

**VIA EMAIL TO edhemminger@gmail.com; rlbplans@gmail.com;  
john.robortella@gmail.com**

May 15, 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 with respect to 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.”<sup>1</sup> 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.”<sup>2</sup>

As the use of word “may” indicates, SEQRA requires that a positive declaration be issued where the potential for a significant environment effect exists.<sup>3</sup>

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.<sup>4</sup>

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 is more likely to require an EIS.<sup>5</sup>

Therefore, 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.<sup>6</sup>

“In making this initial environmental analysis, the lead agencies must study the same areas of environmental impacts as would be contained in an EIS, including both the short-term and long-term effects ... as well as the primary and secondary effects ... of an action on the environment. The threshold at which the requirement that an EIS be prepared is triggered is relatively low: it need only be demonstrated that the action may have a significant effect on the environment.”<sup>7</sup>

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<sup>1</sup> *Akpan v. Koch*, 75 NY2d 561, 569 (1990). See *H.O.M.E.S. v. New York State Urban Dev. Corp.*, 69 A.D.2d 222, 232 (4th Dept. 1979).

<sup>2</sup> 6 NYCRR 617.7(a)(1).

<sup>3</sup> *Farrington Close Condominium Bd. Of Managers v. Incorporated Village of Southhampton*, 205 A.D.2d 623, 624 (2d Dept. 1994).

<sup>4</sup> *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).

<sup>5</sup> *S.P.A.C.E. v. Hurley*, 291 A.D.2d 563, 564 (2d Dept. 2002).

<sup>6</sup> *Uprose v. Power Authority of State of New York*, 285 A.D.2d 603, 608 (2d Dept. 2001).

<sup>7</sup> *Chinese Staff and Workers Association v. City of New York*, 68 N.Y.2d 359, 364, 365 (1986).

Further, “to determine that an EIS will not be required for an action, the lead agency must determine either that there *will be no environmental effect* or that the identified environmental effects *will not be significant*.”<sup>8</sup>

To determine whether a proposed Type I action may have a significant adverse impact on the environment, the impacts that may be reasonably expected to result from the proposed action must be compared against the criteria found in 6 NYCRR 617.7(c). These criteria include, but are not limited to:

(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;

(ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;

(iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;

(v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;

(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;

(x) the creation of a material demand for other actions that would result in one of the above consequences;

(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or

(xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

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<sup>8</sup> West Branch Conservation Ass'n v. Planning Bd of Town of Clarkstown, 207 A.D.2d 837, 839 (2d Dept 1994).



6 NYCRR 617.7 (c)(1)(i)-(xii).

It is worth noting that that “the determination of significance is a threshold determination which should not balance benefits against harm, but rather should consider whether a proposal has any significant adverse impacts. Such balancing may only be done in Findings following an EIS.” SEQRA Handbook, P. 85.

### **Full Environmental Assessment Form**

As part of its determination of significance, a lead agency must complete Part 2 of the Full Environmental Assessment Form (FEAF). This form helps lead agencies to identify potential adverse environmental impacts.

Here, a review of the Part 2 FEAF questions demonstrates that the Project may have the potential for significant adverse impacts to prime agricultural farmland, surface water, groundwater, drainage, impacts on community character and plans, and traffic. Consequently, the proposed action may have a significant adverse impact requiring a positive declaration of environmental significance and preparation of an EIS.

### **Impacts on Land**

Question 1 of the Full Environmental Assessment Form (FEAF) (Part 2) asks the reviewing agency to evaluate whether the proposed action may involve the construction on, or physical alteration of, the land surface of the proposed site.

Question 1f asks if the proposed action may result in increased erosion, whether from physical disturbance or vegetation removal. The FEAF workbook states that it is likely that one or more moderate to large impacts could occur if “large portions of vegetation are removed from the site.”

Here, it is likely that one or more moderate to large impacts could occur because the proposed action would result in the physical disturbance of at least 1.1 acres and that the project will require creation of an access road, burying of electric cables, installation of a steel post support structure for 21,000 solar arrays, construction of a concrete pad for each solar system and installation of inverter and transformer equipment. The physical disturbance of vegetation on the project site may have a potentially significant adverse environmental impact on the environment, requiring issuance of a pos dec.

