STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

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VIA ELECTRONIC MAIL

September 29, 2017

TO: Parties and Intervenors

FROM: Melanie A. Bachman MAB
Executive Director

RE: **PETITION NO. 1313** – DWW Solar II, LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance and operation of a 26.4 megawatt AC solar photovoltaic electric generating facility on approximately 289 acres comprised of 5 separate and abutting privately-owned parcels located generally west of Hopmeadow Street (US 202/CT 10), north and south of Hoskins Road, and north and east of County Road and associated electrical interconnection to Eversource Energy's North Simsbury Substation west of Hopmeadow Street in Simsbury, Connecticut.

During a public meeting of the Connecticut Siting Council (Council) held on September 28, 2017, the Council ruled on the following motion and requests:

1. **Department of Agriculture's (DOAg) Motion to Deny Declaratory Ruling, dated August 23, 2017.**

   DOAg's Motion to Deny Declaratory Ruling, as well as the supporting Motions to Deny Declaratory Ruling submitted by the Town of Simsbury on September 11, 2017; by abutting property owners, Flammini, et al on September 11, 2017; and by DEEP on September 14, 2017, were denied.

2. **DEEP Request for Oral Argument submitted as part of DEEP's Statement in Support of Motion to Deny Declaratory Ruling, dated September, 2017.**

   DEEP's request to provide oral argument during the regular meeting of the Council held on September 28, 2017 was denied.

3. **The Town of Simsbury's Request for Oral Argument on Motions to Deny Declaratory Ruling, dated September 25, 2017.**

   The Town of Simsbury's request for oral argument during the continued evidentiary hearing scheduled for October 10, 2017 was denied.

Enclosed is a copy of the staff report, dated September 28, 2017.

MAB/laf

Enclosure

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DATE: September 28, 2017

TO: Council Members

FROM: Melanie A. Bachman MAB
Executive Director/Staff Attorney

RE: **PETITION NO. 1313** – DWW Solar II, LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance and operation of a 26.4 megawatt AC solar photovoltaic electric generating facility on approximately 289 acres comprised of 5 separate and abutting privately-owned parcels located generally west of Hopmeadow Street (US 202/CT 10), north and south of Hoskins Road, and north and east of County Road and associated electrical interconnection to Eversource Energy's North Simsbury Substation west of Hopmeadow Street in Simsbury, Connecticut. **Staff Report – Department of Agriculture Motion to Deny Petition.**

On August 23, 2017, the Department of Agriculture (DOAg) submitted a Motion to Deny Declaratory Ruling (DOAg Motion) in the above-referenced matter currently pending before the Connecticut Siting Council (Council). In support of its motion, DOAg advances two arguments:

1. The new provisions of Conn. Gen. Stat. §16-50k in Public Act (PA) 17-218, operate prospectively on decisions made by the Council after July 1, 2017; and

2. Retroactive application of the new provisions of Conn. Gen. Stat. §16-50k(a) is appropriate because the statute is "procedural" in nature.

In either case, DOAg concludes that the Council cannot review the project by a petition for a declaratory ruling (petition), but must review the project by an application for a certificate of environmental compatibility and public need (application for a certificate).

On August 24, 2017, the Council requested written comments from the parties with respect to whether the DOAg Motion should be granted or denied by September 14, 2017. On September 11, 2017, the Town of Simsbury (Town) submitted a Motion to Deny Declaratory Ruling indicating the Town agrees with and adopts DOAg's Motion. Also on September 11, 2017, the abutting property owners, Flammini, et al (Flammini, et al) submitted a Memorandum in Support of Motion to Deny Declaratory Ruling indicating they join in the DOAg's Motion. On September 14, 2017, DEEP submitted a Statement in Support of Motion to Deny Declaratory Ruling indicating DEEP adopts the analysis laid out in DOAg's Motion and requested the parties be allowed to present oral argument on the motion during a regular meeting of the Council. Also on September 14, 2017, DWW Solar II, LLC (DWW) submitted an Objection to DOAg's Motion on the basis that petitions are decided based on the requirements in place at the time of filing of a petition, not at the time of decision, and PA 17-218 requires the Council to consider entirely new areas of inquiry when making its decisions, which is substantive, not procedural. On September 21, 2017, DOAg filed reply comments to DWW's objection reiterating the arguments in DOAg's Motion. On September 25, 2017, the Town requested an opportunity for oral argument during the continued evidentiary hearing session

scheduled for this matter on October 10, 2017. On September 26, 2017, the Town submitted reply comments supporting DOAg's reply comments.

A. PA 17-218 does not apply to this proceeding.

Contrary to DOAg's creative argument that the statute operates prospectively on decisions made by the Council after July 1, 2017, PA 17-218 does not apply to this matter. First, the effective date of the relevant sections of the legislation from Raised Senate Bill 943[1] to PA 17-218[2] has consistently remained "***effective July 1, 2017***," while Section 6 of the legislation became "***effective from passage***."[3] Second, in accordance with the provisions of the Uniform Administrative Procedure Act (UAPA) and the Public Utility Environmental Standards Act (PUESA), the relevant sections of PA 17-218 apply from the date an application for a certificate or a petition is received.

As it applies to this matter, Section 16-50k(a) of the PUESA states:

> Notwithstanding the provisions of this chapter or title 16a, 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 customer-side distributed resources project… or grid-side distributed resources project… with a capacity of not more than sixty-five megawatts, as long as such project meets air and water quality standards of the [DEEP].

Effective July 1, 2017, under Section 3 of PA 17-218, the Connecticut legislature modified Section 16-50k of the PUESA to add the following language:

> For a solar facility with a capacity of two or more megawatts, to be located on prime farmland or forest land, excluding any such facility that was selected by DEEP in any solicitation issued prior to July 1, 2017, the Council shall approve by declaratory ruling if the Department of Agriculture represents in writing that such project will not materially affect the status of such land as prime farmland…

Also effective July 1, 2017, under Section 4 of PA 17-218, the Connecticut legislature modified Section 16-50p of the PUESA to require the Council to consider impacts to "agriculture" in rendering decisions on applications for certificates.

1. The effective date of the relevant sections of PA 17-218 is July 1, 2017.

According to the Connecticut General Assembly Legislation Effective Dates, Sections 3 and 4 of PA 17-218 became ***effective July 1, 2017***. However, Section 6 of PA 17-218 became ***effective from passage***.[4] Had the proponents of the legislation intended for Sections 3 and 4 to take effect from passage like Section 6, they could have expressed such an intent, but they did not. The glossary of legislative terms defines "effective date" as: "The date the bill becomes a law. Unless otherwise designated, all bills that amend the statutes are effective October 1 in the year passed. All special acts are effective upon passage."[5] The legislature designated the effective date of the relevant sections of

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[1] Raised Senate Bill No. 943, *available at* https://www.cga.ct.gov. (See attached Exhibit A).
[2] Public Act No. 17-218, *available at* https://www.cga.ct.gov. (See attached Exhibit B).
[3] *Id.* (Section 6 relates to petitioning EPA for approval of kelp and kelp oil as feedstock for heating oil.)
[4] Connecticut General Assembly, Legislation Effective Dates, *available at* https://www.cga.ct.gov (see also CGA link to "current legislation effective from passage.")
[5] Connecticut General Assembly, Glossary of Legislative Terms & Definitions, *available at* https://www.cga.ct.gov/asp/content/terms.asp#E

PA 17-218 as July 1, 2017. PA 17-218 is not a special act. Furthermore, Conn. Gen. Stat. §1-1(u) specifically states, "The passage or repeal of an act shall not affect any action then pending." DOAg argues that PA 17-218 "operates prospectively on decisions made by the Council after July 1, 2017." This is a creative way of arguing that PA 17-218 operates retrospectively on applications for certificates and petitions received by the Council prior to July 1, 2017.

