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BY EMAIL and HAND DELIVERY

Mr. Steven A. Vescio, Mayor, and
Members of the Board of Trustees
Village of Briarcliff Manor
1111 Pleasantville Road
Briarcliff Manor, New York 10510

Re: Briarcliff Solar, LLC, 345 Scarborough Road, Briarcliff Manor, NY (the "Project Site")

Dear Mayor Vescio and Members of the Board of Trustees:

On behalf of Briarcliff Solar, LLC ("Briarcliff Solar"), an affiliate of YSG Solar Development Company, LLC. ("YSG" collectively the "Applicant"), we respectfully submit this letter in support of the pending Application to develop a community solar farm (the "Proposed Action") on these Premises. In particular, we respectfully request that the Board of Trustees close the Public Hearing and adopt a Negative Declaration as its determination of significance herein under the New York State Environmental Quality Review Act ("SEQRA").

This Application has been the subject of extensive review by the Board of Trustees, the Planning Board, the Village's professional consultants and the public. An amended Full Environmental Assessment Form ("EAF") is enclosed herewith along with substantial supplemental documentation that is being provided in addition to the previously submitted supplemental materials numbering several hundred pages.

In its wisdom, the Village of Briarcliff Manor amended its local law to permit a community solar farm on these Premises, subject to issuance of a Special Use Permit, apparently recognizing the necessity to provide for alternative energy production in this time of climate change. Solar energy is a renewable and non-polluting energy resource that can prevent fossil fuel emissions and reduce a municipality's energy load. Energy generated from solar energy systems can be used to offset energy demand on the grid where excess solar power is generated.

The Premises have been vacant for several years, is in disrepair and has been the subject of vandalism. The Premises provides a meaningful opportunity for productive re-use of the site with minimal impact on the community, which impacts are evaluated in the materials previously submitted and now being supplemented.

Clearly, the shading of solar panels by trees is inconsistent with efficient solar production, this Application proposes the removal of trees on the Premises. In that context, it should be noted that approximately 34.2% of the tree population to be removed on the Site are invasive, or 612 of the

1,822 trees at issue. Of the native trees, nearly 15% (i.e., 179) are dead or in either poor or critical condition. Consistent with the discussions with the Village and applicable regulations, it is proposed that mitigation for tree removal include both the planting of trees and landscaping where feasible and, alternatively, payment to a tree fund in a manner to be coordinated in good faith with the Village of Briarcliff Manor, recognizing that the provision of solar energy requires the removal of these trees.

The benefits of solar production in comparison to carbon sequestration provided by trees is addressed in the enclosures submitted herewith, including the discussion set forth in the academic article by Matthew B. Eisenson, entitled “*Solar Panels Reduce CO₂ Emissions More Per Acre Than Trees –and Much More than Corn Ethanol*” (Oct. 26, 2022) published in the Columbia Law School, Columbia Climate School, Sabin Center for Climate Change Law. Among the enclosures is a report from SavATree Consulting Group, dated April 7, 2023, confirming that this Proposed Action will be beneficial regarding carbon sequestration removing more carbon from the air than existing conditions. Consistent therewith, we enclose a copy of an April 6, 2023 letter from Sustainable Westchester supporting this Project and noting that:

The study performed by SavATree Consulting Group indicates this solar project would avoid a net 17,252,541,780 pounds (8,626,271 US tons) of atmospheric Carbon Dioxide (CO₂) per year after subtracting the amount sequestered annually by the trees being removed 45,800 pounds (23 US tons) from the total CO₂ avoided annually by the solar generation 17,252,587,580 pounds (8,626,294 US tons).

Importantly, since its initial presentation to the Village in early 2022, the project has been modified multiple times to show feasible and reasonable alternatives to the initially proposed “action.” On February 7, 2023, we submitted revised plans that modified the prior design by, among other things:

- Reducing the impacts of the Proposed Action on Steep Slopes by 2.262 acres;
- Removal of the solar arrays to avoid 1.236 acres of slopes greater than 25%; and
- Removal of the solar arrays to avoid 1.026 acres of slopes between 15% to 25% from the southwesterly and westerly edges of the Project Site.

Since then, among other things, a review of the condition of the bridge from Scarborough Road has led to the Application specifying replacement thereof, as it provides the primary access to the Premises. Thus, safe and adequate primary access to the site will be ensured by all users including emergency responders

In further support of the Proposed Action, and in response to the draft Part 2 of the EAF and comments from the Board members throughout the public hearing process, enclosed with this Submission are the following:

- Exhibit A: Revised EAF, Part I, prepared by Langan Engineering, Environmental, Surveying, Landscape Architecture and Geology, D.P.C. (“Langan”);
- Exhibit B: Bridge Condition Assessment prepared by Colliers Engineering & Design, dated March 8, 2023;
- Exhibit C: Bridge Permitting Analysis, prepared by Colliers Engineering & Design, dated March 7, 2023;
- Exhibit D: Letters of Support from Sustainable Westchester & E-J Electric Installation Co.;
- Exhibit E: Columbia Law School, Columbia Climate School, Sabin Center for Climate Change Law, article by Matthew B. Eisenson, entitled “*Solar Panels Reduce CO2 Emissions More Per Acre Than Trees –and Much More than Corn Ethanol*” (Oct. 26, 2022);
- Exhibit F: Site Security & Fire Safety Plan, prepared by Langan, dated April 7, 2023;
- Exhibit G: Geotechnical Evaluation, prepared by Foundation Design, P.C., dated August 9, 2022;
- Exhibit H: Carbon Sequestration Assessment prepared by SavATree Consulting Group, dated April 7, 2023;
- Exhibit I: Site Feasibility Analysis prepared by Grella Partnership Strategies;
- Exhibit J: Tree Impacts Analysis, prepared by YSG Solar, dated February 2023;
- Exhibit K: Acoustic Distinctions prepared by Design in Harmony dated April 3, 2023; and
- Exhibit L: Cultural Resources Memorandum, prepared by Historical Perspectives Inc., dated April 10, 2023.

Also enclosed are full size sets of the following materials:

- Civil Engineering & Site Plans prepared by Langan Engineering, Environmental, Surveying, Landscape Architecture and Geology, D.P.C. (“Langan”), dated April 3, 2023 (“Site Plans”);
- Stormwater Pollution Prevention Plan, prepared by Langan, dated April 3, 2023;
- Landscaping Plans, prepared by Aspect 120 Landscape Architecture, P.C., revised through April 10, 2023; and
- Visual Analysis, prepared by Aspect 120 Landscape Architecture, P.C., dated April 10, 2023.

