, and associated electrical interconnection. CGS §4-176 Deadline for Action – Set Date for Decision.**

Mr. Silvestri moved to set the date by which to render a decision in accordance with Connecticut General Statutes § 4-176(e) and Section 16-50j-40(c) of the Regulations of Connecticut State Agencies, as no later than June 12, 2024; seconded by Dr. Near. The motion passed with Mr. Lynch recusing.

- PETITION NO. 1604 - Endurant Energy petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of an 18.0-megawatt AC battery energy storage facility located at 50 Ucar Street (Parcel No. 70H-55-97), Suffield, Connecticut, and associated electrical interconnection. CGS §4-176 Deadline for Action – Set Date for Decision.**

Dr. Near moved to set the date by which to render a decision in accordance with Connecticut General Statutes § 4-176(e) and Section 16-50j-40(c) of the Regulations of Connecticut State Agencies, as no later than June 15, 2024; seconded by Mr. Lynch. The motion passed unanimously.

### **Tower Share Request Consent Calendar - Item Nos. 6 - 8**

Presiding Officer Morissette introduced the Tower Share Request Consent Calendar as Item Nos. 6 - 8. The Consent Calendar was adopted with Mr. Nguyen recusing from Item No. 6.

6. **TS-DISH-004-231213 - Dish Wireless, LLC request for an order to approve tower sharing at an existing telecommunications facility located at 277 Huckleberry Hill Road, Avon, Connecticut. Decision.**
7. **TS-DISH-013-231220 - Dish Wireless, LLC request for an order to approve tower sharing at an existing telecommunications facility located at 141 Gifford Lane, Bozrah, Connecticut. Decision.**
8. **TS-VER-028-240104 - Cellco Partnership d/b/a Verizon Wireless request for an order to approve tower sharing at an existing telecommunications facility located at 15 Old Hartford Road, Colchester, Connecticut. Decision.**
9. **Administrative Matters**

The following public hearings and energy/telecommunications meeting dates were discussed:

- Petition No. 1598, Thursday, February 8, 2024, **evidentiary hearing session** beginning at 2:00 p.m. and **public comment session** beginning at 6:30 p.m. via Zoom remote conferencing.
- Energy/Telecommunications Meeting, Thursday, February 15, 2024, beginning at **1:00 p.m.** via Zoom remote conferencing.
- Docket No. 519, Tuesday, February 27, 2024, **evidentiary hearing session** beginning at 2:00 p.m. and **public comment session** beginning at 6:30 p.m. via Zoom remote conferencing.
- Energy/Telecommunications Meeting, Thursday, February 29, 2024, beginning at **1:00 p.m.** via Zoom remote conferencing.

### **Adjournment.**

Mr. Silvestri moved to adjourn the meeting; seconded by Mr. Nguyen. The motion passed unanimously.

Presiding Officer Morissette adjourned the meeting at 2:13 p.m.

**Respectfully submitted,**



**Melanie A. Bachman**  
**Executive Director**

MAB/laf



# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

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Web Site: [portal.ct.gov/csc](http://portal.ct.gov/csc)

### VIA ELECTRONIC MAIL & CERTIFIED MAIL RETURN RECEIPT REQUESTED

February 5, 2024

Lee D. Hoffman, Esq.  
Pullman & Comley, LLC  
90 State House Square  
Hartford, CT 06103-3702  
[lhoffman@pullcom.com](mailto:lhoffman@pullcom.com)

RE: **PETITION NO. 1589** – USS Somers Solar, 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 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road, Ellington, Connecticut, and associated electrical interconnection.

Dear Attorney Hoffman:

At the energy/telecommunications meeting held on February 1, 2024, the Connecticut Siting Council (Council) did not issue a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed solar photovoltaic electric generating facility in Ellington, Connecticut. Due to a tie, the final vote failed; therefore, a declaratory ruling was not issued.

Enclosed are the Council's Findings of Fact, Opinion, and Decision and Order that were considered during the February 1, 2024 meeting.

Sincerely,

Melanie A. Bachman  
Executive Director

MB/IN/dll

Enclosures (3)

c: Service List dated January 23, 2024  
State Documents Librarian (via email – [csl.cda@ct.gov](mailto:csl.cda@ct.gov))



**STATE OF CONNECTICUT }**

**: ss. Southington, Connecticut**

**February 5, 2024**

**COUNTY OF HARTFORD }**

I hereby certify that the foregoing is a true and correct copy of the Findings of Fact, Opinion, and Decision and Order that were considered, but not approved by the Connecticut Siting Council, State of Connecticut.

**ATTEST:**



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Melanie A. Bachman  
Executive Director  
Connecticut Siting Council

**STATE OF CONNECTICUT }**

**: ss. New Britain, Connecticut**

**February 5, 2024**

**COUNTY OF HARTFORD }**

I certify that a copy of the Findings of Fact, Opinion, and Decision and Order that were considered, but not approved by the Connecticut Siting Council, in Petition No. 1589 has been forwarded by Certified First Class Return Receipt Requested mail, on February 5, 2024, to all parties and intervenors of record as listed on the attached service list, dated January 23, 2024.

**ATTEST:**



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Dakota LaFountain  
Clerk Typist  
Connecticut Siting Council

**REVISED LIST OF PARTIES AND INTERVENORS  
SERVICE LIST**

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
<b>Petitioner</b>	<input checked="" type="checkbox"/> E-mail	USS Somers Solar, LLC	<p>Lee D. Hoffman, Esq.                      Pullman &amp; Comley, LLC                      90 State House Square                      Hartford, CT 06103-3702                      (860) 424-4315  <a href="mailto:lhoffman@pullcom.com">lhoffman@pullcom.com</a></p> <p>Dan Csaplar                      US Solar                      100 N 6<sup>th</sup> Street, Suite 410B                      Minneapolis, MN 55403  <a href="mailto:dan.csaplar@us-solar.com">dan.csaplar@us-solar.com</a></p>

<p><b>PETITION NO. 1589</b> – USS Somers Solar, 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 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road, Ellington, Connecticut, and associated electrical interconnection.</p>	<p>} Connecticut          } Siting          } Council</p>
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February 1, 2024

**Findings of Fact**

**Introduction**

1. On August 23, 2023, USS Somers Solar, LLC (USS) submitted a petition to the Connecticut Siting Council (Council), pursuant to Connecticut General Statutes (CGS) §16-50k and §4-176, for a declaratory ruling for the construction, maintenance, and operation of a 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road in Ellington, Connecticut, and associated electrical interconnection (Petition or Project). (USS 1, p. 1)
2. Pursuant to CGS §16-50k, the Council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling any distributed resources facility with a capacity of not more than 65 MW unless the Council finds a substantial adverse environmental effect. (Conn. Gen. Stat. §16-50k (2023))
3. USS is a Connecticut limited liability company with its principal office in Fairfield, Connecticut. USS is a subsidiary of United States Solar Corporation (US Solar) with offices in Connecticut, Minnesota, Virginia and Massachusetts. US Solar is a development company that specializes in solar projects. (USS 1, p. 4)
4. The party in this proceeding is USS. (Transcript 1 – December 5, 2023 – 2:00 p.m. [Tr. 1], p.4; Record)
5. USS would lease the proposed site. It would construct and own the proposed facility. Post-construction, USS would retain a third-party contractor to monitor and maintain the facility. The host parcel is owned by JLM Associates dba Ellington Airport. (USS 1, p. 10, Appendix A; USS 2, responses 18, 19 and 20)
6. If USS transfers the solar facility to another entity in the future, USS would provide a written agreement as to the entity responsible for any outstanding conditions of the declaratory ruling and quarterly assessment charges under CGS §16-50v(b)(2) that may be associated with the facility, including contact information for the individual acting on behalf of the transferee. (USS 2, response 8)
7. The proposed Project would be a “grid-side distributed resources” facility under CGS § 16-1(a)(37). (CGS § 16-1(a)(37); USS 1, pp. 10-11)
8. The proposed Project would generate renewable electrical energy from solar power. Solar power is considered a Class I renewable energy source. (CGS §16-1(a)(20) (2023))
9. The State legislature established a renewable energy policy under CGS §16a-35k that encourages the development of renewable energy facilities to the maximum extent possible. (CGS §16a-35k (2023))

10. Pursuant to CGS §16-50x, the Council has exclusive jurisdiction over the construction, maintenance and operation of the proposed solar photovoltaic electric generating facility. (CGS §16-50x (2023))

### **Procedural Matters**

11. Upon receipt of the Petition, the Council sent a letter to the Town of Ellington (Town) on August 24, 2023, as notification that the Petition was received and is being processed, in accordance with CGS §16-50k(a), and invited the Town to contact the Council with any questions or comments by September 22, 2023. (Record)
12. Local zoning regulations do not apply to facilities under the exclusive jurisdiction of the Council. Pursuant to CGS §16-50x, the Council has exclusive jurisdiction over solar facilities with a generating capacity greater than 1 MW throughout the state. It shall consider any location preferences provided by the host municipality as the Council shall deem appropriate. (CGS §16-50x (2023))
13. The Town and 14 members of the public submitted requests for a public hearing between September 8 and September 25, 2023. (Record)
14. On October 12, 2023, during a public meeting, the Council granted the requests for a public hearing. (Record)
15. On November 9, 2023, during a public meeting, the Council approved a public hearing schedule. This extended the public comment period to 30 days following the close of the evidentiary record. The evidentiary record closed on December 5, 2023. The public comment record closed on January 4, 2024. (Record)
16. On November 9, 2023 USS filed a motion for protective order under CGS §1-210(b) related to the estimated construction cost of the Project contained within the response to Council interrogatory No. 5 for this facility. (Record)
17. During the public hearing held on December 5, 2023, the Council issued a Protective Order related to the disclosure of the estimated construction cost of the Project pursuant to CGS §1-210(b). (Record)
18. Public Act (PA) 22-3 took effect on April 30, 2022. It permits public agencies to hold remote meetings under the Freedom of Information Act (FOIA) and the Uniform Administrative Procedure Act. FOIA defines “meeting” in relevant part as “any hearing or other proceeding of a public agency.” (Council Administrative Notice Item No. 70; CGS §1-200, *et seq.* (2023))
19. PA 22-3 allows public agencies to hold remote meetings provided that:
  - a) The public has the ability to view or listen to each meeting or proceeding in real-time, by telephone, video, or other technology;
  - b) Any such meeting or proceeding is recorded or transcribed and such recording or transcript shall be posted on the agency’s website within seven (7) days of the meeting or proceeding;
  - c) The required notice and agenda for each meeting or proceeding is posted on the agency’s website and shall include information on how the meeting will be conducted and how the public can access it any materials relevant to matters on the agenda shall be submitted to the agency and posted on the agency’s website for public inspection prior to, during and after the meeting; and

- d) All speakers taking part in any such meeting shall clearly state their name and title before speaking on each occasion they speak.  
(Council Administrative Notice Item No. 70)
20. Pursuant to CGS §16-50m, on November 9, 2023, the Council sent a letter to the Town to provide notification of the scheduled public hearing via Zoom remote conferencing. (Record)
21. Pursuant to CGS §16-50m, the Council published legal notice of the date and time of the public hearing via Zoom conferencing in the Journal Inquirer on November 13, 2023. (Record; Transcript 1 – December 5, 2023 – 2:00 p.m. [Tr. 1], p. 4)
22. The Council’s Hearing Notice did not refer to a public field review of the proposed site. Field reviews are neither required by statute nor an integral part of the public hearing process. The purpose of a field review is an investigative tool to acquaint members of a reviewing commission with the subject property. (Council’s Hearing Notice dated November 9, 2023; Council Administrative Notice Item No. 71 - *Manor Development Corp. v. Conservation Comm. of Simsbury, 180 Conn. 692, 701 (1980)*; Council Administrative Notice Item No. 72 - *Grimes v. Conservation Comm. of Litchfield, 243 Conn. 266, 278 (1997)*)
23. On October 20, 2023, in lieu of an in-person field review of the proposed site, the Council requested that USS submit photographic documentation of site-specific features into the record intended to serve as a “virtual” field review of the site. On November 9 and December 4, 2023, USS submitted such information in response to the Council’s interrogatories. (Record; USS 2 and 5)
24. Pursuant to CGS §16-50p(g), the Council shall in no way be limited by USS already having acquired land or an interest therein for the purpose of constructing the proposed facility. (CGS §16-50p(g) (2023); *Corcoran v. Conn. Siting Council, 284 Conn. 455 (2007)*)
25. The Council’s evaluation criteria under CGS §16-50p does not include the consideration of property ownership or property values nor is the Council otherwise obligated to take into account the status of property ownership or property values. (Tr. 1, p. 8; Transcript 2 – December 5, 2023, 6:30 p.m. [Tr. 2], p. 6; CGS §16-50p (2023); *Westport v. Conn. Siting Council, 47 Conn. Supp. 382 (2001)*; *Goldfisher v. Conn. Siting Council, 95 Conn. App. 193 (2006)*)
26. On November 15, 2023, the Council held a pre-hearing conference on procedural matters for parties and intervenors to discuss the requirements for pre-filed testimony, exhibit lists, administrative notice lists, expected witness lists, and filing of pre-hearing interrogatories. Procedures for the public hearing via Zoom remote conferencing were also discussed. (Council Pre-Hearing Conference Memorandum, dated November 9, 2023)
27. In compliance with Regulations of Connecticut State Agencies (RCSA) § 16-50j-21, on November 22, 2023, USS installed a six-foot by four-foot sign along Somers Road in the vicinity of the proposed access drive. The sign presented information about the proposed solar facility, the public hearing date and contact information for the Council. (USS 3; Council Pre-Hearing Conference Memorandum, dated November 9, 2023)
28. Pursuant to CGS §16-50m, the Council gave due notice of a public hearing on December 5, 2023, beginning with the evidentiary session at 2:00 p.m. and continuing with the public comment session at 6:30 p.m. via Zoom remote conferencing. The Council provided information for video/computer access or audio only telephone access. (Council’s Hearing Notice dated November 9, 2023; Tr. 1, p. 5)

29. The 6:30 p.m. public comment session afforded interested persons the opportunity to provide oral limited appearance statements. Interested persons were also afforded an opportunity to provide written limited appearance statements at any time up to 30 days after the close of the evidentiary record. Limited appearance statements in this proceeding, whether oral or written, were not provided under oath nor subject to cross examination. (Tr. 1, pp. 5-6; CGS §16-50n(f) (2023))
30. In compliance with PA 22-3:
- a) The public had the ability to view and listen to the remote public hearings in real-time, by computer, smartphone, tablet or telephone;
  - b) The remote public hearings were recorded and transcribed, and such recordings and transcripts were posted on the Council's website on December 5, 2023 and December 14, 2023; respectively;
  - c) The Hearing Notice, Hearing Program, Citizens Guide for Siting Council Procedures and Instructions for Public Access to the Remote Hearings were posted on the Council's website;
  - d) Prior to, during and after the remote public hearings, the record of the proceeding has been, and remains, available on the Council's website for public inspection; and
  - e) The Council, parties and intervenors provided their information for identification purposes during the remote public hearings.
- (Hearing Notice dated November 9, 2023; Tr. 1; Tr. 2; Record)
31. The purpose of discovery is to provide the Council, parties and intervenors access to all relevant information in an efficient and timely manner to ensure that a complete and accurate record is compiled. (R.C.S.A. §16-50j-22a (2023))
32. In an administrative proceeding, irrelevant, immaterial or unduly repetitious evidence shall be excluded, and an agency has the right to believe or disbelieve the evidence presented by any witness, even an expert, in whole or in part. (CGS §4-178 (2023); *Dore v. Commissioner of Motor Vehicles*, 62 Conn. App. 604 (2001); RCSA §16-50j-25 (2023)).
33. Pursuant to CGS §16-50n(f), at the conclusion of the hearing session held on December 5, 2023, the Council closed the evidentiary record for Petition 1589 and established January 4, 2024 as the deadline for public comments and the submission of briefs and proposed findings of fact. (Record)
34. On January 3, 2024, USS submitted a post-hearing brief. (Record)

#### **State Agency Comments**

35. Pursuant to RCSA §16-50j-40, on August 24, 2023 and November 9, 2023, the following state agencies were requested to submit written comments regarding the proposed facility: Department of Energy and Environmental Protection (DEEP); Department of Agriculture (DOAg); Department of Public Health (DPH); Council on Environmental Quality (CEQ); Public Utilities Regulatory Authority (PURA); Office of Policy and Management (OPM); Department of Economic and Community Development (DECD); Department of Emergency Services and Public Protection (DESPP); Department of Labor (DOL); Department of Administrative Services (DAS); Department of Transportation (DOT); the Connecticut Airport Authority (CAA); and the State Historic Preservation Office (SHPO). (Record)
36. On September 1, 2023, the Council granted CEQ's request for an extension of time to submit state agency comments to October 6, 2023. (Record)

37. On September 28, 2023 the Council received comments from CEQ<sup>1</sup> regarding site conditions, prime farmland soils and wildlife. Prime farmland soils and State Listed Species, among other environmental concerns, are addressed in the Environmental Effects and Mitigation Measures section of this document, pursuant to CGS §16-50p. (Record; CGS §16-50p (2023))
38. While the Council is obligated to consult with and solicit comments from state agencies by statute, the Council is not required to abide by the comments from state agencies. (Council Administrative Notice Item No. 75, *Corcoran v. Conn. Siting Council*, 284 Conn. 455 (2007))

### **Municipal Consultation**

39. On December 2, 2022, USS notified the Town of the Project and submitted site plans for a 4.0 MW AC solar photovoltaic facility. (USS 1, p. 3)
40. On August 8, 2023, USS provided notice to abutting property owners. (USS 1, p. 3, Appendix A)
41. On January 10, 2023 the Town provided comments to USS citing concerns about the proposed solar facility conflicting with a Federal Aviation Administration (FAA) recommended 700 foot runway extension and protection zones, the limited potential for commercial growth and the safety of planes and parachuters. (USS 1, p. 3; USS 2, response 1)
42. In response to the Town's comments, USS decreased the site footprint by 13 acres and reduced the proposed electrical power generation from 4.0 MW AC to 3.0 MW AC thereby eliminating the southern portion of the array to allow for that portion of the parcel to be used by the parachuting school. (USS 1, p. 3; USS 2, response 1)
43. On July 24, 2023, USS met with the Town's Planning and Zoning Commission (PZC) to present the downsized Project site plan. The meeting was also attended by eight members of the public including members of the Connecticut Parachutists Inc. (CPI). (USS 1, p. 3; USS 2, response 2)
44. At the meeting, concerns were reiterated regarding the safety of planes and parachutists, noise emissions and the potential impact of the Project on future runway extensions. (USS 1, p. 3; USS 2, response 2)
45. In correspondence to the Council dated September 18, 2023, the Town PZC expressed concerns including, but not limited to, the limited potential for industrial development within the town, the impact of the Project on future runway improvements and the safety of parachutists and planes. (Record)

