

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

CANDLEWOOD SOLAR, LLC PETITION : PETITION NO. 1312
 FOR A DECLARATORY RULING THAT NO :
 CERTIFICATE OF ENVIRONMENTAL :
 COMPATIBILITY AND PUBLIC NEED :
 IS REQUIRED FOR A 20 MEGAWATT AC :
 SOLAR PHOTOVOLTAIC ELECTRIC :
 GENERATING FACILITY IN NEW MILFORD : December 14, 2017
 CONNECTICUT :

TOWN OF NEW MILFORD’S POST-HEARING BRIEF

The Town of New Milford (“Town” or “New Milford”) hereby submits this post-hearing brief in accordance with § 16-50j-31 of the Regulations of Connecticut State Agencies and the Siting Council’s (the “Council”) Revised Schedule, dated November 2, 2017, in the above-referenced proceeding concerning the solar project proposed by Candlewood Solar, LLC (the “Project”). The abbreviations used herein are consistent with those set forth in the Council’s Proposed Findings of Fact, dated December 8, 2017.

A. Town Comments on Siting Council’s Draft Findings of Fact, dated December 1, 2017.

Finding #	Town Comment
9	Should be clarified to make clear Candlewood Solar, LLC (“CS”) would not be selling power to any Connecticut-based utilities or electric distribution companies. <u>See</u> CS’s pre-filed testimony of Jim Walker, pp. 5-6.
9	Should be supplemented by reciting the fact CS has not shown the Project would benefit Connecticut electric utility ratepayers. <u>See</u> CS’s pre-filed testimony of Jim Walker, pp. 5-6.
10	Should be clarified to make clear the express terms and public policy articulated in Conn. Gen. Stat. § 16a-35k encourages the development and <i>utilization in Connecticut</i> of renewable energy resources to the maximum practicable extent. <u>See</u> Conn. Gen. Stat. § 16a-35k (emphasis added).

11	Should be clarified to make clear the Council has discretion to consider additional standards, as the Council may deem appropriate, beyond the Project's compliance with DEEP air and water quality standards. <u>See</u> Siting Council's Decision on DEEP's Motion to Deny Declaratory Ruling, dated September 29, 2017, and attached Staff Report, dated September 28, 2017.
11	Should be clarified to make clear the Council, assuming the Council decided to consider additional standards beyond air and water quality standards, has the legal authority and discretion to deny a petition even if the subject project were found to meet applicable air and water quality standards. <u>See</u> Siting Council's Decision on DEEP's Motion to Deny Declaratory Ruling, dated September 29, 2017, and attached Staff Report, dated September 28, 2017.
23	Should be corrected to delete reference to the Chamber of Commerce as the Chamber of Commerce is not an agency or instrumentality of the Town. <u>See</u> CS Petition, Attachment 4.
25	Should be corrected and/or supplemented to make clear (a) no provision of the PILOT Agreement requires the Town to support the Project before the Siting Council, (b) CS has failed to establish that it has provided the Town with either a Development & Management Plan or a Decommissioning Plan as called for in Schedule B, Paragraphs 5 and 6 of the PILOT Agreement, and (c) CS has failed to establish it has reviewed any Development & Management Plan with Town representatives as called for in Schedule B, Paragraph 5 of the PILOT Agreement. <u>See</u> CS Petition, Attachment 5; Proposed Finding of Fact # 162.
26	Should be supplemented to note (a) Mayor Gronbach's letter was written without the support or vote of the New Milford Town Council, the Town's legislative body, and (b) no referendum or Town Meeting has been held to date to determine Town electors' position on the Project. <u>See</u> CS Petition, Attachments 5-7.
28	Add this sentence: "Since CS has failed to establish that it has complied with the conditions and requests set forth in the FFPC memo, the Planning Commission's letter indicates the Project does not comply with the Town's POCD."
29	Should be corrected to reflect CS has not established that it has provided a construction management plan to the Town as requested in the FFPC memo or otherwise complied with all conditions and requests set forth in the FFPC memo.
36	Add this sentence: "The letter specifically raises concerns about the Project's impact on wildlife and vegetation, soil erosion, wetlands and watercourses, and air traffic, and further notes that such projects work best when communities are supportive and come to consensus, which has not happened in reference to the Project."

