March 27, 2019

Honorable Chairwoman V. Susan Sosnowksi

Senate Committee on Environment and Agriculture

Rhode Island State House

Providence, RI 02903

RE: S 0661 An Act Relating to Public Utilities and Carriers – Distributed Generation Interconnection

Dear Chairwoman Sosnowski and Committee Members:

First, we would like to thank you for providing the Rhode Island Chapter of the American Planning Association (APA RI) with an opportunity to comment on the proposed bill which addresses a number of issues related to solar energy. APA RI represents city and town planners statewide, including the boards and commissions for which we conduct much of our work. While we fully support the development of alternative energy, we have concerns with the bill as drafted. Our comments are focused on the language under the net metering section (39-26.4-3); the proposed amendment to the RI Energy Resources Act to require comprehensive solar energy siting ordinances by municipalities; and a new section proposed in the Zoning Enabling Act to require the replacement of housing density in a community whenever there is an alternate use of land, including solar arrays, within any residentially zoned land. These concerns are described more fully below.

Net Metering (pages 8-9)

**Page 8, lines 18-22** – This section would cap the nameplate capacity of net-metering systems at 10 MW for residential areas but does not offer any protection for woodlands, sensitive habitats, or other open space areas that are not specifically designated by DEM as “areas of environmental concern”. We note that this capacity can represent upwards of 50 acres of solar arrays.

**Page 9, Lines 3-5** – Even the maximum capacity of 4 MW in areas of environmental concern still can result in a significant area of land disturbance. While municipalities will undoubtedly place additional requirements and restrictions to reduce environmental impacts, the state is forfeiting its environmental stewardship role by not excluding sensitive environmental areas in its renewable energy program. As planners, we know that many municipalities may not have the expertise or perspective to properly evaluate the impacts of renewable energy development activities like clearcutting, grading, alteration of drainage patterns, and fencing on the environment. Environmental systems are regional, and their protections should be as well.

Both sections above also give municipalities the ability to “opt out” of the megawatt and continuous lot restriction for any project on a case by case basis if the municipality makes that determination through an adopted municipal resolution. This process would essentially allow a city or town council to “spot zone” a renewable energy development, and completely circumvent the purpose of providing these limited protections in the first place. It would allow a community feeling political and financial pressure to override environmental concerns. While we appreciate the aspect of local control offered, we are concerned that this will result in the loss of the state’s role to both protect the environment and direct alternative energy systems to brownfields and land already disturbed. We also feel that it takes land use decisions best made by planning boards and moves them to the political realm.

Mandatory Solar Siting Ordinances (pages 11-12)

**Page 11, lines 32-34, page 12, lines 1-10** – This section mandates that comprehensive solar siting ordinances be in place or adopted by each municipality by April 2020, but then would require these local zoning ordinances to be “reviewed” by the Office of Energy Resources (OER) and the Division of Statewide Planning. While we understand the push behind this mandate, the stipulation for state agency review runs contrary to the Zoning Enabling Act (RIGL 45-24) which outlines the specific process for the creation and amendment of local zoning ordinances. At no point does the Act mention review by OER, Division of Statewide Planning, or any state agency. Ostensibly, this is for coordination of building codes, etc., but the legislation does not say what municipalities are supposed to do with the “review,” or require them to adopt any feedback from the State. Furthermore, this section (**page 12, lines 28-31**) states that updated ordinances must be “provided” to the OER within 30 days of passage, which places an unjustified burden on municipal staff to send revised ordinances to the OER ,as no other ordinances are required to be sent to a state agency.

**Page 12, lines 32-34** – This section indicates that a list of non-compliant municipalities will be provided to the governor, senate president, and house speaker. We question the purpose of this statement and if it is implying consequences for non-compliant communities that have not been specified.

Residential Density

**Page 13, lines 12-20** – RI APA is strongly opposed to this addition to the bill, which adds a section to the Zoning Enabling Act which mandates that communities replace any land in a residential zone which is allocated to a use other than housing with the equivalent housing density somewhere else. You may know that this entire language was the subject of a separate house bill (H-5646) which generated a large chorus of opposition. It is contrary to the fundamental tenants of land use and zoning in Rhode Island, it is a broad-brush and essentially unworkable approach to a sensitive issue, and it is entirely unclear how it would be carried out, much less enforced. Its inclusion in a bill meant to support alternative energy development is also curious, as it is based on the assumption that commercial solar and housing are mutually opposing land uses, as if a property owner would only chose one or the other. It is especially shocking to think that any community which protects land by purchasing it for conservation must then allow the equivalent housing development somewhere else in their community where it is not allowed now. How does the community decide which land then gets developed? Who gains financially?

If a farmer turns over some land to a commercial solar array, does she then forever forfeit the right to develop the land in the future when the solar farm is removed because some other property owner has taken that housing density? If a community knows they must replace the 20 house lots somewhere else, will they simply deny an application for a commercial solar farm? Or will they simply prohibit commercial solar on residential land knowing that it has to be both or neither?

Simply zoning a parcel for a residential use does not guarantee that the land will ever be used for housing. People make land use decisions based on many factors, including market forces (economic) and how they feel about their land (emotional). The bill as drafted is a fundamental violation of the right of individual property owners to use their land as they and their heirs desire, and it elevates just one allowable above all other uses including municipal, institutional, recreation and alternative energy uses. It will not achieve the desired goal of more housing in Rhode Island, but will only serve to pit the various constituencies against each other.

Summary

We would like to see this bill better protect against the destruction of large swaths of forest land for commercial solar, the very issue that has so engaged the public and the environmental community over the past few years. We would like to better protect the independence of the communities in drafting solar ordinances. And we strongly urge that the issue of housing and housing density be disentangled from other uses and that an alternate more comprehensive approach to address the state’s need for more housing be undertaken.

In summary, RI APA appreciates the measures that the state agencies and other stakeholders have taken in creating this bill and fully support the need to build renewable energy infrastructure in Rhode Island; it is a critically important in our fight against climate change. However, with better planning, we need not sacrifice Rhode Island’s delicate and beautiful environmental assets for this purpose. Thank you for your time and consideration. Members of RI APA remain available to provide additional information or communication if desired.

Sincerely,

Ashley V. Sweet Jane Weidman, AICP

C-Chair RI APA Legislative Committee Co-Chair, RI APA Legislative Committee

Exeter Town Planner Charlestown Town Planner

cc RI League of Cities and Towns