In *Citizens Against Pollution Northwest v. Connecticut Siting Council*, the developer of an electric generating facility filed an application for a certificate with the Council on December 5, 1988 and public hearings were held in February, March, April and May of 1989.[6] The Council rendered its decision granting a certificate on November 22, 1989 and mailed notice of the decision to all parties of record on November 30, 1989. On January 12, 1990, 43 days after the Council mailed notice of the decision to all parties of record, the plaintiff appealed from the Council's decision. The sole issue on appeal concerned the applicability and the effective date of PA 88-317, which extended the time period for service of an administrative appeal from within 30 days after the agency mails notice of the decision to within 45 days after the agency mails notice of the decision. PA 88-317 took effect on July 1, 1989. Similar to DOAg's argument, the plaintiff claimed PA 88-317 applied to appeals from decisions rendered on or after July 1, 1989, without regard to the date that the underlying agency proceedings commenced. The Connecticut Supreme Court found the plaintiff's argument unavailing and held that PA 88-317 "is tied to the date that the underlying agency proceedings commenced, and in cases ***where such proceedings had commenced before July 1, 1989, the effective date of the act, the act is inapplicable.***" (Emphasis added.)

Following the same rationale regarding the effective date of legislation and relying also on Conn. Gen. Stat. §55-3, which states, "No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have a retrospective effect," the Connecticut Appellate Court held in *Flanagan v. Blumenthal*, "[T]he act states that it is effective October 1, 2005 and is silent on the issue of retroactivity."[7] Furthermore, the federal Court of Appeals for the Second Circuit concluded in *Centurion v. Sessions* that the presumption against retroactive legislation bars retroactive application because the plain text of the immigration statute at issue in the case attaches legal consequences at the time a lawful permanent resident commits a crime, rather than at the time of conviction.[8] The same principle applies to PA 17-218; the presumption against retroactive legislation under Conn. Gen. Stat. §55-3 bars retroactive application because the plain text of the statute at issue in this case attaches legal consequences at the time a petition is received by the Council, rather than at the time a petition is decided by the Council.

2. PA 17-218 applies from the date an application for a certificate or a petition is received.

On page 1 of DOAg's Motion, DOAg concedes that the subject petition was received by the Council on June 29, 2017. Several provisions under the UAPA dictate that agency actions, including decisions, related to petitions are calculated from the date a petition is received:

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[6] *Citizens Against Pollution Northwest, Inc. v. Connecticut Siting Council*, 217 Conn. 143 (1991).

[7] *Flanagan v. Blumenthal*, 100 Conn. App. 255 (Conn. App. 2007) (PA 05-114 amended Conn. Gen. Stat. §5-141d to permit a state officer or employee to bring an action against the state for indemnification of legal fees and costs incurred by such officer or employee in defense of any civil action in state or federal court arising out of any alleged act, omission or deprivation that occurred in the scope of employment. Prior to the passage of PA 05-114, sovereign immunity barred suits against the state.)

[8] *Centurion v. Sessions*, 860 F.3d 69 (2nd Cir. 2017)

> Conn. Gen. Stat. §4-176(c) - "within 30 days ***after receipt of a petition for a declaratory ruling***, an agency shall give notice of the petition..." (Emphasis added).
>
> Conn. Gen. Stat. §4-176(e) - "within 60 days ***after receipt of a petition for a declaratory ruling***, an agency in writing shall..." (Emphasis added).
>
> Conn. Gen. Stat. §4-176(i) – "If an agency does not issue a declaratory ruling within one hundred eighty days ***after the filing of a petition*** ... the agency shall be deemed to have decided not to issue such ruling." (Emphasis added).

PA 17-218 did not modify any provision of the UAPA. Furthermore, provisions under the PUESA dictate that agency decisions related to applications for certificates are calculated from the date an application for a certificate is filed:

> Conn. Gen. Stat. §16-50p - the Council's decision shall be rendered not later than 12 months ***after the filing of an application*** for a transmission line facility and not later than 180 days ***after the filing of an application*** for other jurisdictional facilities...." (Emphasis added).

Contrary to DOAg's argument, the structure and language of PA 17-218 does not make any reference to prospective operation of the statute on decisions made by the Council after July 1, 2017. In fact, if DOAg's legal conclusion that PA 17-218 applies prospectively to decisions were accepted, the provisions of PA 17-218 would necessarily apply to all of the pending applications for certificates that would have decisions rendered after July 1, 2017. This would include the following applications for certificates submitted to the Council prior to July 1, 2017, but for which a decision was or will be rendered after July 1, 2017 - Docket Nos. 471, 472, 473, 474 and 475. This means the Council would be required to reopen the decisions of Docket Nos. 472 and 473, which were rendered on August 31, 2017 and September 14, 2017; reopen the evidentiary records of Docket Nos. 471 and 474, which closed on August 15, 2017 and August 22, 2017; and reject as incomplete Docket No. 475, which was submitted on June 28, 2017, in order to address impacts to agriculture under Conn. Gen. Stat. §16-50p as amended by PA 17-218. This is an unworkable result.

B. The new provisions of Conn. Gen. Stat. §16-50k are substantive in nature and cannot apply retroactively.

DOAg's second argument that retroactive application of the new provisions of Conn. Gen. Stat. §16-50k is appropriate because the statute is procedural in nature also fails when the common sense, functional retroactivity analysis established by the U.S. Supreme Court in *Landgraf v. USI Film Products* is applied.[9] First, the legislation does not expressly provide that it is to apply retroactively. Second, the new provisions attach new legal consequences to events completed before their enactment. The relationship between the consequences of a new law and conduct predating the new law is important for retroactivity analysis.[10] While there is no precise definition of substantive or procedural law, it is generally agreed that a substantive law creates, defines and regulates rights while a procedural law prescribes the methods of enforcing such rights.[11] For example, under this rationale, the manner in

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[9] *Landgraf v. USI Film Products*, 511 U.S. 244, 270 (1994).
[10] *Id., Zuluaga Martinez v. INS*, 523 F.3d 365 (2nd Cir. 2008)
[11] *Id.*; *D'Eramo v. Smith*, 273 Conn. 610 (2005) (amendment of statutory provision changed requirements for individuals to sue the state for medical malpractice claims and Court held amendment of a statutory limitation of a right to sue the state constitutes a substantive change to the statute.)

which a claim is pursued, or the submission of an application or petition, is **procedural**, whereas eligibility to file a claim, or eligibility to build a solar project on prime farmland, is **substantive**.[12] A statute, which, in form, provides but a change in remedy but actually brings about changes in substantive rights is not subject to retroactive application.[13]

1. **The legislature did not expressly provide that the new provisions of Conn. Gen. Stat. §16-50k should apply retroactively.**