42(f)	Should be clarified to state the Project would result in loss of 95 acres in core forest, i.e. a 21% reduction of the unfragmented core forest in the Project area.
71-76	Should be clarified to state that electricity generated by the Project will not count against the Connecticut renewable portfolio standards established pursuant to Conn. Gen. Stat. § 16-245a. <u>See</u> Conn. Gen. Stat. §§ 16-1(a)(20) and 16-245a and Findings of Fact #9 and #88.
94	Should be corrected to reflect that CS failed to establish that the Century Brass site was ever under a contract of sale between the Town and Panda Power, Inc.
102	Should be clarified to reflect that CS's proposed electrical interconnection route commences at a point due west of the Town's Lynn Deming Park. <u>See</u> CS Petition, Attachment 3 (p. E-200).
103	The last sentence should be supplemented with the phrase ". . . , but not along the wooded hillside between the Project and Candlewood Lake (i.e. west of Lynn Deming Park)." <u>See</u> CS Petition, Attachment 3 (p. E-200).
104	The first and second sentences should be corrected to refer to "undeveloped and unfragmented" forest and forested areas. <u>See</u> CS Petition, Attachment 1.
109	Should be clarified to make clear that no signed legal instruments have been submitted by CS in this proceeding under which New Milford Clean Power, LLC would be legally bound to convey this easement to a non-profit conservation group in the future (i.e. upon taking title to the subject property).
114	Should be clarified in the same manner as draft Finding of Fact # 109.
131	Should be revised in the same manner as draft Finding of Fact # 102.
132	Clarify by adding the following sentence: "Based on the northeasterly direction of the 30-foot-wide interconnection corridor for the revised solar array, the due-east initial direction of the revised corridor (i.e. the point where which said corridor connects to the Project), the steep topography of the hillside to be traversed by this corridor, the location of this corridor relative to Lynn Deming Park, and CS's photographs taken of the subject hillside after foliage has fallen, the interconnection corridor will be visible from Lynn Deming Park and northern reaches of Candlewood Lake in leaf-off conditions." <u>See</u> CS NDDB Review, Site Location Map, Site Plan, and Photograph 3; CS Project Drawings, p. 3 (Existing Conditions); CS Project Drawings, p. 8 (detailed depiction of topography); CS Revised Response to Council Interrogatory #14 (detailed depiction of topography on Figure 1 of Heritage Consultants, LLC Phase 1B Cultural Resources Reconnaissance Survey, p. 52 of 75); CS Environmental Assessment (a/k/a Executive Summary), dated June 2017, View Point #2 photograph, p. 26.
196	Add these sentences: "CS's statement that the solar panels should not be considered impervious and that stormwater would run under the panels

