



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

Web Site: portal.ct.gov/csc

VIA ELECTRONIC MAIL & CERTIFIED MAIL RETURN RECEIPT REQUESTED

August 2, 2024

Lee D. Hoffman, Esq.
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103-3702
lhoffman@pullcom.com

RE: **PETITION NO. 1589R** – 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. **Court-granted Voluntary Remand Regarding Connecticut Siting Council Vote on Final Decision.**

Dear Attorney Hoffman:

On May 20, 2024, the Connecticut Superior Court issued an order granting the Connecticut Siting Council (Council) and USS Somers Solar, LLC's May 16, 2024 Joint Motion for Voluntary Remand regarding the Council's February 1, 2024 vote on the above-referenced petition for a declaratory ruling.

By its Remand Decision and Order dated August 1, 2024, the Council voted to deny issuance of a declaratory ruling on the basis that development of the proposed facility site would have an adverse effect on air navigation and aviation safety.

The Council considered and identified adverse effects associated with the absence of a glare analysis, grounding study and written confirmation of the applicability or inapplicability of the Federal Aviation Administration structure marking/lighting scheme for the utility poles from the evidentiary record of the proposed facility proceeding demonstrate uncertainty as to the effects of the proposed facility on air navigation and aviation safety.

Enclosed are the Council's Remand Findings of Fact, Remand Opinion, and Remand Decision and Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Melanie A. Bachman".

Melanie A. Bachman
Executive Director

MAB/IN/dll

Enclosures (3)

- c: Service List, dated January 23, 2024
The Honorable Matthew J. Budzik, Connecticut Superior Court
(Anastasia.Jordanopoulos@jud.ct.gov)
Assistant Attorney General Robert L. Marconi, Office of the Attorney General
(Robert.marconi@ct.gov)
The Honorable Lori L. Spielman, First Selectperson, Town of Ellington
(lspielman@ellington-ct.gov)
CGS §16-50j(g) State Agency Comment List
State Documents Librarian (csl.cda@ct.gov)

STATE OF CONNECTICUT }

: ss. Southington, Connecticut

August 2, 2024

COUNTY OF HARTFORD }

I hereby certify that the foregoing is a true and correct copy of the Remand Findings of Fact, Remand Opinion, and Remand Decision and Order in Petition No. 1589R issued by the Connecticut Siting Council, State of Connecticut.

ATTEST:



Melanie A. Bachman
Executive Director
Connecticut Siting Council

STATE OF CONNECTICUT }

: ss. New Britain, Connecticut

August 2, 2024

COUNTY OF HARTFORD }

I certify that a copy of the Remand Findings of Fact, Remand Opinion, and Remand Decision and Order in Petition No. 1589R has been forwarded by Certified First Class Return Receipt Requested mail, on August 2, 2024, to each party and intervenor, or its authorized representative, as listed on the attached service list, dated January 23, 2024.

ATTEST:



Dakota LaFountain
Office Assistant
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)
Petitioner	<input checked="" type="checkbox"/> E-mail	USS Somers Solar, LLC	Lee D. Hoffman, Esq. Pullman & Comley, LLC 90 State House Square Hartford, CT 06103-3702 (860) 424-4315 lhoffman@pullcom.com Dan Csaplar US Solar 100 N 6 th Street, Suite 410B Minneapolis, MN 55403 dan.csaplar@us-solar.com

PETITION NO. 1589R – 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. Court-granted Joint Motion for Voluntary Remand.	}	Connecticut
	}	Siting
	}	Council

August 1, 2024

Remand 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 CEQ¹ 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)

¹ 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 Resources² 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, DOAg³ 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)

² https://portal.ct.gov/-/media/CSC/3_Petitions-medialibrary/Petitions_MediaLibrary/MediaPetitionNos1501-1600/PE1589/Determinations/USS-Somers-Solar-LLC_Ellington_20220505_DEEP.pdf

³ 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 DOAg⁴ 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)

⁴https://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-feet 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) criteria⁵ 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)

⁵ <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)

