

DEEP's Answers to Environment Committee Questions

1. When considering an application to construct a solar photovoltaic facility of more than 2 megawatts on prime farmland or core forest land, what is your agency's understanding of the role of DEEP and DoAg?
 - a. There are two paths that a developer of a solar facility of 2 MW or more can pursue at the Siting Council. If the developer pursues the certificate proceeding and the project will impact forest or parks, then DEEP can submit comments that assess the impact of the project to the Siting Council. On the other hand, if the developer pursues the faster and less expensive route of petitioning the Siting Council for a declaratory ruling and the project is to be located on forestland, then the developer must obtain a written determination from DEEP that the facility will not materially affect the status of such land as core forest. Similarly, if the facility is proposed on prime farmland, the developer of the facility must request from DoAg a written determination that the facility does not materially affect prime farmland. If the facility is proposed on both core forest and prime farmland then the developer must request the written determination from both DEEP and DoAg.
 - b. Once a written determination is requested, DEEP evaluates the application and the proposed site and may meet with the developer to discuss the site and request further information if needed. After reviewing the application and concluding that the facility does not materially affect core forest, DEEP will issue a written determination to that effect for the Siting Council.
2. If DEEP or DoAg determine that an applicant's proposal will have a material affect on the status of the land as prime farmland or core forest land, how does this agency finding impact the Siting Council's analysis?
 - a. If DEEP or DOAg determines that the proposed facility will materially affect the status of core forest or prime farmland, then DEEP and DoAg will not provide the written determination. Public Act 17-218 provides that any facility sited on core forest or prime farmland that is seeking a declaratory ruling must obtain this written determination. Therefore, if an application does not receive this written determination, it cannot proceed through the petition process and must either go through the certificate proceeding or adjust the project so that it does not materially affect core forest or prime farmland.
3. The Environment Committee is considering a change in the definition of potential land use impacts, from the current "materially" affect to the proposed "permanently" affect, that the Siting Council should consider when evaluating and approving the installation of solar facilities on prime farmland or core forest. What change do you expect that this will have on the application process? On the state's efforts to preserve and protect farms and forests?
 - a. While the word "permanently" appears more definitive than "materially" affect, it is still subject to interpretation. DEEP has been working closely with DoAg and the Siting Council to address the vagaries of the current legislation. DEEP has developed a tool that is going through an internal vetting process and we believe that it better identifies the areas of specific concern for DEEP and will help all parties to develop projects that provide renewable energy without harming our important natural resources. We are also working on legislative language that will help to clarify the current language.
 - b. DEEP does not support a change to "permanently" affect because of the difficulty in applying the term and because it does not resolve DEEP's concerns regarding the statute.
4. The Environment Committee recently heard testimony regarding an application by Windham Solar (Petition No. 1323, filed 8/31/2017) to construct three 2-megawatt and two one-megawatt facilities on a 43 acre parcel, currently a farm located at 134 Bilton Road, Somers, Connecticut. According to testimony, the Siting Council determined on 1/22/18 that no Certificate of Environmental Compatibility was needed, even though the application was filed after the effective date of the new law that clearly requires the Council to seek the opinion of DoAg as to whether the proposed project would have a material affect on prime farmland. Please explain the process by which this determination was made.
 - a. This question is best answered by the Siting Council.
5. How many applications has the Siting Council received since July 1, 2017, that propose a solar voltaic installation of 2 megawatts or more? How many of these applications have triggered a review of the new law because they would have a potential material impact on farmland or forest?

- a. This question is best answered by the Siting Council. DEEP argued that the solar facilities proposed for Simsbury and New Milford were subject to the legislation but the Siting Council disagreed. Other than those two projects, it is DEEP's understanding that the only other project is the Bilton Road, Somers facility.
6. Does the Siting Council currently have the authority to require applicants to post a decommissioning bond to cover the expenses of removing the solar panel installation and restoring the affected property after the useful life of a solar farm? If so, what have been the circumstances that the Siting Council has considered in exercising this authority?
 - a. This question is best answered by the Siting Council.
7. How do DEEP and DoAg receive timely notice of applications to the Siting Council that propose a solar farm installation?
 - a. There has been some inconsistency in DEEP's receipt of notices from the Siting Council. As a result, DEEP has occasionally missed the opportunity to submit agency comments on a project. DEEP recently adopted a new process to track Siting Council cases in order to be better informed regarding Siting Council deadlines.
8. For the Siting Council, since the 2017 law went into effect, have there been solar farm applications that have been filed where the Siting Council has determined that they would not have a "material affect" on prime farmland or core forest land? If so, how has the Siting Council made this determination? How many 2-megawatt or greater solar installations do you expect to be filed per year? How many of these are proposed for prime farmland or core forest?
 - a. This question is best answered by the Siting Council. However, it is DEEP's understanding that the Bilton Road, Somers case is the only case in which the Siting Council has analyzed the "material affect" of a proposed facility on core forest and prime farmland. Under Public Act 17-218, it does not appear that the Siting Council has the authority to determine whether a proposed facility materially affects either core forest or prime farmland as that is exclusively the purview of DEEP and DoAg, respectively.