We respectfully submit that the record herein is substantial and provides sufficient information for this Board to adopt a Determination of Significance issuing a Negative Declaration, as there is no reasonable basis or purpose to adopt a Positive Declaration requiring the preparation of an Environmental Impact Statement (“EIS”).

SEQRA Action

The Proposed Action is a “Type 1” Action pursuant to SEQRA because it involves the physical alteration of 10 acres, as the Premises is approximately 50 acres and will result in the removal of approximately 22 acres of trees. 6 NYCRR 617.4(b)(6)(i). Additionally, the Project exceeds 25% of a threshold established in 6 NYCRR 617.4(b)(6) because it occurs substantially contiguous to the Old Croton Aqueduct, a historic site that is listed on the National Register of Historic Places, and the Philips Research North America Campus is eligible to be listed on the State and National Registers of Historic Places.¹ 6 NYCRR 617.4(b)(9). The Project will exceed 25% of the acreage disturbance threshold (2.5 acres) provided for in 6 NYCRR 617.4(b)(6)(i).

Accordingly, the Applicant and its consultants have met with the Village’s Planning consultant and officials, and prepared numerous studies and reports to assist the Board in preparing a record that shows that a “hard look”² has been taken to substantiate a determination supported by the facts of this case,³ that the Proposed Action will not have a “significant” adverse impact on the environment.⁴

It is important to note that even if a Type I action could *potentially* have significant adverse environmental impacts, if the proposal is subsequently modified to incorporate, as integral elements of the Proposed Action, measures which assure that significant adverse impacts will not occur, a Negative Declaration is authorized for a Type I action.⁵ The Applicant submits that a

¹ See Letter of Resolution among the NYS DEC, NYS OPRHP and the Applicant, previously submitted to the Board on December 28, 2022.

² The “hard look” doctrine requires that, in reviewing an agency’s determination of environmental significance (or the adequacy of a subsequently prepared EIS), a court, once satisfied that the agency has complied with SEQRA’s procedural requirements, will limit its substantive review of the agency’s SEQRA determination to consideration of whether “the agency identified the relevant areas of environmental concern, took a ‘hard look’ at them, and made a ‘reasoned elaboration’ of the basis for its determination.” Gerrard, Ruzow, Weinberg, Environmental Impact Review In New York [Matthew Bender 1996] § 4:17, quoting Jackson v. N.Y.S. Urban Dev. Corp., 503 N.Y.S.2d 298 (Ct. of App. 1986).

³ “‘The degree of detail with which each factor must be discussed’ varies ‘with the circumstances and nature of the proposal.’ Courts defer to an agency’s ‘hard look’ at environmental impacts unless the agency’s finding is ‘arbitrary, capricious or unsupported by substantial evidence.’” Gerrard, Ruzow, Weinberg, Environmental Impact Review In New York [Matthew Bender 1996] § 4:17, quoting Jackson v. N.Y.S. Urban Dev. Corp. and Argyle Conservation League Inc. v. Town of Argyle, 636 N.Y.S.2d 150, 152 (3d Dep’t 1996).

⁴ [W]here an agency addresses “each relevant area of environmental concern in the document accompanying any negative declaration,” and for each of these issues references “the factual information (presented in the EAF, comments of involved agencies, or elsewhere) on which the agency’s conclusion has been based,” then the “hard look” doctrine “should afford considerable protection against subsequent litigation challenging the agency’s substantive evaluation of potential environmental impact.” Gerrard, Ruzow, Weinberg, Environmental Impact Review In New York [Matthew Bender 1996] § 4:17.

⁵ See Merson v. McNally, 90 N.Y.2d 742 (Ct. of App. 1997). The Court of Appeals has recognized an analysis which “allows for the consideration of the legitimate maturation of a development project in accordance with the goals of environmental regulation.” *Id.* at 750.

Negative Declaration is justified in this case, based upon these principles and the Applicant's proposed solutions to mitigate any environmental impacts.

We respectfully request that the Board adopt a Determination of Significance that the Proposed Action will not have significant adverse environmental impacts, as demonstrated by the record and summarized in this letter.

Difference between an EIS and an Environmental Assessment Form ("EAF")

An EAF serves a very different purpose than an EIS as clearly stated by the New York State Court of Appeals in its decision in Merson v. McNally, 90 N.Y.2d 742, 751 (1997):

The very purpose of an EAF is to assist an agency "in determining the environmental significance or nonsignificance of actions" (6 NYCRR 617.2[m])....While an EAF is used to determine significance or nonsignificance, the purpose of an EIS is to examine the identified potentially significant environmental impacts which may result from a project. (Matter of Coca-Cola Bottling Co. v Board of Estimate, [72 N.Y.2d 674,] 680 [1988]).

Consistent with the Court of Appeals determination, the New York State Department of Environmental Conservation's ("DEC") website states:

Part 2 [of the Full EAF] is designed to help the lead agency inventory all potential resources that could be affected by a proposed project or action, [and] Part 3 [of the Full EAF] will help the reviewing agency decide if the impacts identified are significant, whether impacts will be avoided or substantially mitigated, and whether or not to require an environmental impact statement.⁶

As a result, an EAF and its accompanying documentation is intended to allow the Lead Agency to determine if a project will have a significant environmental impact. A fundamental part of this analysis includes whether any identified impact can be mitigated, thus making it a nonsignificant impact. Contrastingly, an EIS is only meant to study one or more environmental impacts after the Lead Agency has determined it to be significant and not mitigated.

Hard Look Requirement

In determining if an environmental impact will be significant, the Lead Agency must take a hard look at the EAF and the supplemental materials to determine the relevant environmental areas and the extent to which they will be impacted. In the respected treatise on environmental law entitled "Environmental Impact Review In New York," this process is described as follows:

⁶ Part 2 – Identification of Potential Project Impacts (FEAF)
<https://www.dec.ny.gov/permits/91690.html>

The degree of detail with which each factor must be discussed varies 'with the circumstances and nature of the proposal.' Courts defer to an agency's 'hard look' at environmental impacts unless the agency's finding is 'arbitrary, capricious or unsupported by substantial evidence.