Court-granted Voluntary Remand

206. On December 6, 2023, Dr. Thomas Near was appointed to the Council by the Governor as a public member with experience in the field of ecology. Dr. Near was not a member of the Council when the December 5, 2023 public hearing was held and did not participate in the proceeding. (CGS §4-1a, 4-9a and 16-50j (2023); Council Membership, updated to April 26, 2024; Record)
207. On January 4, 2024, Mr. Chance Carter was appointed to the Council by the Governor as a public member. Mr. Carter was not a member of the Council when the December 5, 2023 public hearing was held and did not participate in the proceeding. (CGS §4-1a, 4-9a and 16-50j (2023); Council Membership, updated to April 26, 2024; Record)
208. During a regular meeting held on January 18, 2024, the Council conducted a non-binding straw poll vote of the Council members present on the proposed final decision. Dr. Near stated that he read the record for the proceeding. The straw poll vote resulted in 3 Council members in favor of the proposed facility; 2 Council members opposed to the proposed facility; and 2 Council members absent. (January 18, 2024 Council Meeting Minutes)
209. The Presiding Officer directed Council staff to draft a favorable Opinion and Decision and Order to be reviewed at the next regular meeting. (January 18, 2024 Council Meeting Minutes)
210. During a regular meeting held on February 1, 2024, the Council did not issue a declaratory ruling for the proposed solar photovoltaic electric generating facility. Due to a tie, with 3 Council members in favor of the proposed facility; 3 Council members opposed to the proposed facility; and 1 Council member abstaining, the final vote failed. (February 1, 2024 Council Meeting Minutes; Council February 1, 2024 Final Decision)
211. On February 16, 2024, pursuant to CGS §4-181a(a), USS submitted a Motion for Reconsideration to the Council requesting a new vote be taken on the petition for a declaratory ruling. (Record)
212. During a regular meeting held on February 29, 2024, the Council considered and denied, by a vote of five to one, USS' February 16, 2024 Motion for Reconsideration of the Council's February 5, 2024 final decision not to issue a declaratory ruling. (Record; February 29, 2024 Council Meeting Minutes)
213. On April 15, 2024, pursuant to CGS §4-183, USS filed an appeal of the Council's February 1, 2024 final decision in the New Britain Superior Court (Court) (*USS Somers Solar, LLC v. Conn. Siting Council*, HHB-CV-6085674-S)
214. On April 26, 2024, Khristine Hall was appointed to the Council by the Governor as a public member with experience in the field of ecology. (CGS §4-1a, 4-9a and 16-50j (2023); Council Membership, updated to April 26, 2024)
215. On May 16, 2024, the Council and USS submitted to the Court a Joint Motion for Voluntary Remand Regarding the Council Vote on the Final Decision for Petition No. 1589 requesting an opportunity for the Council to provide clarification and/or reconsideration of the final decision due to changed conditions. (*USS Somers Solar, LLC v. Conn. Siting Council*, HHB-CV-6085674-S)

216. On May 20, 2024, the Court issued an order granting the Council and USS' May 16, 2024 Joint Motion for Voluntary Remand regarding the Council's February 1, 2024 vote on the Petition. (*USS Somers Solar, LLC v. Conn. Siting Council*, HHB-CV-6085674-S)
217. Also on May 20, 2024, the Council issued a memorandum to the service list related to the Court-granted Joint Voluntary Remand and posted the memorandum on its website. It indicated the Council would place the matter on a future regular meeting agenda for a new vote consistent with the Court-granted voluntary remand. (Record)
218. On May 22, 2024, Council Member Chance Carter read the record of the proceeding. (Carter Per Diem Reimbursement Sheet for May 2024)
219. On June 18, 2024, Council Member Khristine Hall read the record of the proceeding. (Hall Per Diem Reimbursement Sheet for June 2024)
220. During a regular meeting held on July 18, 2024, the Council conducted a non-binding straw poll vote on the proposed remand decision that resulted in 2 votes in favor of the Project, 2 votes in opposition of the Project, and 1 abstention. (Council July 18, 2024 Meeting Minutes)
221. On July 18, 2024, the Council issued a memorandum to the service list requesting written comments on the proposed remand decision by July 25, 2024. No comments were received. (Record)