Procedural statutes leave the preexisting statutory scheme intact rather than create a completely different statutory scheme.[14] A statutory amendment that is intended to clarify the intent of an earlier act is typically procedural and has a retroactive effect. In cases where it has been held that a statutory amendment had been intended to be clarifying, and therefore, should be applied retroactively, the legislative history has provided support for the conclusion that the legislature considered the amendatory language to be a declaration of the legislature's ***original*** intent rather than a change in the existing statute.[15] To determine whether the legislature enacted a statutory amendment with the intent to clarify an existing statute, courts consider various factors, including, but not limited to: the amendatory language, the declaration of intent, the legislative history, and the circumstances surrounding the enactment of the amendment, such as whether it was enacted in direct response to a judicial decision that the legislature deemed incorrect or passed to resolve a controversy engendered by statutory ambiguity.[16]

First, with reference to the amendatory language, the relevant provisions of Conn. Gen. Stat. §16-50k at issue here were originally intended, under PA 05-1, "An Act Concerning Energy Independence," to establish a rebuttable presumption that there is a public benefit for certain electric generating facilities and to allow the Council to approve these electric generating facilities by declaratory ruling.[17] PA 17-218 is not a clarification of these existing provisions nor is the amendatory language in PA 17-218 a declaration of the legislature's original intent. PA 17-218 carves out an exception for "solar photovoltaic facilities with a capacity of two or more megawatts to be located on prime farmland" and requires these particular facilities to acquire a letter from DOAg that such project will not materially affect the status of prime farmland. This creates a completely different statutory scheme.

Second, with reference to the declaration of intent, legislative documents may reveal a legislative intent to change, rather than clarify, existing law. Senate Bill 943 contains the following statement of purpose: "To discourage the use of prime farmlands and forest lands as locations for the siting of utility-scale solar facilities." This reveals that the purpose and intent of PA 17-218 was to change the existing law, rather than to clarify the existing law, and to require developers of solar projects to acquire a letter from DOAg that such project will not materially affect the status of prime farmland.

Third, with reference to the legislative history, nothing in these proceedings indicates that the legislature intended for PA 17-218 to be applied retroactively. To the contrary, Representative Hoydick expressed a concern that the three state solicitations of Connecticut, Massachusetts and Rhode Island would be rendered null and void by PA 17-218, if passed, and was assured by

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[12] *Id.; Shannon v. Commissioner of Housing*, 322 Conn. 191, 208 (2016); *Rosario v. Hartford Hospital*, 1995 Conn. Super. LEXIS 1373 (Conn. Super. 1995)
[13] *Id.*
[14] *Id.*; *H. v. Probate Court*, 177 Conn. 93 (1979).
[15] *Town of Middlebury v. Department of Environmental Protection*, 283 Conn. 156 (2007).
[16] *Id.*; *Greenwich Hospital v. Gavin*, 265 Conn. 511 (2003).
[17] Public Act 05-1, An Act Concerning Energy Independence, Office of Legislative Research Bill Analysis, *available at* https://www.cga.ct.gov/2005/BA/2005HB-07501-R00SS1-BA.htm.

Representative Demicco that would not be the case.[18] The literal language of PA 17-218 only provides a specific carve out for Connecticut DEEP solicitations, but Representative Demicco gave the solicitations of all three states that were issued prior to July 1, 2017 the same status. This is consistent with the operation of PA 17-218 as prospective, rather than retrospective.

Fourth, with reference to the circumstances surrounding the amendment, PA 17-218 reasonably cannot be construed to have been enacted in direct response to a judicial decision that the legislature deemed incorrect. No Council decisions on solar projects have been appealed. Furthermore, PA 17-218 cannot reasonably be considered to have been passed to resolve a controversy engendered by statutory ambiguity. No controversy existed with respect to whether solar facilities are included or excluded from the requirement to submit a petition under Conn. Gen. Stat. §16-50k.

Accordingly, under Step One of the *Landgraf* analysis, PA 17-218 changes, rather than clarifies, the provisions of Conn. Gen. Stat. §16-50k and the legislature did not expressly provide that the new provisions of Conn. Gen. Stat. §16-50k should apply retroactively.

2. The new provisions of Conn. Gen. Stat. §16-50k attach new legal consequences to events completed before its enactment.

The U.S. Supreme Court noted in *Landgraf* that "the presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact."[19] The Court observed that the largest category of cases in which it has applied the presumption against statutory retroactivity has involved new provisions affecting contractual or property rights, matters in which predictability and stability are of prime importance.[20] Under *Landgraf*, a law has retroactive effect when it would impair rights a party possessed when he acted, increase a party's liability for past conduct or impose new duties with respect to transactions already completed.[21]

In *Shannon v. Commissioner of Housing*, the Connecticut Supreme Court held that retroactive application of a regulation that imposes a new obligation on tenants based on their sex offender status was improper.[22] Nothing in the applicable statutes, regulations or administrative policies supported the argument that the tenant's continued participation in the rental assistance program was a "time limited or otherwise tenuous expectation subject to the Commissioner's exercise of discretion."[23] Plaintiff had been a registered sex offender since 1997 and was admitted to the rental program in 2009. The program did not have a regulation or formal policy establishing sex offender registration as a ground for denial or termination of assistance. In 2012, a regulation was promulgated that provided for denial of assistance to an applicant or termination of assistance to a participant if subject to a sex offender registration requirement. Plaintiff was notified that his participation in the rental program would terminate July 31, 2013 and after hearings were held, the defendant ordered the termination of plaintiff's benefits. Before the regulation was promulgated, the governing statutes, regulations and policies afforded plaintiff a property interest in continued participation in the rental program that vested with his admission to the program in 2009, which did not authorize the termination of existing participants subject to a registry obligation. The Court determined that given the plaintiff was

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[18] Transcript of House Proceedings, House of Representatives, June 7, 2017, *available at* https://www.cga.ct.gov/2017/trn/H/2017HTR00607-R01-TRN.htm

[19] *Landgraf, supra* note 9 at 270.

[20] *Id.*

[21] *Id.*, *Shannon, supra* note 12 at 206.

[22] *Id.*

[23] *Id.*

properly admitted to the program as a sex offender, the use of his sex offender status, an event that preceded his entry into the program, to terminate his benefits constitutes a "new obligation."

In *H. v. Probate Court*, an adopted person appealed from a judgment of the Probate Court denying her petition to view her original birth certificate. In 1974, plaintiff contacted the probate judge inquiring whether or not she could review her birth record, but was informed that her birth mother did not wish to have her identity disclosed at that time. In 1976, plaintiff filed a petition pursuant to Conn. Gen. Stat. §7-53 as amended by PA 75-170 seeking to inspect her original birth certificate. The Probate Court denied plaintiff's request holding that PA 75-170 required that the genetic parent give permission to the adopted child seeking inspection of her birth certificate and plaintiff had failed to secure the consent of her genetic mother. Plaintiff appealed. PA 75-170 essentially considered access to birth records a matter of Probate Court discretion, but while plaintiff's appeal was pending, PA 75-170 was repealed and substituted with PA 77-246, which required written consent of the genetic parent. Defendant argued that PA 77-246 controlled. The Connecticut Supreme Court disagreed and determined that PA 77-246 created a "parental veto" that didn't exist before the effective date of the act. The Court therefore held that PA 77-246 creates a completely different scheme and allowance of such a "parental veto" as an absolute bar to the examination of plaintiff's birth certificate is precisely the rationale upon which the rule precluding retroactive application of "substantive statutes" has been formulated. The Court further held that the rule precluding retroactive application would be applied even if PA 77-246 were to be characterized as "merely procedural."

