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LEED Green Associate

October 3, 2017

***VIA FEDERAL EXPRESS AND  
ELECTRONIC MAIL***

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Ms. Melanie A. Bachman, Esq., Executive Director  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06501

**Re: Petition 1313 – DWW Solar II, LLC Petition for 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**

Dear Attorney Bachman:

This office represents the Town of Simsbury (“Town”). On behalf of the Town, I have enclosed the Town of Simsbury’s Responses to the First Set of Interrogatories by DWW Solar II, LLC in connection with the above-captioned matter. In addition to a box link containing the responses and attachments thereto provided electronically, I have enclosed sixteen discs containing the full responses because of the voluminous nature of the attachments.

Please do not hesitate to contact me with any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Jesse A. Langer', with a stylized flourish at the end.

Jesse A. Langer

Enclosures

cc: *Service List (via regular mail and electronic mail)*

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**STATE OF CONNECTICUT**  
**CONNECTICUT SITING COUNCIL**

DWW SOLAR, II, LLC PETITION )  
FOR 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 )

PETITION NO. 1313

October 3, 2017

**THE TOWN OF SIMSBURY’S RESPONSES TO THE FIRST**  
**SET OF INTERROGATORIES BY DWW SOLAR II, LLC**

The Town of Simsbury (“Town”) respectfully submits the following responses and non-privileged documentation to the First Set of Interrogatories to the Town by DWW Solar II, LLC (“DWW”).

**Q1: Please refer to the “Northern Gateway” section of the Simsbury 2007 Plan of Conservation and Development (POCD), which can be found at: [https://www.simsbury-ct.gov/sites/simsburyct/files/file/file/adopted\\_pocd.pdf](https://www.simsbury-ct.gov/sites/simsburyct/files/file/file/adopted_pocd.pdf). The Northern Gateway section begins on p. 85 of the POCD. Please also refer to the map entitled “Special Areas Reference Map” which can be found at: [https://www.simsbury-ct.gov/sites/simsburyct/files/file/file/special\\_areas\\_ref.pdf](https://www.simsbury-ct.gov/sites/simsburyct/files/file/file/special_areas_ref.pdf), and is attached as Exhibit A hereto. Please describe the types of projects the Town is seeking to have developed as part of the Northern Gateway targeted development.**

**RESPONSE:** The Town is seeking projects that meet the spirit of the POCD and satisfy the requirements of the Town’s Zoning Regulations (“Regulations”) and other land use regulations.

**Q2: Please refer to the Economic Development section of the POCD (starting on p. 105) and the map entitled “Economic Development Plan,” which can be found at: [https://www.simsbury-ct.gov/sites/simsburyct/files/file/file/economic\\_development.pdf](https://www.simsbury-ct.gov/sites/simsburyct/files/file/file/economic_development.pdf), and is attached as Exhibit B hereto. Is the industrially-zoned area of the map labeled “North End” available for industrial development? Would such industrial development be consistent with the POCD? Why or why not?**

**RESPONSE:** The Town objects to this Interrogatory because the POCD speaks for itself. Subject to and without waiving this objection, the Town responds as follows: Industrial-zoned areas are available for any land use permitted under the Regulations for those

areas. A particular proposal for industrial development may be consistent with the POCD if it meets all of the applicable land use regulations promulgated by the Town. Whether a particular proposal is consistent with the POCD is within the province of the Town's Planning Commission.

**Q3: The Town has labeled “various tobacco fields and barns: Firetown Road, Hoskins” on its list of “Character Places” on p. 46 of the POCD. Please confirm that a portion of this particular “Character Place” is zoned for industrial development by the Town of Simsbury.**

RESPONSE: The Town objects to this Interrogatory because the POCD speaks for itself. Subject to and without waiving this objection, the Town responds as follows: Yes.

**Q4: Please refer to p. 3 of Ms. Heavner's written testimony. Please describe in detail all of the Connecticut “public money” and/or “incentives” that are being provided to the Project.**

RESPONSE: The Town objects to this Interrogatory because it seeks information which may be, or has been, obtained from another, more convenient source, such as the public domain or another party, for whom production would be less burdensome or less expensive.