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<sup>1</sup> [https://portal.ct.gov/-/media/CSC/3\\_Petitions-medialibrary/Petitions\\_MediaLibrary/MediaPetitionNos1501-1600/PE1558/ProceduralCorrespondence/PE1558\\_DEEP-CommentsRecd\\_s.pdf](https://portal.ct.gov/-/media/CSC/3_Petitions-medialibrary/Petitions_MediaLibrary/MediaPetitionNos1501-1600/PE1558/ProceduralCorrespondence/PE1558_DEEP-CommentsRecd_s.pdf)

### **State of Connecticut Planning and Energy Policy**

46. Section 51 of PA 11-80 requires that DEEP prepare a Comprehensive Energy Strategy (CES) every three years that reflects the legislative findings and policy stated in CGS §16a-35k. As such, this statute consolidated Connecticut's energy planning for the first time. The final version of the state's inaugural CES was published on February 19, 2013 (2013 CES). It advocated smaller, more diversified generation projects using renewable fuels, as well as smaller, more innovative transmission projects emphasizing reliability. (CGS §16a-3d (2023))
47. The state CES examines future energy needs and identifies opportunities to reduce ratepayer costs, ensure reliable energy availability, and mitigate public health and environmental impacts. CES Strategy No. 3 is "Grow and sustain renewable and zero-carbon generation in the state and region." The state Integrated Resource Plan assesses the state's future electric needs and a plan to meet those future needs, including, but not limited to, pathways to achieve a 100 percent zero carbon electric supply by 2040. (Council Administrative Notice Item Nos. 47 and 48)
48. The proposed facility will contribute to fulfilling the State's Renewable Portfolio Standard and Global Warming Solutions Act as a zero emission Class I renewable energy source. (Council Administrative Notice Item No. 47)
49. CGS §16-245a establishes Connecticut's *Renewable Portfolio Standards (RPS)*. Currently, RPS requires that 26 percent of Connecticut's electricity usage be obtained from Class I renewable resources by 2024. The percentage increases annually and reaches 40 percent by 2030. (CGS §16-245a (2023)).
50. The Global Warming Solutions Act (GWSA) sets a goal of reducing greenhouse gas (GHG) emissions by 80 percent by 2050. (CGS §22a-200 (2023))
51. The proposed facility will contribute to fulfilling the State's RPS and GWSA as a zero emission Class I renewable energy source. (Council Administrative Notice Item No. 47)

### ***Competitive Energy Procurement***

52. The Project bid into the statewide Shared Clean Energy Facility (SCEF) Program, which is a competitive procurement process administered by the state's electric distribution companies to develop utility scale renewable energy. New or incremental Class I renewable generation projects ranging in size from 100 to 5,000 kW AC are eligible to bid into the SCEF Program for a Tariff Terms Agreement (TTA) with a 20-year term. The first SCEF procurement occurred in 2020. (Council Administrative Notice Item No. 68; USS 2, response 11)
53. The electricity, capacity and renewable energy credits (RECs) produced by the facility would be sold to Eversource in accordance with the TTA. A REC certifies that one megawatt-hour of renewable electrical energy has been generated. (Council Administrative Notice Item No. 68; USS 2, response 11; Tr.1, p. 35)
54. USS would not participate in an ISO-New England, Inc. (ISO-NE) Forward Capacity Auction during the term of the TTA. (USS 2, response 31)



### **Public Benefit**

55. A public benefit exists when a facility is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity. (CGS. §16-50p (2023))
56. The Project would be a distributed energy resource facility as defined in CGS §16-1(a)(49). CGS §16a-35k establishes the State’s energy policy, including the goal to “develop and utilize renewable energy resources, such as solar and wind energy, to the maximum practicable extent.” (CGS §16-1(a)(49) (2023); CGS §16a-35k (2023))
57. PA 05-1, An Act Concerning Energy Independence, established a rebuttable presumption that there is a public benefit for electric generating facilities selected by the Department of Public Utility Control (DPUC, now known as PURA) in a Request for Proposals. (PA 05-1; CGS§16-50k (2023))
58. Under the SCEF program, approximately 60% of the total facility capacity will be supplied to low- and moderate-income customers and approximately 40% of the total facility capacity will be supplied to small business customers and other customers identified by Eversource that are eligible for enrollment. (Council Administrative Notice Item No. 40)

### **Public Act 17-218**

59. PA 17-218 requires, “for a solar photovoltaic facility with a capacity of two or more megawatts, to be located on prime farmland or forestland, excluding any such facility that was selected by DEEP in any solicitation issued prior to July 1, 2017, pursuant to section 16a-3f, 16a-3g or 16a-3j, the DOAg represents, in writing, to the Council that such project will not materially affect the status of such land as prime farmland or DEEP represents, in writing, to the Council that such project will not materially affect the status of such land as core forest. (Record)
60. Pursuant to CGS §16-50x, the Council has exclusive jurisdiction over the construction, maintenance and operation of solar photovoltaic electric generating facilities throughout the state. PA 17-218 does not confer the Council’s exclusive jurisdiction upon DOAg or DEEP nor does it permit DOAg or DEEP to impose any enforceable conditions on the construction, maintenance and operation of solar photovoltaic electric generating facilities under the exclusive jurisdiction of the Council. (CGS §16-50k and 16-50x (2023))
61. By letter dated May 5, 2022, DEEP’s Bureau of Natural Resources<sup>2</sup> determined that the proposed solar facility would not have a material impact on the status of core forest. (May 5, 2022 DEEP CGS §16-50k No Material Impact to Core Forest Determination Letter)
62. By letter dated March 6, 2023, DOAg<sup>3</sup> determined that the proposed solar facility would not have a material impact on the status of prime farmland with the condition that on-site agricultural co-uses are implemented. (March 6, 2023 DOAg CGS §16-50k No Material Impact to Prime Farmland Determination Letter)

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<sup>2</sup> [https://portal.ct.gov/-/media/CSC/3\\_Petitions-medialibrary/Petitions\\_MediaLibrary/MediaPetitionNos1501-1600/PE1589/Determinations/USS-Somers-Solar-LLC\\_Ellington\\_20220505\\_DEEP.pdf](https://portal.ct.gov/-/media/CSC/3_Petitions-medialibrary/Petitions_MediaLibrary/MediaPetitionNos1501-1600/PE1589/Determinations/USS-Somers-Solar-LLC_Ellington_20220505_DEEP.pdf)

<sup>3</sup> [https://portal.ct.gov/-/media/CSC/3\\_Petitions-medialibrary/Petitions\\_MediaLibrary/MediaPetitionNos1501-1600/PE1589/Determinations/USS-Somers-Solar-Response-20230306\\_DoAG\\_Ellington.pdf](https://portal.ct.gov/-/media/CSC/3_Petitions-medialibrary/Petitions_MediaLibrary/MediaPetitionNos1501-1600/PE1589/Determinations/USS-Somers-Solar-Response-20230306_DoAG_Ellington.pdf)

63. On August 2, 2023 DOAg<sup>4</sup> submitted a revised No Material Impact to Prime Farmland Determination Letter based on the downsized facility site. (August 6, 2023 revised DOAg CGS §16-50k No Material Impact to Prime Farmland Determination Letter; Record)
64. PA 17-218 also requires that the Council not find a substantial adverse environmental effect in its exercise of jurisdiction over facilities eligible to be approved by declaratory ruling under CGS §16-50k. There are no exemptions from this provision of PA 17-218. (CGS §16-50k (2023))

#### **Site Selection**

65. The host parcel was selected for the solar facility site due to the presence of open fields, limited ground disturbance and tree clearing, the presence of forested buffers along the property lines, and close proximity to an existing three phase electrical distribution line. (USS 1, pp. 5, 7, Attachment B; Tr. 1, p. 14)
66. Pursuant to CGS §16-50p(g), the Council has no authority to compel a parcel owner to sell or lease property, or portions thereof, for the purpose of siting a facility. (Council Administrative Notice Item No. 75 - *Corcoran v. Connecticut Siting Council*, 284 Conn. 455 (2007))

#### **Proposed Site**

67. Pursuant to RCSA §16-50j-2a(29), “Site” means a contiguous parcel of property with specified boundaries, including, but not limited to, the leased area, right-of-way, access and easements on which a facility and associated equipment is located, shall be located or is proposed to be located. (RCSA §16-50j-2a(29)(2023))
68. The Council does not have jurisdiction or authority over any portion of the host parcel beyond the boundaries of the facility “site.” This includes portions of the host parcel retained by the property owner and portions of the host parcel the property owner may lease to third parties. Once a facility is decommissioned, the Council no longer has jurisdiction or authority over the facility “site.” (CGS §16-50p(g) (2023))
69. Under CGS §16-50p, the Council’s evaluation criteria does not include the evaluation and/or determination of rights under any lease with the property owner of the proposed site nor does it include the evaluation of property values. (Tr. 1, p. 4; Tr. 2, p. 89; CGS §16-50p (2023))
70. Pursuant to a lease agreement with the property owner, USS proposes to construct the solar facility on an approximate 19.2-acre site on an approximate 127-acre parcel at 360 Somers Road in Ellington. The site lease has a 20-year term with 4 successive extension periods of 5 years each. (USS 1, pp. 1,5,7,10 and 20; USS 2, responses 18 and 21)
71. The privately owned host parcel is zoned Industrial (I) and is currently used for mixed purposes including an airport (Ellington Airport), agriculture and pasture. The northern and western portions of the parcel are bordered by forest areas. (USS 1, pp. 1, 5, 13 and 14, Attachment B, Attachment C)
72. The host parcel is subject to a lease with CPI that has 14.5 years remaining in the lease term. (USS 2, response 23)

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<sup>4</sup>[https://portal.ct.gov/-/media/CSC/3\\_Petitions-medialibrary/Petitions\\_MediaLibrary/MediaPetitionNos1501-1600/PE1589/Determinations/USS-Somers-Solar-Revised-Response\\_August-2023-BH\\_DoAG\\_Ellington.pdf](https://portal.ct.gov/-/media/CSC/3_Petitions-medialibrary/Petitions_MediaLibrary/MediaPetitionNos1501-1600/PE1589/Determinations/USS-Somers-Solar-Revised-Response_August-2023-BH_DoAG_Ellington.pdf)

73. Surrounding land use includes State Route 83 (Somers Road) to the east, rural, agricultural and residential parcels to the north, east, west and south. (USS 1, p. 1, Attachment B, Attachment C)
74. Ellington Airport is located within the eastern and central portions of the host parcel and consists of a runway, buildings and open grassland. Cultivated crops are located within the southern, central and northern portions of the parcel while the hay fields are located within the central and eastern portions of the parcel. (USS 1, pp. 1, 5, 13 and 14, Attachment B, Attachment C)
75. Ellington Airport supports light general aviation traffic and includes a helicopter flight school and a parachuting school. (USS 1, p. 27; USS 2, response 1; Record)
76. A gravel surfaced yard, storage trailers, material stockpiles and vehicle parking areas are also located in the central portion of the host parcel. Hydes Brook is located in the southern portion of the parcel and flows from east to west. Broad Brook is located in the northern portion of the parcel and flows from north to south. (USS 1, pp. 1, 5, 13-14, Attachment B, Attachment C)
77. The site slopes gently from east to west, with ground elevations ranging from approximately 255 feet above mean sea level (amsl) along the eastern portion to approximately 235 feet amsl in the western and northwestern portions. Steeper slopes are present in the wooded northeastern portion of the site. (USS 1, p. 5, Attachment B)

### **Proposed Facility**

#### ***Solar Array***

78. The proposed Project consists of 7,074 non-reflective photovoltaic panels rated at approximately 570 Watts. (USS 1, pp. 7, 28, Attachment B-Site Plan C 106)
79. The panels would be installed on a single-axis tracker system supported by posts. The tracker system would move along the north-south axis to a maximum angle of 62 degrees. The trackers would be powered by electricity produced from the solar panels via the transformer. At maximum tilt, the panels would be approximately 12 feet above grade at the highest point and 3 feet at the lowest point. (USS 1, p. 28, Attachment B; Tr.1, pp. 35-36)
80. The panels would be arranged in linear rows facing east at sunrise and west at sunset, separated by 11.2-foot wide vegetated aisles. (USS 1, p. 28, Attachment B)
81. One 10-foot by 30-foot concrete pad would be installed on the south side of the site, centrally located between two arrays and within the fenced array area. The pad would support one switchgear, one transformer and one small auxiliary rack. (USS 1, pp. 7-8, Attachment B; USS 2, responses 34, 35 and 36)
82. The Project would use a total of 18 string inverters (35-inch wide by 26-inch high by 14-inch long), mounted on drive pile foundations at the end of select panel rows. Wiring would extend underground in conduits from the inverters to the switchgear/transformer pad. (USS 1, Attachment B; USS 2, response 34; Tr. 1, p. 109)

83. The Project would be enclosed by a seven-foot tall security fence (farm fence). The fence initially featured a 4-inch gap on the bottom for small wildlife movement; however, due to the planned implementation of grazing activities within the fenced array, the fence could be lowered to ground level to prevent predatory animals from entering. (USS 1, pp. 7, 11, 28, Attachment B; Tr. 1, pp. 26, 29, 74)
84. The nearest property line to the solar facility perimeter fence is 20 feet to the west at 77 Hoffman Road. (USS 2, response 24)
85. The nearest off-site residence to the solar facility perimeter fence is 128 feet to the south at 39 Bridge Street. (USS 2, response 24)

#### *Site Access*

86. The Project would be accessed by a new 16-foot wide, 1,300-foot long gravel access drive extending west from an existing access drive from Somers Road. It would extend to the western portion of the facility to a turnaround area between the northern and southern arrays. Minor improvements would be made to the existing access driveway. (USS 1, pp. 7-8, Attachment B; USS 2, responses 17, 24)

#### *Electrical Interconnection*

87. The Project is comprised of one metered system with a design capacity of approximately 3.0 MW AC. It would interconnect to a three-phase 13.8-kV distribution line on Somers Road. From there, Eversource's distribution line connects to Eversource's Rockville Substation. (USS 1, pp. 3, 7-8, 28, Attachment B; USS 2, response 40)
88. USS interconnection application to Eversource for a connection to the existing pole is currently in review. USS is finalizing an interconnection agreement with Eversource. (USS 2, response 38)
89. The interconnection would include the installation of three new utility poles along the access road to support an overhead line that connects to an existing Eversource pole on Somers Road. The poles would be approximately 45 feet above ground level. (USS 1, pp. 7-8, 28; USS 2, response 39; Tr. 1, pp. 16, 37, 38, 59, 70)
90. The facility interconnection would require ISO-NE review and approval. (USS 2, response 37)
91. The total AC power output of the proposed solar facility would be approximately 2.997 MW at the point of interconnection. (USS 2, response 27)
92. The projected capacity factor of the proposed solar facility is 24 percent. The power output would decline by roughly 0.5 percent per year. (USS 2, response 28 )
93. The facility would contribute to grid stabilization by producing energy at a predictable production curve throughout the day, peaking around noon depending on the season. In addition, the proposed facility is a distributed energy resource facility which provides energy locally, independent of the transmission system. (USS 1, pp. 11, 14)

### **Public Safety**

94. The proposed facility would be designed to comply with the current Connecticut State Building Code, National Electrical Code, the National Electrical Safety Code, the National Electrical Safety Code (NESC) and the National Fire Protection Association code. (USS 2, response 43)
95. Prior to commencement of operation, USS would meet with the Town emergency responders to provide training and information regarding facility operations and emergency response and locations of manual shut offs. (USS 2, response 45; Tr. 1, pp. 42-43)
96. Site access for emergency responders would be provided via a “knox box” (or equivalent) on the access gate. (Tr. 1, pp. 56-57)
97. Specialized equipment would not be required to extinguish a solar panel/electrical component fire. Industry best practices are to let an electrical fire burn out and prevent the fire from spreading with water. (USS 2, response 46; Tr. 1, p. 56)
98. The facility would be remotely monitored on a 24/7 basis by USS personnel and can be remotely shut down in case of an emergency. Monitoring includes real time performance that can detect production abnormalities. The facility can be remotely shut down in its entirety or partially at the level of the string inverters. (USS 1, p. 11; Tr. 1, p. 44)
99. The site is not within a Federal Emergency Management Agency (FEMA)-designated 100-year or 500-year flood zone. (USS 1, p. 21, Attachment B)
100. USS would use pesticides and herbicides at the site during establishment of native grasses, if necessary, and would utilize spot spraying in isolated areas as needed thereafter. Use of these substances will follow Integrated Pest Management principles with an emphasis on restricting use within 100 feet of wetlands and watercourses. (USS 1, Attachment B; USS 2, response 65; Tr. 1, pp. 22, 29)
101. The transformers would contain natural mineral insulating oil and would be equipped with a remotely monitored alarm system that can detect abnormal oil levels. (USS 2, response 49; Tr. 1, pp. 31-32)

### *Aviation Safety*

102. The FAA requires a glare analysis for on-airport solar development at federally-obligated airports. Federally obligated airports are airports that receive federal funding. The FAA recommends that the design of any solar installation at an airport consider the approach of pilots and ensure pilots will not have to face glare that is straight ahead of them or within 25 degrees of straight ahead during the final approach. Ellington Airport is not a federally-obligated airport. (USS 2, response 50; Council Administrative Notice Item Nos. 15-18)
103. The nearest federally-obligated airport to the facility is Hartford-Brainard Airport in Hartford, located approximately 21 miles southwest of the site. (USS 2, response 50; Council Administrative Notice Item Nos. 15-18)
104. The nearest portion of the proposed facility is 1,000 feet from the centerline of the runway. (USS 1, p. 4; USS 2, Response 1)