In light of *Shannon and H.*, it is clear that PA 17-218 cannot be applied retroactively. Similar to the facts in *Shannon*, given DWW's solar project was submitted into the Tri-State RFP in 2015, the use of its selection in the RFP and submission of a petition on June 29, 2017, events that preceded the effective date of PA 17-218, to require acquisition of a letter from DOAg that the project would not materially affect the status of prime farmland constitutes a "new obligation." Nothing in the applicable statutes supports the argument that DWW's submission of a petition for its solar project is a time limited or otherwise tenuous expectation subject to the Commissioner of Agriculture's exercise of discretion. Similar to the facts in *H.*, DWW submitted a petition for its solar project in accordance with the provisions of Conn. Gen. Stat. §16-50k prior to the effective date of PA 17-218, which created a "DOAg veto" that didn't exist before the effective date of the act.

Accordingly, under Step Two of the *Landgraf* analysis, PA 17-218 attaches new legal consequences to events completed before its enactment.

C. Submission of an application for a certificate is not required, nor is it necessary.

At this juncture, requiring DWW to file an application for a certificate would require it to start over. On July 20, 2017, the Council voted to hold a public hearing on the matter, which although discretionary for this matter, would be required under the amended statute. Even if we were to accept DOAg's arguments that PA 17-218 operates prospectively on Council decisions after July 1, 2017 and the statute is procedural rather than substantive, there is no prejudice to DOAg since it is a party to this proceeding and has rights to participate and appeal. In *FairwindCT, Inc. v. Connecticut Siting Council*, the Connecticut Supreme Court determined that although the Council was only required to determine compliance with DEEP's air and water quality standards, the Council has discretion to consider additional standards "as it shall deem appropriate."[24] In *Fairwind*, while hearings were held on petitions for 3 wind projects, the legislature was debating PA 11-245, which required a moratorium on wind projects until the Council drafts regulations for the siting of wind projects that include, but are not limited to, consideration of setbacks, flicker, a requirement for the developer to

[24] *FairwindCT, Inc. v. Connecticut Siting Council*, 313 Conn. 669, 697-704 (2014).

decommission the facility at the end of its useful life, different requirements for projects of different sizes, ice throw, blade shear, noise and impact on natural resources.[25] In Petition No. 983, the Council's decision includes, but is not limited to, findings on setbacks, noise, ice throw/drop, shadow flicker, visibility and site restoration.[26]

Similarly, the Council has held public hearings on solar projects for which additional standards were considered as the Council deemed appropriate, such as findings on agriculture, noise, historic resources, visibility and site restoration.[27] Furthermore, the Council's 2016 Filing Guide for a Petition for a Declaratory Ruling for a Renewable Energy Facility, which applies to this matter, requires submission of documentation beyond compliance with air and water quality standards.[28] DOAg concedes in its motion that the petition was submitted to the Council on June 29, 2017, prior to the effective date of PA 17-218, and that it "has not and will not" represent in writing that the project will not materially affect the status of prime farmland. This is now in the record of this matter. As is evident from the Council's interrogatories, impacts to agriculture are under consideration. As with PA 11-245 in the wind project proceedings, the Council will endeavor to comply with the intent of PA 17-218 without violating the due process rights of any party. Therefore, submission of an application for a certificate is not required, nor is it necessary.

D. Oral argument on DOAg's Motion is unnecessary.

In its September 14, 2017 Statement of Support, DEEP requests the parties be allowed to present oral argument on DOAg's Motion during the Council's regular meeting on September 28, 2017. This is unnecessary. Typically, if allowed, oral argument would occur at a ***public hearing*** specific to the pending matter where there is a transcriptionist, rather than a regular meeting specific to numerous pending matters before the Council where there is not a transcriptionist. Allowance of oral argument during a public hearing on any motion is discretionary to the Council.[29] In the interests of time and efficiency, and given that every party to this matter responded to the Council's request for written comments on DOAg's Motion (DOAg also submitted reply comments), oral argument would serve no purpose in this proceeding and rather than reserve time at a public hearing for regurgitation of the written arguments, any oral argument on the issue may be had on appeal in court.

Staff Recommendations

Based on the foregoing, staff recommends DOAg's Motion, as well as the supporting motions to deny submitted by the Town, DEEP and Flammini, et al, be denied. Staff also recommends DEEP's request to provide oral argument during the Council's regular meeting on September 28, 2017 and the Town's request to provide oral argument during the continued evidentiary hearing session scheduled for October 10, 2017 be denied.

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[25] Public Act 11-245, *available at* https://www.cga.ct.gov (PA 11-245 was effective July 1, 2011 and did not apply retroactively) (See attached Exhibit C).
[26] Connecticut Siting Council, Petition No. 983, *available at* http://www.ct.gov/csc/lib/csc/pendingproceeds/petition_983/decision/983fof.pdf
[27] Connecticut Siting Council, Petition No. 1042, *available at* http://www.ct.gov/csc/lib/csc/pendingproceeds/petition_1042/p1042-fof-final.pdf; Connecticut Siting Council, Petition No. 1056, *available at* http://www.ct.gov/csc/lib/csc/pendingproceeds/petition_1056/p1056-fof-final.pdf
[28] Connecticut Siting Council, Filing Guide for a Petition for a Declaratory Ruling for a Renewable Energy Facility, *available at http://www.ct.gov/csc/lib/csc/guides/2016guides/renewable_energy_facility_petition_guide_081616.pdf*
[29] Regulations of Connecticut State Agencies §16-50j-22a (2012).

EXHIBIT A

General Assembly

Raised Bill No. 943

January Session, 2017

LCO No. **4537**

04537_____ENV

Referred to Committee on ENVIRONMENT

Introduced by:

(ENV)

AN ACT CONCERNING THE INSTALLATION OF CERTAIN SOLAR FACILITIES ON PRODUCTIVE FARMLANDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (e) of section 16a-3j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

(e) The Commissioner of Energy and Environmental Protection, in consultation with the procurement manager identified in subsection (l) of section 16-2, the Office of Consumer Counsel and the Attorney General, shall evaluate project proposals received under any solicitation issued pursuant to subsection (b), (c) or (d) of this section, based on factors including, but not limited to, (1) improvements to the reliability of the electric system, including during winter peak demand; (2) whether the benefits of the proposal outweigh the costs to ratepayers; (3) fuel diversity; (4) the extent to which the proposal contributes to meeting the requirements to reduce greenhouse gas emissions and improve air quality in accordance with sections 16-245a, 22a-174, and 22a-200a; (5) whether the proposal is in the best interest of ratepayers; and (6) whether the proposal is aligned with the policy goals outlined in the Integrated Resources Plan, pursuant to section 16a-3a, and the Comprehensive Energy Strategy, pursuant to section 16a-3d, including, but not limited to,

environmental impacts. For purposes of such evaluation, "environmental impacts" shall include, but not be limited to, impacts to forest land and prime farmland, as defined by the United States Department of Agriculture. In conducting such evaluation, the commissioner may also consider the extent to which project proposals provide economic benefits for the state. In evaluating project proposals received under any solicitation issued pursuant to subsection (b), (c) or (d) of this section, the commissioner shall compare the costs and benefits of such proposals relative to the expected or actual costs and benefits of other resources eligible to respond to the other procurements authorized pursuant to this section.