Gerrard, Ruzow, Weinberg, Environmental Impact Review in New York [Matthew Bender 1996] Section 4:17.

Following this hard look, the Lead Agency can make a Negative Declaration when it finds that there will be no significant environmental impacts, even for a Type I Action. See New York DEC, SEQRA Handbook at 78 (2020 ed.) [hereinafter "SEQRA Handbook"] ("Type I actions do not automatically require an EIS...The lead agency must determine the environmental significance of Type I...actions on a case-by-case basis."). See also Chinese Staff v. Burden, 19 N.Y.3d 922, 924 (2012) ("Although the threshold triggering an EIS is relatively low, a negative declaration is properly issued when the agency has made a thorough investigation of the problems involved and reasonably exercised its discretion."), citing Spitzer v. Farrell, 100 N.Y.2d 186, 190 (2003); Village of Chestnut Ridge v. Town of Ramapo, 953 N.Y.S.2d 75, 82 (2d Dep't 2012) ("[W]here the lead agency, after taking a 'hard look' at relevant environmental concerns, determines that the project will have no significant adverse environmental impacts, and issues a negative declaration to that effect, the EIS may be dispensed with as unnecessary, even for a Type I action."), citing Incorporated Village of Poquott v. Cahill, 782 N.Y.S.2d 823, 828 (2d Dept. 2004); Citizens for Responsible Zoning v. Common Council of City of Albany, 868 N.Y.S.2d 800, 802 (3d Dept. 2008) (Common Council followed same procedure for a rezoning (an unlisted action) as a Type I Action, filing a full EAF, and issued a Negative Declaration; Third Department held that preparation of an EIS is not automatically required for a Type I Action and that the Common Council "fulfilled its obligations under SEQRA by issuing a written decision which revealed that it evaluated the necessary criteria, took the required hard look at areas of environmental concern and explained the basis for its determination to issue a negative declaration."), citing Jaffee v. RCI Corp., 500 N.Y.S.2d 427, 429 (3d Dept. 1986) ("Where, as here, the agency follows the appropriate procedural requirements, the issue distills to whether its conclusion that the proposed project would have no significant impact on the environment is a rational one which is supported by the record. . . A review of the record establishes that the Board's determination was based upon the proper criteria (see 6 NYCRR 617.11); the Board took the requisite "hard look" at the relevant areas of environmental concern and made a 'reasoned elaboration' of its determination").

Here, the depth and breadth of the record establishes a compelling and sufficient basis for this Board to adopt a Negative Declaration.

Benefits of a Substantial Record: Supplementing the EAF and Mitigation Efforts

The Lead Agency can rely on a substantial record complementing an EAF to determine if impacts will be significant. In Save the Pine Bush, Inc. v. Planning Bd. of Town of Guilderland, 629 N.Y.S.2d 124 (3d Dep't 1995), an EAF related to a subdivision application was supplemented with

numerous reports on a variety of topic areas and public hearings were held to discuss same. The Third Department found that the Planning Board was able to:

- 1) identify the relevant environmental factors on its own (i.e., no scoping required), and
- 2) take an adequate hard look at these areas, and correctly found that no EIS was required.

The Second Department came to a similar conclusion in Incorporated Village of Poquott v. Cahill:

Here, the extensive record reveals that LIPA complied with the procedural and substantive requirements of SEQRA both in determining that the Project would have no significant adverse environmental impacts and in issuing the negative declaration. The EAF included a comprehensive report prepared by KeySpan's environmental consultant, TRC Environmental Corporation, that identified and reviewed in detail the areas of environmental concern relevant to the Energy Center, including air emissions, noise, waste water discharges, waste generation and disposal, visual resources, environmental justice concerns, traffic, on-site ammonia storage, and consistency with the New York State Coastal Management Program. The EAF also considered the cumulative impact of the Energy Center and the four other proposed combustion turbine facilities included as part of the Project, as well as the impact of the Energy Center's location adjacent to the existing Power Station.

782 N.Y.S.2d 823, 828 (2d Dept. 2004).

See also Forman v. Trustees of State University of N.Y., 303 A.D.2d 1019, 1021 (4th Dep't 2003), which similarly concluded as follows:

In this case, the SUNY respondents prepared and submitted a full environmental assessment form (FEAF) and supported its FEAF with a Phase I environmental site assessment report. That report considered a number of potential environmental concerns, including the concerns that "portions of the property may constitute wetland areas" and that the property was being "maintained as a University of Buffalo Natural Regeneration Area." The report ultimately concluded, however, that "environmental risk associated with this property is low." The report reviewed various state and federal wetland maps and noted that "[t]here were no federal or state areas of wetlands identified on the subject property." Moreover, a Phase I cultural resources investigation was undertaken, which concluded that no significant cultural resources would be impacted by the project. Other studies undertaken in support of the project included studies of the ground water, air quality, traffic, solid waste, potential flooding, removal of vegetation, surrounding community, historical significance, and, in particular, the impact on wildlife and open space, which together appear to be petitioner's primary concern. We conclude that the SUNY respondents took the requisite hard

look and thus, even assuming, arguendo, that this was a Type I action, we conclude that an EIS was not required.

See also Iroquois Cent. School Distr. v. Zagata, 241 A.D.2d 945 (4th Dep’t 1997) (holding same).

The Record Demonstrates That There Are No Potentially “Significant” Environmental Impacts that Cannot be Mitigated:

Where a project will have no “significant” adverse impacts on the environment, the Lead Agency *must* prepare a Negative Declaration.⁷ The record demonstrates that the Proposed Action will not result in any potentially significant environmental impacts, and thus clearly supports the adoption of a Negative Declaration.

Relevant Areas of Environmental Concern in Making a Negative Declaration:

The Board’s “hard look” at the potential environmental impacts of the Proposed Action has been ongoing for over a year during which time several sessions of public hearings have been held.⁸ The Applicant has investigated and assessed a variety of environmental impacts and provides the following summary which demonstrates that not only will the Proposed Action not have any significant environmental impacts but will result in substantial environmental benefits especially when compared with other permitted uses that are allowed on the Premises as-of-right.