	does not consider, as stated in the IWWC memo, drip edge erosion and long slope erosion, especially in view of the fact that the Project's construction plans anticipate placement of panel drip edges in long straight lines that could result in raveling and channelization parallel to those drip edges that point in down-gradient directions, thereby changing the site's hydrology. Any site development under review by the Town Land Use Agencies would require consideration of Low Impact Development techniques that would maintain or replicate predevelopment hydrology."
205	Should be supplemented by reciting the fact New Milford IWWC Regulations § 2.38 defines the "upland review area" to include the area within 100 feet of the ordinary high-water line of any watercourse or within 100 feet of any wetlands, while § 2.29 defines "regulated activity" to include "any operation within or use of a wetland, watercourse or upland review area involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands, watercourses or upland review area or any operation or use of land that may disturb the natural and indigenous character of a wetland, watercourse or upland review area"
213	Supplement this finding with this sentence: "Research summarized in Calhoun and Klemens (2002) has found that a CTH reduction on the order of 31.6% will reduce the breeding success of poolbreeding amphibians." Calhoun and Klemens (2002), pp. 16-18.
215	The second sentence should be supplemented with the clause " . . . , but CS has not established that any treed buffer areas will be protected by conservation easements during the Project's anticipated lifespan."
217	After the second sentence, insert this sentence: "The Project's revised interconnection route would start from a point approximately 1700 feet due west of Lynn Deming Park, run due east down descending topography for a distance of approximately 200 feet (i.e. directly toward Lynn Deming Park), and then turn in a northeasterly direction toward a location at the northerly base of the FirstLight dam at the northern end of Candlewood Lake." CS Updated Proposed Conditions Map, dated 10/23/17.
218	Delete the second sentence and add these sentences: "CS is proposing to install electrical interconnection poles of 45 to 55 feet in height, yet has not established the average tree canopy height throughout the path of the portion of the interconnection route within the viewshed of Candlewood Lake and Lynn Deming Park. While CS does not expect the solar array itself and associated interconnection poles will be visible from Candlewood Lake, the forest thinning associated with the Project, the 30-foot-wide corridor to be cut through the hillside facing Candlewood Lake and Lynn Deming Park, and the 200-foot initial path of the revised interconnection route heading due east toward the Park down descending topography will be directly visible in leaf-off conditions from Candlewood Lake and Lynn Deming Park. This visibility will reduce the rural aesthetic presently enjoyed by Lake and Park users." See CS NDDB Review, Figure 1 (Site Location

	<p>Map with topography), Figure 2 (Site Plan), and Photograph 3 (note: Photograph 3’s caption describes its depiction as “View facing east down the slope on the eastern portion of the Site near the proposed interconnect route.” However, the Town contends Photograph #3 was taken approximately 1800 feet north of the southerly starting point of the revised interconnection corridor as Photograph #3 looks in an easterly direction upon an area well north of FirstLight’s dam, with the Lake’s Intake Canal visible to the east); Attachment 3 to CS’s Responses to Council Interrogatories Set Two (i.e. Oxbow Associates, Inc. Documentary Ground Photos in vicinity of interconnection corridor); CS Environmental Assessment (a/k/a Executive Summary), dated June 2017, View Point #2 photograph, p. 26 (note: the Town contends that View Point #2 understates Project visibility from the Park and northern sections of the Lake because it was taken from a point well south of the Park). <u>See also</u> Town Comment to Draft Finding of Fact # 132 and its citations.</p>
219	<p>In view of the Town’s comments to Draft Findings of Fact #132 and #218, this draft finding is inaccurate and misstates the visibility of the revised interconnection route and the Project location itself. Replace with the following sentence: “Substantial sections of the revised interconnection route and forest thinning caused by panel locations will be visible in leaf-off conditions from Lynn Deming Park and from the northern section of the Lake.” <u>See</u> citations to ## 132 and 218 above.</p>
220	<p>Delete this finding in view of the Town’s comments to ## 132, 218, and 219 above.</p>
221	<p>Add this sentence: “In addition, under leaf-off conditions, forest thinning associated with Project will be visible from the Lake and Lynn Deming Park and other points to the east of the Project. CS Environmental Assessment (a/k/a Executive Summary), dated June 2017, View Point #2 photograph, p. 26</p>
222	<p>Delete this finding in view of the Town’s comments to ## 132, 218, and 219 above.</p>
223	<p>Add this sentence: “In view of the trail’s terminus at the summit of Candlewood Mountain and the topography between the summit and the proposed project down gradient from the summit, the Project will be visible from the trail’s terminus in leaf-off conditions. <u>See</u> CS Project Drawings, p. 7 (detailed depiction of topography).</p>
268	<p>Add these sentences after the first sentence but before the citation: “Similarly, an agreement to establish a permanent conservation easement for all of the host property after the facility is decommissioned and panels and associated infrastructure are removed from the site would also mitigate the impacts of the facility. In reference to the contemplated permanent conservation easement over non-facility land, CS has not established that any local non-profit conservation groups have committed themselves to accept and manage such an easement.”</p>

