Zoghlin GROUP

300 State Street, Suite 502
Rochester, New York 14614
585.434.0790 *phone*
585.563.7432 *fax*
www.zoglaw.com

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

November 19, 2019

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

Re: Revised 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 rescind the August 7, 2019 Negative Declaration of Environmental Significance ("Neg Dec") and 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]

As the use of word "may" indicates, SEQRA requires that a positive declaration be issued where the potential for a significant environment effect exists.[3]

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.[4]

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.[5]

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.[6]

"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."[7]

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*."[8]

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

---

[1] 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).
[2] 6 NYCRR 617.7(a)(I).
[3] Farrington Close Condominium Bd. Of Managers v. Incorporated Village of Southampton, 205 A.D.2d 623,624 (2d Dept. 1994).
[4] 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).
[5] S.P.A.C.E. v. Hurley, 291 A.D.2d 563, 564 (2d Dept. 2002)
[6] Uprose v. Power Authority of State of New York, 285 A.D.2d 603, 608 (2d Dept. 2001).
[7] Chinese Staff and Workers Association v. City of New York, 68 N.Y.2d 359, 364, 365 (1986)
[8] West Branch Conservation Ass'n v. Planning Bd of Town of Clarkstown, 207 A. D.2d 837, 839 (2d Dept 1994).

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.

6 NYCRR 617.7 (c)(1)(i)-(ii), (iv)-(v), (viii), (x)-(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 land, prime agricultural farmland, surface water, groundwater, drainage, vegetation and fauna, open space, aesthetic resources, community plans and character, traffic, and environmental and environmental health. 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 1(f) asks if the proposed action may result in increased erosion, whether from physical disturbance or vegetation removal. The FEAF workbook states that a proposed project may have one or more moderate to large impacts to land if "[l]arge areas of vegetation will be removed from the site." Question 1(h), Other Impacts, asks the reviewing agency to evaluate other impacts which are not addressed by the questions in this section.

Here, it is likely that one or more moderate to large impacts may occur because the Proposed Project will disturb a significant portion of land. Interestingly, the Developer's revised Environmental Assessment Form, Part 1, states that the total acreage covered by the Project is 43.1 acres, but the SWPPP states that the leased area will only be approximately 37 acres.[9]

Moreover, the Developer's revised Environmental Assessment Form (Part 1) indicates that physical disturbance caused by the proposed Project has increased from 1.1 acres to 2.6 acres.[10] This significant— the area to be disturbed by the project has more than doubled in size.

In fact, the Project has the potential for at least one potentially significant impact to land because it requires 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.

Pre- and post-construction activities associated with earthwork, installation of the solar pv systems (including arrays and associated infrastructure), and project maintenance will disturb project land and may have the potential for increased erosion on the Project Site.

---

[9] Revised EAF (Part 1), D.1.b. Schultz Associates Stormwater Pollution Prevention Plan (SWPPP), dated October 21, 2019, § 1.3(C).

[10] Revised EAF (Part 1), D.1.b.

Additionally, the Developer's geotechnical report makes eleven recommendations regarding the earthwork preparation required to make the site construction ready, which indicates that the proposed Project may have the potential for significant environmental impacts to land.[11]

For example, the Developer's geotechnical report states that the Project will likely entail significant top soil removal, especially under the transformer pad and support equipment because the Project site's soils are moisture sensitive and are frost susceptible.[12] This is important because seasonal freezing and thawing will impact the stability of the solar panel racking system and other ground mounted equipment throughout the Project Site. This conflicts the Developer's Stormwater Pollution Prevention Plan (SWPPP), which states that "there will be little to no clearing of existing vegetation."[13]

Furthermore, the proposed Project site contains cobbles, boulders, and dense soil conditions which limit penetration depths and require pre-augering to bore holes in soil that would be otherwise be too rocky for a foundation system required to mount 21,000 solar panels.[14] Additionally, differences in slope characteristics throughout the site will likely require heavy equipment to perform mass grading of soils on the Project Site before construction can begin. This conflicts with the Developer's Stormwater Pollution Prevention Plan (SWPPP), which states that "no mass grading is required for the installation."[15]

Notably, it is unclear whether the Project Area has been fully evaluated for potential geotechnical impacts, as a portion of the proposed project has been shifted toward Yellow Mills Road.[16] It is unclear if the new area covered by Developer's revised site plans was reviewed as part of the initial geotechnical study.