Figure 1 – Site Location

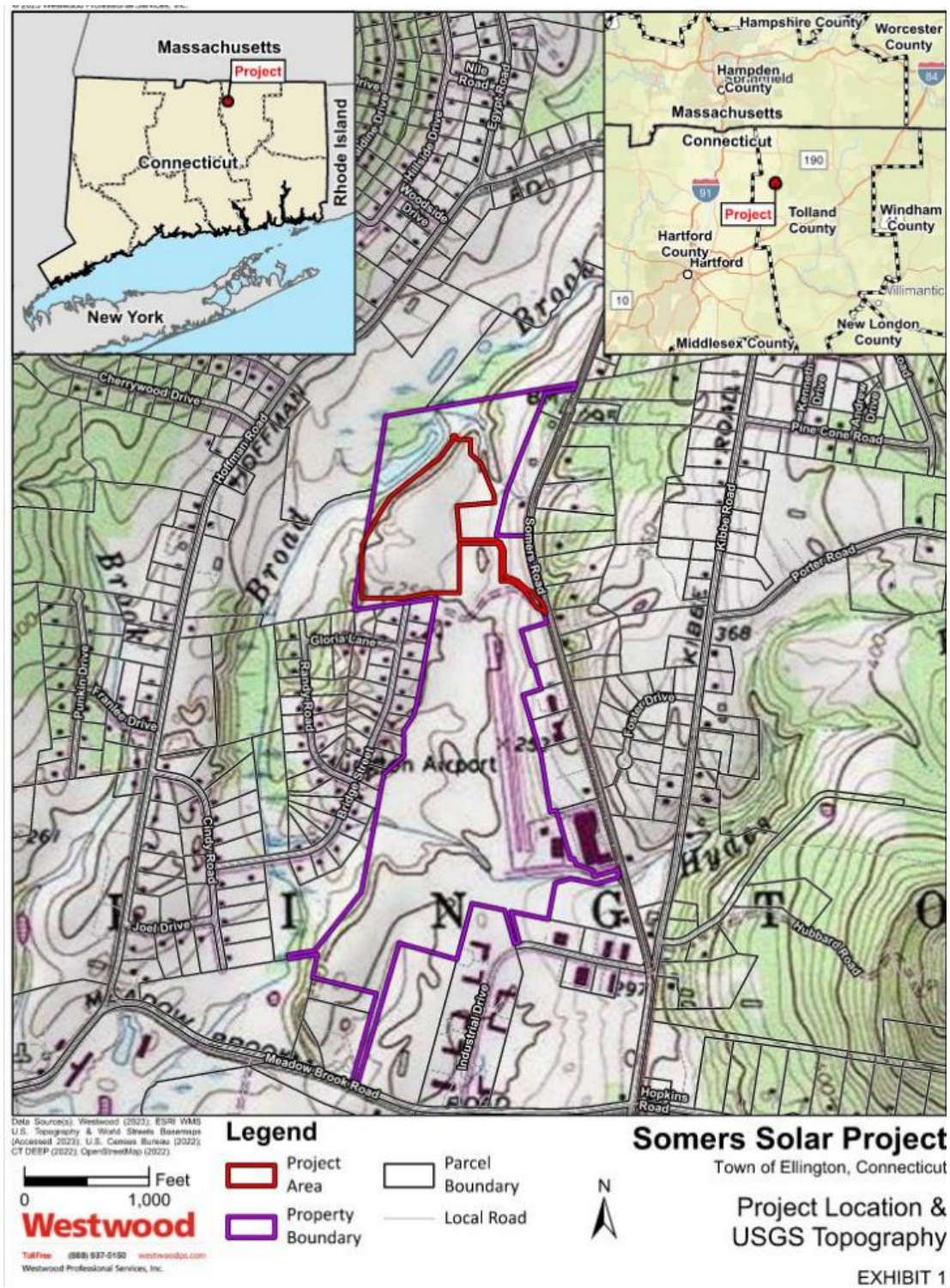