## **Impacts on Prime Agricultural Farmland**

Question 8 of the Full Environmental Assessment Form (FEAF) (Part 2) asks the reviewing agency to evaluate potential impacts to agricultural resources. The FEAF workbook explicitly states that “if any agricultural activities are taking place on or adjacent to the project site, or if the project site is within a New York State Agricultural District, the proposed project may have adverse impacts on farming.”

Question 8a. asks whether the proposed action may impact soil classified within soil group 1 through 4 of the NYS Land Classification System. The FEAF workbook further explains that “[a]n impact means that highly productive soils are taken out of agriculture and converted to non-farm use.” It is likely that one or more moderate to large impacts could occur if “[a] large portion of the site will have the soils disturbed that will make it hard or impossible to continue use of them for agriculture.”

Question 8.b. asks if “[t]he proposed action may sever, cross or otherwise limit access agricultural land.” It is likely that one or more moderate to large impacts could occur if “[s]tructures, fences, signs, landscaping, gates, or similar structures are sited in a manner which prevents access to farm fields.”

Question 8d. asks if “[t]he proposed action may irreversibly convert agricultural land to non-agricultural uses, either more than 2.5 acres if located in an Agricultural District, or more than 10 acres if not within an Agricultural District.” The FEAF workbook states that it is likely that one or more moderate to large impacts could occur if “[k]nown and identified critical masses of farmland are fragmented with non-farm uses.”

Here, the Project will sever and fragment critical masses of farmland with non-farm uses. The proposed action converts 30 acres of prime agricultural farmland into a 7MW industrial scale solar facility, requiring the creation of an access road, burying of electric cables, installation of a steel post support structure for 21,000 solar arrays, construction of a concrete pad for each solar system and installation of inverter and transformer equipment. Therefore, it is likely that one or more moderate to large impacts will occur because the Project’s parcel will be split between the existing cattle operation and an industrial scale solar facility, which is a non-farm use.

Question 8g asks if “[t]he proposed project is not consistent with the adopted municipal Farmland Protection Plan.” The FEAF workbook states that it is likely that one or more moderate to large impacts could occur if “[a] project that removes lands from production that are identified in the plan as part of the areas of critical farmland and the Project reintroduces land uses that are



incompatible with agriculture in an area identified in the plan as critical farmlands or that will induce non-agricultural growth.”

The Town of Farmington’s Farmland Protection Plan identifies the parcel as prime farmland. Similarly, the Ontario County Agricultural Enhancement Plan-2018 identified the property as priority land for protection.”<sup>9</sup> These factors indicate that the Project “may” have “the potential” for significant adverse land use changes and requires further study.

### **Impacts on Surface Water**

Question 3 of the Full Environmental Assessment Form (FEAF) (Part 2) asks the reviewing agency to evaluate potential impacts to any wetland or surface water body.

Question 3b asks if [t]he proposed action may result in an increase or decrease of over 10% or more than a 10 acre increase or decrease in the surface area of any body of water. The FEAF workbook states that it is likely that one or more moderate to large impacts could occur if “large and permanent changes to a water body may change the ecology, water quality, use, or aesthetics of that waterbody” and “[t]he impact extends beyond the project site.” It is also likely that a one or more moderate to large impacts could occur if there will be an impact to a resource that is of special importance to the local community as identified in an open space or land use plan.”

Here, is likely that the one or more moderate to large impacts could occur because the Project site contains two federally regulated and two state regulated wetlands, which are hydrologically connected to off-site wetlands and streams. Additionally, this wetland system is identified as an “environmentally sensitive area” by the Town of Farmington Comprehensive Plan Future Land Use Map (#10).

Question 3i asks if “[t]he proposed action may affect the water quality of any water bodies within or downstream of the site in the proposed action.” The FEAF workbook states that it is likely that one or more moderate to large impacts could occur if “affected waterbodies are interconnected and part of a larger system” and “waterbodies are regulated.”

