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April 16, 2019

Planning Board
Town of Farmington
1000 County Road 8
Farmington, NY 14425

Re: Application of Delaware River Solar to construct a 7 MW solar facility at 466 Yellow Mills Road
SEQRA Determination of Significance
PB # 1003-18 Preliminary Four-Lot Subdivision Plat
PB # 1004-18 Preliminary Site Plan
PB # 1006-18 Special Use Permit

Dear Planning Board Members:

We represent a group of landowners and residents concerned about the impacts of solar development in the Town of Farmington in connection with the following applications by Delaware River Solar, LLC ("Delaware") to construct a 7 MW solar facility at 466 Yellow Mills Road (the "Project"):

SEQRA Determination of Significance
PB # 1003-18 Preliminary Four-Lot Subdivision Plat
PB # 1004-18 Preliminary Site Plan
PB # 1006-18 Special Use Permit

For the reasons set forth in this letter, we ask you to issue a Positive Declaration of Environmental Significance ("Pos Dec") for the Project, or, in the alternative, deny Delaware's applications for subdivision approval, site plan approval, and a special use permit.

The Project Warrants a Positive Declaration of Environmental Significance.

The primary purpose of SEQRA is “to inject environmental considerations directly into governmental decision making.”¹ To this end, SEQRA requires the preparation of an Environmental Impact Statement (“EIS”) when a proposed project “may have a significant effect on the environment.”²

Because the operative word triggering the requirement of an EIS is “may,” there is a relatively low threshold for issuance of a Pos Dec and preparation of an EIS.³ Moreover, a Type I action (as is the one here) carries with it the presumption that it is likely to have a significant adverse effect on the environment and may require an EIS. An EIS is required when the lead agency determines that the action as proposed may include the potential for at least one significant adverse impact to the environment.

Here, the Planning Board must issue a Pos Dec because the Project, as proposed, may have at least one potentially significant adverse environmental impact. The Project would take prime agricultural farmland out of production, and has the potential for adverse drainage impacts, adverse impacts to wetlands and water resources, adverse traffic impacts, damage to community character, and reduction in property values.

- **Prime Agricultural Farmland:** The Project would place approximately 21,000 solar arrays directly on top of prime agricultural soils. The Ontario County Agricultural Enhancement Board stated that “the proposed project will result in a loss of 30 acres of prime farmland on a parcel that is identified in the Ontario County Agricultural Enhancement Plan-2018 as priority land for protection.”⁴ The Board expressed concern about the potential for the cumulative significant loss of prime agricultural land where commercial solar PV systems are allowed uses in zoning districts (such as A-80) where agriculture is the predominant land use and is a priority for protection. *Id.* These concerns were echoed by the Town Conservation Board.⁵
- **Drainage:** The Agricultural Board also warned that the Project may impact surface or subsurface agricultural drainage that would adversely affect the viability of the farmland remaining on the site parcel and its

¹ *Akpan v. Koch*, 75 NY2d 561, 569 (1990).

² ECL 8-0109[2] and 6 NYCRR 617.7(b)(3).

³ *Matter of Chemical Specialties Mfrs. Assn. v. Jorling*, 85 NY2d 382, 397 (1995); (*Omni Partners LP v. County of Nassau*, 237 AD2d 440 (2d Dept. 1997).

⁴ Agricultural Enhancement Board letters dated October 2, 2018 and April 9, 2019.

⁵ Letter from Town of Farmington Conservation Board dated October 22, 2018.

neighbors. *Id.* These concerns were also echoed by the Town Conservation Board.⁶