The Proposed Action Will Positive Impact Energy and Provide Renewable Power to the Community:

The Proposed Action will result in numerous community benefits which are made possible by the Village’s recent amendments to the Zoning Code permitting Large-scale Solar Collection Systems (“solar farms”) as special permit uses on lots larger than 400,000 square feet. Village Code Section 178-5. This amendment allows Village residents to have access to clean and renewable energy while preserving open space and increasing ratables for the Village.

As more fully discussed below and evidenced in the attached Carbon Sequestration Report, the proposed solar panels will reduce CO₂ emissions more per acre than trees and result in a significant savings in carbon emissions.⁹ Aside from the significant environmental benefits, the Project will result in substantial energy savings for local residents and offer a clean renewable energy alternative, which benefits are further detailed in the enclosed letter of support from Sustainable Westchester. (**Exhibit D**). The proposed solar farm also will create new jobs and bring economic growth to the community, as further detailed in the letter of support from E-J Electric Installation Co (**Exhibit D**).

The increased ratables the Village will gain from reactivation of this existing vacant site must also be considered when evaluating the economic impacts of the Proposed Action.

⁷ See SEQRA Handbook, p. 83-84 (Response to Question 1).

⁸ The Applicant applied to the Board of Trustees for a special permit on March 21, 2022.

⁹ Eisenson, Matthew, *Solar Panels Reduce CO₂ Emissions More Per Acre Than Trees –and Much More than Corn Ethanol* (Oct. 26, 2022). See Exhibit E.

The Proposed Action Will Not Result in Significant Environmental Impacts on Community Character and is Consistent with Community Plans:Consistency with the Village's Zoning Code & Comprehensive Plan

Pursuant to the 2021 amendments to the Village's Zoning Code, the proposed solar farm is a permitted principal use with a special permit in the CT1 Zoning District.¹⁰ The Proposed Action furthers the Board's desire to facilitate the use of solar energy collectors to further energy savings and conservation, as identified in the 2021 amendments to the Zoning Code.¹¹ As proposed, the solar farm avoids issues with aesthetics and lighting because it is centrally located to an approximately 95.5 acre site and ample screening is proposed.

The Proposed Action is consistent with the goals in the Village's Comprehensive Plan for preserving open space, which specifically identifies these Premises as open space that is vulnerable to future commercial or residential development or subdivision.¹² Reuse of the vacant site as a solar farm will avoid subdivision, residential development or higher intensity commercial use of the Premises without the construction of buildings. The solar arrays will be screened to adequately mitigate any offsite visibility from adjacent residences or Holbrook Road.

Additionally, the Proposed Action will generate tax ratables for the Village and further the goal of the Comprehensive Plan to increase the commercial tax base.¹³ That goal is furthered while balancing the concerns noted in the Comprehensive Plan about limiting commercial business uses in residential areas.¹⁴ Indeed, the Proposed Action will reactivate this vacant site to produce tax ratables without substantive impact on the traffic patterns in the surrounding area once the facility is operational.¹⁵

Further, the Comprehensive Plan identifies the goal of enhancing active and passive recreation on the Site by residents. The Proposed Action will incorporate publicly accessible trails, and therefore is consistent with the goal of enhancing recreational opportunities for residents on the Premises.¹⁶

No Impact to Public Safety Resources

The nature of the solar farm use effectively results in an unoccupied site, with limited weekly maintenance visits. Inherent in limited visits and unoccupied property is the limited need to draw upon public resources such as the Police and Fire Departments. The Applicant has met with both the Village Fire and Police Departments to address any security or fire safety concerns. Enclosed amongst the documents in this submission is a Site Security & Fire Safety Plan, prepared by Langan, dated April 3, 2023 (**Exhibit F**), which details the actions to be deployed in an emergency situation to ensure the safety of emergency responders, the public and project operators. Additionally, and as discussed in further detail below, the Applicant will be replacing

¹⁰ Village of Briarcliff Zoning Code, Chapter 220, Attachment 3:1 ("Zoning Code").

¹¹ Zoning Code Section 220-9.1.

¹² Village of Briarcliff Comprehensive Plan, adopted May 2007, p.81 ("Comprehensive Plan").

¹³ Comprehensive Plan, p.86.

¹⁴ Comprehensive Plan, p.116.

¹⁵ Comprehensive Plan, p.116.

¹⁶ Comprehensive Plan, p.93.

the existing bridge over Sparta Brook to ensure safe and adequate primary access to the site by emergency responders. See Exhibits B, C & F.

The proposed solar farm will be enclosed with an approximately 7-foot high no-climb security fence and locked gates at each access point to prevent unauthorized entry to the site. See Sheet C502 of the enclosed Site Plans.

Therefore, the Proposed Action will not result in significant impacts to the Fire and Police Departments.

The Proposed Action will not cause a significant environmental impact to the existing transportation systems:

The Applicant's previously submitted Traffic Consultant, LaBella Associates DPC, prepared a Traffic and Parking Study (the "Traffic Study"), dated August 2022, that reviewed the traffic circulation and parking conditions associated with the Proposed Action. In summary, this Traffic Study concluded that the Proposed Action will have no adverse traffic or transportation-related impacts on roadways in the project area, including Scarborough Road, Holbrook Road and U.S. Route 9.¹⁷

Once operational, with regard to traffic the solar farm is anticipated to generate only approximately 1-2 vehicles per week for maintenance of the equipment and grounds.¹⁸ Similarly, the Traffic Study concluded that the short duration of construction-related traffic will not result in significant impacts to the surrounding road network.¹⁹ Indeed, the Proposed Action will generate less traffic than the prior use of the site and other permitted uses or subdivision of the Premises.

The Applicant has evaluated the existing bridge which connects the Premises to Scarborough Road along Shadow Brook Lane, the driveway that will serve as the Project's primary access,. As concluded in the enclosed Bridge Condition Assessment prepared by Colliers Engineering & Design, dated March 8, 2023, the overall bridge is structurally inadequate due to advanced deterioration and full replacement of the existing bridge is recommended. See Exhibit B. Notably, this recommendation of complete replacement would apply to any continued or future use of the Premises and is not specific solely to the proposed solar farm. Also enclosed (**Exhibit C**) is a Bridge Permitting Analysis, prepared by Colliers Engineering & Design, dated March 7, 2023 that details the permitting and approvals process required for the full bridge replacement. The Applicant is committed to replacement of the bridge over Sparta Brook and intends to fully comply all required permits and approvals.

