

TOWN OF MARLBOROUGH PLANNING BOARD

Resolution Issuing Negative Declaration for the Solar Project proposed by Highland 201 Solar LLC in the Town of Marlborough, New York

WHEREAS, Highland 201 Solar LLC (Applicant) submitted an application to the Town of Marlborough Planning Board (Planning Board) for issuance of a special use permit and site plan approval (Application) to construct and operate a 4.1-megawatt (MW) solar facility (Project) at 206 Milton Turnpike (Tax Map No. 95.4-3-7.210, 95.4-3-7.110, 95.4-3-7.22) (Property) in the Town of Marlborough (Town); and

WHEREAS, the Application included a Full Environmental Assessment Form (FEAF) Part 1, prepared pursuant to the New York State Environmental Quality Review Act (SEQRA); and

WHEREAS, pursuant to Section 239-m of the New York General Municipal Law, the Application was referred to the Ulster County Planning Department; and

WHEREAS, the Planning Board declared its intent to be the Lead Agency under SEQRA, and following the required 30-day notice period with no objection from any involved agencies, the Planning Board was established as the Lead Agency for review of the Project; and

WHEREAS, the Planning Board duly considered the application, the EAF Part 1, the criteria for determining significance set forth in 6 N.Y.C.R.R. § 617.7(c) of the SEQRA regulations, and such other information deemed appropriate; and

WHEREAS, the Planning Board has identified the relevant areas of environmental concern, taken a hard look at these areas, and made a reasoned elaboration of the basis for its determination; and

NOW, THEREFORE, BE IT RESOLVED by the Town of Marlborough Planning Board as follows:

1. The Project will not result in any large and important impacts and, therefore, it will not have a significant adverse impact on the environment.
2. Parts 2 and 3 of the FEAF, attached hereto and incorporated herein by reference, have been reviewed and completed by the Planning Board.

3. The attached Negative Declaration, incorporated herein by reference, is issued and adopted for the reasons stated therein.

4. The Planning Board will hereby take such other and further action as is required to comply with the SEQRA regulations, including, but not limited to, ENB publication.

5. This resolution is effective immediately.

PASSED AND ADOPTED this __ day of December, 2024 by the Town of Marlborough Planning Board.

NEGATIVE DECLARATION
Determination of Non-Significance

Lead Agency: **Town of Marlborough Planning Board**

Date: **December __, 2024**

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act (SEQRA)).

The Town of Marlborough Planning Board (Planning Board), as lead agency, has reviewed the application for a 4.1-megawatt (MW) solar facility (Project) proposed by Highland 201 Solar LLC (Applicant). The Planning Board has determined that issuance of a special use permit and site plan approval to the Applicant for the Project (Action) will not have a significant adverse environmental impact and that a Draft Environmental Impact Statement will not be prepared.

Name of Action: Consideration of the Applicant's proposed solar project and issuance of a special use permit and site plan approval therefor.

Location of Action: The Town of Marlborough, New York (Town).

SEQRA Status: Type I Action.

Description of Action: The Planning Board has reviewed the special use permit and site plan application and supporting materials provided by the Applicant, including the Full Environmental Assessment Form (FEAF) Part I.

Reasons Supporting this Determination:

The Planning Board has identified the relevant areas of environmental concern and has taken a hard look at each of the identified areas as required by SEQRA. The Planning Board compared the Action with the criteria for determining significance identified in 6 NYCRR § 617.7(c)(1) and in accordance with 6 NYCRR §§ 617.7(c)(2) and (3). As indicated below in the discussion of each criterion specified in 6 NYCRR § 617.7(c)(1), the Action will not have a significant adverse impact on the environment.

(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;

The Action will not create a substantial change in existing air quality or ground or surface water quality or quantity, traffic, or noise levels (beyond limited increased noise during the temporary construction period), nor will there be any significant increase in solid waste production. Similarly, the Action will not result in any increased potential for erosion, flooding, leaching, or drainage concerns. The Property is roughly 78 acres, and only 0.69 acres of impervious surface will be created by the Project. And in any case, the Project design minimizes impervious surfaces as much as possible and includes use of stormwater management controls. *See* FEAF Part I at §§ D.2.e.iii. (“Runoff from the gravel road will be directed into dry swales with underdrains and directed down grade to the North Eastern corner of the property. The runoff from the concrete pads will flow down grade to a dry detention basin at the North Eastern corner of the site ... Runoff from the Southern portion of the property will flow downgrade through wetland 4, and continue to USACE wetland 3 which is connected to a 30,000 SF pond. The dry detention basin will discharge via a controlled outlet to match pre and post development rates.”). The Applicant will also abide by a Stormwater Pollution Prevention Plan (SWPPP), which was provided with the Application and reviewed by the Planning Board.

