PLANNING BOARD
Town of Kirkwood
70 Crescent Drive
Kirkwood, NY 13795

July 8, 2026
Meeting Minutes

Present:
Adisen Harden, Member
Jason Maxian, Member
Mike Maciak, Member
Dan Wasson, Member
Gordie Woolbaugh, Chairperson
Gina Middleton, Attorney
David Pasquale, Ad Hoc Member
Chad Moran, Building & Code Inspector

Chairman Woolbaugh called the meeting to order at 7:00 PM.

APPROVAL OF MINUTES:

Motion by Mike Maciak and seconded by Dan Wasson to approve the minutes from the May 13, 2026 meeting as submitted. All voted in favor.

E.A.F. DETERMINATION – NORBUT SOLAR :

Ms. Middleton explained Part 2 of the SEQR forms had been completed at the last meeting; Part 3 will be next. We did received a letter dated July 2, 2026 from the applicant with regard to Part 3, which is approximately 38 pages and we have not had the opportunity to review that letter so at this time, until we are able to review, we are not going to proceed with Part 3. For the record we did receive the July 2nd communication, we will be reviewing that, the board members, the town engineer, and the town attorney. We do want to note for the record we just received a letter dated July 8, 2026, from members of Laborers' Local 785, which was read into the record and is included in the file.

Mr. Saunders asked if there would be public comment and Ms. Middleton explained there isn't one scheduled for this evening. Mr. Saunders stated there are people here that want to speak. Ms. Middleton said she understands that but there is no public hearing scheduled, so that is going to be up to the discretion of the board. There was a discussion amongst the board members whether to allow the public to speak. Chairman Woolbaugh explained because there wasn't a scheduled public hearing we want the rest of the public to also know that there would be public comments being made again for other residents of the town, we would have to put that on the schedule, announce it, and publish it. Mr. Saunders commented that every meeting he has attended the public has had the opportunity to comment on the project and they have commented, the comments have been extensive and there are people here that want to speak in favor of the project. If that can't be done this month they asked the board to put it on the agenda at next month's meeting assuming we get to Part 3. Chairman Woolbaugh explained there will be no August meeting, there won't be enough board members to have a quorum, September will be the next meeting.

Mr. Saunders thanked everyone for being here tonight and for continuing to review their project. We have had quite a few meetings where many concerns have been raised about the project primarily related to engineering issues and stormwater environmental issues, visuals, noise, and traffic, all of which they believe they have worked diligently with your engineer, John Mastornardi, who has been reviewing their project, particularly the SWPPP. The subject of the April meeting focused almost exclusively on stormwater and groundwater issues. Mr. Mastronardi did have some additional concerns at that meeting. Subsequent to that meeting the engineers spoke for about ½ an hour after that meeting and had a number of conversations offline afterwards during which additional information was conveyed in terms of changes or updates or upgrades that Mr. Mastronardi wanted

to see from the stormwater management plan. Those changes were made. We came back to the May meeting, at that meeting and the prior meeting, Mr. Mastronardi indicated that he had no further concerns with their stormwater management plan, it satisfied him. The minutes of the April 8th meeting reflects his agreement with the responses that they gave.

Mr. Saunders explained that he wanted to reinforce for the Board the fact that the engineers have worked very collaboratively together. There hasn't been any pushback, they essentially have given the board and the engineer every consideration, they respectfully listened to and implemented every single change the board has asked for. They stand willing and ready to continue to work with you and your engineer resolving any additional concerns that may still remain. He understands the board has not had sufficient opportunity to review the response he had provided last week. The goal was to try and address each of the 13 potential impacts that the board had identified in May and provide our response.

Mr. Saunders went on to say the board as already completed the Part 2 analysis but the question for the September meeting, once you are up to speed, will be a completely different question. It is not whether or not the environment resources exist, they do, there are wetlands on the property, there is air you have to breath, there are trees, and all kinds of environmental issues that exist. Also, the issue is not whether the physical site conditions are present, yes they know there are steep slopes on the property, no one is disputing that and no one is disputing the fact that there are wetlands on the property. As far as the things they are trying to address, at this point the issue is and what the board will need to do is to reflect on the administrative record that has been developed over the past 6-8 months in this matter, which includes taking a look at the project as proposed. That means not what we submitted in February 2024, but as the project as evolved to the present day. The project may have been deficient from the board's standpoint in a number of respects initially but what has to be considered at this juncture is what is the current status of the project as it was designed and modified. You have to consider the project redesigns which have been numerous, you have to consider avoidance measures that the applicant has made to avoid significant environmental impairments, you will have to consider mitigation, and how they potentially mitigated those. An example on mitigation is the fact that they redesigned the project to avoid all contact with not only the wetlands but the wetland buffer areas. That is an example of a mitigation type situation the board will need to take into consideration when it starts to consider those issues. Finally, the board obviously has to consider the engineering review. It is not just engineering comments from Norbut Solar Farm's engineer but also the comments from the town's engineer. That is the key advisor in this matter and that his information from what is in the record is also a critical key to your decision-making process.

Mr. Saunders went on to say Part 2 of the SEQR involved 18 different questions and those questions had multiple sub parts. If you look at the 18 questions and all the sub parts you come up with 120 potential impacts that the board could have identified. The board identified 13. We are not talking 13 of 18, we are talking 13 out of over 100 and of the 13 those impacts were clustered into 5 of the 18 impact areas. Those include land, surface water, plants and animals, land use, and community character. Many of the potential impacts the board found rely on the same engineering record that already exists in terms of what the board has to draw on for the decisions it will make. It will also rely on the same redesign of the project and will find that many involve mitigation aspects that have been incorporated.

Mr. Saunders stated the SEQR process here has worked. The board has been diligent and has considered many comments that have been supplied by the public and Norbut was offered the opportunity to respond to those comments verbally at meetings and also in writing by providing answers to all questions that were raised by the residents that are close to the project. In regard to the public comments, in particular, he doesn't think there is anything left that hasn't been raised, that the board will be faced with before it has to make a decision. Everything has been put on the table in terms of all the possible problems that this project could cause.

Mr. Saunders went on to say that the questions that were identified, additional information was requested by the Board and the engineer. The wetlands were avoided, a digital analysis was prepared and accepted, the SWPPP was revised three times and as Mr. Mastronardi pointed out in the April meeting minutes what he asked for from the solar farm went above and beyond what the DEC requires. Please keep in mind that they are going beyond what they need to do to satisfy the state who is ultimately the most qualified regulator on environmental issues. The town engineer has reviewed the revisions, the project has changed, the administrative record has expanded greatly over the past few months, and all the information has come out. The project today is nothing like the project that was originally submitted. That is what the SEQR process is, it is the give and take when any applicant comers before a municipality has to understand. We don't come in expecting what we supplied to a municipal body is going to be accepted. You have comments, you have response, and they do have to respond appropriately and they think in their case they have done that. What they hope is going to happen is that the board is in a position to address Part 3 and the 13 potential impacts already identified. They hope that the board is going to look at each of those 13 and review them and give them some feedback. They hope there will be come interaction with them in terms of the responses. What they would really like to do is to find out if any of those 13 potential impacts in fact have been resolved or would have been resolved by the time we have this meeting so they can then focus on what is left because what they would like to do is look at the continuing dialog between the engineers, which has been collaborative and very encouraging. With a lot of municipalities, a lot of times there is difficulty with working with towns. Your engineer has been very good to work with; he has been very reasonable but he has pushed us to the point where we have given a lot more than we usually do. That is the process and they understand that and have no problems with that. They hope that the board will wheedle down the issues that really are part of the concerns that the board continues to have. As a result of everything that has been done, as the SEQR workbook says, at the beginning of every one of the 18 questions, when the board conducts its review it should act reasonably. That means not taking comments or information that is provided without any kind of backup, studies from Poland about solar farms or information from a lay person about how much water runoff occurs per one inch of rainfall and to consider that as factual evidence without any basis from any kind of consultant expert. We just hope that the board will look at the 13 impacts and work with them to figure out what is still left, and what is really concerning you about this project. If it is legitimate they are going to address it. They are not going away, they want to work with you and they want to work with your engineer. They want to work with the rest of them, they know they don't believe that but that is the case.

Mr. Saunders reviewed with the Board the 13 potential impacts the Planning Board identified in the FEAF Part 2 that they submitted on July 2, 2026, which is in the file and attached to these meeting minutes. Their responses are to the following questions in the FEAF Part 2:
1. Impact on Land, 1(a), 1 (b), 1 (c), 1 (f)
3. Impacts on Surface Water, 3 (d), 3 (e), 3 (h), 3 (i)
7. Impact on Plants and Animals, 7 (g), 7, (h)
17. Consistency with Community Plan, 17 (a)
18. Impact on Community Character, 18 (e), and 18 (f)

Mr. Saunders concluded by saying the situation should not be based on a question of whether the questions raised early in the review process, those questions have been investigated, plans were revised, engineering was completed, and wetlands avoided. The project has significantly changed and the administrative record has grown. There is a lot of information before you that you will now have to take a look at. That is preciously how the SEQR was intended to proceed. The only remaining question is whether the fully developed record, that the project proposed, as it exists today, may result in more significant impact vs. environmental impacts. That requires not only a finding of a condition of the property such as steep slopes or wetlands but how that translates to an impact. They believe up to this point they have satisfied each of these conditions and they believe that the board should find them not to be significant. When the board is prepared to return they

hope that, in good faith, as they have shown good faith in terms of working diligently with you and your engineer, they hope that the board will consider, looking at these one by one, and let's see if we can come to an agreement as to what additional information the board wants so that we can process along to the next stage. He thank the board for their time and their consideration. They do look forward to continuing to work with you and they do hope that you provide an opportunity to public comment at the next meeting.

