

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

DWW SOLAR II, LLC PETITION FOR	:	PETITION NO. 1313
DECLARATORY RULING THAT NO	:	
CERTIFICATE OF ENVIRONMENTAL	:	
COMPATIBILITY AND PUBLIC NEED	:	
IS REQUIRED FOR A 26.4 MEGAWATT	:	
AC SOLAR PHOTOVOLTAIC ELECTRIC	:	
GENERATING FACILITY IN SIMSBURY	:	
CONNECTICUT	:	DECEMBER 14, 2017

DEPARTMENT OF AGRICULTURE'S COMMENTS ON DRAFT FINDINGS OF FACT

The State of Connecticut Department of Agriculture ("DoAg") respectfully submits the following comments on the DRAFT Findings of Fact, dated Nov. 30, 2017.

Finding of Fact 4:

Pursuant to Regulations of Connecticut State Agencies (RCSA) § 16-50j-40, notice of the Petition was provided to all abutting property owners by certified mail on or about June 26, 2017. (DWW 1, Tab E)

Comment:

The record reflects that the petitioner, DWW Solar II, LLC ("DWW") did not provide notice by certified mail to all abutting property owners. On page 29 of Ex. C to the Petition, the map clearly shows that the property owner abutting Parcel H05-403-026-32H to the east is Sunlight Construction, Inc., owner of Parcel H05-403-005; however, Ex. E to the Petition, which lists the abutting property owners to whom DWW sent notice, does not include Sunlight Construction, Inc. The Siting Council need not consider the late evidence offered by Flammini, *et al.*, to conclude that DWW did not provide the requisite notice – the evidence of lack of notice is already in the record.

DoAg asks that the finding be edited to reflect that DWW did not provide notice to abutting owner Sunlight Construction, Inc.

Finding of Fact 24:

DWW hosted a public information session in the Town of Simsbury on March 11, 2017. DWW notified all abutters of the meeting by first class mail and distributed meeting information flyers at five locations in Town. The meeting was also announced on the Town's and DWW's website. (DWW 1, pp. 15-18)

Comment:

Please see the Comment to Finding of Fact 4.

DoAg asks that the finding be edited to reflect that DWW did not provide notice to abutting owner Sunlight Construction, Inc.

Finding of Fact 26:

DWW hosted another public information session on June 7, 2017 in the Town of Simsbury on June 22, 2017 at the Simsbury High School. DWW notified all abutters of the meeting by first class mail and published notification of the meeting in the *Valley Breeze*.

Comment:

Please see the Comment to Finding of Fact 4.

DoAg asks that the finding be edited to reflect that DWW did not provide notice to abutting owner Sunlight Construction, Inc.

Finding of Fact 98:

DWW searched for brownfield sites, but brownfield sites are typically not large enough to host projects of this size, and they are often not found in as close proximity to electrical

infrastructure as the proposed site. Additionally, property owners may not be willing to sell or lease their land. (Tr. 3, pp. 251-253)

Comment:

DoAg submits that the record does not reflect that DWW searched for brownfields sites for this project. Rather, the question that was posed related to gravel mines and right-of-ways in addition to brownfields sites, and the witness responded generally to the question, and it is thus not a fair inference that DWW actually searched for brownfields sites in Connecticut for this project.

DoAg asks that this finding be removed.

Finding of Fact 102:

The project site is composed of five abutting parcels that collectively consist of 289 acres. The size and associated zoning of the five parcels are as follows:

Town Parcel ID (FOF reference)	Acreage	Town Zoning
G03-403-032 (Parcel 1)	138	R-40
G03-403-012 (Parcel 2)	30	R-40
G03-403-026-32H (Parcel 3)	54	I-1
G03-403-014 (Parcel 4)	14	I-1
G03-403-024 (Parcel 5)	53	R-40

(DWW 1, p.8)

Comment:

DWW certainly did identify the five parcels in the Petition as the above chart indicates (although Parcel 5 is identified as H05-103-024, not G03-403-024); however, as discussed in DoAg's Post-Hearing Brief, at footnote 1, the description of the parcels is wrong. According to

the Town of Simsbury's Assessor's cards, which were submitted with Simsbury's Oct. 3, 2017 Responses to DWW's Interrogatories, Attachment A – Int. No. 6, and according to the property cards available through Simsbury's website, the chart should read as follows:

Town Parcel ID (FOF reference)	Acreage	Town Zoning
G03-403-032 (Parcel 1)	120.92	I-1
H03-403-012 (Parcel 2)	31.4	R-40
H05-403-026-32H (Parcel 3)	75	I-1
H04-403-014 (Parcel 4)	13.2	I-1
H05-403-024 (Parcel 5)	49.4	R-40

The chart in Section 2.1 of DWW's Phase I, which is Ex. O to the Petition, has the correct parcel descriptions in chart form. However, the discrepancy is significant because it is one of many, many examples of misinformation in the Petition and DWW's supporting materials. The Petition should be denied on the basis of the inconsistencies alone.

DoAg asks that the chart in the finding be edited to reflect the data that is in Simsbury's public records.

Finding of Fact 165:

DWW provided a decommission plan that includes solar facility infrastructure removal, waste disposition, and site restoration. (DWW 1, p. 59, Tab S – Decommissioning Plan)

Comment:

For the reasons discussed in DoAg's Post-Hearing Brief, DoAg believes that the record shows that DWW has not provided an actual decommissioning plan: construction will harm the soils and DWW has not shown how DWW will protect the soils; soils will not improve during the life of the project; DWW has vacillated on what it intends to remove; DWW has not

presented a real plan for site restoration; and, most importantly, DWW has not committed the funds to do the decommissioning and restoration work required.

DoAg asks that the finding be changed to read: "DWW provided a decommission plan that is attached to the Petition at Tab S."

Finding of Fact 167:

The Decommissioning Plan includes provisions to restore the agriculture fields occupied by the facility to productive use, including but not limited to the following:

- a. evaluating and categorizing all solar facility components and materials into categories of recondition and reuse, salvage, recycling and disposal prior to removal;
- b. concrete pads would be removed to a depth of 24 inches;
- c. underground wire in the array of the array would [be] pulled and removed from the ground;
- d. removal of facility service roads by removing the processed stone and underlying geotextile fabric;
- e. the sub-grade material and topsoil from affected areas will be de-compacted and restored to a density and depth consistent with the surrounding areas;
- f. for post-project agricultural use, a sub-soiler plow would be used for deep tillage across the project site; and
- g. prevention of soil erosion restoration by leveling, terracing, mulching, and the establishment of suitable grasses and forbs.

(DWW 1, Tab S – Decommissioning Plan)

Comment:

Please see the Comment to Finding of Fact 165.

DoAg asks that this finding be removed.

Finding of Fact 206:

Post-construction, the Project would not increase stormwater runoff rates or volumes. New impervious surfaces are minimal and the solar arrays are elevated above the ground so that permanent grass cover can be established beneath the panels, increasing infiltration. Through a majority of the site, existing agricultural lands and some woodland would be converted to grass surfaces and crushed stone roads. Modeled runoff rates would be reduced as a result of the project without need for engineered stormwater management practices. (DWW 1, p. 51, Tab L – Stormwater Management Report, p. 13)

Comment:

DoAg disagrees with a finding that "new impervious surfaces are minimal." Rather, post-construction, the site will be "dominated by impervious surfaces" (DoAg 10/3/17 Resp. SC Ints., Q9), whereas now, the site has little existing impervious surface. (Pet., § 6.5, p. 36) The surfaces will be impervious because rain is not falling directly on the ground beneath the solar panels. (Kolesinskas Test. 11/2/17, p. 431) The placement of the solar panels will change the hydrologic flow on the ground underneath them. (*Id.*)

DoAg also disagrees with a finding that permanent grass cover can be established beneath the panels. DWW has not shown at all that this will occur. The soils and the grass under the solar panels will be in the shade. (Moberg Test., 9/12/17, pp. 49 – 50) What type of vegetation will even grow there is in question. (Kolesinskas Test., 11/2/17, p. 435; *see* Armstrong, *et al.* (2016) (white clover did not grow under the PV arrays))

DoAg asks that this finding be removed.