105. A glare analysis was performed, but not provided as part of the record, for the proposed solar facility and the results were favorable, indicating no glare would occur. (Tr. 1, p. 64)
106. The solar panels would have a non-reflective, glare-resistant coating that improves the overall efficiency of the panels. (USS 2, response 51; Tr. 1, pp. 62-64)
107. USS filed 23 FAA notices of proposed construction (FAA Form 7460-1) for use of a small crane at the site. The FAA subsequently determined the crane would not pose a hazard to air navigation. (USS 1, p. 28; USS 2, response 52; Tr. 1, pp. 29-30)
108. Construction, operation and maintenance of the proposed facility would not interfere with any airport operations. USS would extend the existing access drive to the north, away from the runway. (USS 2, response 54)
109. The originally proposed southern solar array was located directly west of the Ellington Airport runway. The southern solar array is not proposed as part of this Project. (Tr. 1, pp. 30, 46)
110. On February 11, 2022, the FAA issued a Determination of No Hazard to Air Navigation for three utility poles with the condition that each utility pole would be marked/lighted in accordance with the FAA Advisory Circular 70/7460-1M, Obstruction Marking and Lighting. However, USS interprets this requirement to apply only to structures within 125 feet of the runway; therefore, USS does not propose to light the utility poles. (USS 1, p. 28, Appendix B p. 16; USS 2, response 52; Tr.1, pp. 24, 37-39, 58-59, 70-71)
111. The only existing lighted structure on the airport property is the windsock located south of the runway. (Tr. 1, pp. 37-38)
112. Ellington Airport's runway is located south of the proposed facility, running in a north-south direction. There are no immediate plans for an extension of the runway. Any extensions of the runway would be located to the north. (USS 1, Appendix B; Tr. 1, pp. 37-39, 53, 79)
113. For safety purposes, the FAA requires nothing greater than three feet in height within 125 feet of the centerline of the runway. (Tr. 1, p. 61)
114. Parachutists and skydivers have used fields around the airport and private properties for an alternate landing area. (Tr. 1, pp. 79-80)
115. Pursuant to the NEC, the solar array would undergo a grounding study to reduce the potential of anyone within the solar array area being electrocuted from touching an electrical component of the facility. (Tr. 1, p. 54)

### *Noise*

116. Noise emissions from the solar facility would be primarily from the operation of one transformer and 18 string inverters. (USS 1, p. 27, Attachment B; USS 2, response 55; Tr. 1, p. 23)
117. Each inverter would produce a sound level of approximately 68 dBA at a distance of 3.3 feet. The nearest inverter to a property line is located adjacent to the southern array area and is approximately 315 feet east of the abutting property line for 77 Hoffman Road. (USS 2, responses 55 and 56, Exhibit E)

118. The proposed string inverters would be attached to the end of certain panel rows and distributed rather than concentrated in one location. USS intends to place as many inverters as possible at the end of the panel rows that face the center of the Project. (USS 1, p. 27; USS 2, response 36; Tr. 1, p. 23)
119. The proposed transformer, located on a concrete pad in the middle of the facility site between the northern and southern solar arrays, would produce a sound level of approximately 61 dBA at a distance of 32.8 feet. (Council Administrative Notice Item No. 46; USS 2, response 55)
120. Collectively, the operation of the inverters and transformers would produce a sound level of 51 dBA at the nearest property line at 77 Hoffman Road, thus, in compliance with the DEEP Noise Control Standards for an industrial emitter to a residential receptor (66 dBA day/51 dBA night). (Council Administrative Notice Item No. 46; USS 2, response 57)
121. The transformers and inverters would only operate during the day when electricity is produced by the solar panels. (USS 1, p. 27, Attachment B; USS 2, response 57)
122. Construction noise is exempt from DEEP Noise Control Standards. (RCSA §22a-69-108(g)(2023))

### **Environmental Effects and Mitigation Measures**

#### *Air and Water Quality*

123. The proposed Project would meet DEEP air quality standards and would not produce air emissions of regulated air pollutants or GHG. (USS 1, p. 23, Attachment B)
124. During construction of the proposed Project, air emissions from the operation of machinery would be temporary in nature. (USS 1, p. 23, Attachment B)
125. As applicable to any proposed jurisdictional facility site, the Council's Filing Guide for a Petition for a Declaratory Ruling for a Renewable Energy Facility requires the submission of plans for erosion and sedimentation control consistent with the *2002 Connecticut Guidelines for Erosion and Sedimentation Control* (2002 E&S Guidelines); Water consumption and discharge rates; FEMA Flood Zone information and associated flood mitigation plans; Proximity to DEEP Aquifer Protection Areas; DEEP groundwater classification underlying the site; Wetland and Watercourse Analysis Report and map, and associated Wetland and Watercourse Impact Mitigation Plan; and Vernal Pool Analysis Report and map, and associated Vernal Pool Impact Mitigation Plan. (Record)
126. Operation of the facility would not require water use. (USS 1, Attachment B)
127. Groundwater at the site is classified by DEEP as "GA" which indicates groundwater presumed to be suitable for human consumption without treatment. No impacts on groundwater quality are anticipated to result from the Project. (USS 1, p. 22, Attachment B)
128. Private water wells serve the residences in the area. The installation of the racking system is not expected to result in groundwater quality issues. (USS 1, p. 22, Attachment B)
129. The site is not located within a DEEP-designated Aquifer Protection Area. (USS 1, p. 22, Attachment B)

130. No on-site fuel storage is proposed during construction. (Tr. 1, p. 32)
131. The construction contractor would be responsible for spill prevention and mitigation. A Spill Prevention, Control, and Countermeasure Plan for construction could be developed which would include spill response procedures and contact information. (Tr. 1, pp. 35-36)
132. Based on the amount of manure produced during sheep grazing, there would be no degradation of water quality from stormwater runoff. The amount of manure would be less than that typically applied to the existing farm field to grow crops. (USS 1, Attachment B; USS 2, response 63)

*Stormwater*

133. Pursuant to CGS Section 22a-430b, DEEP retains final jurisdiction over stormwater management and administers permit programs to regulate stormwater discharges. DEEP regulations and guidelines set forth standards for erosion and sedimentation control, stormwater pollution control and best engineering practices. (CGS §22a-430b; DEEP General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities. (DEEP-WPED-GP-015)
134. The DEEP General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (General Permit) requires implementation of a Stormwater Pollution Control Plan (SWPCP) to prevent the movement of sediments off construction sites into nearby water bodies and to address the impacts of stormwater discharges from a proposed project after construction is complete. In its discretion, DEEP could require an Individual Permit for discharges and hold a public hearing prior to approving or denying any General or Individual Permit (Stormwater Permit) application. (CGS §22a-430b (2023); CGS §22a-430(b)(2023))
135. The SWPCP incorporates project designs consistent with the 2002 E&S Guidelines and the *2004 Connecticut Stormwater Quality Manual* (2004 Stormwater Manual). (DEEP-WPED-GP-015)
136. DEEP has the authority to enforce proposed project compliance with its Individual or General Permit and the SWPCP, including, but not limited to, the installation of site-specific water quality protection measures in accordance with the 2002 E&S Guidelines and 2004 Stormwater Manual. (CGS §22a-430b (2023))
137. The Council may impose a condition that requires subsequent compliance with DEEP standards and regulations. (Council Administrative Notice No. 73 - *FairwindCT, Inc. v. Conn. Siting Council*, 313 Conn. 669 (2014))
138. The Project would require a DEEP-issued Stormwater Permit prior to commencement of construction activities as defined in the General Permit. (CGS §22a-430b (2023))
139. The General Permit requires the designing qualified professional to conduct the SWPCP Implementation Inspection that confirms compliance with the General Permit and the initial implementation of all SWPCP control measures for the initial phase of construction. The SWPCP also requires a qualified inspector to inspect the work areas at least once per week and within 24-hours after a rain event that meets certain permit criteria. The qualified soil erosion and sediment control professional or a qualified professional engineer would inspect the area and confirm stabilization and compliance with the post-construction stormwater management requirements. (DEEP-WPED-GP-015)



140. USS has not met with the DEEP Stormwater Program and intends to apply for the DEEP General Permit if the Council approves its Petition. (USS 2, response 72)
141. The Project would be constructed in two main phases:  
a) Phase 1 includes the identification of clearing and grading limits; installation of perimeter erosion and sediment controls; and construction of temporary stormwater basins, sediment traps and berms, followed by stabilization of disturbed areas.  
b) Phase 2 includes clearing, the installation of proposed permanent stormwater treatment facilities and the solar array infrastructure followed by site stabilization.  
(USS 1, Attachments A, B, p. 9)
142. USS prepared a SWPCP that concluded post-construction stormwater could be controlled by perimeter swales and two stormwater management basins; one located in the southwest portion of the site, and one located in the northwestern portion of the site. The management system is designed to maintain existing drainage patterns. (USS 1, p. 22, Attachments A, B)
143. The Project has been designed to comply with DEEP Stormwater Permit Appendix I. (USS 1, p. 22)
144. The drip edge of each solar panel would not impact the sites drainage patterns and proper stabilization practices will be put into place to avoid erosion or channelization beneath the panels. (USS 2, response 75)
145. The Inland Wetlands and Watercourses Act (IWWA), CGS §22a-36, *et seq.*, contains a specific legislative finding that the inland wetlands and watercourses of the state are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed, and the preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. (CGS §22a-36, *et seq.* (2023))
146. The IWWA grants regulatory agencies with the authority to regulate upland review areas in its discretion if it finds such regulations necessary to protect wetlands or watercourses from activity that will likely affect those areas. (CGS §22a-42a (2023))
147. The IWWA forbids regulatory agencies from issuing a permit for a regulated activity unless it finds on the basis of the record that a feasible and prudent alternative does not exist. (CGS §22a-41 (2023))
148. Under the IWWA:  
a) “Wetlands” means land, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and floodplain by the National Cooperative Soils Survey, as may be amended from time to time, of the Natural Resources Conservation Service of the United States Department of Agriculture;  
b) “Watercourses” means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border the state; and  
c) Intermittent watercourses are delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics: (A) Evidence of scour or deposits of recent alluvium or detritus, (B) the presence of standing or flowing water for a duration longer than a particular storm incident, and (C) the presence of hydrophytic vegetation. (CGS §22a-36, *et seq.* (2023))

149. Wetland inspections on the host parcel were performed in April of 2021. (USS 1, Attachment B)
150. USS identified one wetland and three watercourses on the host parcel. Broad Brook and an unnamed tributary, and associated forest wetlands are located in the northwest portion of the host parcel. Hydes Brook is located in the southern portion of the parcel, south and southwest of the airstrip. (USS 1, p. 20, Attachments A, B)
151. No vernal pools were identified on the host parcel. (USS 1, p. 21, Attachment B)
152. The construction limit of disturbance (LOD) would be 71 feet southeast of the forested wetland associated with Broad Brook at its closest point. (USS 1, Attachment B)
153. In compliance with Stormwater Permit Appendix I, USS would not install stormwater control features within 50 feet of wetlands or panels within 100 feet. (Council Administrative Notice Item No. 56; USS 1, Attachment B)

#### ***Forests and Parks***

154. Construction of the facility would require approximately 1 acre of tree clearing. (USS 1, p. 5, Attachment B)
155. The Shenipsit State Forest is approximately 0.75 mile northeast of the Site. The nearest mapped core forest is about 2,800 feet from the site. (USS 1, pp. 16-17, Attachment B, Council Administrative Notice Item No. 99)

#### ***Scenic, Historic and Recreational Values***

156. In October of 2021, USS completed an Archaeological Identification Survey and Built Environment Reconnaissance Study and presented the results to SHPO. (USS 1, p. 24, Attachment B)
157. By letter dated January 20, 2022, SHPO determined that no historic properties will be affected by the proposed Project. (USS 1, p. 24, Attachment B)
158. A majority of the facility would be shielded from view due to existing vegetation and its location set back from Somers Road. (USS 1, pp. 28-29, Attachment B)
159. Year round views of the facility would be from the immediate vicinity southeast of the site from the airport and the industrial properties along Somers Road. Leaf-off views of the site may be possible from abutting residential properties to the east and west and from areas within a 0.25 mile radius. (USS 1, pp. 28-29)
160. There are no town or state designated scenic roads within one mile of the site. The nearest open space is Meadow Brook Estates Open Space, located approximately 735 feet southwest of the facility. The nearest recreational facility is Shenipsit State Forest located approximately 0.75 mile to the northeast. The facility would not be visible from Shenipsit State Forest. (USS 1, p. 25)
161. There are no “blue-blazed” hiking trails maintained by the Connecticut Forest and Park Association within one mile of the site. (Council Administrative Notice No. 94)

162. No comments were received from OPM or DEEP regarding impacts to scenic quality or resources. (Record)
163. Sport parachuting is defined by statute as a “recreational purpose.” In Connecticut, the person in control of the property, including an owner, tenant, lessee or occupant, is liable for permitting entry thereon for any recreational purpose. (CGS §52-557f(4) (2023))

### *Fish, Aquaculture and Wildlife*

164. USS reviewed the most recent DEEP Natural Diversity Database (NDDB) mapping for the site area which determined that a portion of the site is located within an NDDB buffered area. DEEP issued correspondence to USS indicating the site is within range of the eastern box turtle, a state-species of special concern, and recommended turtle protection measures, including but not limited to contractor education, site inspections, and isolation barriers. USS incorporated these measures into the Project site plans. (USS 1, p. 14, Attachment B- Site Plan C-403)
165. USS submitted a subsequent NDDB request for review to DEEP on June 11, 2022. (USS 1, p. 14, Attachment B; DEEP-WPED-GP-015 - Appendix A)
166. By letter dated May 12, 2023, DEEP identified the site as a potential habitat for the Savannah sparrow, a state-listed species of special concern. USS would implement DEEP recommended protective measures to protect this species. (USS 1, pp. 14-15; USS 2 response 68)
167. The northern long-eared bat (NLEB), a federally-listed and state-listed Endangered Species occurs in Connecticut. However, there are no known occurrences in Ellington. By letter dated March 31, 2021 the U.S. Fish and Wildlife Service determined that the Project would not likely have an adverse effect on the NLEB, and no additional action is necessary. (USS 1, p. 15, Attachment B; Council Administrative Notice Item No. 92)
168. Hydes Brook and Broad Brook are not identified as a DEEP-designated cold-water fisheries. (Council Administrative Notice Item No. 55)

### *Agriculture*

169. According to mapping by the United States Department of Agriculture (USDA) Natural Resources Conservation Service, soils at the site consist of gravelly sandy loam, and silt loam. (USS 1, p. 18, Attachment B)
170. The statutory mission of the Governor’s Council for Agricultural Development (GCAD) is to develop a statewide plan for Connecticut agriculture. In 2012, GCAD recommended DOAg create an agriculture-friendly energy policy that includes, but is not limited to, on-farm energy production to reduce costs and supplement farm income, agricultural net metering for power production and transmission, and qualification of agricultural anaerobic digestion projects for zero-emissions renewable energy credits. (Public Act 11-189; GCAD First Annual Report December 2012)
171. Agriculture in Connecticut is likely to be adversely impacted by climate change. It is most affected by changes in temperature and both the abundance and lack of precipitation. The top five most imperiled agricultural products are maple syrup, dairy, warm weather produce, shellfish and apple and pear production, but there are opportunities for production expansion with the future climate, including, but not limited to, biofuel crops, witch hazel and grapes. (Council Administrative Notice Item No. 64 – Climate Change Preparedness Plan)

172. Adaptation strategies for climate change impacts to agriculture include promotion of policies to reduce energy use, conserve water and encourage sustainability. (Council Administrative Notice Item No. 64 – Climate Change Preparedness Plan)
173. Pursuant to CGS §22-26aa, *et seq.*, DOAg administers the Statewide Program for the Preservation of Agricultural Land, a voluntary program to establish a land resource base consisting mainly of prime and important farmland soils. A permanent restriction on non-agricultural uses is placed on the deed of participating properties, but the farms remain in private ownership and continue to pay local property taxes. The host parcel is not enrolled in this program. (CGS §22-26aa, *et seq.* (2023); USS 2, response 22)
174. PA 490 is Connecticut’s Land Use Value Assessment Law for Farm Land, Forest Land and Open Space Land that allows land to be assessed at its use value rather than its fair market or highest and best use value for purposes of local property taxation. 90 acres of the host parcel is enrolled in the PA 490 Program. The portion of the parcel occupied by the site would not affect its use classification. (USS 2, response 21)
175. Prime Farmland Soils are defined by the USDA National Resources Conservation Service as the most suitable land for producing food, feed, fiber, forage, and oilseed crops. (Council Administrative Notice Item No. 14)
176. The host parcel contains 33.52 acres of mapped prime farmland soil, of which 0.09 acres are within the site but are already disturbed by an existing gravel road used for the airport and that would be used for the project. (USS 1, pp. 19-20, Attachment B)
177. USS’s agricultural co-use plan includes a pollinator habitat, a bee keeping area on the host parcel, and a rotational sheep grazing program within the site boundaries. (USS 1, Appendix B – Sheep Grazing Plan; USS 2, response 20)
178. Sheep grazing would occur within the solar array perimeter fence. Grazing would not be permitted in areas outside of the solar array perimeter fence. (USS 1, pp. 19-20; Tr. 1, pp. 19-20)
179. Sheep grazing would be conducted by establishing temporary paddocks within the solar array, isolated by temporary, non-electrified fencing. Signs would be installed at the front gate of the solar facility alerting emergency personnel of the use of the facility for grazing. The sign would also include contact information for the solar grazing entity to assist emergency personnel regarding removal of the sheep, if necessary. (USS 1, Attachment B; Tr.1, pp. 29, 74)
180. It is anticipated 9 sheep would be on-site for two separate two-week periods, rotating among five temporary paddocks established by the sheep grazer. Sheep would graze in one temporary paddock for 3 days, then would be moved to another temporary paddock depending on forage conditions. (USS 1, Attachment B)
181. The temporary fence would be removed when sheep are not on-site. (USS. 1, Attachment B)
182. The solar array would be seeded with a seed mix developed that provides sufficient forage for livestock and promotes pollinator species. (USS 1, Attachment B; USS 2, response 61)
183. The agricultural-style perimeter fence was chosen over standard chain-link fencing to better blend in with the agricultural use of the general area. (Tr. 1, p. 26)

