

**Resolution #2024-4-3 SPECIAL USE PERMIT FOR THE NY BENNINGTON 1,
LLC LARGE-SCALE SOLAR ENERGY SYSTEM PROJECT**

BACKGROUND

WHEREAS, Edward H. Halsted and Terry A. Halsted (“Owner”) are the owners of an approximately 100.35-acre parcel of land located on Church Road in the Town of Bennington, Wyoming County, New York, identified on the Tax Map as Section 4, Block 1, Lot 3.1 (“Property”);

WHEREAS, NY Bennington I, LLC (the “Applicant”) is the lessee of a 13.364-acre portion of the Property (the “Project Site”);

WHEREAS, on or about June 12, 2023, the Applicant submitted a Zoning Permit Application and supporting materials for a Special Use Permit and Site Plan Approval (the “Applications”) to construct and operate a 2.063 MW/ac solar farm array to be known as the Church Road Solar Farm Project (the “Project”) pursuant to the Town of Bennington Solar Law (Local Law No. 2 of 2017) on the Project Site;

WHEREAS, as part of its Applications, the Applicant submitted for the Town of Bennington Town Board’s (“Town Board”) review and consideration, the following materials in support of the Applications:

- Full Environmental Assessment Form, Part 1, dated June 9, 2023, last revised December 4, 2023 (“Long EAF”);
- Agricultural Data Statement, dated June 8, 2023;
- Preliminary Site Plan Set, dated June 12, 2023, last updated December 4, 2023 (“Preliminary Site Plan”);
- Lease Agreement (redacted), dated October 21, 2021, by and between the Owner and Delaware River Solar, LLC (“DRS”), an affiliate of the Applicant (“Lease”);
- Project Memorandum, dated June 21, 2023 (“Project Memorandum”);
- Operations and Maintenance Plan, dated June 21, 2023 (“Operations and Maintenance Plan”);
- Decommissioning Plan, dated June 21, 2023, revised December 4, 2023 (“Decommissioning Plan”);
- ALTA Survey of Project Site, dated August 9, 2023;
- Line of Site diagrams, dated October 3, 2023 (“Line of Site Diagrams”);
- Visual Renderings, dated December 4, 2023 (“Visual Renderings”);

- New York State Electric & Gas Coordinated Electric System Interconnection Review, dated March 2, 2023 (“CESIR”);
- Response to Public Hearing Comments, dated October 6, 2023 (“October Response to Public Hearing Comments”); and
- Town Engineer Comment Response letter dated December 4, 2023 (“December Response to Public Hearing Comments”).

WHEREAS, on June 21, 2023, the Town of Bennington Planning Board (“Town Planning Board”) reviewed the Project and provided comments to the Town Board;

WHEREAS, on or about July 12, 2023, the Town Board, having previously notified all involved agencies of its intent, declared itself as Lead Agency under the State Environmental Quality Review Act (ECL Article 8 and its implementing regulations at 6 NYCRR Part 617, collectively “SEQRA”), began reviewing the Project in its role as lead agency pursuant to SEQRA and the Town of Bennington Zoning and Solar Laws;

WHEREAS, on July 12, 2023, the Town Board referred the Project to the Wyoming County Planning Board (“County Planning Board”) for review under GML 239m;

WHEREAS, on August 7, 2023, the County Planning Board issued its Referral Response of no significant negative county-wide or inter-community impacts;

WHEREAS, on or about August 9, 2023, the Town Board issued a Resolution requiring the Project to enter into a PILOT with the Town, and set a Public Hearing for September 13, 2023 on the Special Use Permit;

WHEREAS, on or about September 13, 2023, the Town Board opened a duly noticed public hearing on the Special Use Permit and continued the public hearing to its October 11, 2023 meeting;

WHEREAS, on Saturday, November 4, 2023, the Town Board held a special session to finalize its SEQRA review of the Project;