Ultimately, the Developer's application, including its site plans, do not provide sufficient details to enable the Planning Board to evaluate Project's potential impacts to land.

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."

---

[11] Foundation Design Geotechnical Report, July 9, 2019.
[12] Id. at 6-7.
[13] SWPPP, § 2.5.
[14] Foundation Design Geotechnical Report, P. 5-6.
[15] SWPPP, § 2.2.
[16] See Developer's revised site plans, dated November 1, 2019.

It is undisputed that the Project site is located on prime farmland. The Town of Farmington's Farmland Protection Plan identifies the parcel as prime farmland. Additionally, the Project is located in the A-80 agricultural district, where agriculture is the predominant use. The parcels surrounding the Project are mainly used for agricultural purposes.

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."

Here, the Project will place approximately 21,000 solar arrays directly on top of prime agricultural soils, resulting in a substantial change in the use, or intensity of the use, of land. It is likely that one or more moderate to large impacts could occur because the physical disturbance caused by the proposed action has increased from 1.1 acres to 2.6 acres. The proposed action converts 43 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.

Furthermore, the Ontario County Agricultural Enhancement Board has 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."[17] 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[18]. These concerns were echoed by the Town Conservation Board.[19]

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 proposed Project will fragment critical pieces of farmland with non-farm uses for at least 30 years. The proposed Project will require construction of 21,000 solar arrays and associated solar pv system infrastructure on 43 acres of prime agricultural farmland. The proposed Project is densely massed and will transform the northern section of the parcel into an industrial facility. The proposed Project now covers even more land as a result of recent site plan

[17] Ontario Agricultural Enhancement Board letter dated April 9, 2019.
[18] Id.
[19] Town Conservation Board meeting minutes dated October 22, 2018.

revisions. Livestock access will be limited to small fragmented areas on the Project Site. Therefore, one or more moderate impacts may occur.

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."

Notably, it is unclear whether the changes to the Developer's site plans have been fully evaluated for impacts to prime agricultural farmland, as a portion of the proposed project has been shifted toward Yellow Mills Road. The Project requires further review by the New York State Department of Agriculture and Markets to determine if adverse impacts to agricultural lands will be minimized or avoided.

These factors indicate that the Project "may" have "the potential" for significant adverse land use changes and requires further study. 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.

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 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 to surface water may 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).

Moreover, the Ontario County Soil and Water Conservation District warned that "there is the possibility of concentrated flows due to impervious panel surfaces modifying flow patterns."

[26] These comments were affirmed by the Ontario County Planning Board in 2018 and again in 2019.[27] Concerns regarding stormwater runoff were also echoed by the Town Conservation Board.[28]

Furthermore, concentrated stormwater flows resulting from densely massed impervious solar array surfaces will impact stormwater flow in and around the Project Site. Notably, the Developer's geotechnical study recommends that site drainage is required to prevent ponding from occurring on the site.[29]

Question 3(h) asks if "[t]he proposed action may cause soil erosion, or otherwise create a source of stormwater discharge that may lead to siltation or other degradation of receiving water bodies." Question 3(i) 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. The Project, by design, is densely-massed and is located in close proximity to two federally regulated and two state regulated wetlands, which are hydrologically connected to off-site wetlands and streams. Pre- and post-construction activities associated with earthwork, installation of the solar pv systems (including arrays and associated infrastructure), and project maintenance may increase stormwater flows and sedimentation on the Project Site, impacting the quality of nearby waterbodies on and off the Project Site. As such, it is likely that the one or more moderate to large impacts may occur.