271	Add this clause at end of sentence: “. . . , a 19% loss of core forest acreage.”
296	Correct the last sentence to read “CS has stated New Milford Clean Power LLC would agree to establish a 100-acre conservation restriction if the Project is approved, but has not established that said prospective owner is presently bound to do so if it takes title to the property.” In addition, add this sentence: “CS has not filed engineered drawings, stormwater management plan, or other construction details in support of its revised Project layout, but has provided only a tax map overlaid on an aerial map showing the revised layout.”

B. The Project should be denied.

For all of the reasons set forth in Siting Council’s Draft Findings of Fact as revised, clarified, supplemented, and/or corrected above, the Town contends the Petition must be denied because (a) CS has not shown it meets all applicable federal and state water quality standards, (b) the Project will have a substantial adverse environmental effect, and (c) the Project’s impact on contiguous forest lands is not consistent with the intent of PA 17-218. Specifically, the Town’s position is supported by the following factors and considerations:

- As noted in the letter from Timothy Abbott, Regional Land Protection and Greenprint Director for the Housatonic Valley Association, dated July 26, 2017, (a) clearcutting will devastate a 458 acre area of core forest and (b) the upland clearcut and industrial development of this size and scale has the potential to negatively impact water quality in the Town and region. Some of the area of clearcutting drains into Candlewood Lake and other sections descend steeply via Ricky River directly into the Housatonic River. Clearcutting will impair the ability of stormwater to absorb and filter groundwater.
- As discussed in the memo of the New Milford Inland Wetlands and Watercourses Commission dated September 18, 2017:
 - A plan to adequately manage stormwater has not been provided.

- The stormwater management system, as designed, diverts all surface flow, starving portions of the wetland system from existing water flow patterns and surcharging other portions of the wetlands at the outlets.
 - The stormwater calculations and subsequent stormwater management report and plans contain inaccuracies and need to take into account the increases in gravel roadway and installation of solar panels on the property.
 - The stormwater management plan needs to take into account the drip edge erosion and long slope erosion potential.
 - The proposed perimeter stormwater catchment area and infiltration basins may create a cascading effect from one infiltration/detention basin to the next. In a significant rain storm the system may fail.
 - The project phasing plan is not realistic, especially in view of the fact CS has very little, if any, experience with larger solar projects.
 - Insufficient detail has been provided with regard to the sedimentation and erosion control and stormwater management plans.
 - There is the potential for significant negative impacts to wetlands and watercourses, and to the species that use the wetlands and watercourses for habitat.
- The project is incompatible with public policy, including the following:
 - Public Act 17-218 should be considered due to the project's impacts to core forest areas.
 - This project would not be permitted by the Town's Zoning Regulations.
 - Candlewood Solar proposes to encumber several acres of active farmland as well as several acres of locally important farmland soils, in conflict with the objectives of the Department of Agriculture and the New Milford Farmland and Forest Preservation Committee.
- The New Milford Zoning Commission in its letter of September 11, 2017 made the following comments:
 - Inadequate buffers being provided to neighboring residential properties resulting in negative visual impacts, as well as noise and potentially dust during construction.
 - The project is located within 0.5 miles of the Candlelight Farms Airport. Glare from the solar panels is a concern for the small aircraft using this facility.
 - Construction traffic, including logging trucks on Candlewood Mountain Road may cause significant damage to the Town road, requiring the town to repair road damage, at a potentially significant cost.
 - Construction of the project may cause significant neighborhood disruption due to increased traffic, noise and parking.
- Public need for the project has not been demonstrated.