WHEREAS, the Town Board coordinated the review of the Applications with several involved and interested agencies including the New York State Energy Research and Development Authority (“NYSERDA”), New York State Department of Environmental Conservation, Wyoming County Department of Planning and Development and New York State Department of Agriculture and Markets;

WHEREAS, the Town Board’s consultant MRB Group, Engineering, Architecture & Surveying, D.P.C. (“MRB Group”), reviewed the Applications, the supporting materials submitted by the Applicant, including a revised Site Plan, Line of Site Diagrams, Visual Renderings, the public hearing comments and responses to public comments and advised the Town Board that no

significant adverse impacts to the environment will result from the development and operation of the Project as proposed;

WHEREAS, on December 6, 2023, the Town Board considered the opinion of MRB Group, the criteria for determining significance as set forth in 6 NYCRR §617.7(c)(1) and the information contained in the Long EAF Part 1 and completed Part 2 and Part 3 of the Long EAF and issued a Negative Declaration under SEQRA.

FINDINGS

The applicable Permitted Special Use and Supplementary Regulations governing Large-Scale Solar Energy Systems contained in the Town's Zoning Law follows in italics, followed by the Town Board's findings with respect thereto:

Article 3 Section 4 Permitted Special Uses

4.1 General Provisions

The special uses for which conformance to additional standards is required shall be deemed to be permitted uses in their respective district, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of this Local Law. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.

4.2 Required Site Plan

A site plan as specified in Article V, Section 3 shall be submitted with each application for a special use permit.

A submission of the Preliminary Site Plan, dated June 12, 2023 with subsequent revisions on October 4, 2023 and December 4, 2023 meet the requirements of this section.

4.3 Standards Applicable to all Special Uses

a. The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to it and the location of the site with respect to the existing or future streets giving access to it, shall be such that it will be in harmony with the orderly development of the district and the location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

The Project Memorandum dated June 21, 2023 details the location and size of the system, the nature and intensity of the system, the size and location of the operation as it relates to the Project Site. Consistent with the Negative Declaration adopted by the Town Board, the Project does not discourage appropriate development and use of adjacent land and buildings or impair the value thereof.

b. Operations in connection with any special use shall not be more objectionable to nearby properties by reason of noise, fumes, vibration or flashing lights, than would be the operations of any permitted use.

The Project will not cause fumes or vibrations and there will be no flashing lights installed. Section 3 of the October Response to Public Hearing Comments contains information on Noise and provides that sound levels will dissipate and will not be audible at the Project fence.

Definition: *LARGE-SCALE SOLAR ENERGY SYSTEM: A Solar Energy System that is ground-mounted and produces energy primarily for the purpose of offsite sale or consumption.*

The Project meets the definition of Large-Scale Solar Energy System.

Section 13: SOLAR ENERGY SYSTEMS

1. Purpose: The Town of Bennington recognizes that solar energy is a clean, readily available, and renewable energy source. The intent of this section is to set provisions for the placement, design, construction, and operation of such systems to uphold the public health, safety, and welfare; and to ensure that such systems will not have a significant adverse impact on the aesthetic qualities and character of the Town.

4. Large-Scale Solar Systems: Large-Scale Solar Energy Systems are permitted within the AG-Agricultural-Residential District and the M-Manufacturing District as a primary use (they are not permitted as an accessory use to supplement an existing business or household) upon issuance of a special use permit and site plan approval by the Town Board, consistent with the requirements of Article III Section 4 and Article V Section 3 of the Town of Bennington Zoning Law.

The proposed Large-Scale Solar System is located in the M-Manufacturing District.

A. Submission Requirements: The applicant shall submit the following information with an application for a special use permit and application for site plan approval which shall be in addition to the information required on the town site plan checklist:

- 7. If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.*

The property on which the Project will be located is leased from the Owner. A redacted Lease between the Owner and DRS, an affiliate of the Applicant, dated October 21, 2021 was provided.