Mr. Kasey Eiklor asked if he could read a letter and Ms. Middleton state she would read into the record and is included into the file. Ms. Middleton also explained the board is going to schedule an additional public hearing for September, which anybody can speak. Mr. Sauders questioned as opposed to public comment and Ms. Middleton explained public hearing/public comment, it is open to everybody as the same concept. We just schedule it because we want to make sure that there is notice out there and anybody is welcome to comment.

Dan Wasson asked Mr. Saunders if they had anything on site and Mr. Congdon explained there are no trailers on site.

Motion by Jason Maxian and seconded by Adisen Harden to schedule a public hearing on September 9, 2026 with regard to Norbut Solar Farm at 7 PM.

Roll Call Vote:

Adisen Harden	Yes
Jason Maxian	Yes
Mike Maciak	Yes
Dan Wasson	Yes
Chairman Woolbaugh	Yes

Motion carried.

Motion by Mike Maciak and seconded by Dan Wasson to adjourn the meeting. The meeting was adjourned at 7:43 pm.

Respectfully Submitted,

Mary Kay Sullivan
Secretary, Kirkwood Planning Board

cc: Planning Board Members
Kelley Diffendorf
Poe Williams
Chad Moran
Bob McKertich
Katie Legg
Rick Pedro

NORBUT SOLAR FARMS

July 2, 2026

VIA ELECTRONIC MAIL ONLY

Planning Board Town of Kirkwood
70 Crescent Drive
Kirkwood, New York 13795

RE: Application by Norbut Solar Farm, LLC and its affiliates, NSF Kirkwood Site 1, LLC; NSF Kirkwood Site 2, LLC; NSF Kirkwood Site 3, LLC; and Quilty Hill Road, LLC (collectively "Norbut Solar" or "Applicant") to construct and operate three 5MWac Commercial Solar Energy Systems (the "Project") on property located at 149 Quilty Hill Road & 165 Foley Road (Tax IDs 147.00-1-2.2; 147.00-1-7.11; and a portion of 147.00- 1-2.11) (the "Property") in the Town of Kirkwood, County of Broome, State of New York

Dear Chairman Woolbaugh and Planning Board Members:

Norbut Solar Farms respectfully submits the following comments for the Planning Board's consideration in connection with its conducting Part 3 of the Full Environmental Assessment Form ("FEAF") SEQRA process on July 8.

The Planning Board has completed Part 2 of the FEAF and has identified thirteen environmental impact categories that it determined may constitute potential Moderate-to-Large impacts ("Potential Impact"). While we disagree with the conclusion that any identified Potential Impacts are truly triggered with respect to the Project, the Applicant accepts the Board's Part 2 findings solely for purposes of addressing the distinct inquiry now presented under Part 3 of the FEAF.

Part 2 and Part 3 perform different functions within the SEQRA review process. Part 2 identifies possible environmental conditions or issues that warrant further evaluation. Part 3 serves a distinct purpose. As explained on pages 274 through 283 of the DEC's Full Environmental Assessment Form Workbook (the "Workbook"), prepared specifically to guide reviewing agencies in completing Part 3, Part 3 requires the Board to evaluate each Potential Impact identified in Part 2 in light of considering its magnitude, importance, duration, likelihood, project design, avoidance measures and mitigation and then determine whether that Potential Impact may result in a significant adverse environmental impact.

Accordingly, the issue before the Board during Part 3 is not simply whether environmentally sensitive resources (such as wetlands) exist on the property, nor whether particular physical site characteristics (i.e.- steep slopes) are present. Those matters have already been identified during the review process. Rather, the question presented during consideration of FEAF Part 3 is whether the existing administrative record demonstrates that the proposed Project, as designed and proposed to be

undertaken, may result in one or more significant adverse environmental impacts as that term is defined under SEQRA, notwithstanding the project modifications, avoidance measures, mitigation commitments, and technical analyses that are part of the record before the Board.

In determining significance, the Board necessarily considers the factual basis for each identified Potential Impact, the environmental mechanism by which any impact could occur, the magnitude and duration of the potential impact, and the extent to which project design, avoidance measures, mitigation, and other technical information contained in the administrative record avoid or reduce that impact below the level of significance described in 6 NYCRR Part 617.

Several general principles necessarily inform the Board's Part 3 significance determination. The existence of an environmental resource (wetlands) does not in and of itself establish that construction of the Project may result in a significant adverse environmental impact. Likewise, the identification of a physical site characteristic (depth to bedrock, steep slopes, etc.) does not itself establish environmental significance. Environmental significance must instead be evaluated in the context of the proposed action itself, including the design modifications made during the review process, the avoidance measures incorporated into the project, the mitigation commitments undertaken by the Applicant, and the technical analyses developed throughout the SEQRA review. Where those materials directly address an identified environmental concern, the Part 3 analysis necessarily includes consideration of whether based on the existing administrative record (rather than general community opinion), those measures adequately avoid a significant adverse environmental impact thereby necessitating issuance of a Negative Declaration.

The administrative record developed during the Board's review constitutes the available body of information upon which the Board must determine whether any identified Potential Impact may result in a significant adverse environmental impact. Prior to the Board's completion of Part 2 of the FEAF, the Applicant submitted a detailed written analysis addressing each of the eighteen Part 2 questions.

The record further includes engineering reports by the Applicant and the Town engineer, stormwater management and erosion and sediment control plans (revised on multiple occasions and ultimately accepted by the Kirkwood engineer), wetland delineations and jurisdictional determinations (including a complete project redesign to avoid wetlands altogether), in-depth visual assessments at locations selected by the Planning Board, project redesigns, avoidance measures, mitigation commitments, agency correspondence, and other technical materials prepared specifically to evaluate the environmental resources present on the property and the potential environmental impacts of the proposed action. Collectively, these materials constitute the factual and technical record upon which the Board's Part 3 significance determination must be based.

The administrative record also reflects the iterative nature of the SEQRA process itself. Throughout the Board's review, questions identified by the Planning Board, its consultants, involved agencies, and the public prompted additional technical analyses, revisions to the Project design, avoidance of

environmentally sensitive resources, refinement of engineering plans, and incorporation of additional mitigation measures. Consequently, the Project now before the Board is materially different from the Project initially submitted for review and is supported by a substantially more developed technical record. The purpose of the FEAF Part 3 is to evaluate whether, in light of that refined Project and expanded administrative record, the identified Potential Impacts may result in one or more significant adverse environmental impacts.

The comments that follow rest exclusively upon the existing administrative record and do not ask the Board to consider any information outside the materials already before it. Their purpose is to assist the Board in evaluating whether that record demonstrates that each of the Board's thirteen identified M/L impacts may result in a significant adverse environmental impact or not, as that term is defined and evaluated under SEQRA, notwithstanding the opinions of certain members of the public.

For ease of the Board's review, NSF has organized its comments according to each of the thirteen Potential Impacts identified by the Board as part of the FEAF Part 2 process. Each section follows the same analytical framework: (1) describe the FEAF Part 2 question requiring evaluation as a potential environmental impact under Part 3; (2) the evidence presently contained within the administrative record relevant to the identified Potential Impact; (3) considerations relevant to the Board's Part 3 significance analysis, including but not limited to mitigation; and (4) the Applicant's position regarding whether the existing administrative record demonstrates that the identified Potential Impact may or may not result in a significant adverse environmental impact.

The Applicant submits that evaluating every identified Potential Impact through this consistent analytical framework will assist the Board in applying a consistent analytical framework to each identified Potential Impact and in determining whether the existing administrative record demonstrates that it may result in a significant adverse environmental impact.. The thirteen Potential Impacts identified by the Board during the FEAF Part 2 process for evaluation in Part 3 follows.

1. IMPACT ON LAND

1(a) – The proposed action may involve construction on land where depth to water table is less than 3 feet.

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue may result in a significant adverse environmental impact.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, Question 1(a), which addresses whether the proposed action may involve construction on land where the depth to the water table is less than three feet.

For purposes of Part 3, however, the relevant inquiry is not whether portions of the Property may exhibit relatively shallow groundwater conditions. Rather, the issue is whether the Project as proposed may result in a significant adverse environmental impact because of that site characteristic.

2. Existing Administrative Record

The administrative record contains substantial information concerning groundwater conditions on the Property.

As explained in the Applicant's response to Part 2, the weighted average groundwater depth of approximately 3.02 feet is derived from NRCS soil mapping. Those maps, used to prepare the FEAF Part 2, provide estimates based upon mapped soil classifications. The calculated average is influenced by the presence of mapped wetlands, where shallow groundwater conditions are naturally expected, while several mapped soil groups identify groundwater depths exceeding 200 centimeters (approximately 6.7 feet).

The Applicant also submitted publicly available well completion records from adjacent properties reporting groundwater depths of approximately 46 feet (18 Quilty Hill Road), 35 feet (23 Quilty Hill Road), 40 feet (84 Quilty Hill Road), and 12 feet (103 Foley Road). These records demonstrate that groundwater conditions vary considerably within the surrounding area and that the NRCS mapping reflects generalized soil characteristics rather than uniform site conditions across the Property.

3. Project Design, Avoidance Measures, and Mitigation

The administrative record further demonstrates that the Project as proposed has been specifically designed to avoid or minimize possible environmental impacts associated with shallow groundwater conditions.

All Project components have been excluded from DEC-jurisdictional wetlands and the associated 100-foot wetland buffers, thereby avoiding those portions of the Property where persistently shallow groundwater conditions are most likely to occur. The administrative record contains no technical evidence contradicting these conclusions.