Here, the Project may affect the water quality of wetlands on and near the site. It is likely that the one or more moderate to large impacts could occur because the Project site contains two federally regulated and two state regulated wetlands, which are hydrologically connected to off-site wetlands and streams.

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<sup>9</sup> Ontario County Agricultural Enhancement Board Letters dated October 2, 2018 and April 9, 2019.

Additionally, concentrated stormwater flows resulting from densely massed impervious solar array surfaces will impact stormwater flow in and around the Project site. These impacts may be exacerbated by differences in soil and slope characteristics on the Project site. This indicates that the Project may have potentially significant adverse impacts to onsite and offsite surface water and drainage. Therefore, Project may have significant adverse impacts to surface water.

### **Impacts on Groundwater**

Question 4 of the Full Environmental Assessment Form (FEAF Part 2) asks the reviewing agency to evaluate potential impacts on the use of, and contamination of, groundwater resources.

Question 4h address other impacts identified by the reviewing agency that are not addressed by the other questions in this section. Other impacts to groundwater could include increased impervious surfaces from the densely massed solar arrays impacting the aquifer's groundwater recharge rate.

Here, most of the Project site contains moderate to high permeability soils.<sup>10</sup> These soils lay on top of a principal unconfined 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, the Project may result in potentially significant adverse impacts to the aquifer because it will place 20,000 impervious solar arrays directly on top of the land and impact the underlaying aquifer's groundwater recharge rate.

### **Impacts on Drainage Patterns**

Question 5 of the Full Environmental Assessment Form (FEAF Part 2) asks the reviewing agency to evaluate whether the proposed action may result in development on lands subject to flooding. Lands subject to flooding can include: lands in wetlands or lands where development will change drainage patterns so as to create potential for flooding.

Question 5d asks if "[t]he proposed action may result in, or require modification of existing drainage patterns." Altered flow patterns are all actions that can modify drainage patterns of surface water flow." The FEAF workbook states that it is likely that one or more moderate to large impacts could occur "[w]hen land uses with high percentages of the lot are covered in impervious surfaces" and "[w]here stormwater generated on-site will impact water bodies off-site on other properties."

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<sup>10</sup> Ontario County Planning Board Draft Meeting Minutes, September 12, 2018, P. 16.



Here, the proposed action may result in or require modification of existing drainage patterns because it will cover 30 acres of land with impervious surfaces. The Project will create industrial facility containing 21,000 impervious solar arrays on 30 acres of farmland. Concentrated stormwater runoff resulting from densely massed impervious solar array surfaces will impact stormwater flow in and around the Project site. These impacts may be exacerbated by differences in soil and slope characteristics on the Project site. This indicates that the Project may have potentially significant adverse impacts to onsite and offsite surface water and drainage. For these reasons, the Planning Board as lead agency must issue a pos dec for this Project.

### **Impacts to Open Space**

Question 11 of the Full Environmental Assessment Form (FEAF Part 2) asks the reviewing agency to evaluate if the proposed action may result in a reduction of open space as designated in any adopted municipal open space plan.

Question 11f, addresses other impacts identified by the reviewing agency that are not addressed by the other questions in this section. The Project may result in a loss of open space identified by the local community as important farmland and identified as contributing to community character. These factors indicate that the Project “may” have “the potential” for significant adverse impacts to community character and requires further study.

### **Impacts on Community Character and Consistency with Community Plans**

Question 17a asks if “[t]he proposed action’s land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s). The FEAF workbook states that it is likely that one or more moderate to large impacts could occur if “[t]he proposed project is not consistent in its proposed use, dimensions of the lot, dimensions and location of all structures, setbacks, size of the structure(s), accessory uses, and overall scale and intensity with existing land uses and local laws and plans encourage maintenance of such existing uses.”

