

April 24, 2019

**VIA U.S. MAIL**

Town of Farmington Planning Board  
c/o Mr. John Robortella, Clerk  
1000 County Road 8  
Farmington, New York 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 are counsel for Delaware River Solar and submit this letter in response to the letter submitted to the Town of Farmington Planning Board (the “Board”) by Frances Kabat, Esq. on April 16, 2019 (the “Kabat Letter”).

The Kabat Letter addresses three issues: (1) the Board’s ongoing SEQRA review, (2) the merits of the special use permit application, and (3) whether there is “no feasible alternative” under Town of Farmington Code § 165-65.3(F)(1)(b)(3). As noted by Chairman Hemminger during the public hearing, the Board’s inquiry is currently limited to SEQRA review. As a result, this letter will only address the SEQRA related items raised in the Kabat Letter. Delaware River Solar will address the substantive merits of the special use permit application with the Board when the Board concludes its SEQRA review and begins hearing public comment on the special use permit application. As a reminder, Delaware River Solar previously addressed the “no feasible alternative” language of Town of Farmington Code § 165-65.3(F)(1)(b)(3) in a letter submitted to the Board on January 9, 2019, by my colleague, Donald A. Young, Esq. A courtesy copy of that letter is enclosed.

**Applicable Standard of Review**

Under New York law, the Board is only required to prepare an environmental impact statement (“EIS”) when the Board determines that the proposed project “may have a *significant* effect on

the environment.” N.Y. Env. Cons. Law § 8-0109(2) (emphasis added). However, an EIS is not required if the Board determines that (1) the proposal will have no adverse environmental impact, or (2) the identified adverse environmental impact will not be significant. *See* 6 NYCRR 617.7(a)(2). This analysis and determination is completed after the Board reviews the Environmental Assessment Form for the project, receives facts and information from the public, and thoroughly analyzes the identified relevant areas of environmental concern to determine if the proposed project “may have a significant adverse impact on the environment.” 6 NYCRR 617.7(b).

The Kabat Letter, submitted at the conclusion of a multi-month public hearing process, incorrectly concludes that the Board “must issue a Pos Dec because the Project ... may have at least one potentially significant adverse environmental impact.” The reality is that because of the due diligence of the Board in examining all available information and public comment, there is ample evidence that the proposed project will not have a significant adverse environmental impact. The Kabat Letter ignores this reality and instead – without support or documentation – attempts to argue that there are five areas of alleged environmental impact.

1. Prime Agricultural Farmland: The Kabat Letter claims that the proposed project will have a significant adverse environmental impact on prime agricultural farmland because the Ontario County Agricultural Enhancement Board concluded in its April 9, 2019, letter to the New York State Department of Agriculture and Markets (“NYS Ag & Markets”) that “[t]he proposed project will result in the loss of approximately 30 acres of prime farmland.” The conclusion reached by the Kabat Letter misrepresents the conclusions of the Ontario County Agricultural Enhancement Board.

The purpose of the Ontario County Agricultural Enhancement Board is to “work[] with the agricultural community, various levels of government, and the private sector to promote agriculture and agri-business, and preserve and protect farmland.” *See* Ontario County Agricultural Enhancement Board website (*available at* <https://www.co.ontario.ny.us/449/Agriculture-Enhancement-Board>). As a result, it made no determination regarding the environmental impact of the proposed project, but rather stated its concern (based on its purpose of promoting agriculture) that the proposed project would temporarily take some farmland out of production. However, the Ontario County Agricultural Enhancement Board specifically noted that, “[a]s proposed, the landowner will be able to continue their agricultural operation at its current scale.” As a result, the proposed project will essentially have no meaningful impact on agriculture since the owner will still be able to continue its agricultural operation at its current scale.



Finally, the information provided in the EAF and during the public hearing clearly demonstrates that the impacted farmland will not be “lost,” but rather will be leased to Delaware River Solar for 30 years, after which the solar array will be decommissioned and the land will once again be available to farm if the owner so chooses. The short term impact on agriculture will be minimal since the owner will be able to continue its operation at its present scale, and there will be no long term impact on agriculture since the impacted land will once again be available for farming operations when the solar array is decommissioned at the end of the lease term.