The Project also incorporates a Stormwater Pollution Prevention Plan ("SWPPP"), erosion and sediment control measures, and construction practices that were revised during the review process in response to comments from the Town Engineer and incorporated into the Project as proposed.

With reference to mitigation as to this Potential Impact the Applicant's ongoing communications with and response to the Town engineer's request to consider mitigation of his concerns regarding the adequacy of the erosion sedimentation control plan, on April 30, 2026 the engineer advised NSF that his outstanding concerns relating to stormwater controls and the SWPPP had been resolved. During the Planning Board's next meeting on May 13, 2026 when asked by the Board to assess the manner in which

the Applicant responded to the stormwater concerns raised and discussed at length during the Planning Board's April 8 meeting, the minutes reflect that Mr. Mastronardi indicated he "agrees with [ ] [Applicant's engineer's] additional comments and details. He is satisfied with the erosion sediment control plan and the SWPPP." Minutes of the Planning Board meeting of May 13, 2026, at p. 2. After soliciting the input of its engineer on outstanding issues previously raised, the Planning Board proceeded with the analysis of the FEAF Part 2 and made its determinations relating to the Potential Impacts.

Accordingly, the administrative record demonstrates that the Project's design, avoidance measures, and engineering controls were specifically developed to avoid or minimize potential groundwater-related environmental impacts.

4. Part 3 Significance Analysis

The FEAF Workbook explains that Part 3 requires the reviewing agency to evaluate the magnitude and importance of each Potential Impact identified in Part 2, taking into consideration the Project as proposed, project modifications, avoidance measures, mitigation, and the information contained within the administrative record.

Applying that framework here, the Board identified a physical site condition—areas of the Property where groundwater may occur at depths of less than three feet and decided that the existence of that condition warranted further evaluation during Part 3. The question now before the Board is whether the existing administrative record demonstrates that the Project as proposed may result in a significant adverse environmental impact because of that condition.

The administrative record demonstrates that the Project has been designed to avoid those portions of the Property where persistently shallow groundwater conditions are most likely to occur and incorporates engineering controls specifically intended to avoid or minimize groundwater-related impacts.

The administrative record does not establish that the Project as proposed may nevertheless result in a significant adverse environmental impact because localized shallow groundwater conditions may exist on portions of the Property.

The administrative record does contain uncontroverted evidence that the driving of posts to support solar panel racking systems and minimal grading will be of limited duration – completed in approximately one year. The Workbook on pages 276 through 277 describes various types of impacts in terms of duration. "Short-term impacts" are identified as "often due to initial land disturbance or construction phase" and may occur for "several months and then improve quickly ..." assessing the same as being "of minor or negligible importance in a long time frame" (here the record reveals a construction period of roughly 12 months over the course of a 25-year or longer reversible land use). The example cited in the Workbook assumes excavation and stockpiling of soil, placement of erosion control measures, regrading, reseeding and landscaping as short term impacts "due to the initial disturbance of soil and vegetation" that will eventually be replaced. In addition, the Board determined that any construction that might last beyond one year would result in either no impact or a small impact. *See* Board finding regarding FEAF Part 2 Question 1(e).

The record does not identify a project activity that may significantly affect groundwater resources because of those conditions; it does not identify the environmental mechanism by which such an impact would occur; it does not contain technical evidence establishing that any such impact would be of sufficient magnitude or importance to constitute a significant adverse environmental impact; and it does not explain why the Project's avoidance measures, SWPPP, erosion and sediment control measures, and other incorporated engineering controls, revised as requested and approved by the Town engineer, would be insufficient to reduce any potential environmental impact below the level of significance.

Accordingly, while the administrative record acknowledges that groundwater depths vary across the Property, it does not demonstrate that the identified site condition, when evaluated in light of the Project as proposed and the avoidance measures, mitigation, and engineering controls incorporated into its design, may result in a significant adverse environmental impact.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record does not demonstrate that the groundwater conditions identified during Part 2 may result in a significant adverse environmental impact.

The record establishes the existence of varying groundwater depths across the Property while also demonstrating that the Project as proposed has been specifically designed to avoid those areas most likely to exhibit persistently shallow groundwater and incorporates avoidance measures, mitigation, and engineering controls intended to minimize potential groundwater-related effects any such effects being of limited duration and not of an irreversible nature.

Accordingly, while the Board identified groundwater depth as a potential issue warranting further evaluation during Part 2, the existing administrative record does not demonstrate that this identified condition, when evaluated in accordance with the Part 3 significance analysis described in the FEAF Workbook, may result in a significant adverse environmental impact.

1(b) – The proposed action may involve construction on slopes of 15% or greater.

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, Question 1(b), which addresses whether the proposed action may involve construction on slopes of fifteen percent or greater.

For purposes of Part 3, however, the relevant inquiry is not whether portions of the Property contain slopes exceeding fifteen percent. Rather, the issue is whether the Project as proposed may result in a significant adverse environmental impact because of those site conditions.

2. Existing Administrative Record

The administrative record establishes that approximately 9.5 acres of the Property contain slopes exceeding fifteen percent. Although these areas occur within the overall limits of disturbance, they comprise less than seven percent of the total Property acreage.

As explained in the Applicant's Proposed Reasoned Elaboration presented to the Board, the Project requires only limited grading and earth disturbance, with the overwhelming majority of the site remaining in its existing topographic condition. The Project has been designed to minimize grading through its layout and construction methods.

The administrative record further includes a revised Stormwater Pollution Prevention Plan ("SWPPP"), erosion and sediment control measures, and engineering review by the Town Engineer addressing runoff, erosion, and sediment control during construction. It should be noted that the Board's April 8 meeting contained a protracted discussion of stormwater and erosion issues and whether and how they could be mitigated through further revisions to the SWPPP.

With reference to the Applicant's ongoing communications with and response to the Town engineer's request to consider mitigation of his concerns regarding the adequacy of the erosion sedimentation control plan, on April 30, 2026, the engineer advised NSF that his outstanding concerns relating to stormwater controls and the SWPPP had been resolved. *See* Exhibit "A". During the Planning Board's next meeting and when asked by the Board to assess the Applicant's response to the stormwater concerns raised at the Board's meeting on April 8, the minutes reflect that Mr. Mastronardi indicated he "agrees with [ ] [Applicant's engineer's] additional comments and details. He is satisfied with the erosion sediment control plan and the SWPPP." Minutes of the Planning Board meeting of May 13, 2026, at p. 2. After soliciting the input of its engineer the Planning Board proceeded with the analysis of the FEAF Part 2 and made its determinations relating to the Potential Impacts.

3. Project Design, Avoidance Measures, and Mitigation

The Project as proposed incorporates multiple measures specifically intended to minimize or eliminate potential environmental impacts associated with construction on sloping terrain.

Earth disturbance has been minimized through the Project layout and construction methods. Disturbed areas will be subject to erosion and sediment controls, temporary and permanent stabilization measures, and revegetation requirements incorporated into the SWPPP. Those measures were revised during the review process in response to comments from the Town Engineer and incorporated into the Project as proposed.

Accordingly, the administrative record demonstrates that potential environmental impacts associated with construction on sloping terrain have been specifically evaluated and addressed through Project design and engineering controls.

4. Part 3 Significance Analysis

The FEAF Workbook explains that Part 3 requires the Planning Board to determine whether the Potential Impact identified during Part 2, when evaluated in light of the Project as proposed, the information contained in the administrative record, and the Project's avoidance measures, mitigation, and engineering controls, may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

The Board's Part 2 determination identified construction on slopes exceeding fifteen percent as a Potential Impact requiring further evaluation. For purposes of these comments, the Applicant accepts that procedural determination solely to address the distinct inquiry now presented under Part 3.

The existence of steep slopes, however, is a physical characteristic of the Property, not an environmental impact. Accordingly, the relevant inquiry under Part 3 is not whether slopes exceeding fifteen percent are present, but whether the administrative record establishes that construction on those slopes, as proposed and as engineered, may result in a significant adverse environmental impact.

The administrative record does not support that conclusion. Rather, it demonstrates that less than seven percent of the Project area contains slopes exceeding fifteen percent; that grading has been minimized through Project design; that disturbance will occur pursuant to a revised Stormwater Pollution Prevention Plan; that erosion and sediment control measures have been incorporated into the Project; and that those engineering measures were reviewed during the SEQRA process.

Most importantly, the administrative record does not identify the environmental mechanism by which the limited construction proposed on those slopes may nevertheless result in a significant adverse environmental impact after consideration of the Project's design, construction methods, and engineering controls. Nor does the record contain technical evidence demonstrating that those measures will be inadequate to avoid or minimize potential impacts below the level of significance.

Accordingly, while the Board identified this issue as a Potential Impact for purposes of Part 3, the existing administrative record does not demonstrate that the Project as proposed may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record does not demonstrate that construction on limited areas of slopes exceeding fifteen percent may result in a significant adverse environmental impact.

The record establishes that such slopes comprise only a small portion of the Property and further demonstrates that the Project as proposed incorporates design modifications, erosion and sediment controls, stormwater management measures, and other engineering practices specifically intended to minimize the potential environmental effects associated with construction on sloping terrain. After the SWPPP was revised by the Applicant at the request of the Town's engineer, the latter has acknowledged the adequacy of the stormwater control program which is relevant to magnitude of the Potential Impact.

Accordingly, while the Board identified slopes exceeding fifteen percent as an issue warranting further evaluation during Part 2, the existing administrative record does not demonstrate that this

identified condition, when evaluated in accordance with the Part 3 significance analysis described in the FEAF Workbook, may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1(c) – The proposed action may involve construction on land where bedrock is exposed or generally within 5 feet of the existing ground surface.

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, Question 1(c), which addresses whether the proposed action may involve construction on land where the depth to bedrock is less than five feet.