Potential 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. The imposition of 21,000 solar arrays on the Project Site will increase ground moisture between solar panels. The fact that DEC does not classify solar panels as impervious surfaces does not mean that the increased ground coverage caused by the solar panels will not impact drainage.

The runoff curve number or CN value is a numeric value used to predict stormwater runoff. The SWPPP states that "there will be no increase to the CN value, rate, and volume of stormwater runoff leaving the project site."[30] The CN is determined from soil type, land use, land condition and land treatment variables. It rises in value with the imperviousness of the site, '0' representing no runoff from the site and '100' means the entire rainfall becomes runoff from the

---

[26] Ontario County Planning Board Draft Meeting Minutes, September 12, 2018, P. 17.
[27] Id. Ontario County Planning Board Draft Meeting Minutes, October 8, 2019, P. 8-9. November 12, 2019. P. 11-12.
[28] Town of Farmington Conservation Board meeting minutes dated October 22, 2018.

[29] Foundation Design Geotechnical Report, P. 8.
[30] SWPPP, § 2.16.

site. Vegetated surfaces have lower CN values than impervious surfaces, which have much higher CN values. This makes sense because impervious surfaces generate more stormwater runoff.

The developer's calculations appear to downplay the impact of the solar panels, as these are impervious surfaces which will affect the flow of stormwater in and around the Project Site. Therefore, the SWPPP's assertion that only very minimal permanent erosion and sedimentation measures are needed requires further investigation.[31] Therefore, the Project may have moderate to large impacts to waterbodies in and around the Project Site.

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 4(h) addresses 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 imperious 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.[32] 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.

The proposed Project will alter the land above the aquifer because it requires 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. The installation of impervious surfaces on the Project Site may negatively impact the underlying aquifer's groundwater recharge rate, reducing the ability of surface water to percolate through the soil. Instead, the densely massed configuration of the solar arrays will likely increase stormwater runoff. Soil compaction resulting from construction and maintenance activities will decrease water absorption and increase stormwater runoff on the Project Site. Therefore, the Project may result in potentially significant adverse impacts to the aquifer.

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 areas or lands where development will change drainage patterns so as to create the potential for flooding.

---

[31] Id. at § 4.1.

[32] Ontario County Planning Board Draft Meeting Minutes, September 12, 2018, P. 16.

Question 5(d) asks if "[t]he proposed action may result in, or require modification of existing drainage patterns." Altered flow patterns are 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 offsite on other properties."

Here, the proposed action may result in or require modification of existing drainage patterns because it will cover 43 acres of land with impervious surfaces. The Project will create an industrial facility containing 21,000 impervious solar arrays on 43 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.

As stated above, in the discussion regarding ground water impacts, the calculated volume of stormwater runoff leaving a project site will vary based soil types, moisture conditions and impervious surfaces. Impervious surfaces have higher CN values than soils and vegetation, which are more naturally absorptive. The developer's calculations appear to downplay the impact of the solar panels, as these are impervious surfaces which will affect the flow of stormwater in and around the Project Site.[33] Therefore, the SWPPP's assertion that only very minimal permanent erosion and sedimentation measures are needed requires further investigation.[34]

Notably, the SWPPP states that "[t]here shall be no cut and fill so as to reduce the risk of creating drainage problems by locating access roads along contours to the greatest extent possible. The surface of the access road shall be level with the adjacent field surface."[35] This statement indicates that the earthwork needed to prep the Project Site may have potentially adverse environmental impacts to drainage.

Removal or Destruction of Vegetation and Fauna

Question 7(g) of the Full Environmental Assessment Form (FEAF) (Part 2) asks the reviewing agency to evaluate whether "[t]he proposed action may substantially interfere with nesting/breeding, foraging, or over-wintering habitat for the predominant species that use or occupy the project site." The FEAF workbook states that it likely that one or more moderate to large impacts could occur if "[a] large percentage of the vegetation is removed and replaced with lawns and other cover types and structures."

