Written Testimony of the Connecticut Siting Council
Submitted to the Environment Committee

In Reference to Raised Bill No. 102
An Act Concerning Minor Revisions to the Environmental Protection and Agriculture-Related Statutes
February 23, 2018

Good afternoon Senator Kennedy, Senator Miner, Representative Demicco, ranking and distinguished members of the Environment Committee. Thank you for the opportunity to provide testimony in connection with Raised Bill No. 102.

The Connecticut Siting Council (Council) has jurisdiction over the construction, operation and maintenance of electric generating facilities utilizing renewable energy sources with a generating capacity of more than 1 megawatt. During the last session, the Council provided written testimony in opposition to Raised Bill 943, AAC the Installation of Certain Solar Facilities on Productive Farmlands, on the basis of adverse impacts to property rights, economics, policies, the environment and electric system reliability.[1]

Section 7 of this bill proposes to substitute the term "permanently" for the term "materially" in describing potential impacts of solar development on prime farmland and core forestland. Yet, neither term is defined.[2]

The Council recommends Raised Bill No. 102 clarify the existing statutory language to address the following matters:

Encouragement of Forum Shopping: As written, subsection (a) of Section 16-50k requires a project developer to solicit written representation from ***EITHER*** the Department of Agriculture (DOAg) ***OR*** the Department of Energy and Environmental Protection (DEEP). This encourages forum shopping. If a project developer is unable to obtain the required representation from DOAg, the project developer could try to obtain the required representation from DEEP and vice versa. Or, the project developer could try to obtain the required representation from both agencies, and if both agencies provide representations, the developer could opt to utilize the representation most favorable to the development of the project. For example, if a project is proposed on prime farmland and DOAg does not provide the required representation that the project will not materially or permanently affect the status of prime farmland, the project developer could seek the required representation from DEEP that the proposed project does not materially or permanently affect the status of core forest.

Timing of the Written Representations: Written representations from DEEP or DOAg should precede any filing to the Council since the written representations define whether an application for a certificate or a petition for a declaratory ruling is to be submitted for a project. Under the Uniform Administrative Procedure Act (UAPA), a final decision on a petition for a declaratory ruling must be issued within 180 days from the date it is received. Even if a petition for a declaratory ruling is submitted to the Council without the required DEEP or DOAg written representation, the Council is legally required to process the petition for a declaratory ruling. This

[1] Written Testimony of the Council, March 6, 2017, https://www.cga.ct.gov/2017/ENVdata/Tmy/2017SB-00943-R000306-Stein,%20Robin%20,%20Chairman-Connecticut%20Siting%20Council-TMY.PDF

[2] Conn. Gen. Stat. §16-50p(g) "in the case of a facility… that is proposed to be installed on land under agricultural restriction… that the facility will not result in a **material decrease of acreage and productivity of arable land**."

entails bearing costs associated with notice requirements, expending resources for full staff review and usurpation of other scarce agency resources on a matter that would sit idle for lack of the required DEEP or DOAg representation until the 180-day final decision deadline, at which time the Council would be required to deny the petition for a declaratory ruling on the basis of lack of the required DEEP or DOAg representation. This bill should require project developers to submit a request to DEEP or DOAg in advance of submitting a petition for a declaratory ruling to the Council. Written representations from DEEP or DOAg should precede any filing to the Council because the DEEP or DOAg representations determine the type of filing submitted to the Council.

Deadline for Submission of Written Representation: As written, subsection (a) of Section 16-50k requires a project developer to obtain written representation from DEEP or DOAg that a proposed project **will not** materially affect the status of such land as prime farmland or core forestland. However, there is no reasonable timeframe provided for DEEP or DOAg to make this representation. This could be resolved by changing the language to require written representation from DEEP or DOAg that a proposed project **will** materially affect the status of such land, so that lack of a representation would be deemed not to materially affect the status of such land. Or, this could be resolved by requiring any solar project with a capacity greater than 2 megawatts to submit an application for a certificate, so the written representation requirement would be rendered moot. Or, this could be resolved by including a reasonable timeframe, such as 30 days, for DEEP or DOAg to issue the required representation, so the developer could submit the appropriate filing and the Council could render a final decision thereon within the applicable statutory deadline. In any case, rather than create uncertainty, clarification of the statutory language and/or development of a timeframe for the representations would provide guidance to the developer as to how and when to submit a project for review, as well as allow the Council to render a final decision within the applicable statutory deadline. Otherwise, the time, energy and resources of the project developer and the Council are unnecessarily expended.

Solar Projects Proposed on Brownfields and Landfills: As written, subsection (a) of Section 16-50k makes no exclusion for solar projects proposed on brownfields and landfills. Although the state encourages the siting of solar projects on brownfields and landfills, project developers currently seeking to build a solar project on a brownfield or landfill are subject to the DEEP or DOAg written representation requirement.

Judicial appeals: If the Council denies a petition for a declaratory ruling on the basis of lack of the required representation from DEEP or DOAg, the Council's final decision can be appealed to the Superior Court by the project developer. The Council has absolutely no control over whether or not DEEP or DOAg submit the required written representation to the developer, but the Council's final decision to deny a petition for a declaratory ruling can be appealed on this basis and neither DEEP nor DOAg could be named as defendants. As a result, an appeal not only unnecessarily expends the time, energy and resources of the Council, but also unnecessarily expends the time, energy and resources of the Superior Court.

In summary, Raised Bill No. 102 should take the opportunity to clarify the statutory language and address the matters of forum shopping, timing of written representations, deadline for submission of written representations, exclusion for solar projects proposed on brownfields and landfills, and judicial appeals.

Thank you again for the opportunity to provide testimony on this proposal. Should you have any questions or seek additional information, please feel free to contact Melanie Bachman at the Council's office at 860-827-2951 or Melanie.Bachman@ct.gov.

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