Sec. 2. Subsection (a) of section 16-50k of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

(a) Except as provided in subsection (b) of section 16-50z, no person shall exercise any right of eminent domain in contemplation of, commence the preparation of the site for, commence the construction or supplying of a facility, or commence any modification of a facility, that may, as determined by the council, have a substantial adverse environmental effect in the state without having first obtained a certificate of environmental compatibility and public need, hereinafter referred to as a "certificate", issued with respect to such facility or modification by the council. Certificates shall not be required for (1) fuel cells built within the state with a generating capacity of two hundred fifty kilowatts or less, or (2) fuel cells built out of state with a generating capacity of ten kilowatts or less. Any facility with respect to which a certificate is required shall thereafter be built, maintained and operated in conformity with such certificate and any terms, limitations or conditions contained therein. Notwithstanding the provisions of this chapter or title 16a, the council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling (A) the construction of a facility solely for the purpose of generating electricity, other than an electric generating facility that uses nuclear materials or coal as fuel, at a site where an electric generating facility operated prior to July 1, 2004, and (B) the construction or location of any fuel cell, unless the council finds a substantial adverse environmental effect, or of any customer-side distributed resources project or facility or grid-side distributed resources project or facility with a capacity of not more than sixty-five megawatts, as long as such project meets air and water quality standards of the Department of Energy and Environmental Protection and as long as such project is not a solar photovoltaic facility with a capacity of two or more megawatts to be located on prime farmland, as defined by the United States Department of Agriculture or on forest land. There shall be a rebuttable presumption that the construction or location of a solar photovoltaic facility with a capacity of two or more megawatts to be located on prime farmland, as defined by the United States Department of Agriculture, or on forest land is not environmentally compatible. Such presumption may be rebutted by evidence that such facility will not materially affect the status of such land as prime farmland or forest land, as applicable, and if such applicant, upon the council's granting of such certificate, posts a bond for the decommissioning of such facility at the end of its useful life. Nothing in this subsection shall be construed to affect any agricultural virtual net metering facility as authorized pursuant to section 16-244u.

Sec. 3. (NEW) (*Effective July 1, 2017*) (a) Not later than February 1, 2018, the Commissioner of Energy and Environmental Protection, in consultation with the Commissioners of

Administrative Services, Correction and Transportation, shall submit a report to the joint standing committee of the General Assembly having cognizance of matters relating to the environment, in accordance with the provisions of section 11-4a of the general statutes, that identifies state properties, including, but not limited to, highway corridors and correctional institutions, that are suitable for lease to private entities for the construction or location of solar photovoltaic facilities with capacities of two or more megawatts.

(b) Not later than sixty days following submission of the report described in subsection (a) of this section, the Commissioners of Energy and Environmental Protection, Administrative Services, Correction and Transportation shall cause such report to be posted to the Internet web site of said departments, respectively. Following such posting, the Commissioner of Energy and Environmental Protection shall forward a copy of such report to the chairperson of the Connecticut Siting Council who shall cause a copy of such report to be posted to the Internet web site of the Connecticut Siting Council not later than thirty days following receipt of such report.

Sec. 4. (NEW) (*Effective July 1, 2017*) The Commissioner of Energy and Environmental Protection shall work in conjunction with the Connecticut Conference of Municipalities to identify closed landfills that are suitable for the lease to private entities for the construction or location of solar photovoltaic facilities with capacities of two or more megawatts. The commissioner may receive from any municipality notice indicating such municipality's interest in the construction or location of solar photovoltaic facilities with capacities of two or more megawatts upon any closed landfill located in such municipality. Upon receipt of such notice and following a reasonable evaluation of the suitability of such closed landfill for such construction or location, the commissioner may post such notice in the same location on the Internet web site of such department as the report posted pursuant to section 3 of this act.

Sec. 5. (NEW) (*Effective July 1, 2017*) Not later than July 1, 2019, the Commissioner of Energy and Environmental Protection, in consultation with the Commissioner of Economic and Community Development and the working group to examine the remediation and development of brownfields in this state, established pursuant to section 32-770 of the general statutes, shall establish a pilot program for the construction or location of solar photovoltaic facilities with capacities of two or more megawatts upon brownfields in this state. Such pilot program shall consist of not fewer than three projects to be located on brownfields that do not: (1) Contain contaminated groundwater or volatile organic compounds that pose a potential threat to human health or safety, and (2) have commercial or industrial activities conducted upon such brownfields. Any such project may consist of brownfields that are not contiguous. The Commissioner of Energy and Environmental Protection shall determine the suitability for participation of any brownfield in such pilot program and, notwithstanding any provision of the general statutes, may undertake any action required to establish such pilot program, including, but not limited to, identifying applicants for the construction or location of solar photovoltaic facilities with capacities of two or more megawatts upon brownfields in this state that may wish to participate in such pilot program. The Commissioner of Economic and Community Development and the working group to examine the remediation and development of brownfields in this state,

established pursuant to section 32-770 of the general statutes, shall provide the Commissioner of Energy and Environmental Protection with any information or assistance that said commissioner requests in furtherance of the establishment of such pilot program. Not later than one year following the establishment of such pilot program, the Commissioner of Energy and Environmental Protection shall submit a report to the joint standing committee of the General Assembly having cognizance of matters relating to the environment, in accordance with the provisions of section 11-4a of the general statutes, detailing the status of such pilot program and identifying any recommendations for legislation to further facilitate or expand such pilot program.

Sec. 6. *(Effective July 1, 2017)* Not later than February 1, 2018, the Commissioner of Energy and Environmental Protection shall submit a report to the joint standing committee of the General Assembly having cognizance of matters relating to the environment, in accordance with the provisions of section 11-4a of the general statutes, that identifies types of properties in the state, other than prime farmlands and forest lands, that are suitable for the construction or location of solar photovoltaic facilities with capacities of two or more megawatts. Such report shall include, but not be limited to, an analysis of whether: (1) Right-of-ways occupied by overhead transmission facilities, as described in section 16-50hh of the general statutes, may serve as such a suitable situs in areas of such right-of-ways that are not subject to restoration or revegetation orders described in section 16-50hh of the general statutes, and (2) abandoned or underutilized parking facilities in the state may serve as such a suitable situs.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2017*	16a-3j(e)
Sec. 2	*July 1, 2017*	16-50k(a)
Sec. 3	*July 1, 2017*	New section
Sec. 4	*July 1, 2017*	New section
Sec. 5	*July 1, 2017*	New section
Sec. 6	*July 1, 2017*	New section

Statement of Purpose:

To discourage the use of prime farmlands and forest lands as locations for the siting of utility-scale solar photovoltaic facilities.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

EXHIBIT B

Senate Bill No. 943

Public Act No. 17-218

AN ACT CONCERNING THE INSTALLATION OF CERTAIN SOLAR FACILITIES ON PRODUCTIVE FARMLANDS, INCENTIVES FOR THE USE OF ANAEROBIC DIGESTERS BY AGRICULTURAL CUSTOMER HOSTS, APPLICATIONS CONCERNING THE USE OF KELP IN CERTAIN BIOFUELS AND THE PERMITTING OF WASTE CONVERSION FACILITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2017*) For purposes of sections 1 and 2 of this act and section 16-50k of the general statutes, as amended by this act: (1) "Core forest" means unfragmented forest land that is three hundred feet or greater from the boundary between forest land and nonforest land, as determined by the Commissioner of Energy and Environmental Protection; and (2) "prime farmland" means land that meets the criteria for prime farmland as described in 7 CFR 657, as amended from time to time.

