

**STATE OF CONNECTICUT
SITING COUNCIL**

PETITION NO. 1312 - Candlewood Solar 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 20 megawatt AC (26.5 megawatt DC) solar photovoltaic electric generating facility located on a 163 acre parcel at 197 Candlewood Mountain Road and associated electrical interconnection to Eversource Energy's Rocky River Substation on Kent Road in New Milford, Connecticut.

SEPTEMBER 6, 2017

APPLICATION TO INTERVENE UNDER CEPA, §22a-19, §4-177a AND §16-50n

Rescue Candlewood Mountain ("RCM"), a voluntary association, is a coalition of Greater New Milford and Sherman residents that hereby move and petition the CSC to become a party intervenor in the above application by Candlewood Solar LLC petitioning the Council for a declaratory ruling that no certificate of environmental compatibility and public need is required for a 20 megawatt solar photovoltaic power generating facility on Kent Road in New Milford, Connecticut. The purpose of the intervention is to participate in these proceedings to prevent unreasonable impact to the natural resources of the State including scenic vistas, economic loss to neighboring property interests, loss and/or fragmentation of habitat, the unreasonable loss of farm/forest land and the use of inadequately narrow vegetated buffers along the project boundaries.

Pursuant to Conn.Gen.Stat. §22a-19 ("CEPA"), §16-50n and §4-177a, the RCM seeks party status as an entity which has a direct interest in the proceedings which will be specifically and substantially affected as it is a voluntary association consisting of taxpayers and citizens of the host town of New Milford and the neighboring town of Sherman including Lisa Ostrove whose property abuts the project site. The members of the group are likely to suffer property value loss different from and greater than that of the public in general due to the proximity of the facility to their homes. In addition, the group seeks to protect the scenic vistas in New Milford and Sherman generally on behalf of the general public. Intervenor seeks party status in the above proceedings for the purpose of submitting testimony, briefs and other evidence relevant to the consideration of the application under consideration; specifically the mitigation of environmental impact to scenic vistas by relocation, increased site buffers, alternative *siting configurations and other best management practices for the conservation of natural resources.*

Intervenor's participation will be in the interests of justice and is proper under CEPA in that the evidence and testimony to be given will tend to show that the proposed activity for which Applicant seeks a certificate is likely to unreasonably harm the public trust in the air, water or other natural resources of the State of Connecticut in that, if

granted, the proposed facility will, inter alia, unreasonably impair the visual quality of the environment and the naturally occurring core forests in and about Candlewood Mountain and surrounding area; and is reasonably likely to cause viewshed and habitat deterioration that is unreasonable because alternatives to the petitioner's proposal exist which would result in lesser impact.

In support of this application, the movant states the following:

- Rescue Candlewood Mountain is a duly constituted Connecticut voluntary association with members who enjoy the scenic views in and about the area of the proposed facility on Candlewood Mountain.
- The proposed power generation facility will have a negative impact on the scenic vistas and natural resources in New Milford and Sherman by clear-cutting 72 acres of core forest in addition to 16 acres of which is farmland, a loss of approximately fifteen thousand trees.
- RCM intends to submit evidence to the record which has not been previously considered in the form of expert testimony which will substantiate the feasibility of available alternatives to the proposed facility of lesser visual impact which will assist the Council in complying with its mandate to minimize impact as required by C.G.S §16-50g and 16-50p(3)(G)(b)(1).
- The design does not incorporate the best available technology for reducing the visual impacts (glare and the view of the facility itself) of the facility in that it fails to fully consider impacts to scenic views, natural habitats and neighboring property uses, including nearby scenic trails and nearby homes.

DISCUSSION OF LAW

The Council must be mindful of the statutory requirements which apply to interventions under CEPA. The bar is quite low for filing an intervention and thus §22a-19 applications should not be lightly rejected. *Finley v. Town of Orange*, 289 Conn. 12 (2008) (an application need only allege a colorable claim to survive a motion to dismiss) citing *Windels v. Environmental Protection Commission*, 284 Conn. 268 (2007).

CEPA clearly and in the broadest terms indicates that any legal entity may intervene. This includes municipal officials, *Avalon Bay Communities v. Zoning Commission*, 87 Conn. App. 537, 867 A.2d 37 (2005).

An allegation of facts that the proposed activity at issue in the proceeding is likely to unreasonably impair the public trust in natural resources of the State is sufficient. See, *Cannata v. Dept. Of Environmental Protection, et al*, 239 Conn. 124 (1996)(alleging harm to floodplain forest resources).