Therefore, given the lack of impact on the roadways in the surrounding area and the planned complete replacement of the existing bridge to provide safe access to the Premises, it is

¹⁷ Traffic Study, p.6.

¹⁸ Traffic Study, p.6.

¹⁹ Traffic Study, p.6.

respectfully submitted that the Proposed Action will have no significant adverse environmental impacts on existing transportation systems. In fact, the replacement of the bridge will substantially improve traffic safety and access to the Premises.

The Proposed Action will not cause a significant adverse environmental impact to the land surface onsite and in the surrounding area:

The Proposed Action will not adversely impact the land surface on the Premises. The water table or bedrock will not be disturbed by the construction or operation of the solar farm. As demonstrated in the enclosed Geotechnical Evaluation, prepared by Foundation Design, P.C., dated August 9, 2022, the water table is at approximately 14 feet, 8 inches.²⁰ The geotechnical engineered documented bedrock was not encountered at any of the soil borings. The excavation and vertical installation support structure will not disturb greater than 6 feet, as demonstrated on the enclosed Site Plans. Therefore, the Project will not result in significant adverse impacts to the bedrock or water table.

The Proposed Action will not adversely impact steep slopes on the Premises. As detailed in the Applicant's February 7, 2023 submission, the Project has been modified to completely remove solar arrays from slopes greater than 25%. See enclosed Site Plans Sheet Coo2 & Tree Impacts Analysis. In fact, the only disturbance proposed on slopes greater than 25% (totaling approximately 595 square feet) is the disturbance associated with the posts for the security fence. The modifications to the Project also removed a portion of the arrays from slopes between 15% to 25% to avoid 1.026 acres of disturbance. In total, these modifications reduced the impacts on steep slopes by approximately 2.262 acres. See Site Plans Sheet Coo2.

In addition, the Proposed Action will not contribute to erosion or sedimentation. The enclosed Stormwater Pollution Prevention Plan ("SWPPP") prepared by Langan, dated April 4, 2023, identifies the erosion control, sediment control, pollution-prevention and stormwater management measures to be implemented during construction to minimize soil erosion and control sediment transport off site. The SWPPP also details these measures for after construction when the solar farm is fully operational to control and treat stormwater runoff from the developed site. The SWPPP concludes that:

the proposed project will not have adverse impacts if the measures for erosion control, sediment control, pollution prevention, and stormwater management measures are properly constructed and maintained in accordance with the requirements outlined herein and on the accompany project plans.²¹

The demolition and construction of the Proposed Action is expected to result in the excavation of more than 1,000 tons of natural material. See revised EAF, prepared by Langan, dated April 10,

²⁰ Geotechnical Report, p3.

²¹ SWPPP, p.22.

2023. All waste produced is solely from the demolition of the building structure, comprised of construction debris.

Regarding the duration of the proposed demolition and installation of equipment for the solar farm, the Applicant has consulted with local suppliers and contractors and determined that the demolition and site preparation timeframe will be approximately 3 months, while the solar equipment and electrical installation will take 6-9 months. The details of the construction sequencing schedule are included on Sheet CE104 of the enclosed Site Plans.

To minimize any potential disruptions or impacts to the surrounding area, the Applicant will be implementing best management practices to control soil erosion, sedimentation, and stormwater runoff during construction. Additionally, the number of construction vehicles used and workers on the site at any given time will be limited and coordinated with local law enforcement and transportation agencies to minimize traffic congestion.

The Proposed Action will not adversely impact carbon sequestration and the proposed tree removal will not negatively impact the Premises and surrounding area. As demonstrated by the Carbon Sequestration Assessment prepared by SavATree Consulting Group, dated April 7, 2023, the Proposed Action will actually result in an overall increase in carbon sequestration, removing more carbon from the air.²² As demonstrated in the enclosed Tree Impact Analysis, the proposed tree removals will not adversely impact steep slopes. See Exhibit J. The Project proposes to remove 1,822 trees that sequester approximately 45,800 pounds of carbon per year.²³ In energy saved alone by using the solar facility compared to traditional energy sources, approximately 17,252,587,580 pounds of CO₂ will be avoided annually.²⁴ Of the total trees to be removed, 118 are standing but dead trees that no longer sequester carbon and another 77 trees are in critical condition and sequester little carbon.²⁵ Additionally, approximately 34.2% of the tree population on the Premises are invasive species.²⁶

The Applicant proposes to plant 125 new, non-invasive trees on the Site which collectively will sequester approximately 3,500 pounds of carbon per year.²⁷

The SavATree report concludes:

[T]he project would be an improvement to the community in the projected carbon sequestration compared to the existing conditions onsite. Overall, this Project will

²² Carbon Sequestration Report, p.1.

²³ Carbon Sequestration Report, p.1.

²⁴ Carbon Sequestration Report, p.2.

²⁵ Carbon Sequestration Report, p.2.

²⁶ Carbon Sequestration Report, Exhibit A, p.6.

²⁷ Carbon Sequestration Report, p.2.

result in savings of at least 17,252,545,280 pounds of atmospheric CO₂ per year, making it very much a net-positive for Briarcliff Manor.²⁸

In fact, it is widely recognized that solar panels reduce CO₂ emissions more per acre than trees and result in a significant savings in carbon emissions.²⁹ It is respectfully submitted that the proposed solar farm will not have a significant adverse impact to the land and will, in fact, result in benefit by saving approximately 17,252,587,580 pounds of CO₂ per year.

The Proposed Action will not cause a significant adverse environmental impact to the surface water onsite and in the surrounding area:

As previously discussed above, a comprehensive SWPPP has been prepared for the Project with the appropriately designed erosion control, sediment control, pollution prevention, and stormwater management measures. These stormwater management measures will ensure there will be no adverse impacts to stormwater runoff quality and quantity during construction, from the proposed tree removals and post-construction operation of the solar farm.

The SWPPP findings reveal a significant reduction in impervious area on the site, with a 77% decrease from the existing conditions. The proposed impervious area covers approximately 1.7 acres across the entire site. This substantial reduction is primarily attributed to the removal of asphalt parking lots and their restoration to pervious areas.