Sec. 2. (NEW) (*Effective July 1, 2017*) In any solicitation issued under section 16a-3f, 16a-3g, 16a-3h or 16a-3j of the general statutes, as amended by this act, after July 1, 2017, the Commissioner of Energy and Environmental Protection shall consider the environmental impacts of any proposal located in the state that is received in response to such solicitation, including, but not limited to, the impacts to prime farmland and core forests and the reuse of sites with limited development opportunities such as brownfields and landfills, as identified by the commissioner.

Sec. 3. Subsection (a) of section 16-50k of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

(a) Except as provided in subsection (b) of section 16-50z, no person shall exercise any right of eminent domain in contemplation of, commence the preparation of the site for, commence the construction or supplying of a facility, or commence any modification of a facility, that may, as determined by the council, have a substantial adverse environmental effect in the state without having first obtained a certificate of environmental compatibility and public need, hereinafter referred to as a "certificate", issued with respect to such facility or modification by the council. Certificates shall not be required for (1) fuel cells built within the state with a generating capacity of two hundred fifty kilowatts or less, or (2) fuel cells built out of state with a generating capacity of ten kilowatts or less. Any facility with respect

to which a certificate is required shall thereafter be built, maintained and operated in conformity with such certificate and any terms, limitations or conditions contained therein. Notwithstanding the provisions of this chapter or title 16a, the council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling (A) the construction of a facility solely for the purpose of generating electricity, other than an electric generating facility that uses nuclear materials or coal as fuel, at a site where an electric generating facility operated prior to July 1, 2004, and (B) the construction or location of any fuel cell, unless the council finds a substantial adverse environmental effect, or of any customer-side distributed resources project or facility or grid-side distributed resources project or facility with a capacity of not more than sixty-five megawatts, as long as: [such] (i) Such project meets air and water quality standards of the Department of Energy and Environmental Protection, (ii) the council does not find a substantial adverse environmental effect, and (iii) 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 in any solicitation issued prior to July 1, 2017, pursuant to section 16a-3f, 16a-3g or 16a-3j, the Department of Agriculture represents, in writing, to the council that such project will not materially affect the status of such land as prime farmland or the Department of Energy and Environmental Protection represents, in writing, to the council that such project will not materially affect the status of such land as core forest. In conducting an evaluation of a project for purposes of subparagraph (B)(iii) of this subsection, the Departments of Agriculture and Energy and Environmental Protection may consult with the United States Department of Agriculture and soil and water conservation districts.

Sec. 4. Subsection (a) of section 16-50p of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

(a) (1) In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate.

(2) The council's decision shall be rendered in accordance with the following:

(A) Not later than twelve months after the filing of an application for a facility described in subdivision (1) or (2) of subsection (a) of section 16-50i or subdivision (4) of said subsection (a) if the application was incorporated in an application concerning a facility described in subdivision (1) of said subsection (a); and

(B) Not later than one hundred eighty days after the filing of an application for a facility described in subdivisions (3) to (6), inclusive, of subsection (a) of section 16-50i, provided the council may extend such period by not more than one hundred eighty days with the consent of the applicant.

(3) The council shall file, with its order, an opinion stating in full its reasons for the decision. The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine:

(A) Except as provided in subsection (b) or (c) of this section, a public need for the facility and the basis of the need;

(B) The nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect, including, but not limited to, (i) electromagnetic fields that, whether alone or cumulatively with other effects, impact on, and conflict with the policies of the state concerning the natural environment, (ii) ecological balance, (iii) public health and safety, (iv) scenic, historic and recreational values, (v) agriculture, (vi) forests and parks, (vii) air and water purity, and (viii) fish, aquaculture and wildlife;

(C) Why the adverse effects or conflicts referred to in subparagraph (B) of this subdivision are not sufficient reason to deny the application;

(D) In the case of an electric transmission line, (i) what part, if any, of the facility shall be located overhead, (ii) that the facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving the state and interconnected utility systems and will serve the interests of electric system economy and reliability, and (iii) that the overhead portions, if any, of the facility are cost effective and the most appropriate alternative based on a life-cycle cost analysis of the facility and underground alternatives to such facility, are consistent with the purposes of this chapter, with such regulations or standards as the council may adopt pursuant to section 16-50t, including, but not limited to, the council's best management practices for electric and magnetic fields for electric transmission lines and with the Federal Power Commission "Guidelines for the Protection of Natural Historic Scenic and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities" or any successor guidelines and any other applicable federal guidelines and are to be contained within an area that provides a buffer zone that protects the public health and safety, as determined by the council. In establishing such buffer zone, the council shall consider, among other things, residential areas, private or public schools, licensed child care centers, licensed youth camps or public playgrounds adjacent to the proposed route of the overhead portions and the level of the voltage of the overhead portions and any existing overhead transmission lines on the proposed route. At a minimum, the existing right-of-way shall serve as the buffer zone;

(E) In the case of an electric or fuel transmission line, that the location of the line will not pose an undue hazard to persons or property along the area traversed by the line;

(F) In the case of a facility described in subdivision (6) of subsection (a) of section 16-50i that is (i) proposed to be installed on land under agricultural restriction, as provided in section 22-26cc, that the facility will not result in a material decrease of acreage and productivity of the arable land, (ii) proposed to be installed on land near a building containing a school, as defined in section 10-154a, or a commercial child care center, as described in subdivision (1) of subsection (a) of section 19a-77, that the facility will not be less than two hundred fifty feet from such school or commercial child care center unless the location is acceptable to the chief elected official of the municipality or the council finds that the facility will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood in which

such school or commercial child care center is located, or (iii) proposed to be installed on land owned by a water company, as defined in section 25-32a, and which involves a new ground-mounted telecommunications tower, that such land owned by a water company is preferred over any alternative telecommunications tower sites provided the council shall, pursuant to clause (iii) of this subparagraph, consult with the Department of Public Health to determine potential impacts to public drinking water supplies in considering all the environmental impacts identified pursuant to subparagraph (B) of this subdivision. The council shall not render any decision pursuant to this subparagraph that is inconsistent with federal law or regulations; and

(G) That, for a facility described in subdivision (5) or (6) of subsection (a) of section 16-50i, the council has considered the manufacturer's recommended safety standards for any equipment, machinery or technology for the facility.

Sec. 5. Subsection (e) of section 16-244u of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

(e) (1) On or before October 1, 2013, the Public Utilities Regulatory Authority shall conduct a proceeding to develop the administrative processes and program specifications, including, but not limited to, a cap of ten million dollars per year apportioned to each electric distribution company based on consumer load, for credits provided to beneficial accounts pursuant to subsection [(c)] (b) of this section and payments made pursuant to subsection [(d)] (c) of this section, provided the municipal, state and agricultural customer hosts, each in the aggregate, and the designated beneficial accounts of such customer hosts, shall receive not more than forty per cent of the dollar amount established pursuant to this subdivision.

(2) In addition to the provisions of subdivision (1) of this subsection, the authority shall authorize six million dollars per year for municipal customer hosts, apportioned to each electric distribution company based on consumer load, for credits provided to beneficial accounts pursuant to subsection [(c)] (b) of this section and payments made pursuant to subsection [(d)] (c) of this section where such municipal customer hosts have: (A) Submitted an interconnection application to an electric distribution company on or before April 13, 2016, and (B) submitted a virtual net metering application to an electric distribution company on or before April 13, 2016.