### **Facility Construction**

184. If the Project is approved by the Council, the following permits would be required for construction and operation:
- a) DEEP Stormwater Permit;
  - b) Town Building Permit; and
  - c) Town Electrical Permit
- (USS 2, response 7)
185. Existing grades would be maintained through the solar array area except where earth work is required to construct the stormwater management system. (USS 1, Attachments A, B)
186. USS would reuse all excavated material thus construction of the facility would not require cut or fill. Any soil from the limited excavation would be spread throughout the site during construction. (USS 1, p. 18, Attachment B)
187. Site construction would disturb an approximate 32.4-acre area. (USS 2, response 26)
188. The steel racking posts would be driven into the ground utilizing pile driving equipment. If there is subsurface resistance, bedrock would be drilled and backfilled. (USS 2, response 74)
189. Construction of the facility is expected to take 7 months. Construction hours would be Monday through Saturday from 7:00 AM to 7:00 PM. (USS 1, p. 8)

### ***Traffic***

190. During construction, no more than 20 construction vehicles would visit the site daily. Construction workers would park along the proposed access drive and within the fence line. (Tr. 1, pp. 26-27)
191. Once operational, the site would require minimal traffic. The site would be inspected 4 times a year to ensure the stormwater system is functioning and the vegetation remains established. Livestock grazing at the site would require regular visits by an agricultural worker when sheep are on site. (USS 1, p. 9; Tr. 1, p. 17)

### **Facility Operations and Maintenance**

192. USS provided a post-construction Operations and Maintenance Plan (O&M Plan) that includes, but is not limited to, provisions for remote monitoring, equipment maintenance, and site safety and security. (USS 2, response 80)
193. The main topics of the post-construction O&M Plan include, but are not limited to, the following:
- a) AC Collection System Maintenance;
  - b) Inverter Preventive Maintenance;
  - c) Array Preventive Maintenance;
  - d) Energy production Analysis and Reporting; and
  - e) Vegetative Maintenance and Facility Infrastructure.
- (USS 2, response 80)

194. To maintain vegetation within the solar facility perimeter fence, USS proposes to implement a rotational sheep grazing plan within the fenced solar array area. When sheep are not maintaining vegetation, mowing would occur except during the active season of the savannah sparrow (i.e. between September 1 – March 31). (USS 1, pp. 14-15, Attachment B, USS 2, response 68)
195. No manual snow removal is expected. The orientation of the solar panels at its steepest angle, would allow any accumulated snow to slide off. (USS 1, Attachment B, p.2; Tr. 1, pp. 36-37)
196. The facility has a design life of approximately 35 years, assuming the panels are not replaced. (USS 1, p. 7)
197. At the end of the Project's lifespan, it will be fully decommissioned and removed from the property. The site would be restored to its original condition, including the removal of access roads, fencing and the stormwater management system. (USS 1, p. 10, Appendix B; USS 2, responses 19 and 81, Exhibit J)
198. After removal of the solar facility and site features, the site would be restored to its pre-existing condition as a farm field. (USS 1, p. 10; USS 2, response 19)
199. USS intends to recycle Project materials, including solar panels, to the maximum extent practicable. Project materials that cannot be recycled would be removed from the site and disposed of at a licensed disposal facility. (USS 2, response 81, Exhibit J)
200. USS selected solar panels for the Project that meet current Toxicity Characteristic Leaching Procedure (TCLP) criteria<sup>5</sup> for characterization as nonhazardous waste in the event the solar panels are not recycled at the end of the Project's life. (USS 2, response 78)
201. Pursuant to CGS §16-50p(g), the Council has no authority to evaluate, amend and/or determine rights under any lease with the property owner of the proposed site, including, but limited to, the restoration of the soils to prime farmland status. (CGS §16-50p(g) (2023))

### Neighborhood Concerns

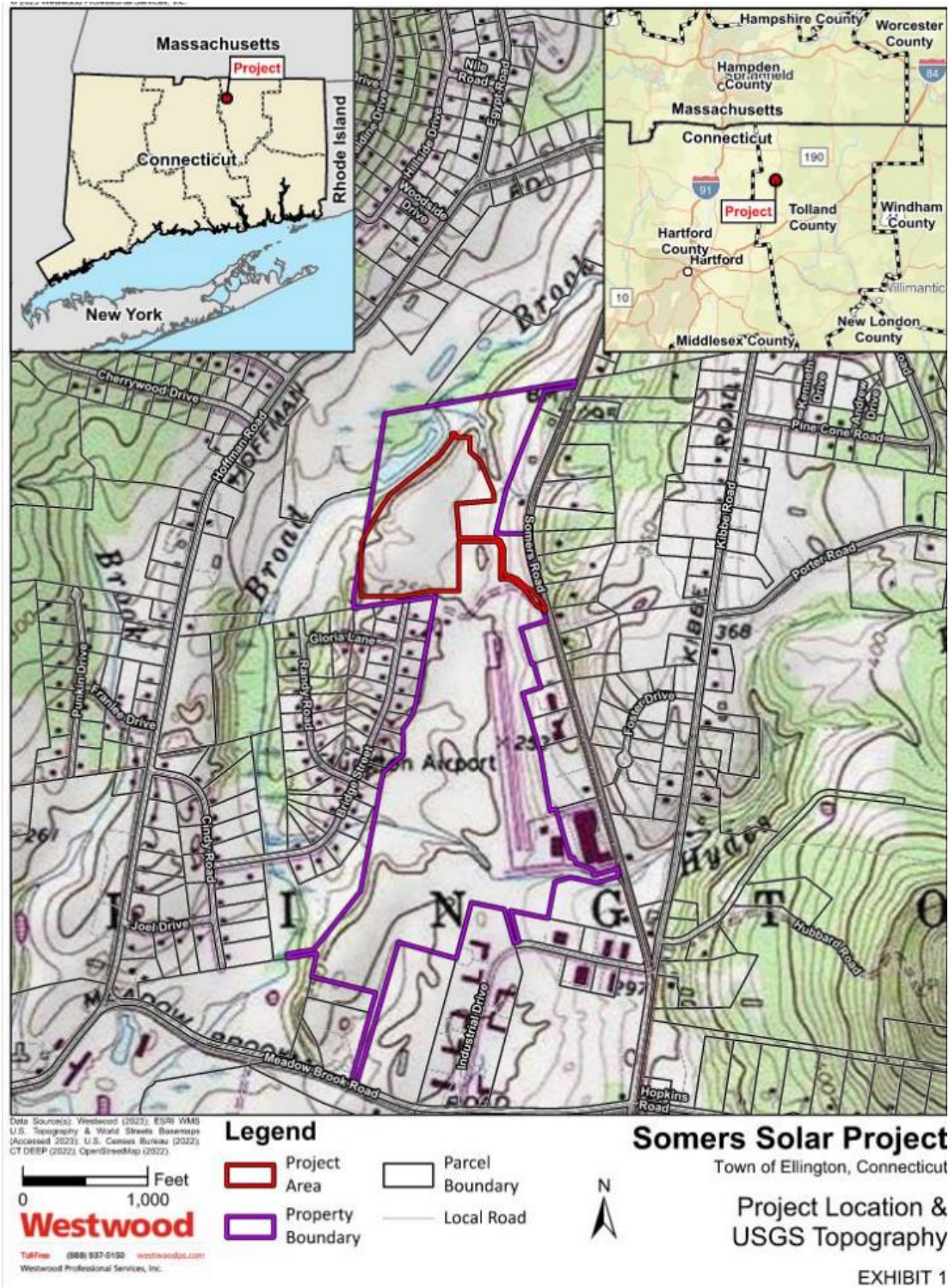
202. Based on concerns expressed by the Town and the parachutists regarding safety, visibility and noise, USS modified the proposed facility by eliminating the portion of the array west of the airstrip, thereby decreasing the size of the site by 13.2 acres and the Project output by 1 MW. (USS 1, p. 3, Attachment B; USS 2, response 1)
203. Pursuant to CGS § 16-50m, the Council, after giving due notice thereof, held a public comment session on December 5, 2023, at 6:30 p.m. via Zoom remote conferencing. (Record; Tr. 2, p. 1)
204. During the public comment session, six members of the public made oral limited appearance statements about the proposed facility. Concerns include, but are not limited to, the following;
  - safety of planes, skydivers and parachutists;
  - traffic disruption during construction of the facility;
  - property devaluation; and
  - the size of the site.(Record; Tr. 2, pp. 93-106)

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<sup>5</sup> <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-I/part-261/subpart-C/section-261.24>

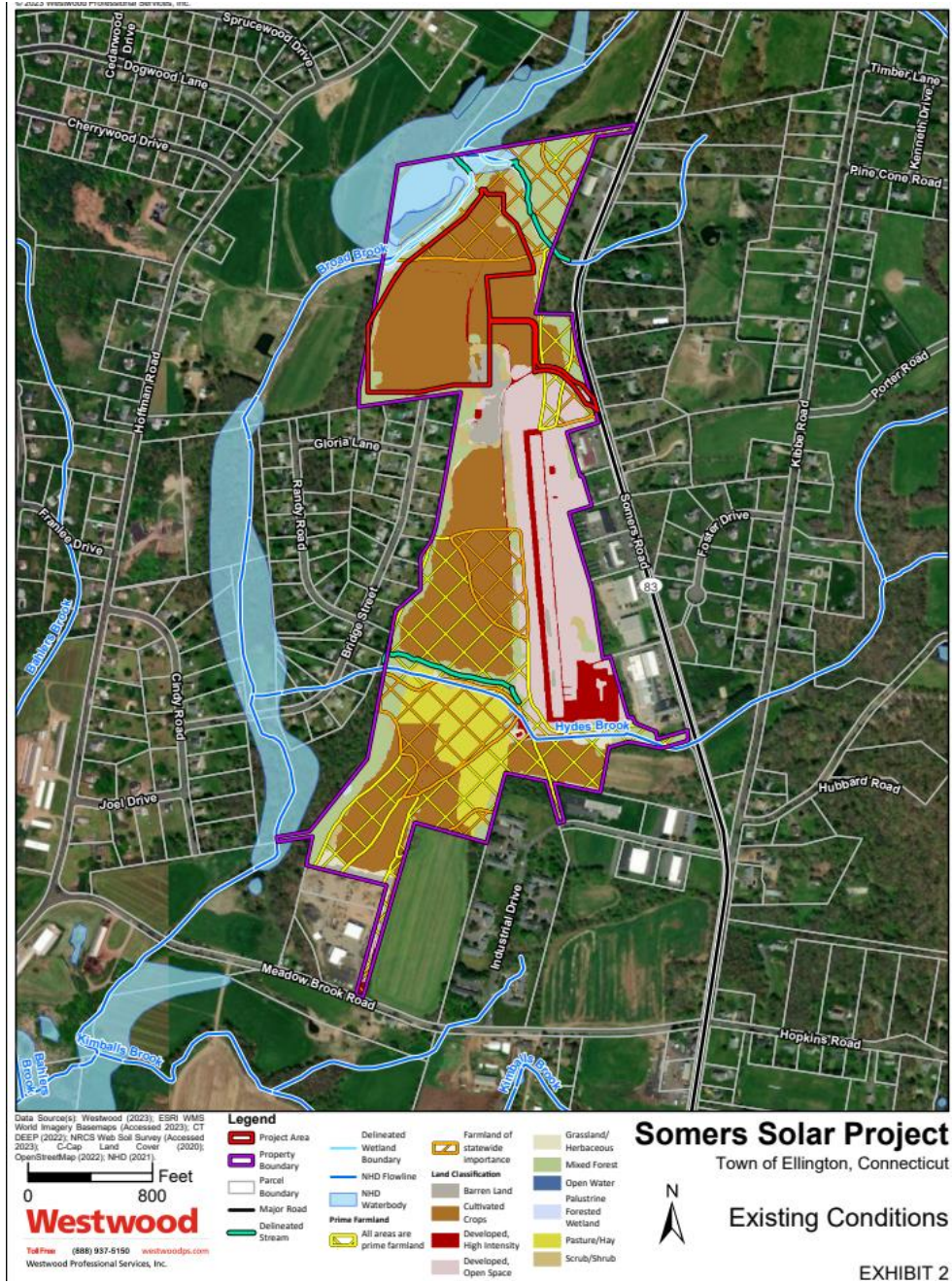
205. The Council received 13 written limited appearance statements regarding the proposed facility.  
(Record)

**Figure 1 – Site Location**



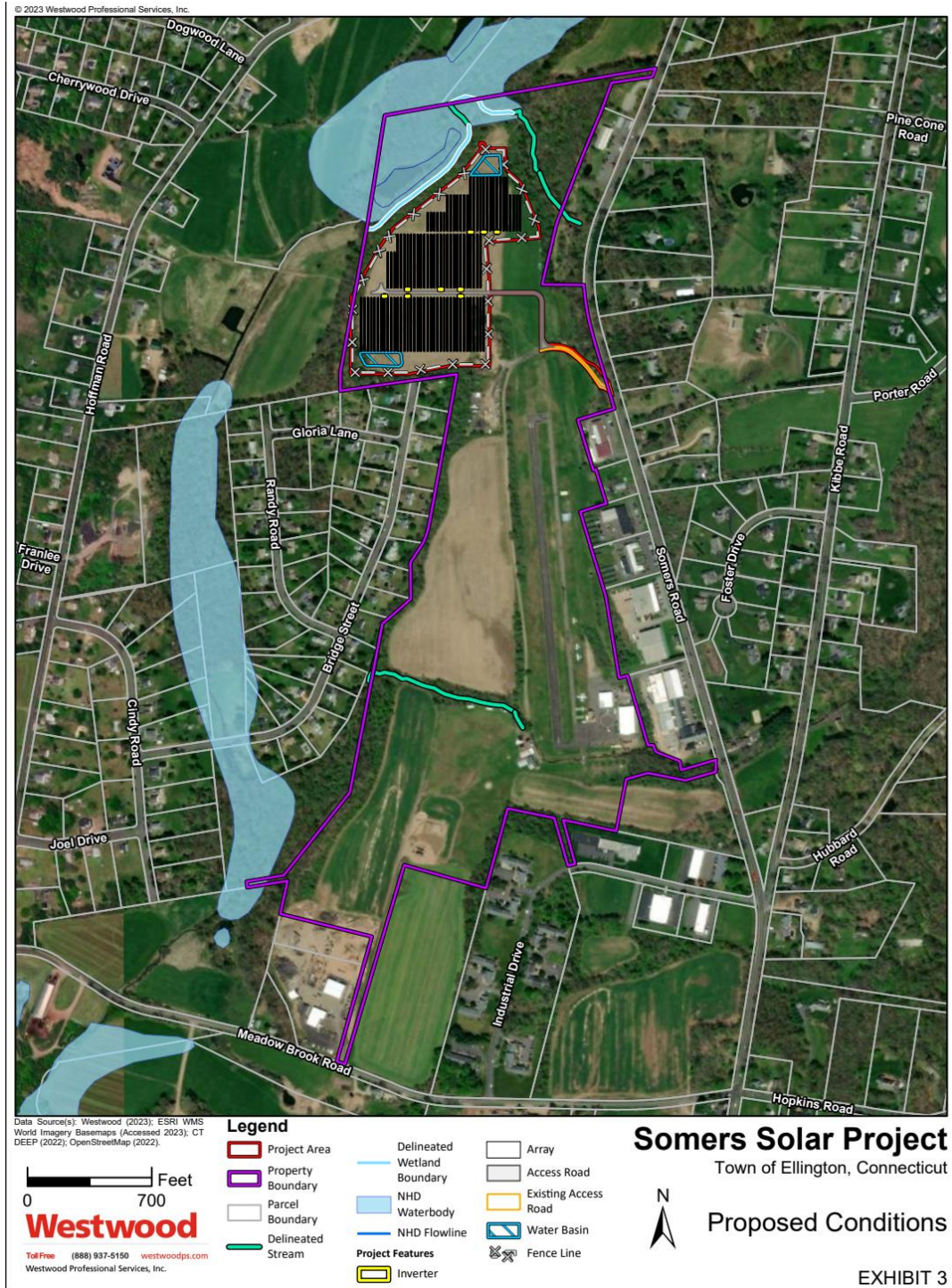


**Figure 2- Existing Conditions**



Wetland delineation. (USS 1, Attachment B)

**Figure 3 – Proposed Facility Conditions**



(USS 1, Attachment B)

**PETITION NO. 1589** – USS Somers Solar, LLC petition for a } Connecticut  
declaratory ruling, pursuant to Connecticut General Statutes §4- }  
176 and §16-50k, for the proposed construction, maintenance and } Siting  
operation of a 3.0-megawatt AC solar photovoltaic electric }  
generating facility located at 360 Somers Road, Ellington, } Council  
Connecticut, and associated electrical interconnection.

February 1, 2024

## **Opinion**

### **Introduction**

On August 23, 2023, USS Somers Solar, LLC (USS) submitted a petition to the Connecticut Siting Council (Council), pursuant to Connecticut General Statutes (CGS) §16-50k and §4-176, for a declaratory ruling for the construction, maintenance, and operation of a 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road in Ellington, Connecticut, and associated electrical interconnection (Petition or Project).

After the filing of the Petition, the Council received requests for a Public Hearing from the Town of Ellington (Town) and 14 members of the public. On October 12, 2023, the Council granted the requests for a public hearing which was held on December 5, 2023.

On November 9, 2023, USS filed a motion for protective order under CGS §1-210(b) related to the estimated construction cost of the Project. During the public hearing held on December 5, 2023, the Council issued a Protective Order related to the disclosure of the estimated construction cost of the Project pursuant to CGS §1-210(b).

### **Jurisdiction**

As it applies to the Petition, CGS §16-50k states in relevant part, "...the Council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling...(B) the construction or location... of any grid-side distributed resources project... with a capacity of not more than sixty-five megawatts, as long as such project meets the air and water quality standards of the Department of Energy and Environmental Protection and the Council does not find a substantial adverse environmental effect..." The Project is a "grid-side distributed resources" facility, as defined in CGS §16-1(a)(37) and has a capacity of approximately 3.0 MW.

Public Act 17-218 requires, for a solar photovoltaic facility with a capacity of two or more megawatts, to be located on prime farmland or forestland, excluding any such facility that was selected by the Department of Energy and Environmental Protection (DEEP) in any solicitation issued prior to July 1, 2017, pursuant to section 16a-3f, 16a-3g or 16a-3j, the Department of Agriculture (DOAg) represents, in writing, to the Council that such project will not materially affect the status of such land as prime farmland or DEEP represents, in writing, to the Council that such project will not materially affect the status of such land as core forest. PA 17-218 also requires that the Council not find a substantial adverse environmental effect in its exercise of jurisdiction over the facilities eligible to be approved by declaratory ruling under CGS §16-50k. There are no exemptions from this provision of PA 17-218.