Similarly, the proposed bridge reconstruction, tree removal and installation of the security fence will not adversely impact the locally regulated wetland buffer, Federally- regulated wetlands or the portions of the Sparta Brook located onsite. Merely 10.2 square feet of disturbance will occur within the first 20-feet of the locally regulated wetland buffer (and approximately 80 feet from the Sparta Brook) to accommodate posts for the security fence. Five trees are proposed to be removed within the wetland buffer area and the stumps of those trees will be left in place to avoid any adverse impacts to the wetland buffer area. Two of the 5 trees to be removed in the wetland buffer are invasive, one of which is dead and as such, account for *de minimis* overall site impacts. See **Exhibit J**. The total ground disturbance in this area is limited to 10.2 square feet. The tree removal will not require the use of heavy equipment or machinery.

As further detailed in the Ecological Analysis, LLC's Wetland Delineation Report, dated September 7, 2022, the proposed action will not result in any impacts to the wetland areas identified within the delineation. The proposed project does not adversely affect water quality within the wetland, and adjacent watercourses.

The Proposed Action will not cause a significant adverse environmental impact on groundwater water onsite and in the surrounding area:

²⁸ Carbon Sequestration Report, p.2.

²⁹ Eisenson, Matthew, *Solar Panels Reduce CO₂ Emissions More Per Acre Than Trees –and Much More than Corn Ethanol* (Oct. 26, 2022). See Exhibit E.

The proposed solar farm will not result in any adverse impacts related to dewatering. As demonstrated in the enclosed Geotechnical Evaluation (**Exhibit G**), the depth to groundwater on site is 14 feet, 8 inches.

The proposed trenching work and dewatering will not impact groundwater because:

- The trenching depth of 24 inches will be shallower than the groundwater level, ensuring that there is no direct contact with the groundwater during excavation or dewatering operations.
- Dewatering operations are anticipated to be temporary and localized.
- Best management practices (BMPs) will be employed during trenching and dewatering to prevent the introduction of contaminants or sediment into the groundwater. These BMPs may include the use of silt fences, sediment basins, and erosion control measures.
- Any water extracted during dewatering will be properly managed and discharged in accordance with applicable regulations, ensuring that it does not cause erosion, sedimentation, or contamination issues downstream.

The proposed project involves minimal construction activities within the Sparta Brook buffer zone area, comprising only a ground disturbance of 10.2 square feet from the security fence posts.

Additionally, the relocation of the ConEdison main service interconnection point to the existing electrical service at the Holbrook Road location was modified in a prior submission, as shown in the plan set dated August 10, 2022.

As detailed in the enclosed SWPPP, the following mitigation tactics are to be employed with the installation of the fence posts, and removal of the five trees with stumps left in place.

- The use of silt fencing to prevent sediment from entering the stream.
- Activities do not require the use of construction materials that are chemical based or toxic.
- Monitor the project site regularly to ensure that all mitigation measures are being implemented correctly and effectively.

Additionally, the Project proposes a long-term and compliant solution to the existing private, failing sewer lines underneath the Premises that serve adjacent residences and do not comply with the Westchester County Sanitary Code. These lines are currently adversely impacting groundwater beneath the Project site. The Applicant, Village Department of Public Works and the Westchester County Department of Health have extensively reviewed the existing condition of the current lines. The Applicant has undertaken investigation and conducted repairs on these private lines at a significant expense. Based on the Applicant's April 5, 2023 meetings with the Village Department of Department of Public Works and the Westchester County Department of Health, the existing private lines will be replaced with new lines running from the single-family homes directly to the public sewer line (approximately 100 feet away). These new connections will not be located on the Premises.

As such, the Proposed Action will not adversely impact groundwater and will actually result in a benefit over existing conditions because the existing noncompliant and failing private sewer lines will be removed from the Premises and replaced with connections to the public sewer.

The Proposed Action will not cause a significant adverse environmental impact to flora or fauna on site or in the surrounding area:

As indicated in the Full Environmental Assessment, which was completed using data from the New York Department of Environmental Conservation's "EAF Mapper", the project site does not contain a significant natural community, nor does it contain any plant or animal species listed by the federal government or New York State as endangered, threatened or rare.³⁰

As previously discussed above and further detailed in the enclosed SavATree Carbon Sequestration Report, the Proposed Action will result in savings of at least 17,252,545,280 pounds of atmospheric CO₂ per year.³¹ Additionally, the Applicant intends to remove all invasive trees from the Premises, which comprise approximately 34.2% of the tree population on the Site and plant 125 new, non-invasive trees.³²

The Proposed Action will not negatively impact wildlife or degrade habitat for rare, threatened or endangered species or specials of special concern. As demonstrated by the enclosed Habitat Impact Memorandum, prepared by Ecological Analysis, LLC and dated April 10, 2023, the Project is designed to avoid such impacts. Based on the Wildlife Habitat Assessment conducted, there are no protected wildlife species identified at the Site and the proposed construction and operation of the solar farm will not negatively impact any species population.

The NY Natural Heritage Program confirmed that there are no known records of rare or endangered species, or significant habitats, at or in the vicinity of the proposed project site, and therefore determined that further action involving NYSDEC Natural Heritage was necessary.

Additional correspondence with the Region 3 Wildlife Department at NYSDEC dated May 10, 2022, concluded that:

no impacts to these species are anticipated and a NYSDEC endangered and threatened species permit will not be needed.

See Exhibit J.

Further, on May 17, 2022, the project received a letter from the USFWS Acting Field Supervisor, in agreement of the no impact determination. **See Exhibit J.**

The Applicant is proposing to add 125 trees and a substantial amount of shrubbery and screening throughout the Premises, as depicted on the enclosed Landscaping Plans, prepared by Aspect 120

³⁰ Full EAF.

³¹ Carbon Sequestration Report, p.2.

³² Carbon Sequestration Report, Exhibit A, p.6.

Landscape Architecture, P.C., dated April 10, 2023. All unpaved areas within the limit of disturbance will be seeded with solar pollinator buffer seed mix to further benefit wildlife. See enclosed Landscaping Plans, Sheet L-2. No herbicides or pesticides will be used to maintain the proposed plantings or underneath the solar arrays.

As evidenced by the enclosed materials and substantial record herein, the Proposed Action will not have an adverse environmental impact on the Project site or in the surrounding area.

The Proposed Action will not cause a significant adverse environmental impact on aesthetic resources onsite and in the surrounding area:

With respect to the location and visibility of the Proposed Action, the enclosed Visual Analysis, prepared by Aspect 120 Landscape Architecture, P.C., dated April 10, 2023 demonstrates that it will not result in any potentially significant visual impacts.