(3) In addition to the provisions of subdivisions (1) and (2) of this subsection, the authority shall authorize, apportioned to each electric distribution company based on consumer load for credits provided to beneficial accounts pursuant to subsection (b) of this section and payments made pursuant to subsection (c) of this section three million dollars per year for agricultural customer hosts, provided each agricultural customer host utilizes a virtual net metering facility that is an anaerobic digestion Class I renewable energy source and not less than fifty per cent of the dollar amount for such agricultural customer hosts established under this subparagraph is utilized by anaerobic digestion facilities located on dairy farms that complement such farms' nutrient management plans, as certified by the Department of Agriculture, and that have a goal of utilizing one hundred per cent of the manure generated on such farm.

Sec. 6. (NEW) (*Effective from passage*) The Department of Energy and Environmental Protection, in consultation with the Department of Agriculture, may assist one or more companies in the submission of a petition to the Environmental Protection Agency for approval of kelp oil as a feedstock under the fuel pathway for the heating oil program within the Renewable Fuel Standard Program. Such assistance may include, but shall not be limited to, inquiring of the status of kelp and kelp oil for consideration as feedstock for heating oil by the Environmental Protection Agency under such program, providing any applicable or requisite information held by the department that may support such petition, and facilitating timely communications between the Environmental Protection Agency, other relevant state agencies and any such petitioning company in furtherance of any such petition.

Sec. 7. Section 22a-207 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

For the purposes of this chapter and chapter 103b:

(1) "Commissioner" means the Commissioner of Energy and Environmental Protection or his authorized agent;

(2) "Department" means the Department of Energy and Environmental Protection;

(3) "Solid waste" means unwanted or discarded solid, liquid, semisolid or contained gaseous material, including, but not limited to, demolition debris, material burned or otherwise processed at a resources recovery facility or incinerator, material processed at a recycling facility and sludges or other residue from a water pollution abatement facility, water supply treatment plant or air pollution control facility;

(4) "Solid waste facility" means any solid waste disposal area, volume reduction plant, transfer station, wood-burning facility or biomedical waste treatment facility;

(5) "Volume reduction plant" means any location or structure, whether located on land or water, where more than two thousand pounds per hour of solid waste generated elsewhere may be reduced in volume, including, but not limited to, resources recovery facilities, waste conversion facilities and other incinerators, recycling facilities, pulverizers, compactors, shredders, balers and composting facilities;

(6) "Solid waste disposal area" means any location, including a landfill or other land disposal site, used for the disposal of more than ten cubic yards of solid waste. For purposes of this subdivision, "disposal" means the placement of material at a location with the intent to leave it at such location indefinitely, or to fail to remove material from a location within forty-five days, but does not mean the placement of material required to be recycled under section 22a-241b in a location on the premises of a recycling facility, provided such facility is in compliance with all requirements of state or federal law and any permits required thereunder;

(7) "Recycling" means the processing of solid waste to reclaim material therefrom;

(8) "Recycling facility" or "recycling center" means land and appurtenances thereon and structures where recycling is conducted, including but not limited to, an intermediate processing center as defined in section 22a-260;

(9) "Resources recovery facility" means a facility [utilizing processes to reclaim energy from municipal solid waste] that combusts municipal solid waste to generate electricity;

(10) "Waste conversion facility" means a facility that uses thermal, chemical or biological processes to convert solid waste, including, but not limited to, municipal solid waste, into electricity, fuel, gas, chemical or other products and that is not a facility that combusts mixed municipal solid waste to generate electricity;

[(10)] (11) "Transfer station" means any location or structure, whether located on land or water, where more than ten cubic yards of solid waste, generated elsewhere, may be stored for transfer or transferred from transportation units and placed in other transportation units for movement to another location, whether or not such waste is stored at the location prior to transfer;

[(11)] (12) "Municipality" means any town, city or borough within the state;

[(12)] (13) "Municipal authority" means the local governing body having legal jurisdiction over solid waste management within its corporate limits which shall be, in the case of any municipality which adopts a charter provision or ordinance pursuant to section 7-273aa, the municipal resource recovery authority;

[(13)] (14) "Regional authority" means the administrative body delegated the responsibility of solid waste management for two or more municipalities which have joined together by creating a district or signing an interlocal agreement or signing a mutual contract for a definitive period of time;

[(14)] (15) "Region" means two or more municipalities which have joined together by creating a district or signing an interlocal agreement or signing a mutual contract for a definite period of time concerning solid waste management within such municipalities;

[(15)] (16) "Solid waste management plan" means an administrative and financial plan for an area which considers solid waste storage, collection, transportation, volume reduction, recycling, reclamation and disposal practices for a twenty-year period, or extensions thereof;

[(16)] (17) "Municipal collection" means solid waste collection from all residents thereof by a municipal authority;

[(17)] (18) "Contract collection" means collection by a private collector under a formal agreement with a municipal authority in which the rights and duties of the respective parties are set forth;

[(18)] (19) "Solid waste planning region" means those municipalities within the defined boundaries of regional councils of governments or as prescribed in the state solid waste management plan;

[(19)] (20) "Biomedical waste" means infectious waste, pathological waste and chemotherapy waste generated during the administration of medical care or the performance of medical research involving humans or animals and which, because of its quantity, character or composition, has been determined by the commissioner to require special handling but excluding any solid waste which has been classified by the department as a hazardous waste pursuant to section 22a-115 or is a radioactive material regulated pursuant to section 22a-148;

[(20)] (21) "Generator of biomedical waste" means any person who owns or operates a facility that produces biomedical waste in any quantity, including, but not limited to the following: General hospitals, skilled nursing facilities or convalescent hospitals, intermediate care facilities, chronic dialysis clinics, free clinics, health maintenance organizations, surgical clinics, acute psychiatric hospitals, laboratories, medical buildings, physicians' offices, veterinarians, dental offices and funeral homes. Where more than one generator is located in the same building, each individual business entity shall be considered a separate generator;

[(21)] (22) "Biomedical waste treatment facility" means a solid waste facility capable of storing, treating or disposing of any amount of biomedical waste, excluding any facility where the only biomedical waste treated, stored or disposed of is biomedical waste generated at the site and any licensed acute care facility or licensed regional household hazardous waste collection facility accepting untreated solid waste generated during the administration of medical care in a single or multiple family household by a resident of such household;

[(22)] (23) "Throughput" means the amount of municipal solid waste processed by a resources recovery facility determined by dividing the average annual tonnage of municipal solid waste by three hundred sixty-five days;

[(23)] (24) "Municipal solid waste" means solid waste from residential, commercial and industrial sources, excluding solid waste consisting of significant quantities of hazardous waste as defined in section 22a-115, land-clearing debris, demolition debris, biomedical waste, sewage sludge and scrap metal;

[(24)] (25) "Wood-burning facility" means a facility, as defined in section 16-50i, whose principal function is energy recovery from wood for commercial purposes. "Wood-burning facility" does not mean a biomass gasification plant that utilizes land clearing debris, tree stumps or other biomass that regenerates, or the use of which will not result in a depletion of, resources;

[(25)] (26) "Person" has the same meaning as in subsection (b) of section 22a-2;

[(26)] (27) "Closure plan" means a comprehensive written plan, including maps, prepared by a professional engineer licensed by the state that details the closure of a solid waste disposal area and that addresses final cover design, stormwater controls, landfill gas controls, water quality monitoring, leachate controls, postclosure maintenance and monitoring, financial assurance for closure and postclosure activities, postclosure use and any other information

that the commissioner determines is necessary to protect human health and the environment from the effects of the solid waste disposal areas;

[(27)] (28) "Designated recyclable item" means an item designated for recycling by the Commissioner of Energy and Environmental Protection in regulations adopted pursuant to subsection (a) of section 22a-241b, or designated for recycling pursuant to section 22a-208v or 22a-256;

[(28)] (29) "Composting facility" means land, appurtenances, structures or equipment where organic materials originating from another process or location that have been separated at the point or source of generation from nonorganic material are recovered using a process of accelerated biological decomposition of organic material under controlled aerobic or anaerobic conditions;

[(29)] (30) "Source-separated organic material" means organic material, including, but not limited to, food scraps, food processing residue and soiled or unrecyclable paper that has been separated at the point or source of generation from nonorganic material.

