



# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

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August 31, 2018

Steve Broyer  
Windham Solar LLC  
c/o Ecos Energy LLC  
222 South 9<sup>th</sup> Street, Suite 1600  
Minneapolis, MN 55402

RE: **PETITION NO. 1220** - Windham Solar LLC Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance and operation of three 2.0 Megawatt and one 1.0 Megawatt Solar Photovoltaic Electric Generating facilities located at 1219 and 1240 Voluntown Road, Griswold, Connecticut.  
**Partial Development and Mangement Plan-Site Clearing Request.**

Dear Mr. Broyer:

At a public meeting of the Connecticut Siting Council (Council) held on August 30, 2018, the Council considered and approved the partial Development and Management (D&M) Plan submitted for this project on July 20, 2018, with the following conditions:

1. This approval is limited to the tree and brush clearing (and rock construction entrance work) on the eastern parcel (i.e. 1240 Voluntown Road) only;
2. Construction shall not commence until DEEP issues a General Permit for the project;
3. The final tree and brush clearing plans for 1219 Voluntown Road shall be submitted for Council review and approval in the future subsequent to the interconnection limitation concerns being resolved and/or when mitigating plans such as battery storage/tracking panels are firm; and
4. Final grubbing plans, grading plans, erosion and sedimentation control plans and other applicable materials shall be submitted in future phase(s) of the D&M Plan for Council review and approval.

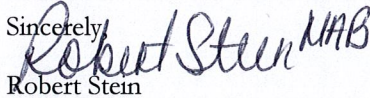
This approval applies only to the partial D&M Plan submitted on July 20, 2018 and other supplemental data dated July 25, 2018, August 1, 2018 and August 17, 2018. Requests for any changes to the partial D&M Plan shall be approved by Council staff in accordance with Regulations of Connecticut State Agencies (RCSA) §16-50j-62(b). Furthermore, the project developer is responsible for reporting requirements pursuant to RCSA §16-50j-62.

This decision is under the exclusive jurisdiction of the Council and is not applicable to any other modification or construction. All work is to be implemented as specified in the Council's decision on the petition dated June 24, 2016 and in the partial D&M Plan dated July 19, 2018.

Enclosed is a copy of the staff report on this partial D&M Plan, dated August 30, 2018.

Thank you for your attention and cooperation.

Sincerely,

  
Robert Stein

Chairman

RS/MP/lm

Enclosure: Staff Report, dated August 30, 2018

c: The Honorable Todd Babbitt, First Selectman, Town of Griswold  
Mario J. Tristany, Jr, Town Planner, Town of Griswold





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### Petition No. 1220

#### Windham Solar LLC

#### D&M Plan – Site Clearing

1219 and 1240 Voluntown Road, Griswold

#### Staff Report

August 30, 2018

### Introduction

On June 24, 2016, the Connecticut Siting Council (Council) issued a Declaratory Ruling to Windham Solar LLC (WS), pursuant to Connecticut General Statutes §4-176 and §16-50k, for the construction, maintenance, and operation of an approximately 7 megawatt (MW) alternating current (AC) solar photovoltaic generating facility at 1219 and 1240 Voluntown Road, Griswold, Connecticut. In its Declaratory Ruling, the Council required WS to submit a Development and Management Plan (D&M Plan). On July 20, 2018, WS submitted its request for tree clearing (Site Clearing Request) for this project as its first phase of the D&M Plan. In accordance with Condition 1 of the Council's Declaratory Ruling, WS submitted a copy of Site Clearing Request to the Town of Griswold on or about July 19, 2018. No comments have been received from the Town of Griswold to date.

The Council issued interrogatories to WS on July 20, 2018. WS submitted responses to Council interrogatories on July 25, 2018. The Council issued a second set of interrogatories to WS on August 1, 2018. WS submitted responses to those additional interrogatories on the same day.

During a regular Council meeting held on August 2, 2018, the Council voted to table the matter for further information regarding soil erosion control measures. On the same date, Oswald Inglese, Director of the Water Permitting and Enforcement Division of the Department of Energy and Environmental Protection (DEEP), submitted correspondence to the Council's Executive Director urging the Council to deny WS's request or continue the matter to the Council's next regular meeting to be held on August 30, 2018 "so that additional information can be collected."

The August 2, 2018 DEEP correspondence indicated that WS's July 20, 2018 request "does not present sufficient detail about how the proposed clearing activities would be accomplished or how the site will [be] stabilized should soil disturbance occur as a result of heavy equipment or unanticipated conditions in the field." DEEP contends such activity cannot occur without DEEP's approval under the General Permit. The August 2, 2018 DEEP correspondence also references that WS is currently the subject of an ongoing enforcement action, specifically a Cease and Desist Order for violations of a General Permit issued for a completely different solar project WS owns and operates at 1 Williams Crossing in Lebanon and Franklin. DEEP indicated that although WS has made efforts to stabilize the site in Lebanon and Franklin, WS has not fully and properly implemented the required stormwater controls at the site.