**Q5: Please refer to p. 3 of Ms. Heavner's written testimony which discusses “supporting sustainable energy and preserving open space, forests and farms.” What processes in the Siting Council's certification proceedings would afford a higher level of review for the issues of “preserving open space, forests and farms” than is currently being provided in this Petition process? Please describe in detail the higher level of review for these three areas that would be provided through a certification proceeding.**

RESPONSE: The Town objects to this Interrogatory because it seeks legal conclusions. Subject to and without waiving this objection, the Town responds as follows: Please refer to General Statutes § 16-50g *et seq.*

**Q6: Please describe in detail all state incentives and benefits the current owner of the Project site received under Public Act 490 as referenced on p. 3 of Ms. Heavner's written testimony.**

RESPONSE: Please see the documents appended hereto as Attachment A.

**Q7: Please explain your rationale for the contention, as articulated on p. 4 of Ms. Heavner's written testimony, that a shading study will be of assistance to the Siting Council as it evaluates this Petition.**

RESPONSE: A shading study would aid the Council and participants to this proceeding in better understanding how much tree clearing and other landscaping and buffering would be necessary and/or appropriate for the proposed Project.

**Q8:** Please refer to p. 4 of Ms. Heavner’s written testimony, as well as the “Historic Resources” section of the POCD, which can be found at: [https://www.simsbury-ct.gov/sites/simsburyct/files/file/file/adopted\\_pocd.pdf](https://www.simsbury-ct.gov/sites/simsburyct/files/file/file/adopted_pocd.pdf). The Historic Resources section begins on p. 33 of the POCD. Please also refer to the map entitled “Historic Points and Places” which can be found at: <https://www.simsbury-ct.gov/sites/simsburyct/files/file/file/nrhp.pdf> and is attached as Exhibit C hereto. Please identify all historic structures that are located on the Project site and are specifically delineated as historic points and places in either the text of the POCD or the map of historic points and places attached hereto as Exhibit C.

RESPONSE: The Town objects to this Interrogatory because the POCD speaks for itself. Subject to and without waiving this objection, the Town responds as follows: Please see the Scenic Resource Plan on page 41 of the POCD and the map titled, “Character Places Simsbury’s Treasures,” on page 47 of the POCD.

**Q9:** Please provide all mechanisms by which the Town can limit the use of the property that is the subject of this Petition to agricultural uses only.

RESPONSE: The Town objects to this Interrogatory because it seeks legal conclusions. Subject to and without waiving this objection, the Town responds as follows: Please see the Regulations and other land use regulations promulgated by the Town as they relate to “agricultural uses,” as well as applicable State and Federal statutes and regulations as they relate to “agricultural uses.”

**Q10:** Please refer to p. 5 of Ms. Heavner’s testimony. Please provide all information in the Town’s possession concerning Dr. Martin Luther King’s: 1) work at or 2) use of, the barns located on the Project site.

RESPONSE: Please see the documents appended hereto as Attachment B. Please also refer to the Phase IA Cultural Resources Assessment performed by Heritage Consultants, LLC attached to the Petition as Exhibit M.

**Q11:** To the Town’s knowledge, is any portion of the Project site registered with the National Register of Historic Places?

RESPONSE: No.

**Q12:** If the answer to Interrogatory Number 11 is no, please provide the justification for standards used by the Simsbury Historic District Commission in its August 9, 2017 evaluation of the Project.

RESPONSE: The Town objects to this Interrogatory because it seeks legal conclusions. Subject to and without waiving this objection, the Town responds as follows: Please see the standards articulated by Heritage Consultants, LLC as set forth in Exhibit M of the Petition. Additionally, please refer to the standards underlying nominations for both the State and Federal Register of Historic Places.

**Q13:** Why has the Town not submitted a “multiple property nomination for Simsbury’s historic farm buildings” as articulated by the Simsbury Historic District Commission in its August 9, 2017 evaluation of the Project, even though this issue has been recognized since at least 2009?

RESPONSE: The current administration has not yet filed application.