(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;

There will not be any removal or destruction of large quantities of vegetation or fauna, nor will there be substantial interference with any wildlife or habitat or other natural resources. There will be only limited tree clearing onsite, which will not result in significant impacts to any significant natural communities or habitats onsite. *See* FEAF Part I at § E.1.b (current acreage of forested land is 2.78 acres, which will be decreased by only 0.18 acres). Further, there are no designated significant natural communities, listed NYSDEC endangered or threatened species, rare species, or species of special concern on the project site. *See* FEAF Part I at §§ E.2.n-p.

(iii) the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part;

There will be no impacts to Critical Environmental Areas as designated under 6 NYCRR § 617.14(g) as a result of the Action. The Property is not located in, nor does it adjoin, a Critical Environmental Area.

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

The Project is not in conflict with the Town’s current plans or goals. The Town Board adopted Local Law 6 of 2017 (Solar Law), amending the Zoning Ordinance of the Town of Marlborough, New York (Zoning Ordinance) to include Section 155-32.2 to regulate solar

projects. Adoption of an amendment or addition to a zoning law by the legislative body of a municipality must be in conformance with the comprehensive plan. The Town indicated its legislative intent in the Solar Law, stating that the Town “recognizes solar energy is a clean, readily available, and renewable energy source[.]” and that “development of solar energy systems ... provides an excellent opportunity for the reuse of land.” Solar Law § 155-32.2(A). The Town Board further stated that the Solar Law “is intended to promote the effective and efficient use of solar energy resources” and that “the accommodation of solar energy systems and equipment and the protection of access to sunlight for such equipment shall be encouraged[.]” *Id.* Indeed, the Town spent significant time and resources to craft a Solar Law that meets the current and future needs of its community and that furthers its goals for growth and development as stated in the Town of Marlborough, NY Comprehensive Plan (Comp Plan). *See* Comp Plan at 36 (“It will continue to be important for the town to encourage the development of on-site solar and, where appropriate, solar fields[.]”).

Moreover, the Solar Law permits Large Scale Solar Energy Systems (which the Project qualifies as) in the Rural-Agricultural (R-AG-1) District, where the Property is located, pursuant to issuance of a special use permit and site plan approval. *See* Solar Law § 155-32.2(I)(1). When the Town drafted the Solar Law, it contemplated where it was appropriate to permit Large Scale Solar Energy Systems, and ultimately limited these facilities to only the R-AG-1 and Industrial Districts. As such, the Town Board made a legislative determination that Large Scale Solar Energy Systems, such as the Project, are in harmony with the Town’s zoning and planning regulations and the character of the surrounding area. *See North Shore Steak House, Inc. v. Bd. of Appeals of Inc. Vill. of Thomaston*, 30 N.Y.2d 238, 243 (1972) (“The inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood.”). Additionally, any purported “impacts” of specially permitted uses are presumed to have been considered by the municipality when such uses were deemed permissible in the zoning law; *see also WEOK Broadcasting Corp. v. Planning Bd. of Town of Lloyd*, 79 N.Y.2d 373, 383 (1992) (“... the aesthetic visual impact of the [radio] towers, was, we presume, considered at the time that radio and television towers were included as permitted uses in the Designed Business zone.”).

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

There will be no impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of community or neighborhood character as a result of the Project. As mentioned above, the Project is proposed to be sited in the R-AG-1 District—one of only two zoning districts where the Town determined such uses are specially permitted, and therefore compatible with the character of the district. Further, as indicated on the site plans, the Project will be screened to the greatest extent possible as demonstrated in the site plans and visual simulations submitted and discussed with the Marlborough Planning Board.

(vi) a major change in the use of either the quantity or type of energy;

There will be no such impacts from the energy used by this site.

(vii) the creation of a hazard to human health;

The Action does not create a hazard to human health.

(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;

There will be only a minimal change in the use, or intensity of use, of the Property. It is currently agricultural land used for hay production, which will be converted, in part, to a passive solar facility. The remaining portion of the property will remain in use for hay production and other permitted agricultural activities. Once the Project is constructed, there will be little to no activity on the Property. The Project is only a temporary construction, which can be decommissioned completely at the end of its useful life, and the Property can be restored for agricultural use. The Project will similarly not present any impact to recreational resources or open space as the Property is privately owned and not used for recreation and there will be no open space impacts.

(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

There will be no such impacts.

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

There will be no such impacts.

(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

There will be no such impacts.

(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.

There will be no such impacts.

For Further Information:

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