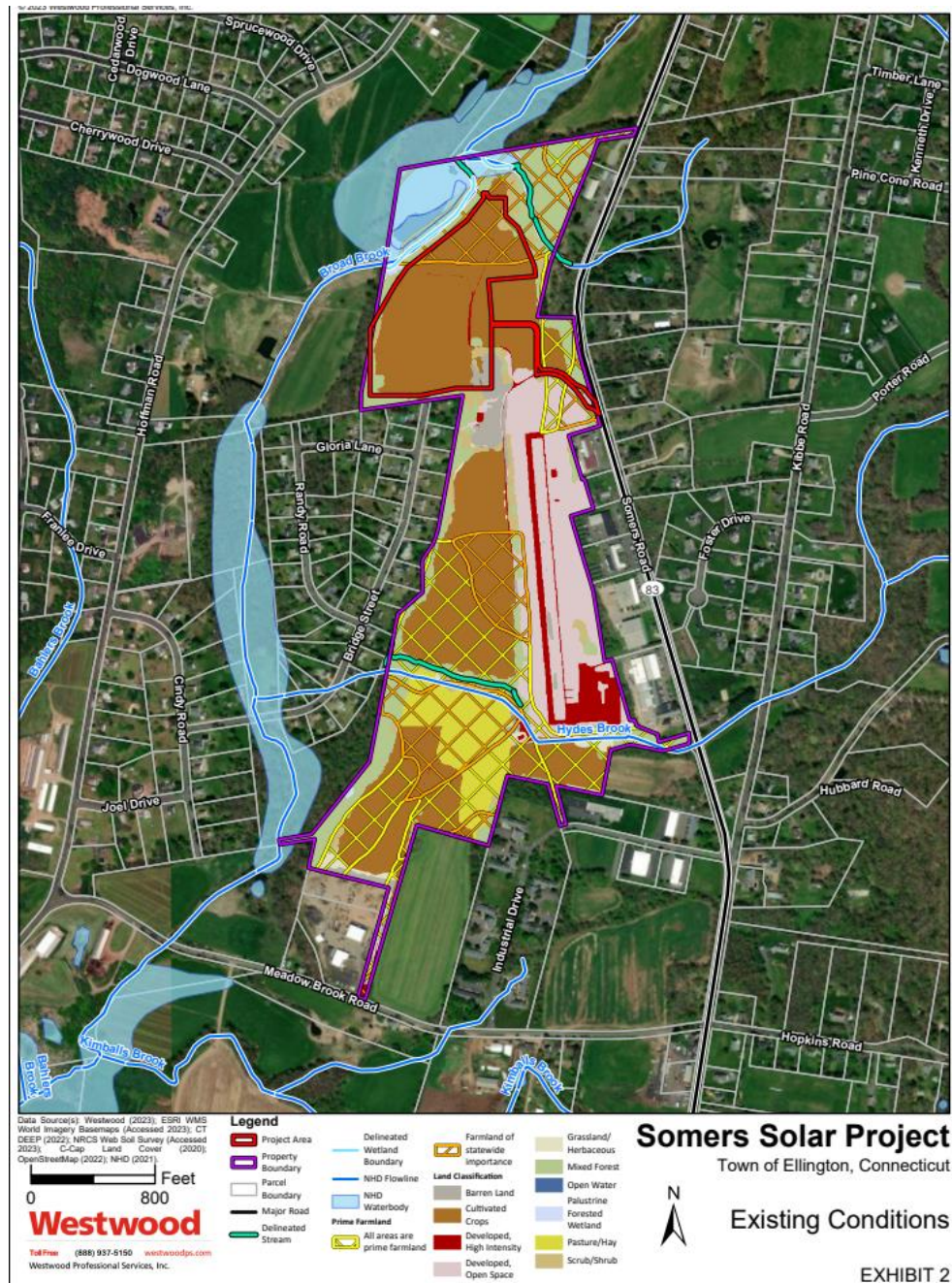