For purposes of Part 3, however, the relevant inquiry is not whether shallow bedrock may occur in portions of the Property. Rather, the issue is whether the Project as proposed may result in a significant adverse environmental impact because of that site characteristic.

2. Existing Administrative Record

The administrative record contains substantial information concerning subsurface conditions on and adjacent to the Property. As explained in the Applicant's response to Part 2, the weighted average depth to bedrock identified by the NRCS soil mapping is approximately 5.2 feet. As with groundwater mapping, these data represent estimates based upon mapped soil.

The Applicant also reviewed publicly available well completion records from neighboring properties. Those records indicate reported bedrock depths of approximately 165 feet (23 Quilty Hill Road), 80 feet (84 Quilty Hill Road), and 42 feet (103 Foley Road), demonstrating substantial variability in subsurface conditions within the surrounding area.

The administrative record further reflects that the Project does not involve extensive mass grading or excavation. Rather, earth disturbance is limited primarily to driven pile foundations, access roads, electrical collection lines, and other customary improvements associated with construction of a ground-mounted solar facility.

3. Project Design, Avoidance Measures, and Mitigation

The Project as proposed has been designed to minimize earth disturbance and to accommodate varying subsurface conditions that may be encountered during construction.

Construction methods rely primarily upon driven steel piles rather than extensive excavation or removal of bedrock. The Project also incorporates a Stormwater Pollution Prevention Plan, erosion and sediment control measures, and construction practices that were revised during the review process in response to comments from the Town Engineer and incorporated into the Project as proposed.

Accordingly, the administrative record demonstrates that the Project design and engineering controls were developed to accommodate localized subsurface conditions while minimizing the potential for associated environmental impacts. The Workbook suggests that when blasting is necessary to develop a site that can be emblematic of a potential moderate to large impact. The Applicant has stated that blasting will not occur. *See also* response to FEAF Part 2 Question 15(b).

4. Part 3 Significance Analysis

The FEAF Workbook explains that Part 3 requires the Planning Board to determine whether the Potential Impact identified during Part 2, when considered in light of the Project as proposed, the technical information contained in the administrative record, and the Project's avoidance measures, engineering controls, and mitigation, may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

The existence of shallow bedrock, however, is a physical characteristic of the Property, not an environmental impact. Accordingly, the relevant inquiry is not whether bedrock may occur at depths of less than five feet below grade, but whether the existing administrative record demonstrates that the Project as proposed may result in a significant adverse environmental impact because of that site condition.

As is the case with 1(a) and 1(b) a conclusion of significant adverse environmental impact is not supported by the administrative. On the contrary, the record reflects that the Project requires only limited grading, that the majority of Project components will be installed using driven posts rather than extensive excavation, and that the Project incorporates construction methods intended to minimize disturbance of existing site conditions. In addition, publicly available well completion records reflect bedrock depths that vary considerably in the vicinity of the Project, confirming that generalized mapping does not establish the actual subsurface conditions that will be encountered at individual construction locations.

More importantly, the administrative record identifies no factual or technical basis demonstrating that the presence of shallow bedrock may result in a significant adverse environmental impact. It identifies no Project component requiring extensive bedrock excavation, no engineering analysis concluding that shallow bedrock will create significant construction-related environmental impacts, and no evidence that the Project's construction methods will be inadequate to address site-specific conditions encountered during construction.

Accordingly, while the Board identified shallow bedrock as a Potential Impact for purposes of Part 3, the existing administrative record does not demonstrate that the Project as proposed may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record does not demonstrate that the potential presence of shallow bedrock may result in a significant adverse environmental impact.

The record establishes that subsurface conditions vary across the Property while also demonstrating that the Project as proposed has been designed to minimize earth disturbance and incorporates construction methods, avoidance measures, mitigation, and engineering controls intended to accommodate localized subsurface conditions and minimize potential environmental effects.

Accordingly, while the Board identified shallow bedrock as an issue warranting further evaluation during Part 2, the existing administrative record does not demonstrate that this identified condition, when evaluated in accordance with the Part 3 significance analysis described in the FEAF Workbook, may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

Question 1(f) – The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, Question 1(f), which addresses whether the proposed action may result in increased soil erosion.

For purposes of Part 3, however, the relevant inquiry is not whether temporary soil disturbance associated with construction has the potential to generate erosion. Temporary soil disturbance is an inherent component of virtually every construction project. Rather, the issue is whether the Project as proposed may result in a significant adverse environmental impact because of erosion after consideration of the Project's design, engineering controls, avoidance measures, mitigation, and the technical information contained within the administrative record.

2. Existing Administrative Record

The administrative record demonstrates that potential erosion associated with construction has been the subject of extensive engineering review throughout the SEQRA process.

The Project incorporates a comprehensive Stormwater Pollution Prevention Plan ("SWPPP") prepared in accordance with the requirements of the SPDES General Permit. The SWPPP includes detailed erosion and sediment control measures, temporary and permanent stabilization requirements, inspection and maintenance procedures, construction sequencing, and post-construction stormwater management practices specifically intended to minimize erosion and sediment transport.

During the review process, the Town Engineer requested revisions to the SWPPP and erosion and sediment control measures. Those revisions were incorporated into the Project, after which, as noted above, the Town Engineer advised that he had no remaining concerns regarding the adequacy of the proposed erosion and sediment control measures.

Accordingly, the administrative record contains detailed engineering analyses prepared specifically to evaluate the environmental concern identified in Question 1(f).

3. Project Design, Avoidance Measures, and Mitigation

The Project as proposed incorporates multiple design features specifically intended to avoid or minimize erosion during construction and permanently stabilize disturbed areas following construction.

These measures include implementation of the revised SWPPP, temporary and permanent erosion and sediment controls, staged construction sequencing, prompt stabilization of disturbed areas, revegetation, and ongoing inspection and maintenance throughout construction.

Collectively, these Project modifications, avoidance measures, and engineering controls were specifically developed to prevent or minimize erosion, sediment transport, and associated environmental impacts.

4. Part 3 Significance Analysis

The FEAF Workbook explains that Part 3 requires the Planning Board to determine whether the Potential Impact identified during Part 2, when evaluated in light of the Project as proposed, the technical information contained in the administrative record, and the Project's avoidance measures, engineering controls, and mitigation, may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

The relevant inquiry is therefore not whether erosion, sedimentation, or stormwater management warranted careful evaluation during the SEQRA process. Those issues are routinely evaluated for projects involving land disturbance. The question presented by Part 3 is whether the existing administrative record demonstrates that the Project as proposed may nevertheless result in significant adverse environmental impacts after consideration of the engineering analyses and control measures incorporated into the Project.

Once again, the administrative record does not make that showing. What the record does establish is that the Project incorporates a comprehensive Stormwater Pollution Prevention Plan prepared in accordance with the requirements of the SPDES General Permit, detailed erosion and sediment control measures, phased construction practices, temporary and permanent stabilization requirements, post-construction stormwater management practices, and inspection and maintenance procedures specifically intended to prevent adverse impacts to soil, water resources, and downstream properties.

Equally significant, the administrative record reflects that these engineering documents were independently reviewed by the Town Engineer, revised in response to his comments, and ultimately accepted as satisfying the engineering concerns raised during the review process. Those revised

engineering documents now form part of the Project as proposed and constitute a substantial basis for the Board's Part 3 determination.

The administrative record identifies no remaining engineering deficiency, no unresolved technical disagreement, and no factual basis demonstrating that the incorporated erosion and stormwater controls will be inadequate to prevent significant adverse environmental impacts. Nor does the record identify additional engineering information necessary to determine whether this identified Potential Impact rises to the level of significance contemplated by SEQRA.

Accordingly, while the Board identified this issue as a Potential Impact for purposes of Part 3, the existing administrative record does not demonstrate that the Project as proposed may result in significant adverse environmental impacts relating to erosion, sedimentation, or stormwater management requiring preparation of an Environmental Impact Statement.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record does not demonstrate that the Project as proposed may result in a significant adverse environmental impact because of soil erosion.

The administrative record establishes that erosion has been comprehensively evaluated through the SWPPP process and that the Project incorporates engineering controls, avoidance measures, mitigation, and construction practices specifically intended to prevent or minimize erosion and sediment transport. The Town Engineer reviewed those measures, requested revisions during the review process, and ultimately advised that he had no remaining concerns regarding their adequacy.

Accordingly, while the Board identified soil erosion as an issue warranting further evaluation during Part 2, the existing administrative record does not demonstrate that this identified issue, when evaluated in accordance with the Part 3 significance analysis described in the FEAF Workbook, may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

3. IMPACTS ON SURFACE WATER

3(d) –The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body.

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, Question 3(d), which addresses whether the proposed action may substantially affect federally protected wetlands or State-regulated freshwater wetlands.

For purposes of Part 3, however, the relevant inquiry is not whether wetlands exist on the Property. The existence of wetlands has been recognized and documented during the review process. Rather, the issue is whether the Project as proposed may result in a significant adverse environmental impact to those wetlands.

2. Existing Administrative Record

The administrative record contains extensive information concerning wetlands on the Property.

A wetland delineation was completed as part of the Project review. The New York State Department of Environmental Conservation has issued a positive jurisdictional determination identifying regulated wetlands on the Property. In addition, the United States Army Corps of Engineers issued a Preliminary Jurisdictional Determination concurring with the wetland delineation prepared for the Project.

Following completion of the wetland delineation, the Project was revised to avoid all DEC-regulated wetlands and the associated 100-foot adjacent buffer areas. The administrative record further demonstrates that no Project components are proposed within mapped wetlands or their regulated buffers.