The Lease is for a 13.364-acre Project Site. The lease term is for a development term and construction term of unspecified length, and an operations term of thirty (30) years commencing on the Project's Commercial Operation Date ("COD") and provides for the option to extend the term by mutual agreement in five- (5) year extension terms.

8. *Blueprints showing the layout of the Solar Energy System signed by a professional engineer or registered architect shall be required.*

A Preliminary Site Plan signed by Bergmann Architects, Engineers and Planners was provided with the Special Use Permit and Site Plan application. The Preliminary Site Plan was dated June 12, 2023, and revised in response to Town comments on October 4, 2023 and on December 4, 2023.

9. *The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed.*

The Site Plan shows illustrative equipment. Project financing requires final land use approvals. Deposits to order system components can only be advanced after financing is finalized. Selection of system components will occur when orders for system components are made.

The submission of specification sheets of all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed shall be provided to the Zoning Enforcement Officer prior to issuance of a building permit.

10. *Property operation and maintenance plan that shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.*

The Operation and Maintenance Plan, at Section 2 and Section 4, contains detailed procedures for maintenance and property upkeep, such as mowing and trimming.

11. *Decommissioning Plan. To ensure the proper removal of Large-Scale Solar Energy Systems, a Decommissioning Plan shall be submitted as part of the application. Compliance with this plan shall be made a condition of the issuance of a special use permit under this Section. The Decommissioning Plan must specify that after the Large-Scale Solar Energy System can no longer be used, it shall be removed by the applicant or any subsequent owner. The plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution. A cost estimate detailing the projected cost of executing the Decommissioning Plan shall be prepared by a professional engineer or contractor. Cost estimates shall take into account inflation. Removal of Large-Scale Solar Energy Systems must be completed in accordance with the Decommissioning Plan. If the Large-Scale Solar Energy System is not considered decommissioned after being considered abandoned, the municipality may remove the system and restore the property and impose a lien on the property to cover the costs to the municipality.*

The Applicant submitted a Decommissioning Plan to the Planning Board dated June 21, 2023, and which was revised on December 4, 2023 to include a certified decommissioning estimate prepared by Robert Paul Switala, Public Engineer.

The Town Engineer has reviewed the Decommissioning Plan and determined it was adequate, and the Town Board concurs with this determination.

The Decommissioning Plan will be executed prior to issuance of a building permit.

12. Bond. Proof of a bond with a surety recognized with the Town shall be filed with the Town for two and one-half times the cost estimate detailing the projected cost of executing the Decommissioning Plan and shall be provided along with the Decommissioning Plan.

The submission of a bond in an amount acceptable to the Town from a surety acceptable to the Town will be provided prior to issuance of a building permit.

D. Standards for issuing a special use permit: The following standards shall be the basis for an approval of a special use permit for a Large-Scale Solar System and in addition to the general requirements of Article Ten (Special Use Permits) of this chapter:

13. Height. Large-Scale Solar Energy Systems shall not exceed 25 feet in height when ground mounted. Roof mounted systems shall adhere to the height requirements of the underlying zoning district.

The Site Plan at sheet C-015 at Detail 6 illustrates that height of the Large-Scale Solar Energy System will not exceed 15 feet at maximum panel tilt.

14. Setbacks. Large-Scale Solar Energy Systems shall adhere to the setback requirements of the underlying zoning district.

Compliance with the Town's Minimum Design Standards for Large-Scale Solar Energy Systems is evidenced on Site Plan Sheet C-005.

The front yard setback adheres to the setback requirement of 50 feet. The side yard setbacks adhere to the setback requirement of 20 feet.

15. Lot Size. Large-Scale Energy Systems shall be located on lots with a minimum lot size of ten (10) acres.

The Large-Scale Energy System is located within a leased lot area of 13.364 acres, which is a portion of the 100.35 acre Property.

16. Solar panels shall not occupy more than fifty (50%) percent of the Lot.

The Bulk Table on Site Plan sheet C-005 evidences that the Large-Scale Energy System occupies 15.54% of the Property.