By letter dated March 6, 2023, DOAg determined that the proposed solar facility would not have a material impact on the status of prime farmland with the condition that the proposed on-site agricultural co-uses are implemented. By letter dated May 5, 2023, DEEP's Bureau of Natural Resources determined the proposed solar facility would not have a material impact on the status of core forest. By letter dated August 2, 2023,

DOAg determined that the downsized facility site would not have a material impact on the status of prime farmland with the condition that the Petitioner would implement a livestock grazing program within the fenced boundaries of the revised project area.

Pursuant to CGS §16-50x, **the Council has exclusive jurisdiction over the construction, maintenance and operation** of the proposed solar photovoltaic electric generating facility.

PA 17-218 does not confer the Council's exclusive jurisdiction upon DOAg or DEEP nor does it permit DOAg or DEEP to impose any enforceable conditions on the construction, maintenance and operation of solar photovoltaic electric generating facilities under the exclusive jurisdiction of the Council. The proposed site is to be used principally for an electric generating facility as defined by CGS §16-50i(a)(3).

Furthermore, the Council does not have jurisdiction or authority over any portion of the host parcel beyond the boundaries of the facility "site." This includes portions of the host parcel retained by the property owner and portions of the host parcel the property owner may lease to third parties. Once a facility is decommissioned, the Council no longer has jurisdiction or authority over the facility "site."

#### **Public Benefit**

Pursuant to CGS §16-50p, a public benefit exists when a facility is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity. PA 05-1, An Act Concerning Energy Independence, portions of which were codified in CGS §16-50k, established a rebuttable presumption that there is a public benefit for electric generating facilities selected by the Public Utilities Regulatory Authority in Requests for Proposal.

The Project was selected in Year 1 of the Shared Clean Energy Facility (SCEF) program. The electricity, capacity and renewable energy credits (RECs) produced by the facility would be sold to Eversource in accordance with a 20-year Tariff Terms Agreement (TTA). A REC certifies that one megawatt-hour of renewable electrical energy has been generated.

USS would not participate in an ISO-New England, Inc. (ISO-NE) Forward Capacity Auction during the term of the TTA.

#### **Proposed Site**

Pursuant to a lease agreement with the property owner, USS proposes to construct the solar facility on an approximate 19.2-acre site on an approximate 127-acre parcel, at 360 Somers Road in Ellington. The host parcel is owned by the Ellington Airport and zoned Industrial (I). The host parcel is subject to a third-party lease with Connecticut Parachutists Inc. (CPI) that has 14.5 years remaining in the term.

The host parcel is currently used for mixed purposes including an airport, agriculture and pasture. Ellington Airport supports light general aviation traffic and includes a helicopter flight school and a parachuting school. The surrounding land uses include State Route 83 (Somers Road) to the east, and rural, agricultural and residential parcels to the north, east, west and south.

#### **Proposed Facility**

The Project consists of 7,074 non-reflective photovoltaic panels rated at approximately 570 Watts. The panels would be installed on a single-axis tracker system that would move in a north-south axis to a maximum angle of approximately 62 degrees. The tracker system would be powered by electricity produced

from the solar panels via the transformer. At maximum tilt, the panels would be approximately 12 feet 10 inches above grade at the highest point and 3 feet at the lowest point. The panels would be arranged in linear rows facing east at sunrise and west at sunset, separated by 11.2-foot wide vegetated aisles.

One 10-foot by 30-foot concrete pad would be installed on the south side of the site, centrally located between two arrays and within the fenced array area. The pad would support one switchgear, one transformer and one small auxiliary rack. The Project would use a total of 18 string inverters (35-inch wide by 26-inch high by 14-inch long), mounted on drive pile foundations at the end of select panel rows. Wiring would extend underground in conduits from the inverters to the switchgear/transformer pad.

The Project would be enclosed by a seven-foot tall agricultural-style security fence. The fence initially featured a 4-inch gap on the bottom for small wildlife movement; however, due to the planned implementation of grazing activities within the fenced array, the fence could be lowered to ground level to prevent predatory animals from entering.

Access to the facility would be from a new 16-foot wide, 1,300-foot long gravel access drive extending west from an existing access drive from Somers Road. It would extend to the western portion of the facility to a turnaround area between the northern and southern arrays. Minor improvements would be made to the existing portion of the access driveway.

The nearest property line and the nearest off-site residence to the solar facility perimeter fence would be 20 feet to the west and 128 feet to the south, respectively.

#### *Electrical Interconnection*

The electrical interconnection includes the installation of three new utility poles along the access road to support an overhead line that connects to a 13.8-kV Eversource distribution line on Somers Road. The new poles would be approximately 45 feet above ground level. From there, Eversource's distribution line connects to Eversource's Rockville Substation.

The interconnection application for a connection to the existing Eversource pole is currently in review. The facility interconnection would require ISO-NE review and approval. The Council will require notification of the dates on which Eversource and ISO-NE approve the interconnection application and design in the Development and Management (D&M) Plan.

#### *Project Alternatives*

Given the selection of the Project in the DEEP SCEF program, and a 20-year TTA contract with Eversource, CPG did not consider alternative locations.

USS selected the proposed site due to the presence of open fields, limited ground disturbance and tree clearing, the presence of forested buffers along the property lines, and close proximity to an existing three phase electrical distribution line.

Pursuant to CGS §16-50p(g), the Council has no authority to compel a parcel owner to sell or lease property, or portions thereof, for the purpose of siting a facility<sup>1</sup>.

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<sup>1</sup> Corcoran v. Connecticut Siting Council, 284 Conn. 455 (2007); CGS §16-50p(g) (2019)

### **Neighborhood Concerns**

The Council held a publicly noticed public comment session via Zoom conferencing on December 5, 2023, commencing at 6:30 p.m. 6 members of the public made oral limited appearance statements at the public comment session. While the Council public comment record was open, 13 interested persons provided written limited appearance statements expressing concerns that included, but were not limited to, safety of planes, skydivers and parachutists, traffic disruption during construction of the facility, property devaluation and the size of the site. Prior to submission of the Petition to the Council, based on municipal and neighborhood concerns, USS modified the proposed facility by removing the southern portion of the originally proposed array thereby decreasing the site footprint by 13 acres and reducing the proposed electrical power generation from 4.0 MW AC to 3.0 MW AC. This would preserve more land for industrial use and the activities of the parachute school. USS also filed a revised site plan to the Federal Aviation Administration (FAA). The FAA determined that the revised facility would not pose a hazard to air navigation.

### **Public Safety**

The Project would comply with the current National Electrical Code (NEC), the National Electrical Safety Code and the National Fire Protection Association code.

The facility would be remotely monitored on a 24/7 basis by USS personnel. Monitoring includes real time performance that can detect production abnormalities. The facility can be remotely shut down in its entirety or partially at the level of the string inverters.

Prior to commencement of operation USS would conduct outreach/training to local emergency responders. Emergency responders would be able to shut down the facility via a disconnect switch. Site access for emergency responders would be provided via a “knox box” (or equivalent) on the access gate. The Council will require USS to provide operations and emergency response training to local emergency responders.

Specialized equipment would not be required to extinguish a solar panel/electrical component fire. Pesticides and herbicides would be used only if necessary and would follow Integrated Pest Management principles with an emphasis on restricting use within 100 feet of wetlands and watercourses.

The Project is not located within a Federal Emergency Management Agency designated 100-year or 500-year flood zone.

### *Noise*

An independent noise analysis dated November 2, 2023, was performed for the Project. Noise generated during facility operations would comply with the DEEP Noise Control Standards. Noise resulting from construction is exempt from DEEP Noise Control Standards.

### *Aviation Safety*

Ellington Airport’s runway is located south of the proposed facility, running in a north-south direction. There are no immediate plans for an extension of the runway; however, any future extensions of the runway would be located to the north. Construction, operation and maintenance of the proposed facility would not

interfere with any airport operations. USS would extend the existing access drive to the north, away from the runway.

For safety purposes, the FAA requires nothing greater than three feet in height within 125 feet of the centerline of the runway. The nearest portion of the proposed facility is 1,000 feet from the centerline of the runway.

Parachutists and skydivers have used fields around the airport and private properties for an alternate landing area. A grounding study of the solar array would be performed to reduce the potential of anyone within the solar array area being electrocuted from touching an electrical component of the facility. Due to the potential of unauthorized persons landing within the solar array area, the Council will require a grounding study be performed and submitted to the Council prior to the commencement of construction.

The FAA requires a glare analysis for on-airport solar development at federally-obligated airports. Ellington Airport is not a federally-obligated airport. The nearest federally-obligated airport to the facility is Hartford-Brainard Airport in Hartford, located approximately 21 miles southwest of the site. The solar panels would have a non-reflective, glare-resistant coating that improves the overall efficiency of the panels. A glare analysis was performed (but not provided as part of the record) for the proposed solar facility and the results were favorable, indicating no glare would occur. The Council will require USS to provide the glare analysis prior to the commencement of construction.

The FAA issued Determinations of No Hazard to Air Navigation (No Hazard Determinations) for the proposed Project. On February 11, 2022, the FAA issued a Determination of No Hazard to Air Navigation for three utility poles with the condition that each utility pole would be marked/lighted in accordance with the FAA Advisory Circular 70/7460-1M, Obstruction Marking and Lighting. However, USS interprets this requirement to apply only to structures within 125 feet of the runway; therefore, USS does not propose to light the utility poles. The Council will require USS to provide written confirmation of the applicability or inapplicability of the FAA structure marking/lighting scheme prior to commencement of construction.

#### *Decommissioning*

The Project has an anticipated design life of approximately 35 years. At the end of the Project's lifespan, it will be fully decommissioned and removed from the property in accordance with provisions of the site lease. The site would be restored to its original condition, including the removal of access roads, fencing and the stormwater management system.

The lease is a private agreement between USS and the property owner. At the end of the lease term, control of the solar facility site reverts back to the property owner. The Council does not have the authority to supersede restoration provisions of the site lease or require additional site restoration conditions beyond those established by the site lease. The property owner would determine site restoration conditions at the time of Project decommissioning, including, but not limited to, access road, fencing, and the stormwater management system.

Project components that cannot be recycled will be removed and disposed of in accordance with regulatory criteria. USS provided Toxicity Characteristic Leaching Procedure (TCLP) results from the solar panel manufacturer for selected panels that indicate the panels would not be characterized as hazardous waste in the event the solar panels cannot be recycled at the end of the Project's life.

Construction hours would be Monday through Friday from 7:00 AM to 6:00 PM and Saturday from 8:00 AM to 5:00 PM.

## **Environmental Effects and Mitigation Measures**

### *Air and Water Quality*

The project would meet DEEP air quality standards. There would be no air emissions of regulated pollutants or greenhouse gases associated with site operation.

Operation of the facility would not require water use.

Groundwater is classified as “GA” which indicates it is presumed suitable for human consumption without treatment. The host parcel and adjacent parcels are served by private wells. Vibrations from the installation of the racking system are not expected to cause sediment releases, and thus, no disruption to well water flow or quality is expected.

Sheep grazing at the site is not expected to impact nearby wells. The amount of manure would be less than that typically applied to the existing farm field to grow crops thus there would be no degradation of water quality from stormwater runoff.

No on-site fuel storage is proposed during construction. In order to ensure subsurface water quality is maintained, the Council will order USS to submit a Spill Prevention, Control and Countermeasures Plan that includes spill response procedures, contact information for regulatory agencies, spill cleanup contractors and local responders.

The site is located outside of a DEEP-designated Aquifer Protection Area.

### Stormwater

Pursuant to CGS §22a-430b, DEEP retains final jurisdiction over stormwater management and administers permit programs to regulate stormwater pollution. DEEP regulations and guidelines set forth standards for erosion and sedimentation control, stormwater pollution control and best engineering practices. The DEEP Individual and General Permits for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (Stormwater Permit) require implementation of a Stormwater Pollution Control Plan (SWPCP) to prevent the movement of sediments off construction sites into nearby water bodies and to address the impacts of stormwater discharges from a Project after construction is complete. A DEEP-issued Stormwater Permit is required prior to commencement of construction.

DEEP has the authority to enforce Project compliance with its Stormwater Permit and the SWPCP, including, but not limited to, the installation of site-specific water quality protection measures in accordance with the *2002 Connecticut Guidelines for Soil Erosion and Sediment Control* (2002 E&S Guidelines).

The Project has been designed to comply with DEEP Stormwater Permit Appendix I and the 2002 E&S Guidelines. Post-construction stormwater would be controlled by perimeter swales and two stormwater management basins; one located in the southwest portion of the site, and one located in the northwestern portion of the site.

The stormwater management system is designed to maintain and/or reduce existing drainage patterns during 2, 10, 25, and 100-year storm events. Once the site is stabilized, USS would conduct annual inspections of the stormwater control features. The Council will order USS to submit a copy of its DEEP-issued Stormwater Permit prior to commencement of construction.



## Wetlands and Watercourses

The Inland Wetland and Watercourses Act (IWWA) strikes a balance between economic activities and wetlands preservation. The impact of a proposed activity on the wetlands and watercourses that may come from outside the physical boundaries of the wetlands or watercourses is a major consideration. Defined upland review areas, such as 100 feet, provide a trigger for reviewing whether a regulated activity is likely to affect wetlands and watercourses. Under CGS §22a-41(d), regulatory agencies shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant, or animal life *unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses.*

One wetland and three watercourses were identified on the host parcel. One watercourse (Broad Brook) and an unnamed tributary, and associated forest wetlands are located in the northwest portion of the host parcel, while Hydes Brook is located in the southern portion of the parcel, south and southwest of the runway.

The Project would comply with 2002 E&S Guidelines.

The Project would include a wetland buffer of 50 feet to stormwater control features and 100 feet to solar panels in accordance with the criteria established in DEEP Stormwater Permit Appendix I. The Council finds the proposed 71-foot buffer between the wetland associated with Broad Brook and the facility limit of disturbance (LOD) sufficient to protect the wetland.

### *Scenic, Historic and Recreational Values*

There are no properties listed on the State or National Register of Historic Places located within or proximate to the Project site. A Phase 1B Survey determined that no significant impacts to cultural resources are anticipated to result from the Project construction, and no additional archaeological investigation is warranted.

The nearest open space is Meadow Brook Estates Open Space, located approximately 735 feet southwest of the facility. The nearest publicly accessible recreational resource is Shenipsit State Forest located approximately 0.75 miles northeast of the proposed site. The facility would not be visible from Shenipsit State Forest.

Sport parachuting, as occurs on the host parcel, is defined by statute as a “recreational purpose.” In Connecticut, the person in control of the property, including an owner, tenant, lessee or occupant, is liable for permitting entry thereon for any recreational purpose.

There are no Town or state designated scenic roads within one mile of the site.

No comments were received from the Office of Policy and Management or DEEP regarding impacts to scenic quality or resources.

Existing vegetation and its location set back from Somers Road would shield the majority of the facility from view. Seasonal views of the facility may be possible from abutting residential properties to the east and west and from areas within a 0.25 mile radius. Year round views of the facility would be from the immediate vicinity southeast of the site from the airport and the industrial properties along Somers Road.

There are no “blue-blazed” hiking trails maintained by the Connecticut Forest and Park Association within one mile of the site.

### *Fish, Aquaculture and Wildlife*

A portion of the proposed site is within a DEEP Natural Diversity Database (NDDDB) buffered area. DEEP issued correspondence to USS indicating the site is within range of the eastern box turtle, a state-species of special concern, and recommended turtle protection measures, including but not limited to contractor education, site inspections, and isolation barriers. USS incorporated these measures into the Project site plans.

A subsequent review by DEEP identified the site as a potential habitat for the Savannah sparrow, a state-listed species of special concern. The Council will order USS to implement DEEP recommended protective measures for the Savannah sparrow.

USS obtained correspondence from the U.S. Fish & Wildlife Service’s (USFWS) Information, Planning and Consultation (IPaC) service indicating that the northern long-eared bat (NLEB), a federally-listed and state-listed Endangered Species, would not be adversely affected by the Project. No additional action would be required.

### *Agriculture*

Approximately 90 acres of the host parcel is enrolled in the PA 490 Program. The portion of the parcel occupied by the site would not affect its use classification.

Approximately 33.52 acres of the host parcel are classified as prime farmland soils of which 0.09 acres are within the site but are already disturbed by an existing gravel road used for the airport and that would also be used for the Project.

In accordance with DOAg’s No Material Impact to Prime Farmland letter dated August 2, 2023, USS would implement a sheep grazing program within the fenced solar array area of the site. The Council does not have jurisdiction or authority over any portion of the host parcel beyond the boundaries of the Project “site.” This includes portions of the host parcel retained by Ellington Airport and portions of the parcel Ellington Airport may lease to third parties.

Sheep grazing would be conducted by establishing five temporary paddocks within the solar array, isolated by temporary, non-electrified fencing. It is anticipated approximately 9 sheep would be on-site and rotated among five temporary paddocks (one paddock at a time) for about 3 days per paddock, depending on forage conditions. Grazing would not be permitted in areas outside of the solar array perimeter fence.

The solar array would be seeded with a seed mix that provides sufficient forage for livestock and promotes pollinator species. The Council will require that the final seed mix be included in the Development and Management (D&M) Plan.

*Forest and Parks*

No state forests or state parks are located in the vicinity of the site. The Shenipsit State Forest is approximately 0.75 mile northeast of the Site. The nearest mapped core forest is about 2,800 feet from the site.

Construction of the facility would require approximately 1 acre of tree clearing.

**Conclusion**

Based on the record of this proceeding, the Council finds that there would not be a substantial adverse environmental effect associated with the construction, maintenance and operation of an approximate 3.0 MW solar photovoltaic electric generating facility and an associated electrical interconnection located at 360 Somers Road in Ellington, Connecticut.

The proposed Project is a grid-side distributed resources facility with a capacity of less than 65 MW under CGS §16-50k, it was selected under the state's SCEF Program, it is consistent with the state's energy policy under CGS §16a-35k, and the proposed Project would meet all applicable U.S. Environmental Protection Agency and DEEP Air and Water Quality Standards. Therefore, the Council will issue a declaratory ruling for the proposed Project.