3. Project Design, Avoidance Measures, and Mitigation

Protection of wetlands has been achieved principally through *Project avoidance*, rather than mitigation.

The Project layout was specifically revised to eliminate disturbance within regulated wetlands and their adjacent areas. Consequently, no direct wetland impacts are proposed.

The Project further incorporates a revised SWPPP, erosion and sediment control measures, and construction practices intended to prevent sediment transport and protect adjacent environmental resources during construction.

Accordingly, the administrative record demonstrates that both Project design and construction controls were developed specifically to avoid or minimize any potential impacts to wetlands.

4. Part 3 Significance Analysis

The FEAF Workbook explains that Part 3 requires the Planning Board to determine whether the Potential Impact identified during Part 2, when evaluated in light of the Project as proposed, the technical information contained in the administrative record, and the Project's avoidance measures, engineering controls, and mitigation, may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

The relevant inquiry is therefore not whether regulated freshwater wetlands constitute environmentally important resources. They unquestionably do. Rather, the question presented by Part 3 is whether the existing administrative record demonstrates that the Project as proposed may result in a

significant adverse environmental impact to those wetlands after consideration of the Project's design and the avoidance measures incorporated into the Project.

Searching the administrative record there is no evidence to suggest that the Project will result in significant impact to wetlands. The record establishes that the Project was specifically redesigned to avoid all NYSDEC-regulated wetlands and their adjacent buffer areas. The preliminary jurisdictional determination issued by the U.S. Army Corps of Engineers likewise confirms the location of federally regulated wetlands, permitting those resources to be incorporated into the Project design and avoided. Those avoidance measures are not proposed future mitigation; they are integral components of the Project as proposed that define the location and extent of Project disturbance.

The administrative record identifies no factual or technical basis demonstrating that the wetlands the Project has been designed to avoid may nevertheless experience significant adverse environmental impacts. Nor does it identify the environmental mechanism by which the Project, as redesigned, would significantly alter the wetlands' physical characteristics, ecological functions, hydrology, or water quality. Likewise, the record contains no agency determination concluding that the Project's avoidance measures are inadequate to protect those resources.

Accordingly, while the Board identified this issue as a Potential Impact for purposes of Part 3, the existing administrative record does not demonstrate that the Project as proposed may result in significant adverse impacts to regulated freshwater wetlands requiring preparation of an Environmental Impact Statement.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record does not demonstrate that the Project as proposed may result in a significant adverse environmental impact to regulated wetlands.

The administrative record establishes the presence of wetlands on the Property while also demonstrating that the Project was specifically redesigned to avoid those wetlands and their regulated adjacent areas. The record further demonstrates that the Project incorporates engineering controls intended to prevent indirect impacts during construction.

Accordingly, while the Board identified wetlands as an issue warranting further evaluation during Part 2, the existing administrative record does not demonstrate that this identified issue, when evaluated in accordance with the Part 3 significance analysis described in the FEAF Workbook, may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

3. IMPACT ON SURFACE WATER

3(e) – The proposed action may create a hazard to environmental resources or human health from flooding.

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue

may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, Question 3(e), concerning the potential for the proposed action to adversely affect regulated wetlands or the environmental functions associated with those resources.

For purposes of Part 3, however, the relevant inquiry is not whether wetlands perform important ecological functions. That proposition is undisputed. Rather, the issue before the Board is whether the Project as proposed may substantially impair those functions so as to result in a significant adverse environmental impact.

2. Existing Administrative Record

The administrative record contains extensive information concerning regulated wetlands and associated environmental resources located on the Property.

Wetland delineations were completed during the SEQRA review process and subsequently confirmed through jurisdictional determinations by both the New York State Department of Environmental Conservation and the United States Army Corps of Engineers. Following completion of those investigations, the Project was redesigned to avoid all DEC-regulated wetlands and their associated 100-foot adjacent areas. As revised, no Project components are proposed within regulated wetlands or their regulated adjacent areas.

The administrative record further contains a revised Stormwater Pollution Prevention Plan ("SWPPP"), erosion and sediment control measures, construction sequencing requirements, and stabilization practices specifically intended to prevent indirect impacts to adjacent environmental resources during construction.

3. Project Design, Avoidance Measures, and Mitigation

Protection of regulated wetlands has been accomplished principally through Project redesign and avoidance, rather than reliance upon post-impact mitigation.

The Project layout was specifically modified after completion of the wetland delineation to eliminate disturbance within regulated wetlands and their adjacent areas. Consequently, the ecological functions performed by those wetlands—including wildlife habitat, groundwater recharge, flood attenuation, and water quality protection—remain associated with undisturbed wetland systems.

The Project further incorporates engineering controls, erosion and sediment control measures, and stormwater management practices specifically intended to prevent indirect impacts during construction.

Accordingly, the administrative record demonstrates that both Project design and construction practices were specifically developed to protect the identified wetland resources.

4. Part 3 Significance Analysis

The FEAF Workbook directs the reviewing agency to evaluate the magnitude and importance of each identified Potential Impact in light of the Project as proposed, including project modifications, avoidance measures, mitigation, and the technical information contained within the administrative record.

Applying that framework here, the Board identified regulated wetlands as warranting additional evaluation during Part 3. The relevant inquiry therefore becomes whether the existing administrative record demonstrates that the Project as proposed may nevertheless substantially impair the environmental functions performed by those wetlands.

The administrative record demonstrates that the Project was redesigned specifically to avoid all regulated wetlands and their associated adjacent areas. Unlike projects that depend primarily upon compensatory mitigation following disturbance, the record here demonstrates that the protected environmental resource itself has been avoided through Project redesign. That redesign constitutes an integral component of the Project as proposed and therefore must be considered in evaluating significance.

Where avoidance has been accomplished through Project redesign, the remaining Part 3 inquiry becomes whether the administrative record identifies a factual or technical basis demonstrating that significant adverse impacts to wetland functions nevertheless remain.

The administrative record identifies no such basis. It does not identify any Project activity that would directly disturb regulated wetlands or their adjacent areas. It does not identify the environmental mechanism through which significant indirect impacts would occur notwithstanding complete wetland avoidance. Nor does it contain technical evidence demonstrating that the revised SWPPP, erosion and sediment control measures, construction sequencing, stabilization practices, and other engineering controls incorporated into the Project would be insufficient to avoid or minimize potential indirect impacts below the level of significance.

The Workbook recognizes that avoidance of environmentally sensitive resources represents the most effective means of preventing environmental impacts. Here, the administrative record demonstrates that avoidance was not merely proposed but incorporated into the Project through redesign. Nothing contained within the administrative record identifies a factual or technical basis upon which the Board could reasonably conclude that the Project as proposed may substantially impair the environmental functions of regulated wetlands notwithstanding the complete avoidance measures incorporated into the Project.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record does not demonstrate that the Project as proposed may result in a significant adverse environmental impact to the ecological functions of regulated wetlands.

Rather, the administrative record demonstrates that protection of those resources has been achieved principally through Project redesign and avoidance, supplemented by engineering controls intended to prevent indirect impacts during construction. Nothing contained within the existing technical record demonstrates that the Project, as proposed, may substantially impair wetland functions or otherwise result in significant adverse environmental impacts requiring preparation of an Environmental Impact Statement.

3(h) – The proposed action may cause soil erosion., or otherwise create a source of stormeater discharge that may lead to silation or degradation of receiving water bodies.

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, 3(h), concerning the potential for the proposed action to adversely affect surface waters or existing drainage patterns.

For purposes of Part 3, however, the relevant inquiry is not whether construction activities have the potential to affect stormwater runoff or surface hydrology. Rather, the issue before the Board is whether the Project as proposed, after consideration of the Project's design, engineering controls, avoidance measures, mitigation commitments, and technical analyses contained within the administrative record, may result in a significant adverse environmental impact to those resources.

2. Existing Administrative Record

The administrative record demonstrates that potential impacts to surface waters and site hydrology have been the subject of extensive engineering review throughout the SEQRA process.

The Project incorporates a comprehensive Stormwater Pollution Prevention Plan prepared in accordance with the requirements of the SPDES General Permit. That plan addresses temporary and permanent stormwater management practices, erosion and sediment controls, construction sequencing, stabilization requirements, inspection protocols, and post-construction stormwater management measures specifically intended to protect downstream water resources and maintain existing drainage characteristics.

During the SEQRA review, the Town Engineer conducted an independent review of the SWPPP and erosion and sediment control plan, requested revisions to those materials, and ultimately advised both the Applicant and the Planning Board that his concerns had been satisfactorily addressed. Those revised engineering documents therefore form part of the Project as proposed and the administrative record now before the Board.

3. Project Design, Avoidance Measures, and Mitigation

The Project incorporates numerous engineering measures specifically intended to avoid or minimize impacts to surface waters and existing hydrologic conditions.

Those measures include the revised SWPPP, temporary and permanent erosion and sediment controls, stabilized construction entrances, staged construction sequencing, prompt stabilization of disturbed areas, permanent vegetative cover, stormwater management practices, and ongoing inspection and maintenance requirements.

Collectively, those engineering controls were developed specifically to prevent sediment transport, protect water quality, and maintain existing drainage characteristics during both construction and operation of the Project.

4. Part 3 Significance Analysis

The FEAF Workbook directs the reviewing agency to evaluate the magnitude and importance of each identified Potential Impact in light of the Project as proposed, including project modifications, avoidance measures, mitigation, and the technical information contained within the administrative record.

Applying that framework here, the Board identified potential impacts to surface waters and site hydrology as warranting further evaluation during Part 3. The question now before the Board is whether the existing administrative record demonstrates that the Project as proposed may nevertheless result in significant adverse environmental impacts to those resources.