17. *All Large-Scale Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing.*

A perimeter fence enclosing 12.45 acres of the Project Site is shown on Site Plan sheet C-005.

Warning signs to be placed on the entrance and perimeter fence will be provided by the manufacturer of the inverter. The Zoning Enforcement Officer will be provided with warning signs for approval prior to COD.

The Owner's contact information to be placed on the entrance and perimeter fence is detailed on Site Plan sheet C-016.

18. *Reasonable accessibility for emergency services vehicles shall be required and no photovoltaic system shall be installed until evidence has been given to the Town Board that the owner has been approved by the local fire department.*

Reasonable accessibility for emergency service vehicles is evidenced on Site Plan sheet C-009.

On October 10, 2023, further details of fire and emergency safety training was provided in comment responses and sent to the Fire Chief for approval. Approval by the Fire Chief shall be submitted to the Zoning Enforcement Officer at the time of application for a building permit.

19. *To the extent practical, all new distribution lines to any building, structure or utility connection must be located below ground.*

All new utility lines to the riser poles near the point of interconnection with the NYSEG utility grid will be located below ground as shown on Site Plan sheet C-013.

20. *All Solar Energy Equipment must have a UL listing or equivalent.*

Since equipment will be procured after financing, all solar energy equipment's UL listing or equivalency will be provided to the Zoning Enforcement Officer prior to issuance of a building permit.

21. *All active Large-Scale Solar Energy Systems shall meet all requirements of the New York State Energy Research and Development Authority and the New York Uniform Fire Prevention and Building Code and shall be inspected by the Town of Bennington Zoning Code Enforcement Officer.*

During construction the inspection of all Large-Scale Solar Energy Systems shall occur by the Town of Bennington Zoning Enforcement Officer to ensure compliance with NYSEERDA requirements and the New York Uniform Fire Prevention and Building Code.

22. *Utility Notification. No grid tied photovoltaic system shall be installed until evidence has been given to the Town Board that the owner has been approved by the utility company to install the system. Off-grid systems shall be exempt from this requirement.*

The Applicant has provided evidence to the Town Board that the Project has been approved by the utility company to install the system by submission of the CESIR, dated March 2, 2023.

23. *Buffer zones shall be proposed and require approval of the Town of Bennington Town Board.*

Proposed buffer zones are shown on Site Plan sheet C-007 (labeled as the "Landscaping Plan"). The Landscaping Plan was prepared to include screening along Church Road that will adequately screen the Project from neighboring properties. The adequacy of this screening was verified by the Visual Site Assessment.

The Line of Site Diagrams, dated October 3, 2023 give visual growth renderings of existing vegetation; anticipated 5 year vegetation status; and anticipated 10 year vegetation status.

24. *Appropriate review shall be undertaken to determine the potential environmental impact of a project, including a State Environmental Quality Review, as well as site plan review as outlined in Article V, Section 3., Site Plan Requirements of the Zoning Law of the Town of Bennington.*

The Town Board declared itself as Lead Agency on July 12, 2023.

The Applicant submitted a Long EAF. The Long EAF Part 1, dated June 9, 2023 was last revised on December 4, 2023. The Long EAF was reviewed by the Town Board at a special meeting held on November 4, 2023. On December 6, 2023, the Town Board adopted a Negative Declaration as evidenced by the Town Supervisor's signature on the Long EAF Part 3.

- E. *Abandonment: Solar energy systems are considered abandoned after three-hundred and sixty-six (366) days without electrical energy generation and must be removed from the property.*

The Applicant submitted a Decommissioning Plan to the Planning Board dated December 4, 2023. The Town Engineer has reviewed the Decommissioning Plan and

determined the sections which describe Abandonment, (Section 1 and Section 4.5), to be adequate. The Decommissioning Plan shall be executed and financial security in the form of a Bond shall be provided to the Town prior to issuance of a building permit.