**PETITION NO. 1589** – USS Somers Solar, LLC petition for a } Connecticut  
declaratory ruling, pursuant to Connecticut General Statutes §4- }  
176 and §16-50k, for the proposed construction, maintenance and } Siting  
operation of a 3.0-megawatt AC solar photovoltaic electric }  
generating facility located at 360 Somers Road, Ellington, } Council  
Connecticut, and associated electrical interconnection.

February 1, 2024

### Decision and Order

Pursuant to Connecticut General Statutes (CGS) § 16-50k(a), CGS §4-176 and the foregoing Findings of Fact and Opinion, the Connecticut Siting Council (Council) finds that the construction, maintenance, and operation of a 3.0 MW Solar Photovoltaic Project on approximately 19.2 acres and associated electrical interconnection at 360 Somers Road, Ellington, Connecticut would not have a substantial adverse environmental effect, would meet all applicable U.S. Environmental Protection Agency and Connecticut Department of Energy and Environmental Protection (DEEP) Air and Water Quality Standards, and therefore, the Council will issue a declaratory ruling for the proposed solar photovoltaic electric generating facility.

Unless otherwise approved by the Council, the facility shall be constructed, operated, and maintained substantially as specified in the Council's record in this matter, and is subject to the following conditions:

1. Submit a copy of a DEEP-issued Stormwater Permit prior to the commencement of construction;
2. The Petitioner shall prepare a Development and Management Plan (D&M) for this site in compliance with Sections 16-50j-60 through 16-50j-62 of the Regulations of Connecticut State Agencies. The D&M Plan shall be provided to the service list, and submitted to and approved by the Council prior to the commencement of facility construction and shall include:
  - a. A final site plan including, but not limited to facility layout, access roads, electrical interconnection design that reduces visibility to the extent feasible, farm style livestock fence design, equipment pads, stormwater management control structures, and final seed mix;
  - b. The dates Eversource and ISO-NE approve the interconnection application and design;
  - c. The glare analysis for the facility;
  - d. A grounding study for the facility;
  - e. Written confirmation of the applicability or inapplicability of the FAA structure marking/lighting scheme for the utility poles;
  - f. Final construction hours and days of the week;
  - g. Erosion and sedimentation control plan consistent with the *2002 Connecticut Guidelines for Erosion and Sedimentation Control* and the DEEP-issued Stormwater Permit including, but not limited to, construction detail/phasing plan; installation of straw bales or other generally accepted similar control measures to reinforce silt fencing adjacent to wetland areas, temporary sediment basin detail, site stabilization measures during construction, inspection and reporting protocols, procedures for periodic cleaning of temporary sediment traps and swales during construction, and final cleaning of sediment traps/stormwater basins upon site stabilization;
  - h. DEEP-approved stormwater management plan consistent with the *2004 Connecticut Stormwater Quality Manual*;
  - i. A plan for the implementation of DEEP-recommended protective measures for the Savannah sparrow;

- j. Final Post-Construction Operations and Maintenance Plan that includes an inspection/maintenance schedule of facility components, vegetation, and stormwater basin/controls;
  - k. Final Petroleum Storage and Spill Prevention Plan (PSSPP) for site construction and operation with worker training and contact information including, but not limited to, regulatory agencies, spill cleanup contractors, and local responders;
  - l. Final structural design for the racking system stamped by a Professional Engineer duly licensed in the State of Connecticut; and
  - m. A final sheep grazing co-use plan for the site, including, but not limited to, provisions for rotational grazing, water access, temporary fencing and emergency evacuation with a document that shall indemnify and hold harmless the Council, its agents, representatives and employees from any and all losses, claims, actions, costs and expenses, judgments, subrogations, or other damages resulting from any injury to a person or to property arising out of the presence of third-parties within the fenced solar facility site.
3. Provide operations and emergency response training to local emergency responders;
4. In accordance with Section 16-50j-62 of the Regulations of Connecticut State Agencies, USS shall provide the Council with written notice two weeks prior to the commencement of site construction activities. In addition, USS shall provide the Council with written notice of the completion of site construction and the commencement of operation;
5. Unless otherwise approved by the Council, if the facility authorized herein is not fully constructed within three years from the date of the mailing of the Council's Findings of Fact, Opinion Decision & Order (collectively called "Final Decision"), this Decision & Order shall be void, and the facility owner/operator shall dismantle the facility and remove all associated equipment or reapply for any continued or new use to the Council before any such use is made. The time between the filing and resolution of any appeals of the Council's Final Decision shall not be counted in calculating this deadline. Authority to monitor and modify this schedule, as necessary, is delegated to the Executive Director. The facility owner/operator shall provide written notice to the Executive Director of any schedule changes as soon as is practicable;
6. Any request for extension of the time period to fully construct the facility shall be filed with the Council not later than 60 days prior to the expiration date of this decision and shall be served on the Town of Ellington;
7. The facility owner/operator shall remit timely payments associated with annual assessments and invoices submitted by the Council for expenses attributable to the facility under CGS §16-50v;
8. The facility owner/operator shall file an annual report on a forecast of loads and resources pursuant to CGS §16-50r;
9. This Declaratory Ruling may be transferred provided both the facility owner/transferor and the transferee are current with payments to the Council for their respective annual assessments and invoices under CGS §16-50v. In addition, both the facility owner/transferor and the transferee shall provide the Council a written agreement as to the entity responsible for any quarterly assessment charges under CGS §16-50v(b)(2) that may be associated with this facility, including contact information for the individual acting on behalf of the transferee;

10. USS shall maintain the facility, components, landscaping, and drainage features, in a reasonable physical and operational condition that is consistent with this Decision and Order and the Development and Management Plan to be approved by the Council;
11. If the facility owner/operator is a wholly owned subsidiary of a corporation or other entity and is sold/transferred to another corporation or other entity, the Council shall be notified of such sale and/or transfer and of any change in contact information for the individual or representative responsible for management and operations of the facility within 30 days of the sale and/or transfer; and
12. This Declaratory Ruling may be surrendered by the facility owner/operator upon written notification to the Council.

We hereby direct that a copy of the Findings of Fact, Opinion, and Decision and Order be served on each party and intervenor or its authorized representative, as listed in the Service List, dated August 24, 2023, and notice of issuance published in The Journal Inquirer in accordance with CGS §4-180(c) and CGS §16-50p(f).

By this Decision and Order, the Council disposes of the legal rights, duties, and privileges of each party and intervenor named or admitted to the proceeding in accordance with RCSA 16-50j-17.

**DECLARATORY RULING**

The undersigned members of the Connecticut Siting Council (Council) hereby certify that they have heard this case, or read the record thereof, in **PETITION NO. 1589** – USS Somers Solar, 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 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road, Ellington, Connecticut, and associated electrical interconnection, and voted as follows:

<b><u>Council Members</u></b>	<b><u>Vote Cast</u></b>
<u>/s/ John Morissette</u> John Morissette, Presiding Officer	No
<u>/s/ Quat Nguyen</u> Chairman Marissa Paslick Gillett Designee: Quat Nguyen	No
<u>/s/ Brian Golembiewski</u> Commissioner Katie Dykes Designee: Brian Golembiewski	Yes
<u>/s/ Robert Silvestri</u> Robert Silvestri	Yes
<u>/s/ Daniel P. Lynch, Jr.</u> Daniel P. Lynch, Jr.	No
<u>/s/ Thomas Near</u> Thomas Near	Yes
<u>/s/ Chance Carter</u> Chance Carter	Abstain

Dated at New Britain, Connecticut, February 1, 2024.



STATE OF CONNECTICUT  
*CONNECTICUT SITING COUNCIL*

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: [siting.council@ct.gov](mailto:siting.council@ct.gov)

Web Site: [portal.ct.gov/csc](http://portal.ct.gov/csc)

**VIA ELECTRONIC MAIL**

February 5, 2024

TO: Classified/Legal Supervisor  
158920231205  
The Journal Inquirer  
306 Progress Drive  
Manchester, CT 06045-0510  
[nhlegals@hearstmediact.com](mailto:nhlegals@hearstmediact.com)

FROM: Dakota LaFountain, Clerk Typist *DL*

RE: **PETITION NO. 1589** – USS Somers Solar, 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 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road, Ellington, Connecticut, and associated electrical interconnection.

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Please publish the attached legal notice for one day on the first day possible from receipt of this notice.

Pursuant to Connecticut General Statutes §16-50m(c), the general notice to be public shall be published in its entirety in not less than **TEN POINT BOLDFACE TYPE**. If you have any questions concerning the ten point type, please contact me. If your newspaper does not have ten point type, please so state and also state the size type actually used in the legal notice in your affidavit.

Please respond to [siting.council@ct.gov](mailto:siting.council@ct.gov) with the quote at your earliest convenience. Thank you.

Please send affidavit of publication and invoice to: Connecticut Siting Council  
10 Franklin Square  
New Britain, CT 06051

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STATE OF CONNECTICUT  
*CONNECTICUT SITING COUNCIL*

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: [siting.council@ct.gov](mailto:siting.council@ct.gov)

Web Site: [portal.ct.gov/csc](http://portal.ct.gov/csc)

NOTICE

Pursuant to Connecticut General Statutes §4-176 and §16-50k, the Connecticut Siting Council (Council) announces that, on February 1, 2024, the Council considered Findings of Fact, an Opinion, and a Decision and Order regarding a petition from USS Somers Solar, LLC for a declaratory ruling for the proposed construction, maintenance and operation of a 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road, Ellington, Connecticut. The Council's final vote was tied. Therefore, it failed, and a declaratory ruling was not issued. This petition record is available for public inspection in the Council's office, Ten Franklin Square, New Britain, Connecticut.



# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: [siting.council@ct.gov](mailto:siting.council@ct.gov)

Web Site: [portal.ct.gov/csc](http://portal.ct.gov/csc)

### Meeting Minutes

#### Meeting of February 29, 2024

A Zoom remote conference meeting of the Connecticut Siting Council (energy/telecommunications) was held on Thursday, February 29, 2024. The meeting was called to order with a quorum present by Presiding Officer John Morissette at 1:00 p.m.

#### Council Members Present:

John Morissette  
Presiding Officer  
Robert Silvestri  
Chance Carter  
Daniel P. Lynch, Jr.

Brian Golembiewski  
(designee for Commissioner Dykes)  
Quat Nguyen  
(designee for Chairman Gillett)

#### Council Member Absent:

Thomas Near, Ph.D.

#### Staff Members Present:

Melanie Bachman  
Executive Director/Staff Attorney  
Robert Mercier  
Siting Analyst  
Ifenyichukwu Nwankwo  
Siting Analyst

Christina Walsh  
Supervising Siting Analyst  
Michael Perrone  
Siting Analyst

#### Recording Secretary:

Lisa Fontaine

#### 1. Minutes of February 15, 2024.

Mr. Silvestri moved to approve the Minutes of February 15, 2024; seconded by Mr. Carter. The motion passed unanimously.

2. **PETITION NO. 1422 - CF Mulnite LLC Declaratory Ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the construction, maintenance and operation of a 4.99-megawatt AC solar photovoltaic electric generating facility to be located at Mulnite Farms, Inc. off Barber Hill Road west of the intersection with Rockville Road, East Windsor, Connecticut and associated electrical interconnection. Motion to Reopen and Modify.**

**PETITION NO. 1463 – CF Mulnite Miller, LLC Declaratory Ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the construction, maintenance and operation of a 1.0-megawatt (MW) AC solar photovoltaic electric generating facility located at a Mulnite Farms, Inc. parcel off Wapping Road, and a 4.0 MW AC solar photovoltaic electric generating facility located at a Mulnite Farms, Inc. parcel off Miller Road, East Windsor, Connecticut, and associated electrical interconnection. Motion to Reopen and Modify.**

Mr. Silvestri voted to grant the Motions to Reopen and Modify these Declaratory Rulings with the conditions noted in the staff report, an addition to Condition No. 2g to include transformer protections including containment measures and/or low level oil alarms; and the additional condition to submit a cumulative post-construction noise study and any necessary mitigation measures; rendering the Town of East Windsor’s Request for Party status and the Town of East Windsor resident’s Request for a Public Hearing moot; seconded by Mr. Carter. The motion passed with Mr. Nguyen voting no and Mr. Lynch recusing.

3. **PETITION NO. 1589 – USS Somers Solar, 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 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road, Ellington, Connecticut, and associated electrical interconnection. Petition for Reconsideration.**

Mr. Lynch moved to deny the Petition for Reconsideration; seconded by Mr. Golembiewski. The motion passed with Mr. Nguyen voting no.

4. **PETITION NO. 1592 – Santa Fuel, Inc. petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 3.85-megawatt AC solar photovoltaic electric generating facility located at 159 South Road, Somers, Connecticut, and associated electrical interconnection. Draft Findings of Fact.**

After reviewing the Draft Findings of Fact, Presiding Officer Morissette conducted a non-binding straw poll of the Council members with Mr. Golembiewski in favor of the proposed facility; and Mr. Silvestri, Mr. Nguyen, Mr. Carter, Mr. Lynch and Presiding Officer Morissette opposed to the proposed facility.

Presiding Officer Morissette directed staff to draft an Opinion and Decision and Order denying issuance of a declaratory ruling for this petition to be reviewed at the next meeting.

- PETITION NO. 1597 – Greenskies Clean Energy 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 3.74-megawatt AC solar photovoltaic electric generating facility located at Parcel No. 017-150-066, Spencer Hill Road, Winchester, Connecticut, and associated electrical interconnection. Decision.**

Mr. Golembiewski moved to approve this petition with the conditions noted in the staff report and an addition to Condition No. 4 to submit a final electrical interconnection plan that has been approved by Eversource for Council review and approval, prior to the commencement of construction, that includes the use of pad-mounted equipment on both the Eversource and GCE sides of the interconnection, and any hybrid design options to reduce the visual impact of the electrical interconnection; seconded by Mr. Carter. The motion passed unanimously.

- PETITION NO. 1608 – Greenskies Clean Energy, 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 3.035-megawatt AC solar photovoltaic electric generating facility located at 141 Middlefield Road, Durham, Connecticut, and associated electrical interconnection. CGS §4-176 Deadline for Action – Set Date for Decision.**

Mr. Golembiewski moved to set the date by which to render a decision in accordance with Connecticut General Statutes § 4-176(e) and Section 16-50j-40(c) of the Regulations of Connecticut State Agencies, as no later than July 15, 2024; seconded by Mr. Silvestri. The motion passed unanimously.

#### **Tower Share Request Consent Calendar - Item Nos. 7 - 10**

Presiding Officer Morissette introduced the Tower Share Request Consent Calendar as Item Nos. 7 - 10. The Consent Calendar was adopted.

- TS-DISH-034-240116 - Dish Wireless, LLC request for an order to approve tower sharing at an existing telecommunications facility located at 41 Padanaram Road, Danbury, Connecticut. Decision.**
- TS-DISH-118-240116 - Dish Wireless, LLC request for an order to approve tower sharing at an existing telecommunications facility located at 845 Ethan Allen Highway, Ridgefield, Connecticut. Decision.**

9. **TS-DISH-103-240122 - Dish Wireless, LLC request for an order to approve tower sharing at an existing telecommunications facility located at 11 Filbert Road, Norwalk, Connecticut. Decision.**

10. **TS-VER-121-240206 – Cellco Partnership d/b/a Verizon Wireless request for an order to approve tower sharing at an existing telecommunications facility located at 153 East Haddam Road, Salem, Connecticut. Decision.**

11. **Administrative Matters**

The following public hearings and energy/telecommunications meeting dates were discussed:

- Energy/Telecommunications Meeting, Thursday, March 14, 2024, beginning at **1:00 p.m.** via Zoom remote conferencing.
- Petition No. 1598, Tuesday, March 19, 2024, **continued evidentiary hearing session** beginning at 2:00 p.m. via Zoom remote conferencing.
- Docket No. 520, Thursday, March 21, 2024, **evidentiary hearing session** beginning at 2:00 p.m. and **public comment session** beginning at 6:30 p.m. via Zoom remote conferencing.
- Energy/Telecommunications Meeting, Thursday, March 28, 2024, beginning at **1:00 p.m.** via Zoom remote conferencing.

**Adjournment.**

Mr. Carter moved to adjourn the meeting; seconded by Mr. Silvestri. The motion passed unanimously.

Presiding Officer Morissette adjourned the meeting at 1:52 p.m.

**Respectfully submitted,**



**Melanie A. Bachman**  
**Executive Director**

MAB/laf



STATE OF CONNECTICUT  
*CONNECTICUT SITING COUNCIL*

Ten Franklin Square, New Britain, CT 06051  
Phone: (860) 827-2935 Fax: (860) 827-2950  
E-Mail: [siting.council@ct.gov](mailto:siting.council@ct.gov)  
Web Site: [portal.ct.gov/csc](http://portal.ct.gov/csc)

**VIA ELECTRONIC MAIL & CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

March 1, 2024

Lee D. Hoffman, Esq.  
Pullman & Comley, LLC  
90 State House Square  
Hartford, CT 06103-3702  
[lhoffman@pullcom.com](mailto:lhoffman@pullcom.com)

RE: **PETITION NO. 1589** – USS Somers Solar, 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 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road, Ellington, Connecticut, and associated electrical interconnection. **Petition for Reconsideration. Decision.**

Dear Attorney Hoffman:

During a public meeting of the Connecticut Siting Council (Council) held on February 29, 2024, the Council considered and denied, by a vote of five to one, USS Somers Solar, LLC's February 16, 2024 Petition for Reconsideration, pursuant to the provisions of Connecticut General Statutes §4-181a(a), of the Council's February 5, 2024 final decision not to issue a declaratory ruling for the above-referenced solar photovoltaic electric generating facility due to a tie vote.

Thank you for your attention and cooperation.

Sincerely,

Melanie A. Bachman  
Executive Director

MAB/IN/dll

c: Service List dated January 23, 2024

## Town of Groton v. Conn. Siting Council

Superior Court of Connecticut, Judicial District of New Britain At New Britain

August 11, 2020, Decided; August 11, 2020, Filed

DOCKET NO: HHBCV206059580S

### Reporter

2020 Conn. Super. LEXIS 1041 \*

TOWN OF GROTON, v. CONNECTICUT SITING  
COUNCIL Et Al

**Notice:** THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

### Core Terms

agency's decision, unappealable, aggrieved, subject matter jurisdiction, jurisdiction to issue, correspondence, appealing, Cell, fuel

**Judges:** [\*1] JOHN LOUIS CORDANI, Judge.

**Opinion by:** JOHN LOUIS CORDANI

### Opinion

#### ORDER

ORDER REGARDING:

04/30/2020 101.00 MOTION TO DISMISS PB 10-30

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

The defendants have moved to dismiss this administrative appeal alleging that there is no final agency decision being appealed. Administrative appeals are creatures of statute. The right to appeal, and the court's jurisdiction over an appeal, is provided by statute. The defendants challenge the court's subject matter jurisdiction to hear this appeal by asserting that there is no final agency decision being appealed and therefore the statutory conditions which would authorize

an appeal have not been met. Once subject matter jurisdiction has been challenged, it is the plaintiff's burden to establish that subject matter jurisdiction exists. In considering whether subject matter jurisdiction exists, the court should, where reasonably possible, indulge ambiguity in favor of finding jurisdiction.