- **Community Character and Property Values:** The Project is out of character with the surrounding agricultural residential neighborhood and will become an external obsolescence, driving down property values.⁷
- **Traffic:** The Project is located several hundred feet from the well-traversed intersection of Yellow Mills Road and Fox Road. The current configuration of the site plan with its densely massed solar arrays, inadequate landscape buffers, and glare-laden solar panels has the potential to cause further traffic accidents along this well-traversed intersection. These factors indicate that the Project “may” have “the potential” for significant adverse traffic impacts and requires further study.
- **Wetland and Aquifer Impacts:** The proposed site plan shows that the Project would be located in close proximity to regulated wetlands. The Project site contains two wetlands regulated by the Army Corps of Engineers (USACE) and two state-regulated wetland areas. The Future Land Use Map (#10) of the Town of Farmington Comprehensive Plan identifies this wetland system as an environmentally sensitive area. The Developer’s wetland delineation report admits that the onsite wetlands are hydrologically connected to off-site wetlands and streams:

“[T]he forested wetland located along the western boundary of the Review Area drains naturally to the Northwest and is hydrologically contiguous with a larger wetland complex to the west of the Project site.⁸ This off-site wetland physically abuts a perennial stream channel that flows to the north and into other wetlands that are located to the north of Fox Road.”⁹

Additionally, the Project site sits on top of an unconfined principal aquifer, which recharges from surface water that percolates through the soils. When water seeps in from pores in the ground’s surface directly above the aquifer. Therefore, it is reasonable to believe that the Project’s location may have the potential for a potentially significant adverse impact to wetlands and the aquifer.

For these reasons, the Project may have the potential for at least one potentially significant adverse environmental impact. Consequently, this Board must issue a Pos Dec and require the applicant to prepare an EIS.

⁶ Letter from Town of Farmington Conservation Board dated October 22, 2018.

⁷ Rowe Realty letter dated March 20, 2019.

⁸ North Country Ecological Services, Inc. Wetlands Delineation Report, Page 7.

⁹ *Id.*

The Applicant Failed to Establish That It Is Entitled to a Special Use Permit

The Planning Board must deny Delaware's application for a special permit for a Solar Photovoltaic (PV) System because the applicant did not satisfy the requirements of Farmington Town Code 165-65.3 and Article VIII.¹⁰

The Planning Board must comply with the requirements of Town Code when it considers a special use permit application. The Planning Board must deny Delaware's application for a special use permit because it cannot make the findings required by Town Code 165-99(C)(5)(a), (b), (c), (d), (e), (g) and (h).

In order to grant Delaware's special use permit request, the Planning Board must make the specific findings set forth in Farmington Town Code 165-99(C)(5). In this case, the Planning Board cannot make the required findings for these reasons:

(a) The Project will not adversely effect the orderly development and character of the surrounding neighborhood.¹¹

The Planning Board cannot make this finding because the proposed Project will have a substantial and undue adverse effect upon adjacent property, and the character of the neighborhood. First, the Project will significantly impact the character of the neighborhood because it will replace agriculturally zoned prime agricultural land with solar arrays, transforming rural parcels into industrial uses. Furthermore, siting arrays near a roadway will dominate and interfere with the development and use of neighboring property as the arrays will be perceived an eyesore, discouraging more desirable future residential and agricultural development near the Project parcels.

(b) The Project will not be a nuisance to neighboring land uses in terms of the production of obnoxious or objectionable noise, dust, glare, odor, refuse, fumes, vibrations, unsightliness, contamination, or other similar conditions.

Here, siting arrays near a roadway will dominate and interfere with the development and use of neighboring property as the arrays will be perceived an eyesore. The dense massing of the arrays will create glare visible to properties from the Project due to inadequate landscape buffers.

(c) The Project will not create hazards or dangers to the general public or to persons in the vicinity of the project from fire, explosion, electricity, radiation, crowds, traffic congestion, parking of automobiles or other similar conditions.

¹¹ Farmington Town Code 165-99(C)(5)(a).

The Planning Board cannot make this finding because the location of the proposed Project raises serious safety concerns as the Project is located in close proximity to a well-traversed intersection. Inadequate landscape buffers and glare from the Project's densely massed solar panels will distract drivers and create safety issues for drivers and pedestrians.

(d) The Project will not cause undue harm to or destroy existing sensitive natural features on the site or in the surrounding area or cause adverse environmental impacts, such as significant erosion and/or sedimentation, slope destruction, flooding or ponding of water or degradation of water quality.