**Q14:** Please refer to the January 16, 2012 *Middletown Press* article entitled, “Martin Luther King Jr.’s Time in Simsbury Evokes Awe,” which can be found at: <http://www.middletownpress.com/news/article/Martin-Luther-King-Jr-s-time-in-Simsbury-evokes-11828680.php> and is attached as Exhibit D hereto. According to that article, a dormitory in which Martin Luther King, Jr. lived while he worked tobacco fields in Simsbury “was destroyed by fire in February 1984 as part of a training exercise for volunteer firefighters.” Please provide, as articulated by the Simsbury Historic District Commission, all of the “consideration of cultural resources” that was “an integral part of the town planning and design review” that was completed prior to the Town’s decision to use Dr. King’s dormitory as a training exercise.

RESPONSE: The Town did not decide to use Dr. King’s dormitory as a training exercise.

**Q15:** The *Middletown Press* article notes that information concerning the burning of the dormitory was available on the Simsbury Fire Department website. Is such information still available on the website? If so, please provide the website address where such information is located.

RESPONSE: The Town does not control the information provided on the Simsbury Fire District website as the Fire District is distinct legal entity. The Town is unaware of any other website on which this information may be located.

**Q16:** If the information related to the burning of the dormitory is no longer available on the Simsbury Fire Department website, please provide the following:

- The date such information was first placed on the website;
- The date such information was removed from the website;
- The rationale for removing the information from the website;
- The individual(s) responsible for the removal of such information from the website;
- A copy of any iterations of the website, whether “live” internet pages or archived, that contain information related to the burning of the dormitory; and
- Any descriptions and/or pictures in the possession of the Town of Simsbury that relate to the burning of the dormitory used by Dr. King.

RESPONSE: Please see Response to Interrogatory No. 15.

**Q17: The *Middletown Press* article references claims by Ernest G. Shaw that Dr. King did not work in the tobacco fields in Simsbury, Mr. Shaw contends that Dr. King worked in the dormitory that was the subject of that article. Please provide all information in the Town's possession that refutes that statement by Mr. Shaw.**

RESPONSE: Other than the documents provided in response to Interrogatory No. 10 herein, the Town does not have any information within its possession that relates specifically to Mr. Shaw's statement.

**Q18: How many tobacco barns in the Town are currently slated for demolition? Why are they being slated for demolition?**

RESPONSE: None as of the date of this Interrogatory Response.

**Q19: How many tobacco barns in the Town have been demolished in the past ten years? Why were they demolished?**

RESPONSE: Seven. Two tobacco barns were demolished in response to orders issued by the Town Building Official. The remaining five tobacco barns were demolished by the respective property owners. Please see the documents appended hereto as Attachment C.

**Q20: How many tobacco barns in the Town have been demolished or destroyed in the past ten years as a result of neglect, vandalism or fire?**

RESPONSE: Please see response to Interrogatory No. 19.

**Q21: Does the Town building inspector, Public Works, or Planning and Land Use Departments have policies, memoranda or official documents regarding the treatment of the tobacco barns, including the potential safety situations and/or criminal activity involved with these sites? If so, please provide copies of such materials.**

RESPONSE: Please see the State of Connecticut Building Code and Penal Code.

**Q22: Please provide a summary of all emergency service calls, including calls to the police and/or fire departments relating to tobacco barns in Simsbury, including vandalism, trespassing and fire complaints.**

RESPONSE: The Town objects to this Interrogatory because it: (1) is overly broad, unduly burdensome and oppressive; (2) is not reasonably calculated to lead to the discovery of admissible evidence; and (3) seeks information which is irrelevant and immaterial to the subject matter of this Petition.

**Q23: Please provide a summary of all noise complaints, trespassing complaints and similar complaints received by the Town for the Project site for the last five years as those complaints may relate to the unauthorized use of the Project site by persons other than the owner and/or operator of the Project site.**

RESPONSE: The Town objects to this Interrogatory because it: (1) is overly broad, unduly burdensome and oppressive; (2) is not reasonably calculated to lead to the discovery of admissible evidence; and (3) seeks information which is irrelevant and immaterial to the subject matter of this Petition.

**Q24: Please provide examples of previous uses of tobacco sheds for “interpretive exhibit space” by the Town of Simsbury.**

RESPONSE: The Town is unaware of any such examples by the Town.