- As outlined in the letter from Starling W. Childs, MFS, dated September 14, 2017: (a) Critical habitat features warrant much more study at the proper times of year in order to fully understand the cycle of seasonal use, and (b) Hydrological modelling of the runoff that will be generated given all the additional impervious surfaces has not been provided.
- Alternate sites, including the Century Brass Brownfield site, have not been adequately considered by Candlewood Solar.
- Historical features such as stone walls, stone bounds, ancient road beds and other archeological resources have not been evaluated, recorded or inventoried.
- A decommissioning plan has not been made part of the record. The Town is concerned with the corporate structure and the future unwillingness or inability for Candlewood Solar to properly decommission and restore the site once the solar project is no longer viable.
- As noted in the letter from Russell T. Posthauer, PE, dated September 18, 2017 an adequate, accurate and detailed erosion control plan, including a sequencing and phasing plan has not been provided.
- Additional surveys of state endangered and threatened species should be completed prior to moving forward with approval.
- The alternative use of the property as a 508 unit planned residential community has not been demonstrated to be feasible, therefore the likely future use of the property would be for recreational purposes or low density housing, which would be permitted by the zoning regulations should the current or future property owner request a zone change.
- None of the vernal pools at the site have been examined for obligate vernal pool species during peak breeding season. (#214 finding of fact)
- Candlewood Solar does not propose landscape plantings or buffers around the solar facility. (#217 finding of fact).
- The Natural Diversity Database Preliminary Assessment identified nine state-listed species within or near the boundaries of the proposed site.
- The Council on Environmental Quality reviewed the petition and found the analysis of potential impacts to vegetation and wildlife to be inadequate to enable an informed decision. The petition was filed before essential data was available.

- The Town has not been given an opportunity to review and comment on a revised engineered site plan based on the revised “Photovoltaic Array Layout”.
- The application is missing a tremendous amount of vital information to determine if it is feasible to construct without causing negative impacts to wetlands, watercourses, and wildlife, including listed species.
- Mayor Pete Bass and at least 8 of the 9 New Milford Town Council members elected on November 7, 2017 actively oppose the Project, reflecting a consensus amongst Town residents that the Project is more harmful than beneficial, especially in view of the factors recited above and the multitude of smaller solar projects pending before the Council that will be in line with the policies articulated within PA 17-218. While the Town’s agreeing to the PILOT agreement might be interpreted as an act in support of the Project, the PILOT was executed at time well before a full factual record on the Project was developed and the PILOT contains no terms requiring the Town to support the Project before the Council or elsewhere.
- Mr. Walker’s pre-filed testimony establishes that the Project would primarily benefit Massachusetts ratepayers and electric utility companies based in Massachusetts and Rhode Island, not Connecticut ratepayers or utilities. Connecticut DEEP did not vote to select the Project as part of the tri-state selection process and that fact and the reasons for DEEP’s failure to support the Project weigh against approval of this Project by the Council.
- The Council’s cross-examination of CS’s environmental consultants revealed that the environmental review performed by CS consultants was performed in a manner that understated the Project’s detrimental and long-lasting impact on native species, especially those dependent on the inland wetland systems located in the Project’s immediate vicinity. Contrary to CS’s representations, the Project will have a substantially adverse environmental effect for all the reasons recited in the Record.
- CS has understated and misanalyzed the Project’s visual impact, most importantly of the 30-foot-wide interconnection swath to be cut in an easterly and northeasterly direction down Candlewood Mountain – directly within the viewshed of Candlewood Lake and Lynn Deming Park – two of the Town’s and region’s most important recreational resources. Forest thinning will also occur that will further degrade the Park and Lake viewsheds. Lynn Deming Park’s beach, picnic areas, play areas, and parking areas all face the Lake in a westerly direction, looking out upon the opposing undeveloped and wooded hillside in a manner that is an important aesthetic and natural resource for Park and Lake users. CS’s proposed interconnection corridor would create a permanent visual eyesore for users of the Park and Lake in the vicinity of the Park, yet these impacts are not even analyzed within Section 3.10 of the Environmental Assessment prepared for CS by Amec Foster Wheeler.