Finding of Fact 207:

The post-construction design mimics existing topography and drainage patterns to maintain the current hydrologic balance. In the majority of the Project Site a low cover crop would be established to promote more natural infiltration into the soil than currently exists, absorb pollutants, stabilize the topsoil from erosion, and result in lower runoff rates from the agricultural field areas to the surrounding discharge points. Mature vegetation has been preserved to the maximum extent as practicable in order to maintain infiltration in these areas. (DWW 1, Tab L – Stormwater Management Report, p. 12)

Comment:

DoAg disagrees with a finding that post-construction the current hydrologic balance will be maintained and that a low cover crop will be established. Please see the Comment to Finding of Fact 206.

DoAg asks that this finding be removed.

Finding of Fact 215:

Sediment traps would be installed at the discharge point at each of the Project's sub-watersheds when the contributing area exceeds one acre, but is less than five acres. A temporary sediment basin, a larger version of a trap that includes a staged release discharge structure, would be constructed for areas exceeding five acres. (DWW 2, response 44; Tr. 1, pp. 43-44)

Comment:

DoAg disagrees with this finding: DWW clearly does not know what it is going to do with respect to sediment traps and basins. (Vitaliano and Moberg Test., 9/12/17, pp. 40, 42-45)

DoAg asks that this finding be removed.

Finding of Fact 247:

Current agricultural use at the Project Site disturbs the top portion of the soil without any dust control or erosion control measures. (Tr. 4, pp. 661-662, 733-734)

Comment:

DoAg disagrees with this finding. The witness who testified to the current lack of dust or erosion control at the site said he did not know the extent of tilling that was going on at the site. This witness clearly has no knowledge of whether there are dust or erosion controls at the site now.

DoAg asks that this finding be removed.

Finding of Fact 343:

Pursuant to C.G.S. § 22-26aa, *et seq.*, DOAg administers the Statewide Program for the Preservation of Agricultural Land (SPPAL). The main objective of the voluntary program is 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. (C.G.S. § 22-26aa, *et seq.*)

Comment:

The objective of the voluntary program is broader than stated in the finding: the program seeks to maintain and preserve agricultural land – not just prime and important farmland soils – for farming and food production purposes.

DoAg asks that the second sentence be changed to: "The main objective of the voluntary program is to maintain and preserve agricultural land."

Finding of Fact 344:

Connecticut preserved 1,289 acres of agricultural land in 2015, the most since 2009. Connecticut preserved 1,563 acres of agricultural land in 2016, the most since 2011. (Council Administrative Notice 90 – CEQ 2016 Report; Council Administrative Notice 91 – CEQ 2017 Report)

Comment:

The numbers of acres quoted in the finding are correct in terms of what is reported in the two CEQ annual reports; however, since both reports also note that Connecticut is not meeting its goal and/or is not on track for meeting its goal for preserving agricultural land, that fact should be added to the finding. The two reports state that Connecticut's goal is to preserve 130,000 acres.

DoAg asks that the following sentence be added to the finding: "In 2015 and 2016, Connecticut was not on track for meeting its goal of preserving 130,000 acres of agricultural land."

Finding of Fact 353:

Agricultural best management practices, if properly employed, can prevent erosion and sedimentation from exposed agricultural soil during heavy rains. (DoAg 4, response 13)

Comment:

There is a small typographical error in the finding. The correct citation to the record is: DoAg 4, response 12.

DoAg asks that the finding be edited accordingly.

Finding of Fact 357:

According to the latest NRCS mapping, the Project Site contains [there are] 64.7 acres of Prime Farmland and 65.1 acres of Farmland of Statewide Importance in active agricultural use. Forested areas of the Project Site contain 25.2 acres of Prime Farmland soils and 65.1 acres of Farmland soils of Statewide Importance (refer to Figure 8). (DWW 2, response 7)

Comment:

In DWW 2, response 7, the figure for soils of Statewide Importance in forested areas is 58.5 acres.

DoAg asks that the finding be edited accordingly.