**Q25: In his August 3, 2017 letter to Jerome Shea, Mr. Robert Carr states that “environmental and property use information for the Meadowood property may be pertinent to the proposed solar facility project.” Is the reliance on the information related to the Meadowood property permissible for determinations under the Connecticut Remediation Standard Regulations (RCSA §§ 22a-133k-1 through 22a-133k-3) and/or the Connecticut Site Characterization Document promulgated by the Connecticut Department of Energy and Environmental Protection?**

RESPONSE: The Town objects to this Interrogatory because it seeks legal conclusions. Subject to and without waiving this objection, the Town responds as follows: Yes. Information related to land use and environmental conditions on the Meadowood property is an important line of evidence as to the historical operations at the proposed Project site particularly, as in this case, where there is a dearth of historical site operation information presented in the Phase I environmental site assessment (“Phase I”). This information is relevant since both the Meadowood property and the Project site were owned and operated by the same property owner and used for tobacco cultivation. Relevant, historical operation information is encouraged to fill the data gaps in the Project site’s conceptual site model.

**Q26: If the answer to Interrogatory Number 25 is yes, please provide the legal and/or regulatory basis for such reliance.**

RESPONSE: The Town objects to this Interrogatory because it seeks legal conclusions.

**Q27: Please provide a list of all chemicals that were used at the Project site and a list of all chemicals that were used at the Meadowood site.**

RESPONSE: The Town objects to this Interrogatory because it is vague and/or ambiguous. Subject to and without waiving this objection, the Town responds as follows: Please see Exhibit C of the Town’s Prehearing Submission, particularly Zuvic Carr’s letter, dated August 3, 2017, for the list of the chemicals used at the Meadowood property. Please see the “Preliminary Report, Pesticide Disposal Area, Culbro Corporation,” dated April 1986, and prepared by Fuss & O’Neill, Inc., for the list of chemicals for the Project site and other Culbro Corporation sites. The Fuss & O’Neill Preliminary Report is appended hereto as Attachment D.

**Q28: Please provide all environmental testing and/or environmental reports in the possession of the Town or the possession of Zuvic Carr and Associates relating to the Project site or the Meadowood site.**

RESPONSE: The Town objects to this Interrogatory because it is vague and/or ambiguous. Subject to and without waiving this objection, the Town responds as follows: Please see the Town's Prehearing Submission. The Town has also included documents appended hereto as Attachment E. Additionally, the Town has some files in hardcopy concerning testing and/or monitoring of wells on the Project site or the Meadowood property. The Town is willing to make them available for inspection.

**Q29: Please provide all information in the possession of the Town or the possession of Zuvic Carr and Associates that demonstrates that the Project site is an "establishment" as that term is defined by the Connecticut Transfer Act, Conn. Gen. Stat. §22a-134 et seq.**

RESPONSE: The Town objects to this Interrogatory because it seeks legal conclusions. Subject to and without waiving this objection, the Town responds as follows: The Town has provided information demonstrating that the Project site may be an "establishment" as defined by the Connecticut Transfer Act. This information is significant in light of the dearth of information provided by the Phase I. Please see the Town's Prehearing Submission and Attachments D and E hereto.

**Q30: If the site would not be considered an "establishment" under the Connecticut Transfer Act, please identify all statutes and regulations which would require the undertaking of any remedial actions at the Project site, based on information in the possession of the Town or Zuvic Carr and Associates.**

RESPONSE: The Town objects to this Interrogatory because it seeks legal conclusions.

**Q31: On p. 2 of his July 27, 2017 letter to Jerome Shea, Mr. Robert Carr states that the Phase I Environmental Site Assessment ("ESA") performed by DWW "was conducted as a requirement by law (i.e., CGS Section 16-50k, 22a-134a-134g, etc.). Please provide the basis for that statement. Specifically, please provide the following information:**

- A citation to where in section 16-50k it states that DWW, or any applicant, must conduct a Phase I ESA;
- The basis for the implication that DWW is subject to the requirements of section 16-50k;
- A citation to where in sections 22a-134a-134g it states that DWW must conduct a Phase I ESA; and
- Any information in the possession of the Town or Zuvic Carr and Associates that DWW will be a "certifying party" as that term is defined under the Transfer Act.