Sec. 8. Section 22a-207a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

(a) As used in [sections] section 22a-208d, [22a-208q] as amended by this act, and subsection (b) of section 22a-228: (1) "Composting" means a process of accelerated biological decomposition of organic material under controlled conditions; and (2) "mixed municipal solid waste" means municipal solid waste that consists of mixtures of solid wastes which have not been separated at the source of generation or processed into discrete, homogeneous waste streams such as glass, paper, plastic, aluminum or tire waste streams provided such wastes shall not include any material required to be recycled pursuant to section 22a-241b. [; and (3) "mixed municipal solid waste composting facility" means a volume reduction plant where mixed municipal solid waste is processed using composting technology.]

(b) As used in this chapter, "end user" means any person who uses a material for such material's original use or any manufacturer who uses a material as feedstock to make a marketable product.

Sec. 9. Section 22a-208d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

(a) On and after July 1, 1989, the Commissioner of Energy and Environmental Protection shall not issue a permit under section 22a-208a to construct or expand a resources recovery facility [or a mixed municipal solid waste composting facility] where any mixed municipal solid waste will be processed or a disposal area for ash residue generated by resources recovery facilities or mixed municipal solid waste unless said commissioner makes a written determination that such facility or disposal area is necessary to meet the solid waste disposal needs of the state and will not result in substantial excess capacity of resources recovery facilities [,] or disposal areas. [or mixed municipal solid waste composting facilities.]

(b) The commissioner shall publish, at the expense of the applicant, notice of the preliminary determination of need for the proposed facility or disposal area in a newspaper having a substantial circulation in the area affected. Publication shall be within sixty days of determination by the commissioner that the application is complete. Any person may submit written comments on the preliminary determination of need in the same manner as provided by the commissioner for the submission of comments on the application. The commissioner shall not make a final determination of need for the facility or disposal area unless a permit is issued. A preliminary determination of need shall be void if a permit is not issued. As used in this section, "preliminary determination of need" means a statement by the commissioner of the need for a resources recovery facility [, a mixed municipal solid waste composting facility] or disposal area during the pendency of an application to construct such facility or area.

(c) (1) The applicant for a permit to construct or expand a resources recovery facility [or a mixed municipal solid waste composting facility] requiring a determination of need under subsection (a) of this section shall provide such information as the commissioner deems necessary, including but not limited to:

(A) The design capacity of the proposed facility;

(B) The planned operating rate and throughput for the facility;

(C) An explanation of any difference between the information provided under subparagraphs (A) and (B) of this subdivision;

(D) The estimated amount of the following: (i) The mixed municipal solid waste generated by and received from each municipality and other customers that will send waste to the facility, in tons per day evidenced by contracts or letters of intent, (ii) the mixed municipal solid waste to be recycled pursuant to regulations adopted by the commissioner under section 22a-241b, and (iii) change in the amount of mixed municipal solid waste generated because of population growth, waste generation, source reduction and industrial and commercial development over the design life of the facility. Information submitted under this subdivision shall include the methodology used to determine the estimates;

(E) A contingency plan for use of facility capacity if throughput declines or increases by at least ten per cent from the throughput estimated in the application;

(F) An analysis of reasonable levels of reserve capacity for seasonal peaks and unexpected facility outages;

(G) The capability of the applicant to complete the project;

(H) The technical feasibility of the proposed facility; and

(I) A demonstration that the throughput capacity of the proposed facility, when combined with the throughput capacity of all other resources recovery facilities with permits to construct under the provisions of section 22a-208a [,] and existing resources recovery

facilities with construction permits to expand [and mixed municipal solid waste composting facilities,] shall not exceed the total throughput capacity of resources recovery facilities [and mixed municipal solid waste composting facilities] needed to process waste generated in the state as set forth in the solid waste management plan adopted pursuant to section 22a-228.

(2) In making the determination required under this section, the commissioner shall consider the information submitted under subdivision (1) of this subsection, the current and anticipated availability of throughput capacity for mixed municipal solid waste at resources recovery facilities, [mixed municipal solid waste composting facilities,] land disposal areas, recycling facilities and other facilities that process or dispose of mixed municipal solid waste that have obtained all necessary permits to construct and any other information the commissioner deems pertinent and shall insure that no waste is accounted for more than once as a result of transfer from one vehicle or facility to another or for any other reason.

(d) (1) The applicant for a permit to construct a disposal area for ash residue generated by resources recovery facilities or mixed municipal solid wastes which requires a certificate of need under subsection (a) of this section shall submit such information as the commissioner deems necessary, including but not limited to, (A) the name of the resources recovery facilities or municipalities to be served by the disposal area; (B) the transportation system needed to serve the disposal area; (C) the available capacity of other disposal areas for ash residue or mixed municipal solid waste in the state that have obtained all necessary permits to construct; and (D) the design capacity of the disposal area.

(2) In making the determination required under this subsection, the commissioner shall consider the information submitted pursuant to subdivision (1) of this subsection and any other information the commissioner deems pertinent.

(e) The provisions of this section shall apply to any application for a permit under section 22a-208a for a resources recovery facility, for a disposal area for ash residue generated by resources recovery facilities, [for a mixed municipal solid waste composting facility] or for a disposal area for mixed municipal solid wastes which is pending on or submitted after July 1, 1989.

(f) This section shall not apply to an application for a permit or permit modifications of any resources recovery facility operating as of June 30, 1993, provided there is no expansion after that date of the facility's boilers or waste handling and processing equipment. Any such facility shall comply with all applicable environmental laws and regulations. Nothing in this subsection and no action taken by the commissioner pursuant hereto shall validate or invalidate any permit or determination of need issued or approved prior to June 30, 1993, for any resources recovery facility not operating as of that date, or otherwise affect any action of the commissioner, proceedings or judicial review relating thereto, pending on or commenced after that date.

Sec. 10. Section 22a-208q of the general statutes is repealed. (*Effective July 1, 2017*)

Approved July 10, 2017

EXHIBIT C

Substitute House Bill No. 6249

Public Act No. 11-245

AN ACT REQUIRING THE ADOPTION OF REGULATIONS FOR THE SITING OF WIND PROJECTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2011*) (a) On or before July 1, 2012, the Connecticut Siting Council, in consultation with the Department of Public Utility Control and the Department of Environmental Protection, shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, concerning the siting of wind turbines. Such regulations shall include, but not be limited to, (1) a consideration of (A) setbacks, including considerations of tower height and distance from neighboring properties; (B) flicker; (C) a requirement for the developer to decommission the facility at the end of its useful life; (D) different requirements for projects of different sizes; (E) ice throw; (F) blade shear; (G) noise; and (H) impact on natural resources; and (2) a requirement for a public hearing for wind turbine projects.

(b) The Connecticut Siting Council shall not act on any application or petition for siting of a wind turbine until after the adoption of regulations pursuant to subsection (a) of this section.

Approved July 13, 2011