Of note, this section is not limited to impacts to threatened or endangered species. The Developer's application for site plan approval admits that that proposed action would result in the physical disturbance of at least 2.6 acres and that the Project will require creation of an access

[33] SWPPP, § 2.16.
[34] Id. at § 4.1.
[35] Id. at § 5.1.

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 fact that the Project Site is primarily used as pastureland is irrelevant; the Developer's revised EAF Part 1, question E.2.m. admits that the site is home to a wide range of animals, which live and migrate through the Project Site. Therefore, the Project could have potentially significant environmental impacts to the plant and animal species that live on or migrate through the Project Site. Therefore, proposed Project may result in the removal or destruction of vegetation and fauna.

Impacts to Historic and Unique Geological Resources

Question 2 (a) of the Full Environmental Assessment Form (FEAF) (Part 2) asks the reviewing agency to evaluate whether the "[p]roposed action may result in the modification or destruction of... any unique or unusual landforms on the site." The FEAF workbook states that it is likely that one or more moderate to large impacts may occur if "[t]here will be alteration of the physical aspects of the feature in any way" or "[t]he setting of the feature will be physically altered, or new structures will affect the aesthetic character and setting of the feature."

Question 10 (a) of the Full Environmental Assessment Form (FEAF) (Part 2) asks whether the proposed action may occur wholly or partially within, or substantially contiguous to, any buildings, archaeological site or district which is listed on the National or State Register Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places. The FEAF workbook states that one or more moderate impacts could occur if "[t]he project changes the character or the view of an important aesthetic resource" or introduces an architectural design that is not consistent with a designated historic district ... and that is not consist with the long-term vision the community has for its aesthetic character as identified in an adopted comprehensive plan."

Here, the Project is in close proximity to two historic cobblestone houses, one located to the northwest of the Project Site at 4740 Fox Road and the other located across the street and south from the Project Site at 595 Yellow Mills Road. The Town considers 4740 Fox Road and 595 Yellow Mills Road to be notable historic properties.[36]

In fact, a registered Public Historian identified these properties as important historic resources.[37] The Public Historian further states that "seven percent of all cobblestone structures in the state are located in Ontario County."[38] As these structures have unique historic value, "the proposed action should be required to provide supplemental information that identified what, if any visual or aesthetic impacts, it may have upon the environmental setting, including any impacts upon these historic structures."[39]

---

[36] Town of Farmington Comprehensive Plan, Pgs. 2-60 and 2-61.
[37] Town of Farmington Historian letter, October 29, 2018.
[38] Id.
[39] Id.

Furthermore, the Project site is contiguous to an ancient glacial drumlin, which is a "unique natural resource" and an environmentally sensitive natural feature.[40] The drumlin dominates the southern portion of the parcel. Stormwater flows from the Project may impact the drumlin, eroding this environmentally sensitive, natural feature. Additionally, the siting of the solar facility in close proximity to the drumlin will negatively impact the aesthetic character of this feature and views of the drumlin from nearby properties. Therefore, the Project may have the potential for at least one potentially significant adverse environmental impact to historic and sensitive natural features.

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 11(f), 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 to Aesthetic Resources

Question 9(a) of the Full Environmental Assessment Form (FEAF) (Part 2) asks whether the "[p]roposed action may be visible from any officially designated federal, state, or local scenic or aesthetic resource." FEAF workbook states that one or more moderate impacts could occur because "[t]he project will be visible and is in sharp contrast to surrounding land uses by virtue of its scale, dimension, color or height."

Question 9(c) asks whether the "[p]roposed action may be visible from publicly accessible vantage points" on a seasonal or year-round basis. FEAF workbook states that one or more moderate impacts could occur if "[t]he project is scale, color, or dimension that will be highly visible from publicly accessible scenic resources."