RESPONSE: The Town objects to this Interrogatory because it seeks legal conclusions. Subject to and without waiving this objection, the Town responds as follows: The Phase I addressed whether the Project site is an “establishment” despite significant data gaps. Regardless of applicable legal authority, DWW at the very least considered the Connecticut Transfer Act applicable or relevant to the Petition.

**Q32: Did Mr. Chad Frost attend a meeting of concerned abutters, hosted by Mr. James D. Rabbitt, on July 26, 2017 for the purpose of discussing potential visual impacts associated with the Project and desired landscaping of the residents in the area? If so, please provide a summary of Mr. Frost’s impressions of that meeting.**

RESPONSE: No.

**Q33: Please provide a summary of the issues that were discussed at the July 26, 2017 meeting referenced in Interrogatory Number 32.**

RESPONSE: Mr. Rabbitt gave a power point presentation depicting various screening/buffering options to discuss with those present. Of the seventy-seven slides, fifty-nine depicted screening/buffer options and eighteen were reference points to materials provided by DWW. Please see the documents appended hereto as Attachment F.

**Q34: Please refer to p. 3 of Ms. Heavner’s written testimony. What is the basis for the summary statement “As we understand the State’s rationale, the Simsbury site was not optimal for promoting renewable energy in Connecticut because it is located on prime agriculture soils and the cost for the energy produced was too high.”**

RESPONSE: Conversations with the Commissioners of DEEP and DOA. Additionally, please see the article published in the Hartford Courant embedded in the following link:

<https://www.google.com/amp/www.courant.com/news/connecticut/hc-simsbury-solar-controversy-20170621-story,amp.html>

**Q35: Please provide an estimate of costs for the landscaping proposal recommended by Mr. Chad Frost.**

RESPONSE: Such an estimate would be conceptual because DWW has not submitted a construction plan. It is estimated that the cost of the screening proposed by Kent + Frost would be comparable to that proposed by DWW based on the cost per linear foot represented by DWW in its responses to the Council’s First Set of Interrogatories.

**Q 36: Please provide the name and employer of every individual who prepared or assisted in the preparation of the responses to these interrogatories.**

RESPONSE: The following individuals prepared or assisted in the preparation of the responses to these interrogatories:

1. Jesse A. Langer and Robert M. DeCrescenzo, Legal Counsel;

2. Lisa L. Heavner; First Selectwoman for the Town;
3. Thomas F. Cooke, Director of Administrative Services for the Town;
4. Marguerite Carnell, Vice Chair, Town Historic District Commission;
5. James D. Rabbitt AICP, Director of Planning and Community Development for the Town;
6. Michael Glidden CFM CZEO, Assistant Town Planner;
7. Jerome F. Shea, Town Engineer;
8. Adam Kessler, Project Engineer;
9. David Gardner, Town Assessor;
10. Henry Miga, Town Building Official;
11. Thomas Roy, Director of Public Works for the Town;
12. Melissa Appleby, Deputy Director of Administrative Services;
13. Elaine W. Lang, Town Selectwoman and former President of the Town Historical Society;
14. Robert J. Carr, P.E., LEP, Vice President and Principal-In-Charge of Zuvic, Carr and Associates, Inc.; and
15. Chad Frost, Principal of Kent +Frost, LLC;

Respectfully submitted by,

THE TOWN OF SIMSBURY

By: \_\_\_\_\_

  
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**CERTIFICATION**

I hereby certify that on this day that the foregoing was delivered by electronic mail (all content) and by disc via regular mail, to all parties and intervenors of record, as follows:

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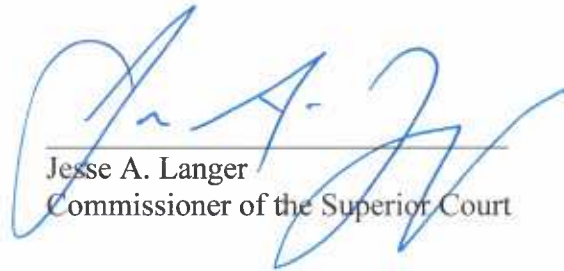
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