In defining aesthetic impacts, the DEC provides the following guidance:

“[m]ere visibility, even startling visibility of a project proposal, should not be a threshold for decision making.”³³

The Board is required to take an objective approach in determining whether any significant visual impacts will result from the Proposed Action. See, The SEQRA Handbook, 4th. Ed. (2020), p. 82-83 (Response to Question 25). General community objections related to mere visibility of a project proposal should not be a threshold for decision making. See Matter of WEOK Broad. Corp. v. Planning Bd. Of the Town of Lloyd, 79 NY2d 373 (1992). Clearly, the construction of virtually any other project on the Premises would yield greater visual impact than the demolition of an existing commercial development, tennis courts and parking areas that will be replaced with the installation of solar arrays that stand approximately 9-feet in height.

As demonstrated during the Applicant’s appearances and shown on the enclosed Visual Analysis, the Applicant’s proposed solar farm is minimally visible from Holbrook Road and Scarborough Road and neighboring residences.

Extensive new plantings to further screen views of the solar arrays are proposed at the Holbrook Road entrance, as depicted on Sheet L-2 of the enclosed Landscaping Plans prepared by Aspect 120 Landscape Architecture, P.C., dated April 10, 2023. The photo-simulations provided in the Visual Analysis demonstrate the minimal visibility from residences on Holbrook Road and Shadow Brook Road during leaf-off conditions with the proposed mitigation plantings. The proposed screening includes the placement of evergreens and shrubbery along the property lines with neighboring residences to further screen views and also to attract pollinators. See

³³ DEC Guidance Policy: Assessing and Mitigation Visual Impacts:
http://www.dec.ny.gov/docs/permits_ej_operations_pdf/visual2000.pdf

Landscaping Plan, Sheet L-2. Thus, the Proposed Action will not have a significant adverse environmental impact on the aesthetic conditions of the surrounding area.

The Proposed Action Will Not Result in Significant Environmental Impacts to Cultural, Archeological or Historical Resources:

The Proposed Action is located on a site that is already disturbed and fully improved and will not adversely affect any cultural, archeological or historical resources. See Exhibit L. Pursuant to the New York State Environmental Quality Review Regulations, 6 NYCRR § 617.7(C)(1), the impairment of the character or quality of important historical or archaeological resources is indicative of significant adverse impacts on the environment. The Premises is eligible to be listed on the State and National Registers of Historic Places, and the NYS DEC and the NYS Office of Parks, Recreation and Historical Preservation (“NYS OPRHP”) have determined that the buildings may be demolished because no feasible alternatives exist that would avoid or lessen the adverse impacts to the historic resources and district associated with the Project. See the Letter of Resolution Among the NYS DEC, NYS OPRHP and the Applicant, previously submitted on December 28, 2022.

During the Applicant’s review with the NYSOPRH, Sarah McIvor, NYS OPRHP Historic Preservation Technical Specialist, identified the nearby Old Croton Aqueduct as a National Historic Landmark. NYS OPRHP has since determined that the proposed project has no adverse impact on the Old Croton Aqueduct and memorialized the overall project-related mitigation tactics in the November 28, 2022 Letter of Resolution. See Exhibit L.

The enclosed Landscaping Plans and Visual Analysis demonstrate that the Proposed Action will not have an adverse impact on the adjacent Old Croton Aqueduct Trail to the north and south of the site. The proposed solar arrays will not be visible during leaf-off or leaf-on conditions because of the change in elevation and existing dense vegetative buffer that will remain. See Visual Analysis, Sheet V6. Indeed, at its closest point, the Old Croton Aqueduct Trail is approximately 230-feet from the 7-foot high perimeter fence and approximately 270 feet from the nearest solar panel. See Visual Analysis, Sheet V6.

The Proposed Action Will Not Result in Significant Environmental Impacts to Open Space or Recreational Resources:

The Proposed Action will not result in a loss of recreational opportunities, or a reduction of an open space resource designated in any adopted municipal open space plan. The solar farm will not impair natural functions or ecosystems, as concluded by the NYS DEC and US FWS, previously discussed above. Similarly, stormwater storage will not be adversely impacted by the Proposed Action, as detailed in the enclosed SWPPP. The enclosed Visual Analysis and NYS OPRHP Letter of Resolution also conclude that the Proposed Action will not negatively impact the adjacent Old Croton Aqueduct Trail. See Visual Analysis, Sheet V6.

In fact, the Applicant has committed to installing publicly accessible trails across the Premises to enhance recreational opportunities for residents. As such, it is respectfully submitted that the Proposed Action will positively impact recreational resources and have no adverse impacts to open space.

The Proposed Action Will Not Result in Significant Environmental Impacts to Critical Environmental Areas:

As indicated in the Full Environmental Assessment, which was completed using data from the New York Department of Environmental Conservation's "EAF Mapper", the project site does not contain any areas identified as habitat for an endangered or threatened species and is not located within or adjoining a state listed Critical Environmental Area.³⁴ Therefore, the Proposed Action will have no significant adverse environmental impact on any Critical Environmental Areas.

The Proposed Action Will Not Result in Significant Environmental Impacts created from Noise, Odor, or Outdoor Lighting:

As demonstrated by the enclosed Acoustic Study prepared by Acoustic Distinctions, Inc., dated 3, 2023 (**Exhibit K**), the noise generated by equipment at the solar farm will comply with the Village noise ordinance and will not exceed 45 dBA at any property line. This noise evaluation included a review of the noise from the solar farm, including transformers, located in the center of the site, and inverters, distributed throughout the site. The noise study omitted trees and other obstructions that may exist which in reality would lower sound levels. No odor will be emitted from the proposed solar farm.

The solar farm will not be equipped with lighting. For security and safety, lights similar to the existing installations at the property entrances will remain to illuminate the gates and access points. Along the accessway to the solar arrays, no-impact, sensor lights will be installed in the event a security concern needs to be addressed during nighttime hours. These lights will be angled down, equipped with motion-activation sensors and not visible from any property line.

Therefore, the Project will not adversely impact noise, odor or lighting conditions in the surrounding area.