C. If the Council approves the Project, any such approval should be conditioned on verifiable and enforceable mitigation of the Project's detrimental effects.

If the Council approves the Project, its approval should be conditioned on CS taking the following verifiable and enforceable mitigation measures:

- The 30-foot interconnection swath must be cut and placed on a path that commences well north of its present commencement location, in a location that will not aim 200 feet of 30-foot interconnection corridor straight easterly at Lynn Deming Park as it descends steep topography (as it does under the revised layout). In addition, the northeasterly portion of this swath must be reoriented in a manner that minimizes its visibility from the Park and northern reaches of the Lake. Under the current Project design, this has not been done.
- Interconnection transmission poles must be installed at a height no higher than fifteen (15) feet below the surrounding forest canopy as measured by the average height of all trees within 100 feet of each installed transmission pole – at least until the interconnection lines reach a point that is below FirstLight's dam, where they presumably will not be viewed from the Park or Lake. Rather than installing standardized poles to a height between 45 and 55 feet in lock-step fashion, CS should be required to custom-cut each pole to ensure these poles remain not visible for all those who use the rural recreational treasures in the immediate vicinity of this Project (i.e. Park, Lake, and trails in the vicinity).
- A minimum wooded buffer of 50 feet should be provided along the edge of the wetlands and watercourses with an additional 25 foot buffer of natural filter strip.
- An acceptable detailed phasing plan of tree clearing, stumping, grading and stabilization of soils within the seasonal time frames should be provided and followed.
- The stormwater management plan should be revised and peer reviewed, with the cost of the peer review reimbursed to the Town by the developer.
- During construction a third party sedimentation and erosion control specialist shall be hired by the developer to provide weekly inspection reports to the Siting Council, DEEP and the Town of New Milford and promptly correct any problems noted.

- Once construction is complete, a third party licensed engineer should provide written certification to the Town, DEEP and the developer that the stormwater management plan was installed in accordance with the approved plans.
- A 100 foot vegetated buffer shall be provided along the property's common boundaries with other properties containing single family homes and along the property's frontage on Candlewood Mountain Road. Existing trees and other vegetation should not be cut within 100 feet of abutting properties containing single family residences and along the property's frontage.
- All site construction traffic should be required to access the site along the utility access road.
- Construction hours should be limited to Monday through Friday from 8am to 5pm.
- No parking associated with construction should be parked along the road edge or within 50 feet of the edge of the town right of way.
- The access road entrance should be paved in accordance with the Town ordinance to prevent damage to the road edge.
- Mitigation should be provided to offset the loss of active farmland and locally important farmland soils.
- That prior to commencement of construction, including any site clearing or tree or brush cutting, the developer will provide all contact information for the project manager and the erosion control professional to the Mayor's Office.
- That prior to commencement of construction, including any site clearing or tree or brush cutting, all bonds shall be submitted to the Town and reviewed and revised, as necessary, to the satisfaction of the Town Attorney.
- Historic stone walls throughout the Project property must not be dismantled, but preserved in their present locations and incorporated into panel field placements.
- In view of the risk of raveling and channelization posed by panel structure drip edges that collectively point in down-gradient directions, CS should be required to stagger or alter the collective drip edge rows to reduce, counter, and/or mitigate any such raveling and channelization
- At least 60 days prior to the commencement of construction, CS must provide the Siting Council, DEEP, and the Town with an Development & Management Plan and a Decommissioning Plan as called for in Schedule B, Paragraphs 5 and 6 of the PILOT Agreement.

- At least 30 days prior to the commencement of construction, CS must provide the Siting Council, DEEP, and the Town with an appropriate, signed, legally-binding permanent conservation easement between New Milford Clean Power, LLC and a local non-profit conservation group that complies with the representations made by CS during the course of this proceeding.

TOWN OF NEW MILFORD

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CERTIFICATION OF SERVICE

I certify that a copy of the above Post-Hearing Brief was or will immediately be delivered electronically on December 14, 2017 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

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New Milford, CT



John D. Tower