The Planning Board cannot make this finding because the proposed Project will result in a loss of 30 acres of prime farmland.¹² The Project will also be located on top of an aquifer and will potentially impact the aquifer and environmentally sensitive, regulated wetland areas on and off site. In fact, siting the Project on prime agricultural farmland containing valuable wetland and water resources directly contravenes the goal of the Town's Comprehensive Plan, which seeks to balance future development goals and natural resource protection.¹³

(e) The Project will not be incompatible with the type, extent and direction of building development and/or the creation of access roads or ingress/egress points for the site and surrounding areas, as proposed in the Town of Farmington Master Plan or in the Route 96/Route 332 Corridor Development Plan, as adopted and amended by the Town of Farmington.

The Planning Board cannot make this finding because the agricultural character of the Project site will be transformed by the addition of the densely packed, ground-mounted solar arrays, resulting in an industrial use sited in a pastoral agricultural neighborhood. This action will directly contravene the findings of the Ontario County Agricultural Enhancement Plan-2018 which designates the Project's land as a priority for protection.¹⁴ Additionally, the Project is out of character with the surrounding agricultural residential neighborhood and will become an external obsolescence, driving down property values.¹⁵ While it the policy of the Town to encourage industrial growth and economic development, the Comprehensive Plan's Future Land Use Plan (#10) makes it clear that this parcel should remain an active agricultural site.

(g) The Project will not create disjointed vehicular circulation paths or create vehicular/pedestrian conflicts.

¹² Agricultural Enhancement Board letters dated October 2, 2018 and April 9, 2019.

¹³ Farmington Comprehensive Plan. P. 3-1.

¹⁴ Agricultural Enhancement Board letters dated October 2, 2018 and April 9, 2019.

¹⁵ Rowe Realty letter dated March 20, 2019.

The Planning Board cannot make this finding because the proposed Project would be located near a well-traversed intersection with inadequate landscape buffers. Additionally, glare from the Project's densely massed solar panels will distract drivers and create safety issues for drivers and pedestrians.

(h) The Project will provide adequate landscaping, screening or buffering between adjacent uses which are incompatible with the proposed project.

The Planning Board cannot make this finding because the proposed project in its current form has inadequate buffers. Siting the arrays close to a roadway will dominate and interfere with the development and use of neighboring property as the solar arrays will be perceived as an eyesore.

Town Code explicitly states that “[s]hould the applicant, based on the findings of the Board, **fail to meet any one of the criteria or requirements listed above** or those listed in Article VI, either because of the basic nature and design of the project or the lack of appropriate mitigating measures, **then the request for approval of a special use permit shall be denied.**” § 165-99 (C) (6).

Based on a review of the Town Code's special use permit criteria, it is clear that Delaware River Solar's Special Use Permit Application should be denied because the Project fails to mitigate negative impacts to neighborhood character, visual impacts to surrounding properties, environmental impacts to prime agricultural soils, water resources, and wetlands, and safety concerns resulting from the project's configuration and location near a well-traversed intersection.

The Applicant Failed to Demonstrate that No Feasible Alternative Exists

The Farmington Town Code contains stringent standards to site a solar farm on certain types of soils. The Planning Board cannot approve a special permit for a solar farm on soils classified as Class 1 through 4 unless it determines that there is no feasible alternative.¹⁶ Here, the record before the Planning Board does not contain any documentation that would support such a finding.¹⁷ Consequently, the applicant failed to demonstrate that no feasible alternative exists to siting the Project and the special permit application must be denied.

¹⁶ Farmington Town Code 165-65.3(F)(1)(b)(3).

¹⁷ In fact, the Comprehensive Plan emphasizes that in order to achieve the goal of minimizing adverse environmental impacts resulting from development higher priority should be given to “identifying and weighing alternatives than to examining measures to mitigate any adverse negative impacts.” P. 3-10.

Thank you reviewing this letter. If you have any questions, please do not hesitate to contact me.

Regards,

A handwritten signature in black ink, appearing to read 'Frances Kabat', written in a cursive style.

Frances Kabat, Esq.