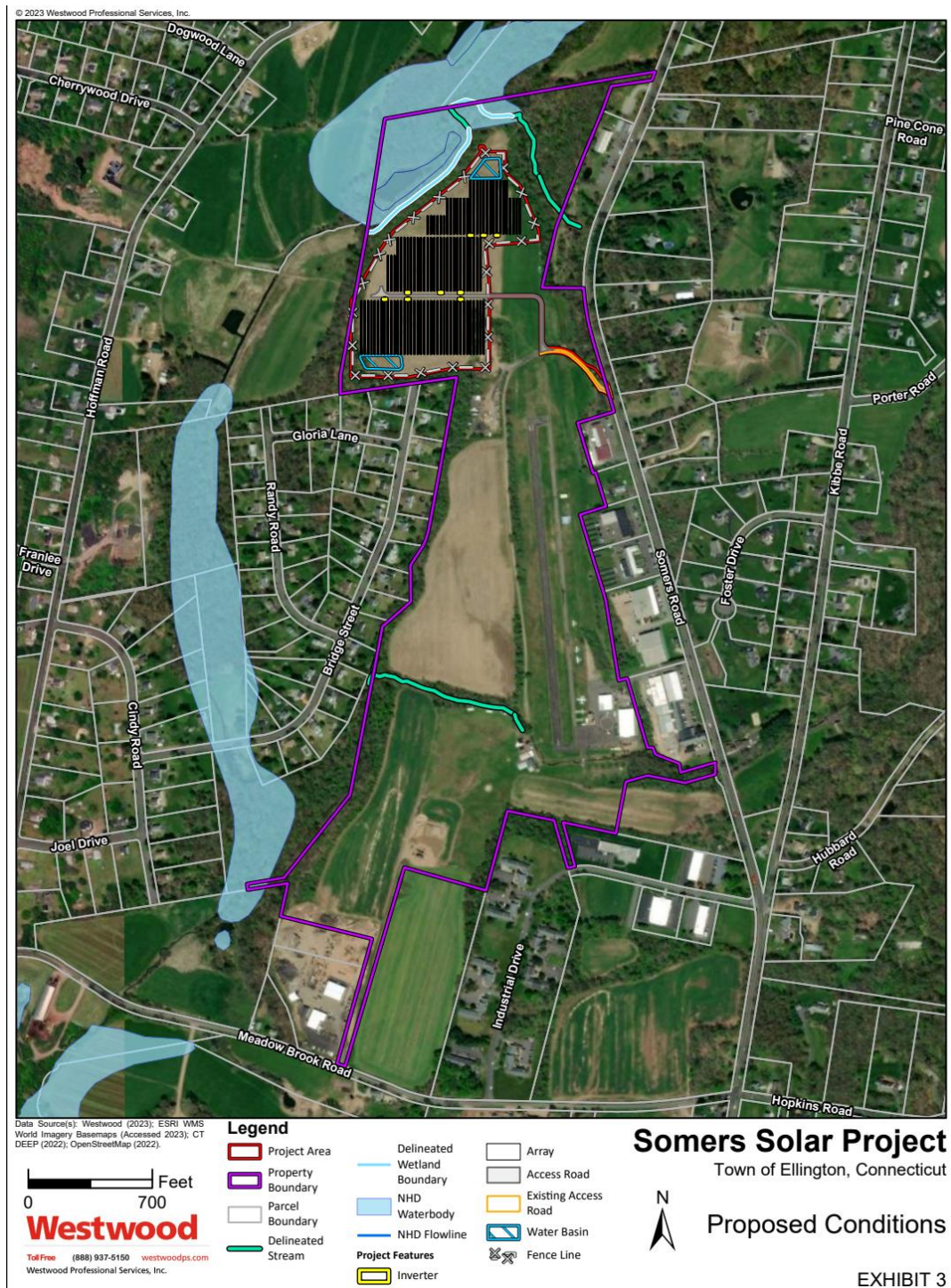