Here, the proposed solar energy facility is in sharp contrast to the existing natural landscape and may be visible from publicly accessible vantage points. Currently, the Project site consists of open pastureland with views of adjacent fields and residential properties. The Project will place an industrial solar energy facility in the middle of agriculturally zoned prime agricultural land, which will clash with the existing viewshed. Further, developer's landscaping plan does not sufficiently eliminate views of the Project from nearby properties, pedestrians, and drivers.

[40] Town of Farmington Comprehensive Plan, P. 4-3.

This Project will cause a substantial change in land use, replace 43 acres of prime agricultural land with industrial solar arrays, and transform rural parcels into industrial uses. These factors indicate that the Project "may" have "the potential" for significant adverse impacts on aesthetic resources and requires further study.

Consistency with Community Plans

Question 17(a) 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's land use is certainly different from and in sharp contrast to the surrounding land use patterns. It will convert 43 acres of open farmland to a densely massed 7MW solar facility. Therefore, the proposed project is not consistent with surrounding land use patterns, and overall scale and intensity of existing land uses.

Question 17(c) asks if the proposed action is inconsistent with local land use plans or zoning regulations. Moreover, Question 17(d) asks if the proposed action is inconsistent with any County plans, or other regional land use plans. The FEAF workbook states "[I]f 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."

Here, placement of an industrial solar facility on prime agricultural land is inconsistent with the goals and recommendations of the Town's Comprehensive Plan and County's Agricultural Enhancement Plan. 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. 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.[41] Moreover, this Project will directly contravene the findings of the Ontario County Agricultural Enhancement Plan-2018 which designates the Project's land as a priority for protection.[42]

Additionally, the Project is out of character with the surrounding agricultural residential neighborhood and will become an external obsolescence, driving down property values.[43] The agricultural character of the Project site will be transformed by the addition of the densely

[41] Farmington Comprehensive Plan. P. 3-1.
[42] Ontario County Agricultural Enhancement Board Letters April 9, 2019.
[43] Rowe Realty letter dated March 20, 2019.

packed, ground-mounted solar arrays, resulting in an industrial use sited in a pastoral agricultural neighborhood. Therefore, the proposed Project is inconsistent with community plans.

Consistency with Community Character

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 18(f) 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.

Here, the proposed solar energy facility is entirely inconsistent with the character of the community and its 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.

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 13(f), addresses other impacts identified by the reviewing agency that are not addressed by the other questions in this section.

Here, the location of the proposed Project raises serious traffic safety concerns. 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. In fact, the site plan locates the main access road in close proximity to a crest in Fox Road, and reduced visibility could become a major safety problem.

Landowners and residents, through letters and comments to the Planning Board, have documented a number of safety failures regarding the Yellow Mills Road/Fox Road intersection.

For example, accidents at the Yellow Mills Road/Fox Road intersection have yielded at least one fatality.[45] Drivers regularly run the stop sign located at the Yellow Mills Road/Fox Road intersection. Residents also stated that the Yellow Mills Road/Fox Mills Road intersection will become more dangerous at morning and evening rush hour during the Project's construction period.

Any impacts to traffic resulting from vehicles moving topsoil and solar facility equipment have not been studied. Notably, the Town's May 31, 2019 SRF Associates letter did not evaluate traffic impacts during the construction period.[46] Additionally, it is unclear that impacts to sight line distances stemming from revisions to the site plan (moving solar pv systems and landscaping closer to Yellow Mills Road) have been evaluated.

Contrary to SRF's analysis, this intersection is not safe. The Yellow Mills Road/Fox Road intersection has an accident rate that is ten times higher than the statewide average.[47] In fact, SRF's analysis admits that additional warning measures may be needed if the number or severity of crashes increases at this intersection.[48] These factors indicate that the project may have moderate to large impacts on traffic and traffic safety.