On August 3, 2018, the Council issued a third set of interrogatories to WS. Interrogatory No. 7 requested WS respond to the August 2, 2018 DEEP correspondence. WS submitted responses to the third set of Council interrogatories on August 17, 2018, including a 100-page response to the August 2, 2018 DEEP correspondence from Thomas Melone, Esq., President and General Counsel of Allco Renewable Energy Limited (Allco), the parent company of WS.

In its response, Allco states that the General Permit should not be applicable to WS's July 20, 2018 request for two reasons:

1. The responses to Council interrogatories nos. 1-6 explain the method of proposed tree clearing and the minimal amount of disturbance that may result; and
2. The General Permit refers to "clearing and grubbing," which is defined as the complete removal of trees including stumps, but WS's request is to cut trees without removing the stumps, which is defined as "timbering."



Affirmative Action / Equal Opportunity Employer



The remainder of WS's response to the August 2, 2018 DEEP correspondence addresses DEEP's discussion of the Lebanon/Franklin projects, Allco's challenges to DEEP's energy policies and how DEEP has addressed stormwater issues in consent orders.

By letter dated August 28, 2018, DEEP states that the clear cutting of approximately 22.7 acres of trees and 11.2 acres of brush is a construction activity required to be covered by a General Permit. DEEP is concerned that, despite the use of tracked equipment, the use of other trucks and equipment to haul away trees and wood chips would cause rutting and compaction and hardening of soils.

DEEP notes that, once activity at a site commences and stormwater flow is impacted, it is a challenge to slow it down and reverse course. A site may appear stable, but continued activity across the site may compact soils and lead to unanticipated runoff that causes erosion and sedimentation beyond the project limits. DEEP asserts that this risk would be minimized through compliance with an approved Stormwater Pollution Control Plan (SWPCP) and associated best management practices under the General Permit.

### **Project Site**

The project will be located on two different properties on Voluntown Road (Route 138). The western property is an approximately 32.7-acre parcel owned by PLH, LLC and located south of Route 138 and east of Latham Drive at 1219 Voluntown Road. The eastern property is an approximately 17.4-acre parcel owned by PLH, LLC and located north of Route 138 and west of Hopeville Road (Route 201) at 1240 Voluntown Road. The total combined area of both parcels is 50.1 acres, and both parcels are zoned C-1 Village Commercial District. The western parcel is largely wooded and undeveloped except for a clearing in the southwestern portion of the parcel. The eastern parcel is largely cleared on the western side and wooded on most of the eastern side, except for the southeastern corner.

The approved solar project includes four solar arrays. On the eastern property, WS has two arrays known as Project 1 and Project 2. Project 1 is a 1.0 MW AC array, and Project 2 is a 2.0 MW AC array, for a total of 3.0 MW. On the western parcel, WS has two arrays known as Future 1 and Future 2. Both Future 1 and Future 2 are 2.0 MW AC arrays, for a total of 4.0 MW.

### **Site Clearing Request**

The Site Clearing Request contains three tree clearing areas and three brush clearing areas to accommodate all four arrays. One 6.9-acre brush clearing area would be located in the vicinity of Project 1. One 6.5-acre tree clearing area and one 0.8-acre brush clearing area would be located in the vicinity of Project 2. One 10.5-acre tree clearing area would be located in the vicinity of Future 1. One 5.7-acre tree clearing area and one 3.5-acre brush clearing area would be located in the vicinity of Future 2. See attached figure titled, "Proposed Tree/Brush Clearing Plan."

Final site development plans consistent with the 2002 *Connecticut Guidelines for Soil Erosion and Sedimentation Control* (2002 E&S Guidelines) and the 2004 *Connecticut Stormwater Quality Manual* have been developed. A final SWPCP was submitted to DEEP for the project's General Permit on August 3, 2018. Per the requirements of the General Permit, no grading or grubbing of the site would occur prior to the DEEP approval of the SWPCP. Hence, no grading or grubbing would occur on-site during the tree clearing operation. Trees would be cut within 1-foot of existing grade and brush would be cut within 6-inches of existing grade. Stumps will remain in place at this time. Rock construction entrances would be installed for the clearing operations to minimize the tracking of soil off-site during the site clearing process and to establish dedicated entrances to the sites. Future site work is subject to review and approval of the SWPCP from DEEP as well as review and approval by the Council of future phases of the D&M Plan.