Figure 2- Existing Conditions



Wetland delineation. (USS 1, Attachment B)

Figure 3 – Proposed Facility Conditions



(USS 1, Attachment B)

PETITION NO. 1589R – 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. Court-granted Joint Motion for Voluntary Remand.	} Connecticut Siting Council August 1, 2024
--	--

Remand 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).

During a regular meeting held on February 1, 2024, the Council did not issue a declaratory ruling for this Petition due to a tie vote. On February 16, 2024, pursuant to CGS §4-181a(a), USS submitted a Motion for Reconsideration to the Council requesting a new vote be taken on the Petition. The Council denied the Motion for Reconsideration during a regular meeting held on February 29, 2024.

USS filed an appeal of the Council's February 5, 2024 final decision on the Petition in the New Britain Superior Court (Court) on April 15, 2024. On May 16, 2024, USS and the Council filed a Joint Motion for Voluntary Remand with the Court requesting an opportunity for the Council to reconsider its February 5, 2024 final decision. The Court granted the Joint Motion for Voluntary Remand on May 20, 2024.

Also on May 20, 2024, the Council issued a memorandum to the service list related to the Court-ordered Joint Voluntary Remand and the placement of the Petition on a future regular meeting agenda for a new vote.

During a regular meeting held on July 18, 2024, the Council conducted a non-binding straw poll vote on the proposed remand decision that resulted in 2 votes in favor of the Project, 2 votes in opposition to the Project, and 1 abstention.

On July 18, 2024, the Council issued a memorandum to the service list requesting written comments on the proposed remand decision by July 25, 2024. No comments were received.

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 facility¹.

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.

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

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 be an adverse effect on air navigation and aviation safety 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 not issue a declaratory ruling for the proposed Project.

PETITION NO. 1589R – USS Somers Solar, LLC petition for a declaratory } Connecticut
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 } Siting
photovoltaic electric generating facility located at 360 Somers Road, Ellington, }
Connecticut, and associated electrical interconnection. **Court-granted Joint** } Council
Motion for Voluntary Remand.

August 1, 2024

Remand Decision and Order

Pursuant to Connecticut General Statutes (CGS) § 16-50k(a), CGS §4-176 and the foregoing **Remand** Findings of Fact and **Remand** Opinion, the Connecticut Siting Council (Council) finds that the construction, maintenance and operation of a 3.0-megawatt AC solar photovoltaic electric generating facility and associated electrical interconnection located at 360 Somers Road, Ellington, Connecticut, would have an adverse effect on air navigation and aviation safety, and therefore, the Council will not issue a declaratory ruling and hereby denies the petition for a declaratory ruling for the proposed solar photovoltaic electric generating facility.

The Council finds that the absence of a glare analysis, grounding study and written confirmation of the applicability or inapplicability of the Federal Aviation Administration structure marking/lighting scheme for the utility poles from the evidentiary record of the proposed facility proceeding demonstrates uncertainty as to the effects of the proposed facility on air navigation and aviation safety.

We hereby direct that a copy of the **Remand** Findings of Fact, **Remand** Opinion, and **Remand** Decision and Order be served on each person listed in the Service List, dated January 23, 2024 and notice of issuance published in The Journal Inquirer.

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

CERTIFICATION

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. 1589R** – 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, Court-granted Voluntary Remand Regarding the Council Vote on the Final Decision, and voted as follows on the petition for a declaratory ruling for the proposed facility site:

<u>Council Members</u>	<u>Vote Cast</u>
<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/ Daniel P. Lynch, Jr.</u> Daniel P. Lynch, Jr.	Absent
<u>/s/ Thomas Near</u> Thomas Near	Absent
<u>/s/ Chance Carter</u> Chance Carter	Absent
<u>/s/ Khristine Hall</u> Khristine Hall	No
<u>/s/ Bill Syme</u> Bill Syme	No

Dated at New Britain, Connecticut, August 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

Web Site: portal.ct.gov/esc

VIA ELECTRONIC MAIL

August 2, 2024

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

FROM: Dakota LaFountain, Office Assistant *DL*

RE: **PETITION NO. 1589R** – 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. **Court-granted Voluntary Remand Regarding Connecticut Siting Council Vote on Final Decision.**

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

Please send an affidavit of publication and invoice to my attention.

Thank you.

dll



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

Web Site: portal.ct.gov/esc

NOTICE

Pursuant to a Connecticut Superior Court order, dated May 16, 2024, granting the Connecticut Siting Council (Council) and USS Somers Solar, LLC's Joint Motion for Voluntary Remand regarding the Council's February 1, 2024 vote on the petition for a declaratory ruling from USS Somers Solar, LLC 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, the Council announces that, on August 1, 2024, the Council issued Remand Findings of Fact, a Remand Opinion, and a Remand Decision and Order denying this petition, pursuant to Conn. Gen. Stat. §4-176 and §16-50k. This petition record is available for public inspection in the Council's office, Ten Franklin Square, New Britain, Connecticut.