Impacts from Steel Pilings and Solar PV Panels

As stated above, the Project will place approximately 21,000 solar arrays directly on top of prime agricultural soils. The arrays will be supported by steel pilings, coated with zinc, which will be driven into the ground. Rainwater and water condensation can corrode galvanized steel pilings.[50] The corrosion of galvanized steep pilings can disperse zinc into the environment.[51]

While the Developer's geotechnical report indicates that the soil corrosivity is low,[52] it is unclear how soil conditions (including PH) may change over time as a result of the proposed Project. The Project Site will be covered in impervious surfaces, which will limit the soil's ability

---

[45] Letter from James Redmond to Planning Board, dated November 20, 2018.
[46] SRF Associates' Trip Generation/Crash Analysis Letter, dated May 31, 2019.
[47] Id. at 2.
[48] Id. at 2-3.
[50] "Contributions of Heavy Metals from Material Exposures to Stormwater," Pitt, R. and Ogburn, O. University of Alabama (2013), Pg 3, available at http://rpitt.eng.ua.edu/ Publications/ Stormwater_Characteristics _Pollutant_Sources_and_Land_Developinent_Characteristics/Storinwater_pollutant_sources/Contributions_of_Heavy_Metals_from_Material_Exposures_to_Stormwater.pdf.
[51] Contributions pf Heavy Metals from Material Exposures to Stormwater," Pitt, R. and Ogburn, O. University of Alabama (2013), Pg 6. "Zinc Hazards to Fish, Wildlife, and Invertebrates: A Synoptic Review" Eisler, Ronald. U.S. Fish and Wildlife Contaminant Hazard Reviews, Report 26. Biological Report 10. April 1993. P. 6-7. Available at https://www.pwrc.usgs.gov/eisler/CHR_26_Zinc.pdf.
[52] Foundation Design Geotechnical Report, P. 4-5.

to properly drain. Increased zinc concentrations from corroded pilings can negatively impact environmental health including terrestrial and aquatic plants and animals.[53]

Additionally, solar PV panels may contain metals such as Arsenic, Barium, Cadmium, Chromium, Lead, Mercury, Selenium, and Silver, which are hazardous to environmental health.[54] The risk of toxic compounds leaching out of damaged Solar PV panels at the proposed Project Site is a potentially significant environmental impact because the proposed Project sits on top of prime agricultural soils located over an aquifer and is located in close proximity to environmentally sensitive wetland resources.

Notably, solar panels can be damaged during severe weather events, such as rain and windstorms, increasing the risk that toxic compounds contained in PV panels are released into the environment. This creates potentially significant impacts related to Solar PV panel maintenance, as the proposed Project is expected to have a 30-year life span, and routine maintenance may only take place twice a year. Moreover, Developer's decommissioning plan does not fully address the environmental risks posed by removal and disposal of the solar panels. Solar PV panels are becoming harder and more costly to recycle as panel technology becomes more advanced.[55] Landfilling solar PV panels may result in toxic metals leaching out into the environment. These factors indicate that the project may have moderate to large impacts to environmental health associated with installation and use of PV solar panels.

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 Project may include the potential for at least one significant adverse environmental impact, the Planning Board must issue a positive declaration of environmental significance.

---

[53] Zinc Hazards to Fish, Wildlife, and Invertebrates: A Synoptic Review" Eisler, Ronald. U.S. Fish and Wildlife Contaminant Hazard Reviews, Report 26. Biological Report 10. April 1993. P. 6-7. Available at https://www.pwrc.usgs.gov/eisler/CHR_26_Zinc.pdf.

[54] Developer's Solar Panel Toxicity Report.

[55] "Innovation is Making Solar Panels Harder to Recycle," McMahon, Jeffery. Forbes, Sept. 4, 2018. Available at www.forbes.com.

CONCLUSION

For the foregoing reasons, we request that the Planning Board rescind the August 7, 2019 neg dec, 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

Enc.

Cc: Jeffrey D. Graff, Esq.
Terence Robinson, Esq.
Jim Foley, Esq.
Jim Falanga