The Proposed Action Will Not Result in Significant Environmental Impacts on Human Health:

The demolition of the existing building and proposed excavation will not disturb contaminated soil or result in a public health concern. The Applicant has completed extensive evaluations and testing on the building, including Asbestos Bulk Testing, Asbestos Containing Material Evaluation, PBS Facility Report, PCB Testing Results, and a Polarized Light Microscope Analysis. All demolition activities will follow State guidelines and debris will be disposed of pursuant to all

³⁴ Full EAF, p. 12.

applicable laws and standards. In addition, the Applicant's engineering team will adhere to an Excavation Management Plan in the event that petroleum hydrocarbon impacted or other constitutes of concern impacted soil is encountered during foundation excavation activities at the subject site. If impacted soils are not encountered, then the Excavation Work Plan will not be required, and standard construction practices will be followed.

In summary, these procedures will ensure the Proposed Action will not have any adverse impacts to existing environmental conditions on the Premises.

Mitigation Tactics

When considering records, Lead Agencies are within their right to consider how mitigation efforts can avoid significant environmental impacts. Part 3 of the EAF gives the Lead Agency an opportunity to examine the proposed project in relation to the potential impacts and identify if any mitigation tactics have been included in the project plans. See New York DEC Webpage entitled "Determination of Significance – Full EAF (Part 3)"³⁵, which states:

It is feasible that the reviewing agency will identify a potential large, long-lasting, important impact that is likely to occur but the project includes features that mitigate those effects to the point where the impact is no longer a significant concern. Some projects include aspects that mitigate impacts partially or fully. This needs to be taken into consideration when determining significance of an impact.

The ability of an applicant to implement mitigation efforts to avoid a determination of significance was exemplified in the court's decision in Pine Bush, 629 N.Y.S.2d at 126, as cited above. In Pine Bush, the court noted that there were substantial modifications and mitigation measures to a subdivision application, which the Lead Agency correctly relied on in determining that there would be no significant environmental impacts (and therefore, no EIS was required).

It should also be noted that consideration of such mitigation efforts have been deemed proper by the Court of Appeals. Therefore, Negative Declarations for Type I Actions that have incorporated such mitigation measures are not considered to be problematic, unlike improper Conditioned Negative Declarations. See Merson, 90 N.Y.2d at 755, where the Court of Appeals stated:

[T]he modifications here were not conditions unilaterally imposed by the lead agency, but essentially were adjustments incorporated by the project sponsor to mitigate the concerns identified by the public and the reviewing agencies, with only minor variations requested by the lead agency during the review process. Of distinguishing dispositive import here is that the modifications were examined

³⁵<https://www.dec.ny.gov/permits/91836.html#:~:text=It%20is%20feasible%20that%20the,aspects%20that%20mitigate%20impacts%20partially>

openly and with input from all parties involved. This process comports with the overriding purposes of SEQRA.

Alternatives Analysis

The record herein includes several alternatives, as the Project has been reduced in size and modified in location to avoid steep slopes impacts. Importantly, within the context of an EIS, SEQRA only requires an Applicant to study feasible alternatives as they align with the developer's goals in the context of the site. The Applicant is not required, nor can it be compelled to consider sites that it does not control. See SEQRA Handbook at 6 for review of projects sponsored by private applicants, which states:

“site alternatives should be limited to parcels owned by, or under option to, a private applicant. To demand otherwise would place an unreasonable burden on most applicants to commit to the control of sites which they do not otherwise have under option or ownership.” See also Friends of Van Voorhis Park, Inc. v. City of New York, 216 A.D.2d 259 (1st Dep't 1995) (“In the case of a private applicant, any such requirement is further limited only to such sites as are owned by or under the legal control of the applicant.”).

Specifically, the requirement to consider alternatives in an EIS is limited to “reasonable” alternatives that are “feasible, considering the objectives and capabilities of the project sponsor.” See SEQRA Handbook at 6 (quoting 6 NYCRR 617.9(b)(5)(v)). This standard has been recognized by the courts. See Save Open Space v. Planning Board of Town of Newburgh, 904 N.Y.S.2d 188, 190 (2d Dep't 2010), which states:

Contrary to the petitioners' contention, the Planning Board considered a reasonable range of feasible alternatives (see Matter of Town of Dryden v. Tompkins County Bd. of Representatives, 78 N.Y.2d 331, 574 N.Y.S.2d 930, 580 N.E.2d 402; Akpan v. Koch, 75 N.Y.2d 561, 570, 555 N.Y.S.2d 16, 554 N.E.2d 53; Matter of County of Orange v. Village of Kiryas Joel, 44 A.D.3d at 769, 844 N.Y.S.2d 57; ECL 8-0109[2][d], [4]; 6 NYCRR 617.9[b][5][v]). The Planning Board analyzed the impacts associated with those alternatives in comparison with the initial proposal, and incorporated aspects of the alternatives in mitigation of the impacts associated with the initial proposal (see Matter of County of Orange v. Village of Kiryas Joel, 44 A.D.3d at 769, 844 N.Y.S.2d 57). The Planning Board was not required to consider the petitioners' proposed alternatives. Consideration of a smaller scale alternative is permissive, not mandatory, and alternatives are to be considered in light of the developer's objectives (see 6 NYCRR 617.9[b][5][v]).

Pre-Textual Positive Declaration

A Positive Declaration by a Lead Agency cannot be merely based on public opposition. See Broeders v. Schoenfeld, 548 N.Y.S.2d 231 (2d Dept. 1989) (succumbing to public opposition declared an improper ground for issuing a Positive Declaration); see also WEOK Broadcasting Corp. v. Planning Bd. of Town of Lloyd, 79 N.Y.2d 373, 385 (1992) (when considering opposition comments “decision makers must not be given the freedom to either ignore or disregard the information that the environmental review process was designed to elicit if the process is to have any meaning”).

For all these reasons, based upon this extensive record, we respectfully submit that it fully supports this Board issuing a Determination of Significance which constitutes a Negative Declaration.

We look forward to appearing before this Board to address any questions and thank you for your consideration.

Respectfully yours,
William S. Null
William S. Null

cc: Mr. Malcolm Netburn, Chair, and Members of the Planning Board; Mr. Josh Ringel; Josh Subin, Esq.; Mr. David Turiano, P.E.; Ms. Sarah Yackel; Mr. David Magid; Ms. Susan Jainchill; and Kristen Motel, Esq.