This Site Clearing Request would allow for easier site access for final design elements such as survey and soil investigation and will allow for some limited site activities to occur while the SWPCP design review is pending.

For mowing/brush cutting, WS would attach a mower to a skid steer (or skid loader), a small, rigid-frame engine-powered machine (similar in appearance to a “Bobcat”) with lift arms that can be used to attach a variety of tools or attachments. (See attached photographs.) Other equipment-mounted cutting devices may be used for tree removal. See attached photograph. Chainsaws may also be utilized for some manual tree clearing operations.

As a vehicle with tracks instead of tires, the skid loader exerts an average ground pressure of approximately 4.2 pounds per square inch (psi) unloaded. This is much less than the average pressure exerted on the ground by an average person’s foot, which is on the order of 16 psi. Thus, WS contends that “tire ruts” are not expected to be a concern.

WS contends that perimeter silt fence is not required for tree or brush clearing given that no grading, stump removal or earthwork is proposed. While soil disturbances may occur, WS contends that it would be less than 1-acre for the entire clearing. Thus, WS further contends that a General Permit would not be required for such clearing. Additionally, such clearing does not fall within the recommendations of the 2002 E&S Guidelines (Chapter 4 – Large Construction Site Sequences and Special Treatments).

Given the quality of wood at the site (e.g. pine and other softwoods), all materials will likely be chipped on-site into a chipper truck or stockpiled on-site for erosion control purposes during construction. (See attached photograph of chipper with haul truck.)

Work hours would be Monday through Saturday from 7:00 a.m. to 6:00 p.m.

By letter dated July 13, 2018, DEEP indicated that, per its review of the Natural Diversity Database, no negative impacts to state-listed species would be expected.

### **Federally Listed Species**

Condition 1(b) of the Council’s Declaratory Ruling requires “review of the project areas for federally-listed species and any applicable mitigation measures.” Connecticut is within the range of the northern long-eared bat (NLEB), a federally-listed Threatened species and State-listed Endangered species. There are no known NLEB hibernacula or known maternity roost trees near the project area, and tree clearing would occur outside of the June 1 through July 31 pup season. Thus, the project would not adversely impact the NLEB.

Three other federally-listed species are known to occur in New London County: piping plover, a Threatened shorebird species; sandplain gerardia, an Endangered plant species; and small whorled pogonia, a Threatened orchid species. The project is not expected to have a negative impact on the piping plover due to the distance from the coast and the lack of suitable breeding habitat. The project is not expected to have a negative impact on the sandplain gerardia due to the distance from the coast. The project is not expected to have a negative impact on the small whorled pogonia due to the lack of preferred habitat.

### **Interconnection**

As of the time of the Council’s Decision in June 2016, WS had received confirmation from Eversource that the local electrical distribution system can support the 3.0 MW AC interconnection associated with the two arrays (Project 1 and Project 2) at 1240 Voluntown Road. To date, a further impact study has not yet been performed to determine whether or not the 4 MW AC interconnection (for Future 1 and Future 2) at 1219 Voluntown Road can be supported by the distribution system (with existing distribution and/or upgrades).

WS notes that, even if 3 MW is the (firm) limit of the interconnection, it is currently investigating the use of tracking arrays and battery storage. Battery storage, for example, would enable all four arrays to be built while still using only a