2. Drainage: The Kabat Letter once again misrepresents the letter from the Ontario County Agricultural Enhancement Board when it claims that the board “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 neighbors.” The actual statement from the Ontario County Agricultural Enhancement Board is a request that NYS Ag & Markets require Delaware River Solar to “determine *if* there are any surface or subsurface agricultural drainage systems that will be impacted by the proposed project” (i.e., manmade drainage ditches and tile systems).

Once again, the comments of the Ontario County Agricultural Enhancement Board were aimed at protecting agriculture, not identifying adverse environmental impacts. The board requested that Delaware River Solar determine whether the installation of the solar array would damage surface or subsurface drainage structure (i.e., drainage ditches and tile systems), not because it felt any such disturbance would create a significant adverse environmental issue but because it feared any damage to drainage infrastructure could make the leased farmland or neighboring farmland less economically productive. Delaware River Solar has consulted with the owner and determined that there are no such surface or subsurface drainage systems that will be damaged by the installation of the proposed solar array.

3. Community Character and Property Values: Relying solely on a single realtor opinion letter, the Kabat Letter claims that the project is “out of character with the surrounding agricultural residential neighborhood and will become an external obsolescence, driving down property values.” The reality is that the proposed project is a specially permitted use and thus carries a legal presumption that it is in fact consistent with the character of the underlying zoning district in which it is permitted. The New York Court of Appeals has specifically held that “[t]he



inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood.” *N. Shore Steak House, Inc. v. Bd. of Appeals of Inc. Vil. of Thomaston*, 30 N.Y.2d 238, 243 (1972). As a result, the Kabat Letter incorrectly concludes that the proposed project is not consistent with the character of the neighborhood because the proposed solar array is a permitted use within the zoning district, subject to the issuance of a special use permit.

4. Traffic: SEQRA looks at impacts on traffic relating to, for example, the ability of the current roadway infrastructure to handle additional traffic generated by a project. The Kabat Letter alleges the project will create traffic problems; however, it provides no data to support that claim. Instead, it refers to its possibility of creating distracted drivers. If this were the standard, almost every project would require a positive declaration, including farms. For example, the lands now currently include grazing cows, which also can capture the attention of drivers passing by. Farming operations often involve moving machinery and associated traffic, noise, lights and odors. In contrast, the proposed Project will result in little to no traffic, noise, lights or odors and will instead consist of static solar panels, specifically designed to eliminate glare so they can absorb sun light, not reflect it. Furthermore, the proposed project will include visual buffers and extended setbacks.
5. Wetland and Aquifer Impacts: The Kabat Letter claims, once again without support, that 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.” The claim is entirely speculative. Delaware River Solar has examined the project site to ensure the protection of any identified wetlands. While wetlands have been identified at the site, none have been identified in the construction area. Thus, the Project has been designed to avoid disturbing any and all wetlands and to respect and comply with all buffers required as a result of such wetlands. Should any additional wetlands be identified, the Project will be constructed and operated in order to respect and comply with all regulations, including buffers, relating to such wetlands.

The unsupported claims against the proposed project made in the Kabat letter stand in stark contrast to the environmental assessment performed by the NYS Ag & Markets. Having reviewed all relevant information related to the potential environmental impact of the proposed project, NYS Ag & Markets concluded in its April 12, 2019, letter to the New York State Energy Research and Development Authority (“NYSERDA”) that “the proposed action would not have



an unreasonably adverse effect on the continuing viability of farm enterprises within the district or State environmental plans, policies and objectives.” That determination was due, in part, to specific environmental mitigation steps proposed for the project by NYSERDA.

To date, the Board has conducted a thorough and exhaustive collection of relevant information. While Delaware River Solar believes that the Board now has sufficient information to make a SEQRA determination, it will provide any additional information that the Board may deem necessary. Despite vocal public concern over the proposed project, the Board is tasked with reviewing the actual factual information it has received when making its SEQRA determination. Delaware River Solar respectfully submits that the proper determination given the factual information provided and the determination by NYS Ag & Mkts is that the proposed project will not have a significant adverse environmental impact. For that reason, Delaware River Solar requests that the Board issue a Negative Declaration.

Sincerely,



Terence L. Robinson Jr.

TLR/sms

Enclosure