The Project land use is certainly different from and in sharp contrast to the surrounding land use patterns. It will convert 30 acres of open farmland to a densely massed 7MW solar facility featuring almost non-existent interior setbacks. Therefore, the proposed project is not consistent with surrounding land use patterns, applicable setback requirements and overall scale and intensity of existing land uses.

Question 17c asks if the proposed action is inconsistent with local land use plans or zoning regulations. Moreover, Question 17d asks if the proposed action is inconsistent with any County plans, or other regional land use plans.



The FEAF workbook states “If a project... is in conflict with the stated vision, goals recommendations or land use concept map of a comprehensive plan, then the proposed action is inconsistent, and the reviewing agency will need to evaluate whether this inconsistency is small or moderate to large.” It is likely that one or more moderate to large impacts could occur if “[s]ignificant area variances are required.”

Here, placement of an industrial solar facility on agricultural land is inconsistent with the goals and recommendations of the Town’s Comprehensive Plan and County’s Agricultural Enhancement Plan. 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.<sup>11</sup> Additionally, the Project is out of character with the surrounding agricultural residential neighborhood and will become an external obsolescence, driving down property values. <sup>12</sup> 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. 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.<sup>13</sup>

Question 18 of the Full Environmental Assessment Form (FEAF Part 2) asks the reviewing agency to evaluate whether “[t]he proposed project is inconsistent with the existing community character.” The FEAF workbook notes “[c]hanges to the type and intensity of land use, housing, public services, aesthetic quality , and to the balance between residential and commercial uses can all change community character.”

Question 18f asks if the “[p]roposed action is inconsistent with the character of the existing natural landscape.” Additionally, “waterbodies, open lands, forested lands, topography, natural communities and wildlife and unique geological features all contribute to the natural landscape. When these resources are reduced, fragmented, or eliminated, the natural landscape can change.”

The FEAF workbook states that it is likely that one or more moderate to large impacts could occur if significant portions (in size and in importance to the community) of the natural landscape are removed or changed.

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<sup>11</sup> Agricultural Enhancement Board letters dated October 2, 2018 and April 9, 2019.

<sup>12</sup> Rowe Realty letter dated March 20, 2019.

<sup>13</sup> Farmington Comprehensive Plan. P. 3-1.

Here, the proposed solar energy facility is entirely inconsistent with the character of the existing natural landscape. First, the Project will significantly impact the character of the neighborhood because it will place an industrial solar energy facility in the middle of agriculturally zoned prime agricultural land. 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. These factors indicate that the Project “may” have “the potential” for significant adverse impacts to community character and requires further study.

The Developer’s attorney cites *N. Shore Steak House, Inc. v. Bd. of Appeals of Inc. Vil. Of Thomaston* in support of its argument that inclusion of a permitted use in the zoning ordinance equals a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood. The Developer’s reliance on this case is misplaced. The North Shore Steak House case involved an application for a special exception permit, and the cited language was used by the Court to explain the legal difference between a special exception permit and a use variance. It simply is irrelevant to any SEQRA analysis as to whether the proposed solar energy facility is visually consistent with the surrounding agricultural farmland and whether its placement in the middle of an agricultural community may significantly affect community character.

### **Impacts on Traffic**

Question 13 of the Full Environmental Assessment Form (FEAF Part 2) asks the reviewing agency to evaluate whether the proposed action may result in a change to existing transportation systems.

Question 13f, addresses other impacts identified by the reviewing agency that are not addressed by the other questions in this section. The location of the proposed Project raises serious safety concerns because it 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.


For the reasons cited, there is a possibility that the proposed action may cause at least one significant environmental impact in many of the areas enumerated in 6 NYCRR 617.7(c). Because the action may include the potential for at least one significant adverse environmental impact, 6 NYCRR 617.7 (a) (1) requires the lead agency to issue a positive declaration of environmental significance. Therefore, under SEQRA, the Applicant must be required to prepare an EIS.

### **CONCLUSION**

For the foregoing reasons, we request that the Planning Board classify the action as a Type I action pursuant to SEQRA, issue a positive declaration of environmental significance and require preparation of an Environmental Impact Statement.

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

Sincerely,



Frances Kabat