As detailed above, the Town Board finds that the Project, as shown in the Preliminary Site Plan, satisfies all requirements for the issuance of a Special Use Permit for a Large-Scale Solar Energy Systems contained in the Town's Zoning Law.

Decision

Based on the foregoing findings and after review of the Applications and supporting materials, the Applicant's presentations at the June 21, 2023 Town Planning Board meeting; July 12, 2023 Town Board meeting; August 7, 2023 County Planning Board meeting; August 9, 2023 Town Board meeting; September 13, 2023 Town Board meeting; October 11, 2023 Town Board meeting; November 4, 2023 Town Board meeting; November 15, 2023 Town Planning Board meeting and December 6, 2023 Town Board meeting; after consideration of the comments made at the public hearings held on September 13, 2023 and October 11, 2023 and the Applicant's response to public hearing comments; and after due deliberation,

BE IT RESOLVED that the Town Board finds that the Applicant has submitted all applicable materials, met all applicable requirements as set forth in the Solar Law and hereby approves the Application and authorizes issuance of a Special Use Permit for the proposed large-scale ground mounted solar energy system in accordance with the layout, design, specifications and notes shown on the Site Plan, subject to all applicable laws and conditions; and, be it further

RESOLVED that the Town Board hereby authorizes the Supervisor or her designee to sign and stamp the Applicant's Site Plan and hereby authorizes the Zoning Enforcement Officer to issue a Special Permit for the construction and operation of the Project; and, be it further

RESOLVED that the foregoing Resolution(s) are subject to the following conditions:

3. The Applicant shall submit to the Zoning Enforcement Officer prior to the issuance of any building permit(s) the following:
 - a. A copy of a resolution from the Town Board granting Site Plan Approval of the Project;
 - b. An executed Host Community Benefit Agreement, between the Applicant and the Town for the Project in a form subject to the reasonable approval of the Town's Special Counsel, which shall include: (i) a payment by Applicant to the Town of \$10,000 per MW/AC within thirty (30) days of COD, (ii) an annual payment on the anniversary date of the COD in the amount of \$2,000 per MW/AC, with annual increases in an amount equal to 2% and (iii) for a term matching that of the Project through completion of decommissioning;
 - c. Evidence of the Applicant and Wyoming County Industrial Development Agency

entering into a Payment In Lieu of Taxation Agreement;

- d. Copies of equipment specification sheets for the photovoltaic panels, mounting systems, inverters and all other significant system components pursuant to the requirements of Section 13(4)(A)(3) of the Solar Law; and evidence that electric components meet applicable UL Standards;
 - e. A copy of the property Operation and Maintenance Plan pursuant to the requirements of Section 13(4)(A)(4) of the Solar Law;
 - f. A Decommissioning Plan that will be implemented upon abandonment and/or in conjunction with the removal of the facility that complies with the requirements of Section 13(4)(A)(5);
 - g. A bond to secure the costs of decommissioning subject to the reasonable approval of the Town's Special Counsel and MRB Group as to form and amount pursuant to the requirements of Section 13(4)(A)(6) of the Solar Law;
 - h. A copy of a Road Maintenance Agreement approved as to form by MRB Group;
 - i. A permit from Wyoming County Highway Department for construction of the entry road to the Project Site, if one is required;
 - j. A Stormwater Pollution Prevention Plan ("SWPPP") approved by MRB Group or evidence that a SWPPP is not required;
 - k. Evidence of submission of an Emergency Response Plan to the Fire Department; and
 - l. Start of construction of the Project not later than eighteen (18) months after the later of issuance of a Special Use Permit and approval of a Site Plan.
4. Prior to COD, the Applicant shall install warning signs meeting the requirements of Section 13(4)(B)(5) of the Solar Law and approved by the Zoning Enforcement Officer; and, be it further

RESOLVED, that the Supervisor shall file a report of its final action by these resolutions with the County Planning Board within thirty (30) days of these resolutions; and, be it further

RESOLVED, that these resolutions shall take effect immediately.