In this case the appeal is being brought pursuant to [CGS 4-183](#). In pertinent part, [CGS 4-183\(a\)](#) provides as follows:

"A person who has exhausted all administrative remedies within the agency and who is aggrieved by a final decision may appeal [\*2] to the Superior Court as provided for in this section. The filing of a petition for reconsideration is not a prerequisite to the filing of such an appeal."

Thus, the statute allows for appeals of final agency decisions. Accordingly, the court concludes that an administrative appeal to the superior court can only be taken from a final decision of an agency. Further, the person taking the appeal must be aggrieved by that final decision of an agency.

We start by determining what alleged agency decision the plaintiff is appealing. The lead paragraph of the complaint clarifies this by stating that the plaintiff is "aggrieved and appealing pursuant to Connecticut General Statutes (CGS) 4-183 from the decision of the Defendant Connecticut Siting Council (the "Siting Council") dated February 14, 2020". Attached to the complaint as Exhibit B is a letter from the Executive Director of the Siting Council dated February 14, 2020 addressed to both the plaintiff and Fuel Cell Energy (the "February 14, 2020 Letter"). The complaint is clear that the plaintiff is appealing an alleged decision in that February 14, 2020 Letter.

Upon a review of the February 14, 2020 Letter, it is clear that the letter is [\*3] not a decision of the Connecticut Siting Council. The letter is written by the Executive Director of the Siting Council to the plaintiff and another

party. It refers to Siting Council Petition No. 1214 which was decided by the Siting Council on March 4, 2016 in a final decision (the "2016 Decision"). The first sentence of the letter clearly states that the letter was written because the plaintiff and Fuel Cell Energy had asked the Executive Director to explain why the Siting Council had jurisdiction to issue the 2016 Decision. The Executive Director then simply goes on to explain that the equipment associated with 2016 Decision was a fuel cell and that pursuant to [CGS 16-50](#), the Siting Council was given jurisdiction over fuel cells, all as clearly stated in the 2016 Decision. Thus the February 14, 2016 Letter is merely personal correspondence of the Executive Director of the Siting Council explaining her personal view as to why the Siting Council had jurisdiction to issue the 2016 Decision.

The 2016 Decision was issued on March 4, 2016. The appeal period to challenge that decision ran forty five days after March 4, 2016. The 2016 Decision was not appealed and became unappealable after that forty [\*4] five day period. It is thus not possible to now bring a court challenge to the 2016 Decision. Further, although the plaintiff was notified of the petition that was addressed in the 2016 Decision, it did not participate in that proceeding or appeal the 2016 Decision. Clearly, nothing that the Executive Director said in the February 14, 2020 Letter could change the 2016 Decision, in particular the letter could not, and does not attempt to, change whether or not the Siting Council had jurisdiction to issue the 2016 Decision.

The Executive Director is not a member of the Siting Council, and nothing in the February 14, 2020 Letter indicates that there was a meeting of the Siting Council concerning the letter or that any member of the Siting Council participated in what was written in the letter. The plaintiff's own allegations confirm that the February 14, 2020 Letter was not a decision of the Siting Council in alleging that (i) the defendant received no notice, (ii) there was no hearing held, (iii) no evidence was taken, and (iv) there was no meeting of the Siting Council and no vote by its members. The plaintiff argues that the foregoing were defects in the Siting Council's decision in [\*5] the February 14, 2020 Letter. However, what the foregoing points really confirm is that the February 14, 2020 Letter does not represent a decision of the Siting Council at all. Lastly, the minutes of the Siting Council, which are public and which the court can take judicial notice of as the public minutes of a state agency, further confirm the plaintiff's own allegations that no meeting or vote of the Siting Council was held to consider the February 14, 2020 Letter. Correspondingly, the court

finds no evidence that the Siting Council was petitioned to issue a declaratory ruling and therefore did not initiate the procedures required to take such action. Certainly no contested case proceeding was held.

Although the plaintiff asserts that the February 14, 2020 Letter "modified or supplemented" the 2016 Decision, the plaintiff does not effectively explain exactly how the February 14, 2020 Letter "modified or supplemented" the 2016 Decision. What exactly was changed or supplemented? The answer is nothing. The Plaintiff claims that the February 14, 2020 Letter was a declaratory ruling. However, the letter itself, the correspondence leading to the letter, the absence of a petition and the [\*6] lack of any procedure or action by the Council itself unmistakably tell another story, that the letter is the mere personal opinion of the Executive Director, who is not a member of the Siting Council and cannot make substantive decisions for the Siting Council. The February 14, 2020 Letter does state in one sentence that "It is the opinion of the Council that units remain fuel cell facilities even though they produce usable thermal energy". In context, the court interprets the foregoing sentence as merely expressing the Executive Director's personal opinion of what the Council's opinion was in the 2016 Decision concerning its jurisdiction to issue the 2016 Decision. The court notes that the 2016 Decision clearly discusses the equipment and the Siting Council's reasoning supporting its decision that it had jurisdiction. The foregoing quoted sentence is essentially lifted from the Siting Council's 2016 Decision. In the correspondence leading up to the February 14, 2020 Letter, the Executive Director clearly indicates that the "letter would come from me directly as ED/SA", and that is exactly what happened.

As noted, the 2016 Decision was final and the appeal period had run. The February [\*7] 14, 2020 Letter does not in any way change or modify the 2016 Decision. Instead, the February 14, 2020 Letter merely represents the personal views of the Executive Director concerning why she believed that the Siting Council had jurisdiction to issue the 2016 Decision. Jurisdiction is not something that can be changed by a subsequent ruling, particularly when the underlying 2016 Decision had become unappealable and fully executed. The February 14, 2020 Letter does not even attempt to change or modify that 2016 Decision. Since the February 14, 2020 Letter was not a decision of the Siting Council, there can be no request for reconsideration and no appeal taken to the Superior Court. There is no final agency decision to reconsider or to appeal.



Further, the February 14, 2020 Letter, being merely the personal correspondence of the Executive Director of the Siting Council, merely discussed the Siting Council's 2016 Decision which has become unappealable. As such the plaintiff cannot be aggrieved by personal correspondence concerning a 2016 decision that has long since become unappealable and is a fully executed decision. Even if the February 14, 2020 Letter were a declaratory ruling of the [\*8] Siting Council, which it is not, it does not appear to be able to aggrieve the plaintiff since the 2016 Decision is now unappealable and fully executed. The plaintiff has failed to establish how a mere discussion of the Siting Council's jurisdiction over a decision that has become unappealable and fully executed could aggrieve the plaintiff.

In view of the foregoing, the court finds that this administrative appeal does not appeal any final agency decision. The plaintiff has failed to establish subject matter jurisdiction over this appeal. Accordingly, the court respectfully grants the defendants' motions to dismiss and orders the appeal dismissed.

438571

Judge: JOHN LOUIS CORDANI

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), [section 51-193c of the Connecticut General Statutes](#) and *Connecticut Practice Book Section 4-4*.

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## D'Amato-Canterbury v. Town of Canterbury Planning & Zoning Comm'n

Superior Court of Connecticut, Judicial District of Windham At Putnam

July 23, 2009, Decided; July 24, 2009, Filed

CV074006069S

### Reporter

2009 Conn. Super. LEXIS 2074 \*; 2009 WL 2781527

D'Amato-Canterbury v. Town of Canterbury Planning  
and Zoning **Commission**

**Notice:** THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

### Core Terms

intersection, aggrievement, regulations, subdivision, stop sign, quotation, marks, subdivision regulation, planning and zoning, public hearing, trial court, reasons, streets, traffic, residents, traveling, appeals, corner, zoning

### Case Summary

#### Procedural Posture

Plaintiff developer appealed a **decision** of defendant town of Canterbury planning and zoning **commission**, which denied the developer's application for subdivision approval for a five-lot subdivision of its real property upon a **tie** vote.

#### Overview

The reviewing court held that the developer was the owner of the property, and was classically aggrieved by the **commission's decision**. Further, as the applicant, the developer showed that the decision specially and injuriously affected the developer's specific, personal, or legal interest. The appeal was timely and service of process was proper under [Conn. Gen. Stat. § 8-8\(b\)](#) and [\(f\)](#). The decision was supported by substantial evidence. Opponents testified that they were concerned about safety issues if the developer's road intersected with an existing road. There was concern that if an additional sight line was created, the potential for

accidents remained, especially in slick road conditions. The developer further revised the plans by relocating the new proposed intersection. Opponents still voiced concerns. The commission's concerns regarding the safety of the proposed intersection had a valid basis in Canterbury, Conn., Subdivision Regs. §§ 1.10 and 4.21(A), and were supported by the record. Although the developer attempted to alleviate the commission's concerns, safety issues surrounding the proposed intersection still remained.

#### Outcome

The decision was affirmed.

### LexisNexis® Headnotes

Administrative Law > Judicial  
Review > Reviewability > General Overview

Real Property Law > Zoning > Judicial Review

#### [HN1](#) **Judicial Review, Reviewability**

[Conn. Gen. Stat. § 8-8\(b\)](#) governs appeals from decisions of planning and zoning commissions to the Connecticut Superior Court. A statutory right to appeal may be taken advantage of only by strict compliance with the statutory provisions by which it is created.

Administrative Law > Judicial  
Review > Reviewability > Jurisdiction & Venue

Civil Procedure > Appeals > Standards of  
Review > Questions of Fact & Law

Evidence > Burdens of Proof > Allocation

Administrative Law > Judicial  
Review > Reviewability > Standing

See [Conn. Gen. Stat. § 8-8\(a\)\(1\)](#).

## [HN2](#) **Reviewability, Jurisdiction & Venue**

Pleading and proof of aggrievement are prerequisites to a trial court's jurisdiction over the subject matter of an administrative appeal. In order to have standing to bring an administrative appeal, a person must be aggrieved. Aggrievement presents a question of fact for the trial court and the party alleging aggrievement bears the burden of proving it. A plaintiff may prove aggrievement by testimony at the time of trial; or by the production of the original documents or certified copies from the record.

Administrative Law > Judicial  
Review > Reviewability > Standing

## [HN3](#) **Reviewability, Standing**

Two broad yet distinct categories of aggrievement exist, classical and statutory. Classical aggrievement requires a two-part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the controversy, as opposed to a general interest that all members of the community share. Second, the party must also show that the alleged conduct has specially and injuriously affected that specific personal or legal interest.

Administrative Law > Judicial  
Review > Reviewability > Standing

## [HN4](#) **Reviewability, Standing**

Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation.

Administrative Law > Judicial  
Review > Reviewability > Standing

Real Property Law > Zoning > Judicial Review

## [HN5](#) **Reviewability, Standing**

Administrative Law > Judicial  
Review > Reviewability > General Overview

Civil Procedure > ... > Service of  
Process > Methods of Service > Service on Agents

Governments > Local  
Governments > Administrative Boards

Real Property Law > Zoning > Judicial Review

Governments > Local Governments > Claims By &  
Against

## [HN6](#) **Judicial Review, Reviewability**

Pursuant to [Conn. Gen. Stat. § 8-8\(b\)](#), an appeal shall be commenced by service of process in accordance with [§ 8-8\(f\)](#) and [\(g\)](#) within fifteen days from the date that notice of the decision was published as required by the general statutes. [Section 8-8\(f\)](#) provides service of legal process for an appeal under [§ 8-8\(f\)](#) shall be directed to a proper officer and shall be made as follows: (2) For any appeal taken on or after October 1, 2004, process shall be served in accordance with [Conn. Gen. Stat. § 52-57\(b\)\(5\)](#). [Section 52-57\(b\)](#) provides that process in civil actions against the following-described classes of defendants shall be served as follows: (5) against a board, commission, department or agency of a town, city or borough, notwithstanding any provision of law, upon the clerk of the town, city or borough, provided two copies of such process shall be served upon the clerk and the clerk shall retain one copy and forward the second copy to the board, commission, department or agency.

Administrative Law > Judicial Review > Standards  
of Review > Substantial Evidence

Real Property Law > Zoning > Judicial Review

## [HN7](#) **Standards of Review, Substantial Evidence**

A court, in reviewing the actions of an administrative agency, is not permitted to substitute its judgment for that of the agency or to make factual determinations on its own. In appeals from administrative zoning decisions, a planning and zoning commission's conclusions will be

invalidated only if they are not supported by substantial evidence in the record.

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Standard of Review

Governments > Local  
Governments > Administrative Boards

Real Property Law > Subdivisions > State Regulations

Administrative Law > Judicial Review > Standards of Review > General Overview

Administrative Law > Separation of Powers > Legislative Controls > Explicit Delegation of Authority

### [HN8](#) **Standards of Review, Arbitrary & Capricious Standard of Review**

A subdivision application is subject to the commission's administrative authority. A municipal planning commission, in exercising its function of approving or disapproving any particular subdivision plan, is acting in an administrative capacity and does not function as a legislative, judicial or quasi-judicial agency. The commission is entrusted with the function of interpreting and applying its zoning regulations. The trial court must determine whether the commission has correctly interpreted its regulations and applied them with reasonable discretion to the facts. The plaintiffs have the burden of showing that the commission acted improperly. The trial court can sustain a plaintiff's appeal only upon the determination that the decision of the commission was unreasonable, arbitrary or illegal. It must not substitute its judgment for that of the commission and must not disturb decisions of local commissions as long as honest judgment has been reasonably and fairly exercised.

Administrative Law > Judicial Review > Standards of Review > Clearly Erroneous Standard of Review

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

### [HN9](#) **Standards of Review, Clearly Erroneous**

### **Standard of Review**

It is an appellate court function to determine whether the judgment of the trial court was clearly erroneous or contrary to the law; appellate review excludes the retrial of the facts. The appellate court does not determine whether the trier of facts could have reached a conclusion other than the one reached. It looks both at the conclusion reached and the method by which it was reached to determine whether that conclusion is correct and factually supported.

Administrative Law > Separation of Powers > Legislative Controls > Explicit Delegation of Authority

Civil Procedure > ... > Standards of Review > Substantial Evidence > Sufficiency of Evidence

Evidence > ... > Testimony > Credibility of Witnesses > General Overview

Real Property Law > Zoning > Judicial Review

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

### [HN10](#) **Legislative Controls, Explicit Delegation of Authority**

Conclusions reached by a planning and zoning commission must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the agency. The question is not whether the trial court would have reached the same conclusion, but whether the record before the agency supports the decision reached. The substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred. It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.

Administrative Law > Judicial Review > Administrative Record > General

Overview

Administrative Law > **Agency**

Adjudication > **Decisions** > General Overview

### [HN11](#) **Judicial Review, Administrative Record**

In a case such as a **tie** vote, a **board**, as a body, can give no reason for its failure to act although the result amounts to a rejection of a subdivision application. When the zoning body fails to state reasons for its **decision** on the record, the reviewing court has a duty to search the entire record before it to find a basis for the board's decision.

Administrative Law > Separation of Powers > Legislative Controls > Explicit Delegation of Authority

Governments > Courts > Common Law

Real Property Law > Subdivisions > State Regulations

Administrative Law > Agency Rulemaking > Rule Application & Interpretation > General Overview

Administrative Law > Agency Rulemaking > State Proceedings

### [HN12](#) **Legislative Controls, Explicit Delegation of Authority**

As a creation of the State, a municipality, whether acting itself or through its planning and zoning commission, has no inherent powers of its own and it possesses only such rights and powers that have been granted expressly to it by the State. Thus, while the State may have inherent power to regulate in the interest of public health, safety, morality and welfare in connection with municipal regulations, it is a cardinal principle of construction that provisions and amendments must be enacted pursuant to the enabling statute. In determining whether a particular regulation is within the authority of the commission to enact, the courts do not search for a statutory prohibition against such an enactment; rather, they must search for statutory authority for the enactment. Because subdivision regulations adopted by a planning and zoning commission are in derogation of common-law property rights, the scope of the enabling statute granting the power to adopt such regulations should not be extended by construction beyond the fair

import of its language, or to include by implication that which is not clearly within its express terms.

Real Property Law > Subdivisions > State Regulations

### [HN13](#) **Subdivisions, State Regulations**

See [Conn. Gen. Stat. § 8-25\(a\)](#).

Real Property Law > Subdivisions > State Regulations

### [HN14](#) **Subdivisions, State Regulations**

Canterbury, Conn., Subdivision Regs. § 1.10 echoes the language of [Conn. Gen. Stat. § 8-25\(a\)](#), and provides that the purpose of the rules governing the subdivision of land in the town of Canterbury is to protect the safety, convenience, and welfare of the inhabitants of Canterbury by ensuring that the land to be subdivided shall be of such a character that it can be used for building purposes without danger to health for the safety of the public. Canterbury, Conn., Subdivision Regs. § 4.21(A) further provides that no subdivision of land requiring the layout and establishment of new streets shall be made unless the proposed layout of new streets is in harmony with existing or proposed streets, particularly in regard to safe intersections and so arranged as to provide an adequate and convenient system for present and prospective traffic and maintenance.

Administrative Law > Separation of Powers > Legislative Controls > Explicit Delegation of Authority

Real Property Law > Zoning > Judicial Review

### [HN15](#) **Legislative Controls, Explicit Delegation of Authority**

The conditions which might make an intersection unsafe are many and varied. No one standard could ever be adopted to cover adequately all future cases. Judgment and experience must be applied in each instance, and an administrative agency such as a planning and zoning commission may act upon its own knowledge and observation, as well as the evidence presented to it at a

hearing.

**Judges:** [\*1] Michael E. Riley, J.

**Opinion by:** Michael E. Riley

## Opinion

### MEMORANDUM OF DECISION

The plaintiff, D'Amato - Canterbury, LLC, appeals from the decision of the defendant, the town of Canterbury planning and zoning commission, which denied the plaintiff's application for subdivision approval for a five-lot subdivision of its real property located on the southwesterly side of Phinney Lane in Canterbury.