Finding of Fact 360:

DWW would establish a cover crop of grasses / forbs in the solar field areas. These semi-managed grasslands / forbs could result in improvement of soil health over the 25 year life of the Project. (DoAg 2, p. 2; DOAG 5, response 35; DWW 8, response 71)

Comment:

DoAg disagrees with the finding. The record does not support a finding that DWW will establish a cover crop of grasses or that these will be grasslands that will improve soil health over the life of the project. The citations to the statements by DoAg do not support the proposed finding, and neither does the citation to DWW's interrogatory response. Rather, for the reasons set forth in Section 6 of DoAg's Post-Hearing Brief, the record reflects that soil health will *not* improve over the life of the project.

DoAg asks that this finding be removed.

Finding of Fact 361:

DWW proposes to restore the soil upon Project Decommissioning. Restoration measures include de-compaction and restoration of soil to a density and depth consistent with surrounding areas. In all areas restoration shall include, as reasonably required, leveling, terracing, mulching, and other necessary steps to prevent soil erosion, to ensure establishment of suitable grasses and forbs, and to control noxious weeds and pest. If agriculture is the intended post-project use, deep till of the project site will be undertaken. (DWW 1, Tab S, p. 6)

Comment:

DoAg disagrees with the finding. For the reasons described in Sections 4 – 7 of DoAg's Post-Hearing Brief, the record rather clearly establishes that DWW will not be restoring the soil upon decommissioning of the project.

DoAg asks that this finding be removed.

Finding of Fact 362:

During Project decommissioning, DWW would remove all structures related to the Project expect [sic] for foundations or other materials that are located deep enough below grade not to have an impact on potential future use of the Project Site or such materials are located in no-agricultural areas. (DWW 5, response 76)

Comment:

DoAg disagrees with the finding. DWW has made contradictory statements as to what will be removed from the site at the end of the project: in the decommissioning plan document, DWW speaks of partial removal of structures related to the project, but at the public information sessions and at the hearing, DWW promised to "get everything out of the ground." The details of these contradictions are set forth in Section 7 of DoAg's Post-Hearing Brief.

DoAg asks that this finding be removed.

Finding of Fact 366:

DWW offered to DoAg an agricultural conservation easement, free of charge, on all five Project parcels that would restrict future non-agricultural development upon decommissioning of the Project. DOAg declined the initial offer but DOAg and DWW continue to discuss the concept of restricting future development rights of the Project Site. The Town was not included in the discussion and would be interested in reviewing any proposal restricting development on any of the parcels. (DWW 6, response 4; Tr. 4, pp. 452-453, 478-482, 523-24)

Comment:

DoAg agrees that the Town was not included in the brief discussions between DoAg and DWW on this topic. However, for the reasons set forth in Section 8 of DoAg's Post-Hearing Brief, DWW's offer is not a real offer.

DoAg asks that this finding be removed.

Finding of Fact 368:

DWW would enhance pollinator habitat by planting grass seed mixes that include flowering species such as white clover and alfalfa and using wildflower plantings along certain perimeter fences. (DWW 1, p. 13)

Comment:

DoAg does not believe the record supports a finding that DWW will be able to establish and maintain any particular type of grasses at the project site. Please see the Comments to Findings of Fact 206, 207, and 360.

DoAg asks that this finding be removed.

Comment on Finding of Facts 5, 11, 21, 43, 93, and 94:

With respect to Finding of Facts 5, 11, 21, 43, 93, and 94, DoAg respectfully submits that these are conclusions of law and should be removed from the Draft Findings of Fact.

DoAg asks that these findings be removed.

Respectfully submitted,

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Certification of Service

I, Jason E. Bowsza hereby certify that a copy of the foregoing Department of Agriculture's Comments on Draft Findings of Fact was sent on December 14, 2017, by e-mail and by first class mail, postage prepaid to the following parties on the Service List in this matter:

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Town of Simsbury

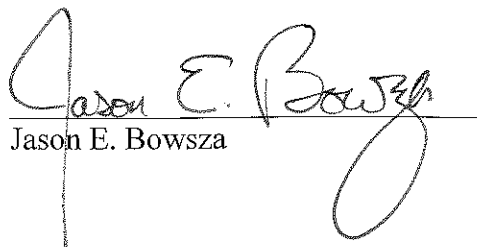
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