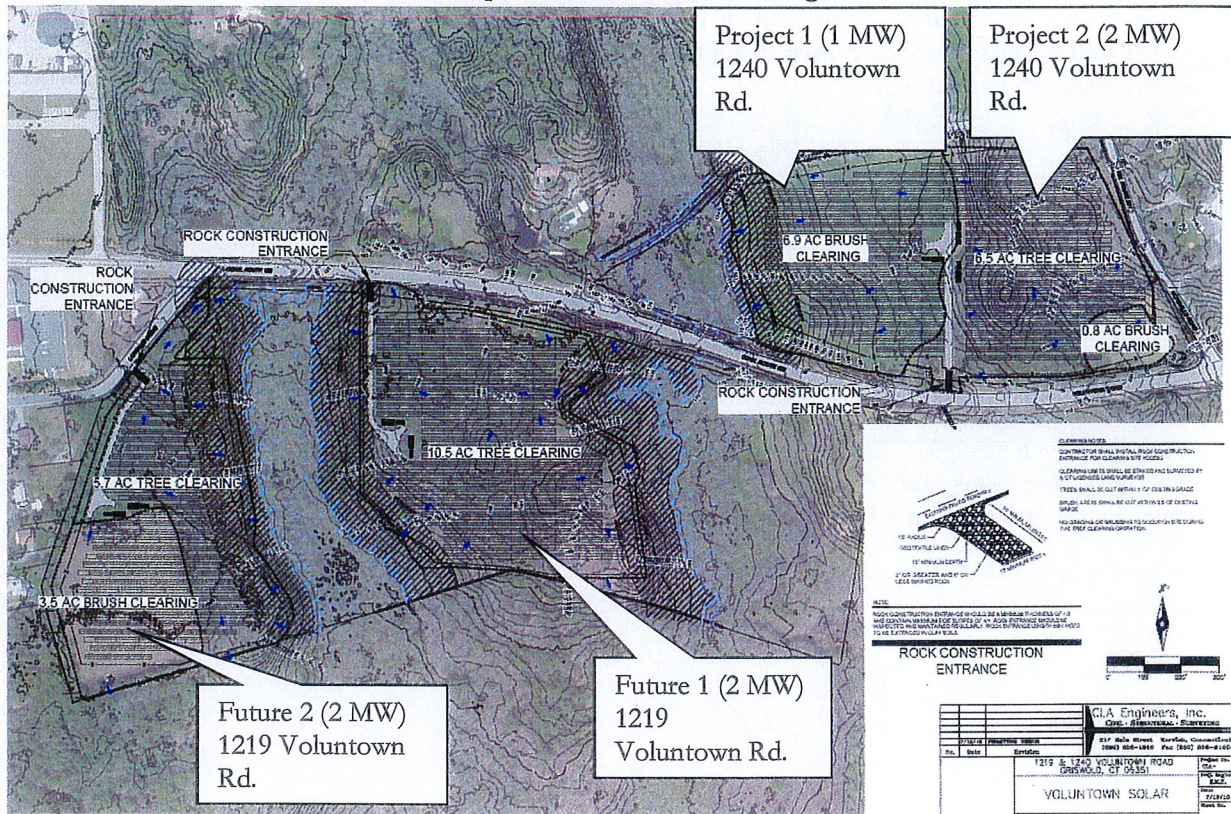
3 MW interconnection. Council staff suggests including a condition that the tree/brush clearing be limited only to the 1240 Voluntown Road site at this time, and that the plans for tree/brush clearing for the 1219 Voluntown Road site be submitted in the future when the interconnection limitation concerns are resolved and/or mitigating plans such as battery storage/tracking panels are firm.

### **Recommendations**

Council staff recommends approval of the Phase I D&M Plan with the following conditions:

1. This approval is limited to the tree and brush clearing (and rock construction entrance work) on the eastern parcel (i.e. 1240 Voluntown Road) only;
2. Construction shall not commence until DEEP issues a General Permit for the project;
3. The final tree and brush clearing plans for 1219 Voluntown Road shall be submitted for Council review and approval in the future subsequent to the interconnection limitation concerns being resolved and/or when mitigating plans such as battery storage/tracking panels are firm; and
4. Final grubbing plans, grading plans, erosion and sedimentation control plans and other applicable materials shall be submitted in future phase(s) of the D&M Plan for Council review and approval.

### Proposed Tree/Brush Clearing Plan

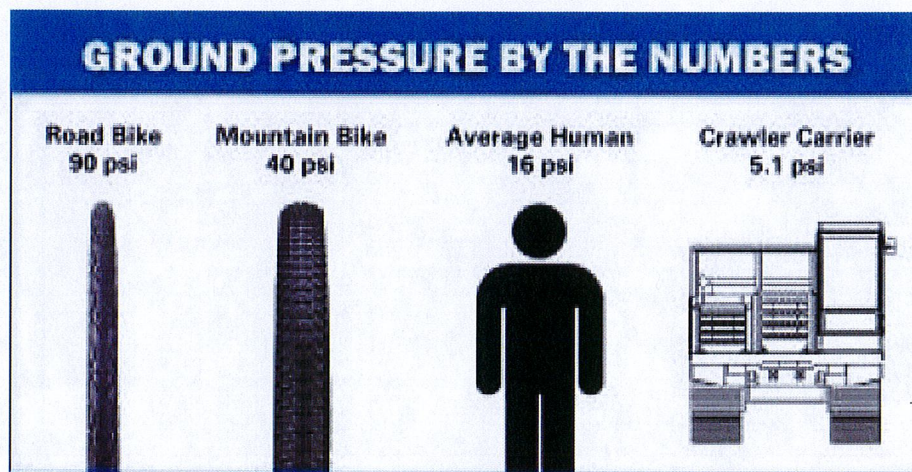




### Skid Loader



### Ground Pressure Comparison Chart





**Equipment Mounted Cutting Device**



**Chipper with Haul Truck**