By way of application, dated October 10, 2006, the plaintiff, D'Amato - Canterbury, LLC, applied for subdivision approval with the defendant, the town of Canterbury planning and zoning commission, for a subdivision of a portion of a 153-acre lot, located on the southwesterly side of Phinney Lane in Canterbury, into five residential building lots, with the associated construction of approximately 1,500 linear feet of new town road. (Return of Record [ROR], Item A.) A public hearing was held on November 9, 2006; (ROR, Item X); and on various dates thereafter; (ROR, Items BB, FF, LL and YY); concluding on April 12, 2007 (ROR, Item FFF). On June 14, 2007, the defendant reached a **tie** vote, failing to approve the application. (ROR, Item JJJ.) The plaintiff appealed this **decision** to the Superior Court, and the appeal was [\*2] tried to the court on May 18, 2009.

[HN1](#) [↑] [General Statutes § 8-8\(b\)](#) governs appeals from decisions of planning and zoning commissions to the Superior Court. "A statutory right to appeal may be taken advantage of only by strict compliance with the statutory provisions by which it is created." (Internal quotation marks omitted.) [Cardoza v. Zoning Commission, 211 Conn. 78, 82, 557 A.2d 545 \(1989\)](#).

"It is well settled that [HN2](#) [↑] [p]leading and proof of aggrievement are prerequisites to a trial court's jurisdiction over the subject matter of an administrative appeal ... It is [therefore] fundamental that, in order to have standing to bring an administrative appeal, a person must be aggrieved ... Aggrievement presents a question of fact for the trial court and the party alleging aggrievement bears the burden of proving it." (Internal

quotation marks omitted.) [Alvord Investment, LLC v. Zoning Board of Appeals, 282 Conn. 393, 399-400, 920 A.2d 1000 \(2007\)](#). A plaintiff may prove aggrievement by testimony at the time of trial; [Winchester Woods Associates v. Planning & Zoning Commission, 219 Conn. 303, 308, 592 A.2d 953 \(1991\)](#); or "by the production of the original documents or certified copies from the record." [\*3] (Internal quotation marks omitted.) [Quarry Knoll II Corp. v. Planning & Zoning Commission, 256 Conn. 674, 703, 780 A.2d 1 \(2001\)](#).

[HN3](#) [↑] "Two broad yet distinct categories of aggrievement exist, classical and statutory. Classical aggrievement requires a two part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the [controversy], as opposed to a general interest that all members of the community share. Second, the party must also show that the [alleged conduct] has specially and injuriously affected that specific personal or legal interest ...

[HN4](#) [↑] "Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) [Pond View, LLC v. Planning & Zoning Commission, 288 Conn. 143, 156, 953 A.2d 1 \(2008\)](#). The standard for statutory aggrievement in zoning appeals is set forth in [General Statutes § 8-8\(a\)\(1\)](#), which provides in relevant part: [HN5](#) [↑] "In the case of a decision by a ... planning and zoning commission 'aggrieved [\*4] person' includes any person owning land that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board."

In the complaint, the plaintiff alleges that it "is aggrieved by the action of the [defendant] in that ... [it] is the owner of real property ... which was the subject of the subdivision application ..." (Complaint, P10.) At trial, the plaintiff presented a certified copy of a statutory quit claim deed demonstrating that the plaintiff is the owner of the subject property. (Plaintiff's Exhibit 1.) From this undisputed evidence, the plaintiff is classically aggrieved by the defendant's decision because, as the owner of the subject property, the plaintiff has demonstrated that it has a specific, personal and legal interest in the subject matter of the defendant's decision. Further, as the applicant whose application to develop that property has been denied, the plaintiff has demonstrated that the defendant's decision has specially and injuriously affected that specific, personal

or legal interest.

[HN6](#)<sup>[↑]</sup> Pursuant to [General Statutes § 8-8\(b\)](#), an "appeal shall be commenced by service of process in accordance with [subsections \(f\)](#) and [\(g\)](#) of this [\[\\*5\]](#) section within fifteen days from the date that notice of the decision was published as required by the general statutes." [General Statutes § 8-8\(f\)](#) provides in relevant part: "Service of legal process for an appeal under this section shall be directed to a proper officer and shall be made as follows: ... (2) For any appeal taken on or after October 1, 2004, process shall be served in accordance with [subdivision \(5\) of subsection \(b\) of section 52-57](#)." [General Statutes § 52-57\(b\)](#) provides that "[p]rocess in civil actions against the following-described classes of defendants shall be served as follows: ... (5) against a board, commission, department or agency of a town, city or borough, notwithstanding any provision of law, upon the clerk of the town, city or borough, provided two copies of such process shall be served upon the clerk and the clerk shall retain one copy and forward the second copy to the board, commission, department or agency ..."

The defendant published notice of its decision on June 19, 2007. (Complaint, P9; Answer, P9; ROR, Item KKK.) The plaintiff commenced this action by service of two copies of process on the Canterbury town clerk on June 26, 2007. (Marshal's Return.) [\[\\*6\]](#) Accordingly, the appeal is timely and that service of process was proper.

"It is well settled that [HN7](#)<sup>[↑]</sup> a court, in reviewing the actions of an administrative agency, is not permitted to substitute its judgment for that of the agency or to make factual determinations on its own." (Internal quotation marks omitted.) [R&R Pool & Patio, Inc. v. Zoning Board of Appeals, 257 Conn. 456, 470, 778 A.2d 61 \(2001\)](#). "In appeals from administrative zoning decisions, the commission's conclusions will be invalidated only if they are not supported by substantial evidence in the record." (Internal quotation marks omitted.) [Heithaus v. Planning & Zoning Commission, 258 Conn. 205, 221, 779 A.2d 750 \(2001\)](#).

[HN8](#)<sup>[↑]</sup> "A subdivision application is subject to the commission's administrative authority. A municipal planning commission, in exercising its function of approving or disapproving any particular subdivision plan, is acting in an administrative capacity and does not function as a legislative, judicial or quasi-judicial agency ... The commission is entrusted with the function of interpreting and applying its zoning regulations ... The trial court must determine whether

the commission has correctly interpreted its regulations [\[\\*7\]](#) and applied them with reasonable discretion to the facts ... The plaintiffs have the burden of showing that the commission acted improperly ... The trial court can sustain the [plaintiffs'] appeal only upon the determination that the decision of the commission was unreasonable, arbitrary or illegal ... It must not substitute its judgment for that of the ... commission and must not disturb decisions of local commissions as long as honest judgment has been reasonably and fairly exercised ... [HN9](#)<sup>[↑]</sup> It is an appellate court function to determine whether the judgment of the trial court was clearly erroneous or contrary to the law; appellate review excludes the retrial of the facts ... The Appellate Court does not determine whether the trier of facts could have reached a conclusion other than the one reached. It looks both at the conclusion reached and the method by which it was reached to determine whether that conclusion is correct and factually supported ...

[HN10](#)<sup>[↑]</sup> "Conclusions reached by the commission must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the agency. The [\[\\*8\]](#) question is not whether the trial court would have reached the same conclusion, but whether the record before the agency supports the decision reached ... [The] so-called substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred ... [I]t must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." (Citations omitted; internal quotation marks omitted.) [King's Highway Associates v. Planning & Zoning Commission, 114 Conn. App. 509, 514-16, 969 A.2d 841 \(2009\)](#).

The plaintiff appeals on the ground that the defendant exceeded its statutory authority and acted illegally, arbitrarily and in abuse of its discretion in one or more of the following ways: (a) the defendant "disregarded and failed to consider evidence submitted by the [plaintiff] into the public hearing record"; (b) the defendant denied the plaintiff's application despite the fact that the application was "in all material [\[\\*9\]](#) respects in compliance with the requirements of the Canterbury Zoning Regulations and Subdivision Regulations"; (c) the defendant "failed to state any reasons whatsoever

for its failure to approve the ... application" <sup>1</sup>; (d) the defendant's denial of the plaintiff's application "is not reasonably supported by the evidence submitted into the public hearing record"; and, (e) the defendant "failed to consider and/or apply the appropriate standards of administrative review in considering the ... application for subdivision approval." (Complaint, P11.) In considering these claims, this court must determine whether the defendant's denial of the plaintiff's application has a valid basis in its regulations and is supported by the record.

Due to the very nature [\*10] of a tie vote, the defendant could not state formal, official or collective reasons for its decision. See [Hall v. Planning & Zoning Board, 153 Conn. 574, 576, 219 A.2d 445 \(1966\) \(HN11\)](#) "[i]n such a case [as a tie vote] the board, as a body, [can] give no reason for its failure to act although the result [amounts] to a rejection of the application". "When the zoning body fails to state reasons for its decision on the record, the reviewing court has a duty to search the entire record before it to find a basis for the board's decision." [Hescock v. Zoning Board of Appeals, 112 Conn.App. 239, 249, 962 A.2d 177 \(2009\)](#). Accordingly, the court must search the entire record to determine if there is substantial record evidence to support the defendant's decision.

In their briefs, the parties discuss three possible reasons for the defendant's decision to deny the plaintiff's application for subdivision approval: (1) safety concerns regarding the intersection of a proposed cul-de-sac with an existing dead end street; (2) compliance issues as to § 4.21(D) of the subdivision regulations, which pertains to the permissible length of dead end streets; and, (3) controversy about open space. The latter reasons [\*11] will not be considered in this memorandum because the defendant's safety concerns regarding the proposed cul-de-sac are supported by the record, and the denial of the application has a valid basis in the subdivision regulations.

"It is well established that, [HN12](#) as a creation of the state, a municipality [whether acting itself or through its

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<sup>1</sup> This argument will not be addressed in this memorandum, as the plaintiff correctly acknowledges in its brief that "[i]n those instances in which a municipal land use commission fails to state, or is unable to state, the reasons for its decision, the Trial Court is required to glean the record of the proceedings before the commission to determine whether there was an evidentiary basis for the commission's action ..." (Plaintiff's brief, p. 13.)

planning and zoning commission] has no inherent powers of its own ... and that [it] possesses only such rights and powers that have been granted expressly to it by the state ... Thus, while the state may have inherent power to regulate in the interest of public health, safety, morality and welfare ... [i]n connection with [municipal regulations], it is a cardinal principle of construction that provisions and amendments must be enacted pursuant to the ... enabling statute ... In determining whether a particular regulation [is] within the authority of the commission to enact, [therefore] we do not search for a statutory prohibition against such an enactment; rather, we must search for statutory authority for the enactment ... In addition, because subdivision regulations adopted by a planning and zoning commission are in derogation of common-law property rights, the [\*12] scope of the enabling statute granting the power to adopt such regulations should not be extended by construction beyond the fair import of its language, or to include by implication that which is not clearly within its express terms." (Citations omitted; internal quotation marks omitted.) [Buttermilk Farms, LLC v. Planning & Zoning Commission, 292 Conn. 317, 326-27, 973 A.2d 64 \(2009\)](#).

[General Statutes § 8-25\(a\)](#) provides in relevant part: [HN13](#) "No subdivision of land shall be made until a plan for such subdivision has been approved by the commission ... Before exercising the powers granted in this section, the commission shall adopt regulations covering the subdivision of land ... Such regulations shall provide that the land to be subdivided shall be of such character that it can be used for building purposes without danger to health or the public safety, that proper provision shall be made for water, sewerage and drainage ... and that the proposed streets are in harmony with existing or proposed principal thoroughfares shown in the plan of conservation and development as described in [section 8-23](#), especially in regard to safe intersections with such thoroughfares, and so arranged and of such width, as to [\*13] provide an adequate and convenient system for present and prospective traffic needs."

[HN14](#) Section 1.10 of the subdivision regulations echoes the language of [General Statutes § 8-25\(a\)](#), and provides that the purpose of the rules governing the subdivision of land in the town of Canterbury is to protect "the safety, convenience, and welfare of the inhabitants of Canterbury by ensuring that the land to be subdivided shall be of such a character that it can be used for building purposes without danger to health for the safety of the public ..." Section 4.21(A) of the



subdivision regulations further provides: "No subdivision of land requiring the layout and establishment of new streets shall be made unless the proposed layout of new streets is in harmony with existing or proposed streets, particularly in regard to safe intersections and so arranged as to provide an adequate and convenient system for present and prospective traffic and maintenance."

As early as October 20, 2006, Towne Engineering, Inc. (Towne Engineering) began advising the defendant of its concerns regarding the intersection of the proposed cul-de-sac, Winding Trail, with the existing road, Phinney Lane. Towne Engineering stated: **[\*14]** "If the [northerly] curb line [of Phinney Lane] is changed as proposed, it would create a very difficult movement for the Town trucks as they plow snow past Winding Trail, may compromise school bus access to the terminus of Phinney Lane, and may require a stopped intersection for east bound traffic from the terminus of Phinney Lane." (ROR, Item Q, p. 3.) At the public hearing on January 11, 2007, resident Arlene Maynard also voiced concerns about the intersection: "I'm very concerned about the ability to see around this corner coming past that road because this is a very sharp corner and it's a place where cars often, it's rare to meet a car because there's so few residents on this road but this is a dangerous corner where you're going to be cutting this road ... I'm concerned about coming down and having someone crossing my path and going into that road on a road that's not that well kept in the winter time and not being able to slow down." (ROR, Item LLL, pp. 12-13.)

Despite having received revised plans and supplemental materials from the plaintiff, which proposed a stop sign, stop bar and intersection signage for those vehicles traveling easterly on Phinney Lane at the proposed intersection **[\*15]** of Winding Trail, Towne Engineering remained troubled by safety concerns regarding the intersection. (ROR, Item RR, pp. 1-2.) By way of letter, dated February 8, 2007, Towne Engineering recommended that a stop sign, stop bar and stop ahead warning sign be added to the westerly bound lane on Phinney Lane to be located at the intersection with the proposed Winding Trail. (ROR, Item RR, p. 2.) It expressed its concern that "[e]ven if additional sight line is created on the northerly side of Phinney Lane ... there will remain the potential for conflicts with vehicles who may not choose to stop while traveling easterly on Phinney Lane at the stop sign or may not be able to stop due to slick road conditions." (ROR, Item RR, p. 2.) Towne Engineering noted that the first selectman and the director of public works believed

that "it was not wise to install stop signs on Phinney Lane in either direction due to the steep grades of the existing road that exist in this proposed intersection location ..." (ROR, Item RR, p. 2.) Towne Engineering concluded its letter by stating that it did "remain concerned over the safety of the current intersection as proposed." (ROR, Item RR, p. 5.)

At the public hearing **[\*16]** on March 8, 2007, resident Maynard spoke at great length about her concerns regarding the intersection: "The tarred width of the road on the corner is [too] narrow to allow cars to easily move past [oncoming] traffic. A driver heading down the hill relies on putting the right tires of his or her vehicle off the pavement and [onto] the dirt shoulder. There is no shoulder on the other side of the road only ledge ... There's a drainage problem on Phinney Lane that included the lack of a crown to the section of the road on the hill. Water is able to flow across the road at the corner. This is problematic when there's snow plowed at the side of the road, the snow melts during the day resulting in water across the road and at night freezes up again ... [With respect to the proposed stop sign] going [uphill] on Phinney Lane ... [the] residents of upper Phinney Lane need momentum. I heard that out of every neighbor that's heard about the stop in order to reach the top of the hill during winter snow conditions ... A stop sign would undoubtedly increase the event of not making it to the top of the hill ... If we have difficulty moving up the hill in the winter imagine the residents of the Winding Trails **[\*17]** Estates first stopping and then needing to make a left turn to return home crossing the path of traffic coming down the hill in snowy conditions." (ROR, Item NNN, pp. 2-3.)

Following the public hearing on March 8, 2007, the plaintiff further revised the plans by relocating the new proposed intersection with Phinney Lane westerly, which would allow the plaintiff to build the intersection at the top of the hill and to make grading improvements to create the sightline required to exit the subdivision safely. (ROR, Item ZZ, p. 1.) Nevertheless, Towne Engineering noted in a letter to the defendant, dated April 10, 2007, that "[t]he one significant problem which remains is that as any vehicle which travels to the west on Phinney Lane with the intention of turning left into Winding Trail, will not see any eastbound vehicles traveling on Phinney Lane until he is almost at the intersection cross-over point unless additional significant site grading is still proposed and conducted on the Maynard property, sufficiently enough to create adequate cross-over sight distance in the westbound approach to this intersection." (ROR, Item ZZ, p. 1.)

Although the plaintiff had added a stop sign, stop bar [\*18] and stop ahead sign for the eastbound vehicles traveling on Phinney Lane at Towne Engineering's request, Towne Engineering noted that "[a] safer alternative to this design limitation would be to conduct a significant [regrading] of the Maynard property adequate to create the sightline necessary to eliminate the need to provide for the stop sign now proposed which would obviously require the cooperation of that property owner." (ROR, Item ZZ, p. 2.) It added, in closing, that it did "remain somewhat concerned over the safety of the current intersection as proposed ..." (ROR, Item ZZ, p. 6.) After reviewing a detailed commentary from DLS Consulting Traffic Engineers, dated April 9, 2007, which discussed the safety of the proposed intersection, Towne Engineering stated in a subsequent letter to the defendant, dated April 12, 2007, that it saw "no reason in our Professional Opinion to question or change our comments and recommendations made to your Commission dated April 10, 2007." (ROR, Item CCC, p. 1.)

The defendant's concerns regarding the safety of the proposed intersection have a valid basis in its regulations and are supported by the record. The substantial evidence in the record shows [\*19] that although the plaintiff attempted to alleviate the defendant's concerns, safety issues surrounding the proposed intersection still remained. In a similar case involving a resubdivision application, the Supreme Court held in [\*Blakeman v. Planning Commission\*, 152 Conn. 303, 307-08, 206 A.2d 425 \(1965\)](#) that the defendant planning commission had reasonably concluded that a proposed intersection was not safe. The court stated: [HN15](#) [↑] "The conditions which might make an intersection unsafe are many and varied. No one standard could ever be adopted to cover adequately all future cases. Judgment and experience must be applied in each instance, and an administrative agency such as the defendant may act upon its own knowledge and observation, as well as the evidence presented to it at a hearing." [Id.](#), 307. The record contains substantial evidence in support of the defendant's safety concerns, which were pertinent to the considerations that the defendant was required to apply under the regulations.

For the foregoing reasons, the appeal is dismissed.

Riley, J.