The administrative record demonstrates that those issues have already been the subject of detailed engineering analyses prepared specifically to evaluate stormwater management, erosion, sediment transport, and post-construction drainage. Those analyses were independently reviewed by the Town Engineer, revised in response to his comments, and ultimately accepted as technically adequate. Accordingly, the administrative record presently contains substantial technical information directly addressing the environmental concern identified by the Board.

Nothing contained within the administrative record demonstrates that the Project as proposed may nevertheless produce significant adverse impacts to surface waters or site hydrology following implementation of those added and enhanced engineering controls accepted by the Town engineer. The record identifies no remaining engineering deficiency, no unresolved technical disagreement, and no evidence demonstrating that the revised stormwater management practices will be incapable of maintaining existing drainage conditions or protecting downstream water resources.

The Workbook recognizes that Part 3 is intended to evaluate significance based upon the information already developed during environmental review. Here, the administrative record already contains detailed technical analyses prepared specifically to evaluate the environmental concern identified by the Board. The record therefore provides the Board with the information necessary to determine whether significant adverse environmental impacts may occur. Nothing contained within that technical record identifies additional engineering information necessary to evaluate the significance of this identified Potential Impact.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record does not demonstrate that the Project as proposed may result in significant adverse environmental impacts to surface waters or existing drainage characteristics.

Rather, the record demonstrates that these issues have been extensively evaluated through detailed engineering analyses, revised in response to the Town Engineer's comments, incorporated into *and constitute the Project as proposed.* The administrative record therefore provides the Board with a sufficient technical basis to conclude that the identified Potential Impact does not rise to the level of a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

3(i) – The proposed action may affect the water quality of any water bodies within or downstream of the proposed action.

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, 3(i), concerning the potential for the proposed action to adversely affect the movement, quantity, or quality of surface water or existing hydrologic conditions.

For purposes of Part 3, however, the relevant inquiry is not whether construction activities temporarily interact with stormwater or site hydrology. Rather, the issue before the Board is whether the Project as proposed may permanently alter existing hydrologic conditions so as to result in a significant adverse environmental impact.

2. Existing Administrative Record

The administrative record demonstrates that hydrologic conditions on the Property have been evaluated through multiple technical studies prepared by the Applicant and reviewed by the Town engineer during the SEQRA review process. Those studies include the revised Stormwater Pollution Prevention Plan, erosion and sediment control plans, drainage analyses, wetland delineations, engineering reports.

The Project was redesigned during the SEQRA review to avoid regulated wetlands and associated adjacent areas, thereby preserving those portions of the Property that naturally influence groundwater recharge, flood storage, and surface water movement.

The Town Engineer reviewed the Applicant's engineering submissions, required revisions where appropriate, and, upon inquiry from the Planning Board advised that his concerns regarding stormwater management and erosion and sediment controls had been satisfactorily resolved.

3. Project Design, Avoidance Measures, and Mitigation

The Project incorporates multiple design features intended to maintain existing hydrologic conditions to the maximum extent practicable.

Those measures include preservation of wetlands and adjacent areas through Project redesign, implementation of the revised SWPPP, permanent vegetative stabilization following construction, erosion and sediment controls, stormwater management practices, and construction sequencing intended to minimize disturbance during active construction.

Collectively, those measures are intended to preserve existing drainage characteristics while minimizing temporary construction-related effects.

4. Part 3 Significance Analysis

The FEAF Workbook directs reviewing agencies to evaluate the magnitude and importance of each identified Potential Impact after considering the Project as proposed, including project modifications, avoidance measures, mitigation, and the technical information contained within the administrative record.

Applying that framework here, the Board identified potential impacts to site hydrology as warranting additional evaluation during Part 3. The relevant inquiry therefore becomes whether the existing administrative record demonstrates that the Project as proposed may significantly alter existing hydrologic conditions.

The administrative record demonstrates that preservation of existing hydrologic conditions has been a central objective of the Project's design, redesign after receiving the NYDEC's jurisdictional determination and the Town engineer's evaluation and recommendations at various stages prior to the Board conducting its FEAF Part 2 analysis. Wetlands and adjacent areas have been avoided through Project redesign, stormwater management practices have been revised during the SEQRA review process, and erosion and sediment controls have been incorporated to minimize temporary construction-related disturbances. Those measures form part of the Project as proposed and therefore must be considered in evaluating significance.

The administrative record does not demonstrate, however, that the Project as proposed may nevertheless significantly alter existing hydrologic conditions. It identifies no engineering analysis concluding that post-construction runoff characteristics will produce significant downstream impacts. It identifies no unresolved deficiencies in the revised stormwater management plan. Nor does it contain technical evidence demonstrating that the Project will substantially alter groundwater recharge, drainage patterns, or other hydrologic functions following implementation of the Project's incorporated engineering controls.

The Workbook further recognizes that significance should be evaluated in light of the complete administrative record developed during environmental review. Here, the record already contains the technical information necessary to evaluate hydrologic impacts. Nothing contained within that record identifies a remaining technical uncertainty demonstrating that the Project as proposed may significantly alter existing hydrologic conditions or that additional environmental review is necessary to evaluate this identified Potential Impact.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record does not demonstrate that the Project as proposed may result in significant adverse impacts to existing hydrologic conditions.

Rather, the administrative record demonstrates that hydrologic impacts have been comprehensively evaluated through engineering analyses, Project redesign, wetland avoidance, stormwater management practices, and erosion and sediment controls that were revised in response to comments from the Town Engineer and incorporated into the Project as proposed.

Accordingly, while the Board identified hydrology as a Potential Impact warranting additional evaluation during Part 2, the existing administrative record does not demonstrate that the Project as proposed may result in a significant adver se environmental impact requiring preparation of an Environmental Impact Statement.

7. IMPACT ON PLANTS AND ANIMALS

7(g) – The proposed action may substantially interfere with nesting/breeding, foraging over over-wintering habitat for the predominant species that occupy or use the project site.

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, 7(g), concerning the potential for the proposed action to adversely affect plant or animal species or ecological resources.

For purposes of Part 3, however, the relevant inquiry is not whether wildlife is present on the Property. The existence of common plant and animal species is expected throughout much of rural Broome County. Rather, the issue is whether the Project as proposed may result in a significant adverse environmental impact to the particular biological resources identified in the administrative record.

2. Existing Administrative Record

The administrative record demonstrates that the Applicant completed the biological resource assessment required by the FEAF.

Part 1, Section E.2.m identifies the predominant plant and animal species known or expected to occur on the Property. In addition, Part 1, Sections E.2.n through E.2.q indicate that the Property does not contain threatened or endangered species, species of special concern, designated significant natural communities, or other specially protected biological resources identified in those portions of the FEAF.

Significantly, the Board answered the threshold question associated with Impact Category 7 in the negative yet nevertheless proceeded to evaluate the individual subparts and identified Potential Impacts under Questions 7(g) and 7(h).

The administrative record, however, does not identify any particular predominant species, ecological community, or biological resource that the Board concluded would be significantly affected by the Project as proposed.

3. Project Design, Avoidance Measures, and Mitigation

The Project has been designed to minimize unnecessary disturbance while preserving substantial portions of existing vegetation throughout the Property.

Although portions of the Property will be cleared to accommodate the solar arrays, significant areas of existing vegetation will remain undisturbed. Disturbed portions of the Property will be stabilized and revegetated in accordance with the Project plans and the revised SWPPP.

The administrative record further reflects that no state or federal wildlife agency identified protected species or sensitive biological resources requiring additional avoidance or mitigation measures.

4. Part 3 Significance Analysis

The FEAF Workbook directs the reviewing agency to evaluate identified Potential Impacts in light of the Project as proposed, the biological resources actually present, the magnitude of any anticipated effects, and the information contained within the administrative record.

Applying that framework here, the Board identified a Potential Impact concerning biological resources. The relevant inquiry therefore becomes whether the administrative record demonstrates that the Project as proposed may result in a significant adverse environmental impact to identifiable plant or animal species or ecological resources.

The administrative record does not identify the particular species, ecological community, or biological resource that may be significantly affected. Nor does it identify the environmental mechanism through which the Project would produce significant adverse impacts to those resources. While the record acknowledges the presence of common plant and animal species, it does not contain technical evidence demonstrating that the Project as proposed would significantly affect those species beyond the temporary and localized habitat changes ordinarily associated with construction on privately owned land.

The FEAF itself distinguishes between the presence of common biological resources and the presence of specially protected or ecologically significant resources. Here, the administrative record reflects that the relevant portions of Part 1 concerning threatened and endangered species, species of special concern, significant natural communities, and similar protected biological resources were answered in the negative. Under these circumstances, the existing administrative record does not identify the factual basis demonstrating that the **Project as proposed** may nevertheless result in a significant adverse environmental impact to biological resources.

Nothing contained within the administrative record identifies the biological resource that is alleged to be significantly affected, the magnitude of that effect, or the technical basis supporting such a conclusion.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record does not demonstrate that the Project as proposed may result in a significant adverse environmental impact to plant or animal resources.

Rather, the record identifies common biological resources expected within the surrounding landscape while identifying no threatened or endangered species, no designated significant natural communities, and no other specially protected biological resources requiring additional environmental review. The administrative record likewise identifies no specific predominant species or ecological resource that may be significantly affected by the Project as proposed.

Accordingly, while the Board identified this issue as warranting additional evaluation during Part 2, the existing administrative record does not demonstrate that the identified Potential Impact may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

7(h) – The proposed action requires the conversion of more than 10 acres of forest, grassland or any other regionally or locally important habitat.

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, 7(h), concerning the potential for the proposed action to adversely affect habitat considered locally important.