The Connecticut Appellate Court has noted that statutes "such as the EPA are remedial in nature and should be liberally construed to accomplish their purpose." *Avalon Bay Communities, Inc. v. Zoning Commission of the Town of Stratford*, 87 Conn.App.537 (2005); *Keeney v. Fairfield Resources, Inc.*, 41 Conn. App. 120, 132-33, 674 A.2d1349 (1996). In *Red Hill Coalition, Inc. V. Town Planning & Zoning Commission*, 212 Conn. 7272, 734, 563 A.2d 1347 (1989) ("section 22a-19[a]makes intervention a matter of right once a verified pleading is filed complying with the statute, whether or not those allegations ultimately prove to be unfounded"); *Polymer Resources, Ltd. v. Keeney*, 32 Conn. App. 340, 348-49, 629 A.2d 447 (1993) ("[Section] 22a-19[a] compels a trial court to

permit intervention in an administrative proceeding or judicial review of such a proceeding by a party seeking to raise environmental issues upon the filing of a verified complaint. The statute is therefore not discretionary.") See Also, *Connecticut Fund for the Environment, Inc. v. Stamford*, 192 Conn. 247, 248 n.2, 470 A.2d 1214 (1984).

In *Mystic Marineline Aquarium v. Gill*, 175 Conn. 483, 490, 400 A.2d 726 (1978), the Supreme Court concluded that one who filed a verified pleading under § 22a-19 became a party to an administrative proceeding upon doing so and had "statutory standing to appeal for the limited purpose of raising environmental issues." "It is clear that one basic purpose of the act is to give persons standing to bring actions to protect the environment." *Belford v. New Haven*, 170 Conn. 46, 53-54, 364 A.2d 194 (1975).

The Intervenor is entitled to participate as a §22a-19 intervenor which allows for a right of appeal under that statute. *Committee to Save Guilford Shoreline, Inc. v. Guilford Planning & Zoning Commission*, 48 Conn. Sup. 594, 853 A.2d 654(2004) once any entity has filed for intervention in an administrative proceeding, it has established the right to appeal from that decision independent of any other party. *Mystic Marineline Aquarium v. Gill*, 175 Conn. 483 (1978) stated quite clearly that "one who files a §22a-19 application becomes a party with statutory standing to appeal." *Branhaven Plaza, LLC v Inland Wetlands Commission of the Town of Branford*, 251 Conn. 269, 276, n.9 (1999) held that a party who intervenes in a municipal land use proceeding pursuant to §22a-19 has standing to appeal the administrative agency's decision to the Superior Court. The Court cited as support for this proposition, *Red Hill Coalition, Inc. v. Conservation Commission*, 212 Conn. 710, 715, 563 A.2d 1339 (1989)("because the [appellants] filed a notice of intervention at the commission hearing in accordance with §22a-19(a), it doubtless had statutory standing to appeal from the commission's decision for that limited purpose.")

In *Keiser v. Zoning Commission*, 62 Conn. App. 600, 603-604 (2001) our Appellate Court stated that the *Branhaven Plaza* case is directly on point and held "the plaintiff in the present case properly filed a notice of intervention at the zoning commission hearing in accordance with §22a-19(a). Accordingly, we conclude that he has standing to appeal environmental issues related to the zoning commission's decision."

The rights conveyed by CEPA are so important and fundamental to matters of public trust that the denial of a 22a-19 intervention itself is appealable. See, *CT Post Limited Partnership v. New Haven City Planning Commission*, 2000 WL 1161131 Conn. Super. (Hodgson, J. 2000)(§22a-19 intervenors may file an original appeal for improper denial of intervenor status).

Intervenors' application for intervenor status should be granted so that it may participate by presenting evidence for the record and meaningfully assist the Siting Council in reaching a decision which minimizes impact to natural resources of the state while balancing the public need for responsible renewable energy sources..

VERIFICATION

The undersigned, Lisa Ostrove, duly authorized Director of Rescue Candlewood Mountain, duly sworn, hereby verifies that the above application is true and accurate to the best of her knowledge and belief.

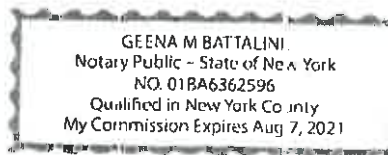
Lisa K. Colton

Sworn and subscribed before me this 5th day of September, 2017.

Maura M. Battalini

Notary Public; My Commission Expires August, 7 2021

Respectfully Submitted,
Rescue Candlewood Mountain,



By [Signature]
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The intervenor requests copies of all filings made in the course of this docket to date and from this date forward and requests service by electronic mail.

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was deposited in the United States mail, first-class, postage pre-paid this 6th day of September, 2017 and addressed to:

Ms. Melanie Bachman, Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (1 orig, 15 copies, plus 1 electronic) (US Mail/electronic).

And electronic copies to:

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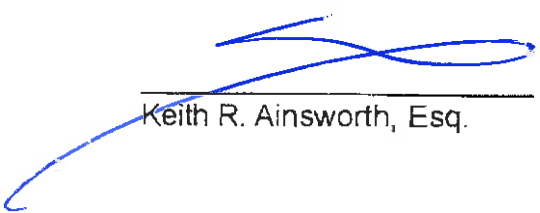
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