For purposes of Part 3, however, the relevant inquiry is not whether portions of the Property presently contain wooded areas or wildlife habitat. Rather, the issue is whether the Project as proposed may significantly affect habitat identified within the administrative record as being *locally important.*

2. Existing Administrative Record

The administrative record demonstrates that the Applicant evaluated the biological resources present on the Property through completion of the FEAF and supporting environmental studies.

Part 1, Sections E.2.n through E.2.q identify no threatened or endangered species, no species of special concern, no designated significant natural communities, and no other specially protected biological resources associated with the Property. Likewise, the threshold question for Impact Category 7 was answered in the negative.

The administrative record further reflects that approximately sixty percent of the existing forested area on the Property will remain following construction of the Project.

Although the Board identified a Potential Impact under 7(h), the administrative record does not identify the habitat it considers to be locally important (a requirement of 7(h) itself), the ecological characteristics that distinguish that habitat from other forested land within the surrounding area, or the factual basis supporting such a conclusion.

3. Project Design, Avoidance Measures, and Mitigation

The Project has been designed to minimize unnecessary disturbance while preserving substantial areas of existing vegetation throughout the Property.

Areas not required for construction will remain undisturbed. Disturbed portions of the Property will be stabilized and revegetated following construction in accordance with the Project plans and the revised and approved Stormwater Pollution Prevention Plan and related controls.

The administrative record further demonstrates that no state or federal resource agency identified locally important habitat requiring additional avoidance measures, special permitting, or Project redesign.

4. Part 3 Significance Analysis

The FEAF Workbook directs the reviewing agency to evaluate the magnitude and importance of each identified Potential Impact in light of the Project as proposed, the characteristics of the affected resource, and the technical information contained within the administrative record.

Applying that framework here, the Board identified a Potential Impact relating to locally important habitat. The relevant inquiry therefore becomes whether the administrative record demonstrates that the Project as proposed may significantly affect habitat that is shown by the record to possess locally important ecological characteristics.

The administrative record contains no such demonstration.

While the record reflects that portions of the Property will be cleared during construction, it does not identify the habitat alleged to be locally important, the ecological function performed by that habitat,

or the basis upon which the Board concluded that the affected habitat possesses local importance within the meaning of the FEAF.

Nor does the administrative record identify the environmental mechanism through which the proposed clearing would produce significant adverse ecological consequences after considering the substantial remaining forest cover, the areas preserved from disturbance, and the absence of specially protected biological resources identified elsewhere in the record.

The Workbook recognizes that significance depends upon the characteristics of the affected resource rather than the mere existence of vegetation or wooded land. Consequently, the fact that forest clearing will occur does not, standing alone, demonstrate that the Project may significantly affect locally important habitat. Nothing contained within the administrative record identifies the habitat resource that is alleged to possess local importance, explains why that habitat is ecologically significant, or demonstrates that the Project as proposed may significantly impair its ecological function.

This conclusion is likewise consistent with the Applicant's responses to Part 1, Sections E.2.m through E.2.q, the Board's negative response to the threshold question for Impact Category 7, and the absence of any determination by state or federal resource agencies identifying locally important habitat requiring additional environmental review.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record does not demonstrate that the Project as proposed may result in a significant adverse environmental impact to habitat shown by the record to be locally important.

Rather, the administrative record demonstrates that substantial forested areas will remain following construction, identifies no threatened or endangered species, no designated significant natural communities, and no other specially protected biological resources, and does not identify any habitat possessing locally important ecological characteristics that may be significantly affected by the Project as proposed.

Accordingly, while the Board identified this issue as warranting additional evaluation during Part 2, the existing administrative record does not demonstrate that the identified Potential Impact may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

17. CONSISTENCY WITH COMMUNITY PLAN

17(a) – The proposed action's land use components may be different from, or in sharp contract to, current surrounding land use patterns.

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue

may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, Question 17(a), concerning the consistency of the proposed action with existing land use plans or zoning regulations.

For purposes of Part 3, however, the relevant inquiry is not whether the Project introduces a new land use to the Property. Rather, the issue is whether the Project as proposed may result in a significant adverse environmental impact because it is materially inconsistent with the Town's adopted land use policies or regulatory framework.

2. Existing Administrative Record

The administrative record demonstrates that the Property is located within a zoning district in which utility-scale solar energy systems are expressly permitted upon issuance of a Special Use Permit.

The Project has therefore been reviewed by the Planning Board under the standards established by the Town's Zoning Law for that permitted land use.

The FEAF Workbook on pages 253 and 254 recognizes that determining whether a proposed action is consistent with adopted land use plans and zoning provides important context for evaluating land use impacts because activities that are consistent with an adopted plan are less likely to result in impacts to community character or to the environment.

The administrative record identifies no adopted comprehensive plan, zoning provision, or formally adopted land use policy with which the Project is inconsistent.

3. Project Design, Avoidance Measures, and Mitigation

Throughout the review process the Project has been modified in response to comments received from the Planning Board, the Town Engineer, involved agencies, and the public.

Those modifications include revisions to the Project layout, avoidance of regulated wetlands and adjacent areas, enhanced screening, revisions to the Stormwater Pollution Prevention Plan, and other design changes incorporated into the Project as proposed.

Accordingly, the Project before the Board reflects the culmination of the SEQRA review process and incorporates the modifications developed during that review.

4. Part 3 Significance Analysis

The FEAF Workbook directs reviewing agencies to evaluate the magnitude and importance of identified Potential Impacts in light of the Project as proposed, the characteristics of the affected resource, and the information contained within the administrative record.

Applying that framework here, the Board identified land use consistency as warranting additional evaluation during Part 3. The relevant inquiry therefore becomes whether the administrative record demonstrates that the Project as proposed may result in a significant adverse environmental impact because it is inconsistent with adopted land use policy.

The administrative record does not support such a conclusion.

The Project is proposed on property where utility-scale solar facilities are expressly authorized by the Town's Zoning Law, subject to Planning Board review and issuance of a Special Use Permit. The administrative record identifies no adopted planning document, zoning provision, or legislative policy indicating that the proposed land use is incompatible with the Property or surrounding area.

While consistency with adopted zoning and land use planning is an appropriate consideration under SEQRA, the administrative record demonstrates that the Project is proposed within a zoning district where utility-scale solar energy systems are expressly permitted upon issuance of a Special Use Permit. The administrative record identifies no adopted comprehensive plan, zoning provision, or other formally adopted land use policy with which the Project is inconsistent.

Nothing contained within the administrative record demonstrates that the Project as proposed is materially inconsistent with the Town's adopted land use framework or that any such inconsistency may result in a significant adverse environmental impact.

The Board did not identify significant visual, traffic, or noise impacts that would independently support a finding that the Project is incompatible with surrounding land uses. Considered together, the administrative record does not demonstrate that the Project may significantly alter existing land use patterns or the manner in which surrounding properties may reasonably be used and enjoyed.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record does not demonstrate that the Project as proposed may result in a significant adverse environmental impact because of inconsistency with existing land use.

Rather, the administrative record demonstrates that the Project is proposed within a zoning district where utility-scale solar energy systems are expressly permitted, has been reviewed under the standards established by the Town's Zoning Law, and has been modified throughout the SEQRA review process to address environmental concerns identified during that review.

Accordingly, while the Board identified land use consistency as a Potential Impact warranting further evaluation during Part 2, the existing administrative record does not demonstrate that the Project as proposed may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

18. IMPACT ON COMMUNITY CHARACTER

18(e) – The proposed action is inconsistent with the predominant architectural scale and character.

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, 18(e), concerning the potential for the proposed action to be inconsistent with the existing scale or character of the surrounding neighborhood.

For purposes of Part 3, however, the relevant inquiry is not whether the Project will introduce a new visual element into the landscape. Virtually every development project alters a site in some respect. Rather, the issue before the Board is whether the Project as proposed may result in a significant adverse environmental impact because it materially alters the established character of the surrounding community.

2. Existing Administrative Record

The administrative record demonstrates that community character and visual impacts have been extensively evaluated throughout the SEQRA review process.

At the Board's request, the Applicant prepared visual simulations from viewpoints selected by the Planning Board as those most likely to experience Project visibility. Those simulations demonstrate that, following implementation of the proposed screening and preservation of existing vegetation, the solar arrays will be substantially screened from surrounding public viewpoints. The administrative record further demonstrates that, with the exception of limited utility infrastructure visible from a small number of locations, Project components will generally remain below approximately fifteen feet in height.

The administrative record likewise reflects the Board's determination that the Project will not result in significant traffic impacts or significant operational noise impacts.

3. Project Design, Avoidance Measures, and Mitigation

Throughout the review process, the Project has been modified to minimize potential effects upon surrounding properties.

Those modifications include preservation of existing vegetation, additional landscape screening, avoidance of environmentally sensitive resources, refinement of the Project layout, and continued limitation of the height of Project components.

Collectively, those design modifications were incorporated specifically to minimize potential visual effects and maintain compatibility with surrounding land uses.

4. Part 3 Significance Analysis

The FEAF Workbook directs the reviewing agency to evaluate the magnitude and importance of identified Potential Impacts after considering the Project as proposed, including project modifications, avoidance measures, mitigation, and the information contained within the administrative record.

Applying that framework here, the Board identified community character as warranting further evaluation during Part 3. The relevant inquiry therefore becomes whether the administrative record demonstrates that the Project as proposed may significantly alter the existing character of the surrounding community.

The administrative record does not demonstrate such an impact.

The Board's own evaluation concluded that the Project would not result in significant visual impacts, significant traffic impacts, or significant operational noise impacts (no or small impact determined for 9, 13 and 15 of FEAF Part 2). Those are among the principal environmental factors ordinarily considered in evaluating whether a proposed action may alter community character. The Project has likewise been redesigned to preserve existing vegetation, incorporate additional screening, and minimize the visibility of Project components from surrounding properties.

Under these circumstances, the administrative record does not identify the environmental mechanism through which the Project may nevertheless significantly alter neighborhood character. While the presence of solar panels necessarily differs from existing vegetation, the mere introduction of a different land use or visual element does not itself establish a significant adverse environmental impact. Rather, the question under Part 3 is whether the Project as proposed will produce environmental effects of sufficient magnitude and importance to significantly alter the character of the surrounding community.

Nothing contained within the administrative record identifies the factual or technical basis demonstrating that the Project as proposed, after consideration of the incorporated screening, preservation of vegetation, Project redesign, and the Board's findings regarding visual, traffic, and noise impacts, may nevertheless significantly alter neighborhood character.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record does not demonstrate that the Project as proposed may result in a significant adverse environmental impact to community character.

Rather, the administrative record demonstrates that the Project has been extensively evaluated through visual analyses requested by the Planning Board, modified to preserve existing vegetation and incorporate additional screening, and found by the Board not to result in significant visual, traffic, or operational noise impacts. The existing record therefore does not identify a factual or technical basis demonstrating that the Project may nevertheless significantly alter the character of the surrounding community.

Accordingly, while the Board identified this issue as a Potential Impact warranting additional evaluation during Part 2, the existing administrative record does not demonstrate that the Project as proposed may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

18(f) – Proposed action is inconsistent with the character of the existing natural landscape.

For purpose of the following discussion only, the Applicant accepts the Board's Part 2 determination that this issue warranted further evaluation and addresses only the distinct question presented in Part 3—whether the existing administrative record demonstrates that the identified issue may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Statement.

1. Issue Identified in Part 2

The Board identified a Potential Impact with respect to FEAF Part 2, 18(f), concerning the overall environmental consequences of the proposed action.

Unlike the preceding questions, however, Question 18(f) does not evaluate a single environmental resource or impact category. Rather, it requires the Board to consider the Project as proposed in its entirety and determine whether the administrative record demonstrates that the identified Potential Impacts, individually or collectively, may result in one or more significant adverse environmental impacts. Accordingly, 18(f) represents the culmination of the Part 3 significance determination.

2. Existing Administrative Record

The administrative record developed during the SEQRA review process is extensive.

It includes detailed engineering studies, wetland delineations, jurisdictional determinations, a revised Stormwater Pollution Prevention Plan, erosion and sediment control plans, biological resource evaluations, visual impact assessments prepared from viewpoints selected by the Planning Board, agency correspondence, Project revisions, and repeated review and ultimate approval by the Town Engineer and input from other involved agencies.

Throughout the review process, the Applicant modified the Project in response to comments received from the Planning Board, the Town Engineer, involved agencies, and the public. Those modifications—including wetland avoidance, revisions to the SWPPP, enhanced erosion and sediment controls, additional screening, and other Project refinements—have been incorporated into the Project as proposed.

The administrative record therefore reflects not only the characteristics of the Property, but the evolution of the Project throughout the environmental review process.

3. Project Design, Avoidance Measures, and Mitigation

The Project as proposed incorporates numerous measures specifically intended to avoid, minimize, or mitigate potential environmental impacts identified during the SEQRA review.

Among other things, the Project has been redesigned to avoid regulated wetlands and adjacent areas; incorporates a revised SWPPP and engineering controls reviewed by the Town Engineer; preserves substantial areas of existing vegetation; limits the height of Project components; incorporates additional landscape screening; minimizes earth disturbance through Project design; and stabilizes disturbed areas following construction.

Those measures are not future commitments. They are integral components of the Project as proposed and therefore must be considered in evaluating significance under Part 3.

4. Part 3 Significance Analysis

The FEAF Workbook explains that Part 3 requires the reviewing agency to evaluate each identified Potential Impact in light of the Project as proposed, project modifications, avoidance measures, mitigation, and the information contained within the administrative record, and to determine whether the proposed action may result in one or more significant adverse environmental impacts.

The administrative record demonstrates that each of the Potential Impacts identified by the Board has been evaluated individually throughout this submission.

Concerning land resources, the record identifies physical site characteristics but does not demonstrate that those characteristics may result in significant adverse environmental impacts after considering the Project's design, construction methods, engineering controls, and incorporated mitigation measures.

With respect to water resources, the record demonstrates that regulated wetlands have been avoided through Project redesign and that stormwater management, erosion control, and hydrologic impacts have been extensively evaluated through engineering analyses reviewed and approved by the Town Engineer and incorporated into the Project as proposed.

In the case of biological resources, the record identifies no threatened or endangered species, no designated significant natural communities, no other specially protected ecological resources, and no identified factual basis demonstrating that the Project may significantly affect predominant species or habitat shown by the administrative record to possess local ecological importance.

Turning to land use and community character, the record confirms that the Project is proposed in accordance with the Town's adopted zoning framework and that the Board identified no significant visual, traffic, or operational noise impacts that would independently support a finding of significant adverse impacts upon the surrounding community.

Accordingly, the administrative record demonstrates that the identified Potential Impacts have been evaluated through detailed technical studies, Project redesign, avoidance measures, engineering controls, mitigation, and agency review. Nothing contained within the administrative record demonstrates that the

identified Potential Impacts, whether considered individually or cumulatively, may result in one or more significant adverse environmental impacts requiring preparation of an Environmental Impact Statement.

Part 3 requires the Board to determine significance based upon the Project as proposed and the administrative record developed during the environmental review process. Having evaluated each identified Potential Impact within that framework, the existing administrative record does not identify a factual or technical basis demonstrating that the Project may result in significant adverse environmental impacts either individually or collectively.

5. Applicant's Position

The Applicant respectfully submits that the existing administrative record provides the Board with a comprehensive factual and technical basis upon which to complete its Part 3 significance determination.

That record reflects extensive environmental review, repeated Project modifications, detailed engineering analyses, avoidance of environmentally sensitive resources, incorporation of mitigation and engineering controls into the Project as proposed, and consideration of each Potential Impact identified by the Board during Part 2.

For the reasons discussed throughout this submission, the Applicant submits that the existing administrative record does not demonstrate that the Project as proposed may result in one or more significant adverse environmental impacts, either individually or cumulatively, requiring preparation of an Environmental Impact Statement.

CONCLUSION

As discussed throughout these comments, Part 2 and Part 3 perform fundamentally different functions within the SEQRA review process. Part 2 identifies environmental conditions or issues warranting additional evaluation. Part 3 requires the Planning Board to determine whether, after considering the Project as proposed, the Project modifications developed during the environmental review process, the avoidance measures incorporated into the Project, the mitigation and engineering controls, and the information contained within the administrative record, the identified Potential Impacts may result in one or more significant adverse environmental impacts requiring preparation of an Environmental Impact Statement.

The administrative record now before the Board is comprehensive. It includes detailed engineering analyses, wetland delineations and jurisdictional determinations, biological resource evaluations, visual impact assessments prepared from locations selected by the Planning Board, revised stormwater management plans, erosion and sediment control measures, agency correspondence, repeated Project revisions, and technical review by the Town Engineer and other involved agencies.

Throughout the SEQRA review process, the Applicant modified the Project in response to comments received from the Planning Board, its consultants, involved agencies, and the public. Consequently, the Project now before the Board is materially different from the Project originally submitted for review and incorporates numerous design modifications specifically intended to avoid, minimize, or mitigate the environmental concerns identified during the review process.

The Part 3 significance determination must therefore be based upon the Project as proposed, not the Project as originally conceived. Likewise, it must be based upon the administrative record as it presently exists, including the technical analyses, Project redesign, avoidance measures, mitigation commitments, engineering controls, and agency review that now form integral components of the proposed action. When viewed collectively, the administrative record demonstrates several consistent and recurring themes.

Concerning **land resources**, the record identifies physical site characteristics but does not establish that those characteristics, after consideration of the Project's design, construction methods, and engineering controls, may result in significant adverse environmental impacts.

Regarding **water resources**, the record demonstrates that regulated wetlands have been avoided through Project redesign and that potential impacts relating to erosion, stormwater management, surface waters, and site hydrology have been comprehensively evaluated through detailed engineering analyses that were revised during the review process and incorporated into the Project as proposed.

With respect to **biological resources**, the administrative record identifies no threatened or endangered species, no designated significant natural communities, no other specially protected ecological resources, and no factual or technical basis demonstrating that the Project as proposed may significantly affect identified predominant species or habitat shown by the record to possess local ecological importance.

Finally, when considering **land use and community character**, the administrative record demonstrates that the Project is proposed within a zoning district where utility-scale solar facilities are expressly permitted, has been reviewed under the standards established by the Town's Zoning Law, and was determined by the Board not to result in significant visual, traffic, or operational noise impacts. The record therefore does not identify the factual or technical basis demonstrating that the Project as proposed may nevertheless significantly alter the surrounding community.

Ultimately, the question before the Board is not whether environmental resources exist on or near the Property, nor whether construction of the Project will alter the Property in some respect. Those propositions are neither unusual nor disputed. The question presented by Part 3 is whether the existing administrative record, after consideration of the Project as proposed, demonstrates that one or more of the identified Potential Impacts may result in significant adverse environmental impacts requiring preparation of an Environmental Impact Statement.

Because the existing administrative record does not demonstrate that the Project as proposed may result in one or more significant adverse environmental impacts, Norbut Solar Farms submits that preparation of an Environmental Impact Statement is not warranted and that the Planning Board should conclude the FEAF Part 3 and the SEQRA process by issuing a Negative Declaration.

Respectfully,

Steve Saunders
Developer and Senior Counsel