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TOWN OF YORKTOWN

Via Hand Delivery & Electronic Mail

Hon. Richard Fon, Chairman
and the Members of the Town of Yorktown Planning Board
Albert A. Capellini Community & Cultural Center
1974 Commerce Street, Room 222
Yorktown Heights, NY 10598

**Re: Jacob Solar 2344 NY, LLC
Application for Site Plan & Special Permit Approvals
1805 Jacob Road, Yorktown, New York**

Dear Chairman Fon and Members of the Planning Board:

This firm represents Jacob Solar 2344 NY, LLC (“Freestone” or “Applicant”), the contract-lessee of an approximately 53-acre parcel located at 1805 Jacob Road (Tax Map ID 35.16-1-4) (“Property”). Freestone is seeking Site Plan and Special Permit approval to facilitate the development of a large-scale solar energy system on the Property to provide electrical power to the Yorktown community and its vicinity through a low-impact, renewable energy resource (“Project”).

The Applicant is providing the following responses to comments received at the Public Informational Hearing held on October 7th and November 4th. The responses are also provided to augment the SEQRA record, as your Board continues to assess whether the Project could result in any adverse impacts that can be quantified as significant. As summarized previously and below, we submit that the empirical data and other objective evidence in the record demonstrates that the Project could be constructed and operated without imposing adverse conditions upon the community that could be quantified as significant. We respectfully request placement on your Board’s January 27th meeting agenda to go through these items, as well as to continue the SEQRA review of the Project.

Enclosed are the following materials to facilitate your Board’s continued review:

- Jacob Road Solar Farm: Operations, Maintenance, and Sustainability Plan, prepared by Freestone Renewables, dated November 21, 2024;
- Project Decommissioning Plan, prepared by Freestone Renewables, dated January 2025;
- Wildlife Memorandum, prepared by LaBella Associates, dated January 9, 2025;

- Aerial of Site Disturbance and Surrounding Woodland Area; and
- Photographs of Similarly Situated Solar Developments.

Notably, the Applicant has not yet updated its visual analyses and line of sight studies. The Town Board is still evaluating potential revisions to the solar power generation and facilities ordinance. Since these revisions may affect the layout of the Project, the Applicant is waiting for the Town Board to complete its process before updating the visual impact studies. Given that a moratorium has already been in place for 11 months, and the latest version expires on March 31, 2025, we anticipate providing updated visual impact studies in the near future.

Policy Considerations: “Does Yorktown Need Solar Energy?”

Several members of the public questioned whether the Project would foster the Town’s development and sustainability goals, as well as whether there is capacity in the local electric grid to route energy generated by the Project to local homes. We respectfully submit that the answer to these questions is emphatically “yes.”

The Town has adopted various planning policies establishing its commitment to promoting green infrastructure and renewable energy for the community. The Project is entirely consistent with these policies, including the various zoning regulations permitting large scale solar development at the Property.

In addition, the Project would add approximately 3.125 MW/ac (6,220,000 kW/h) annually to the local electric grid, which would reduce the utility companies’ need to purchase electricity from plants located tens to hundreds of miles away (many of which emit carbon dioxide into the atmosphere). This is a tangible benefit of distributed community solar projects – it allows local homeowners to direct their utility providers to purchase electricity from local renewable sources, thereby reducing transmission costs that are typically passed onto the consumer. Here, 6,220,000 kW/hour is enough electricity to power approximately 550 homes¹ in the area to receive such benefits each year. This empirical evidence provides further support under SEQRA to determine the Project would result in a beneficial impact to the community.

Consistency with Public Policy and Goals

Determining whether a project would result in “a material conflict with a community’s current plans or goals as officially adopted” is a relevant factor for the Planning Board’s SEQRA

¹ According to the U.S. EIA’s 2020 Residential Energy Consumption Survey, the average household in New York State consumes approximately 10,483 kWh. See U.S. EIA, Detailed Household Site Electricity End-Use Consumption in the United States by State (June 2023), <https://www.eia.gov/consumption/residential/data/2020/state/pdf/ce5.3.st.pdf>. When the total annual energy production of the solar farm (6,220,000 kWh) is divided by the average household consumption, the resulting figure is approximately 593 homes. To be on the conservative side and account for fluctuations in energy use, Freestone rounded this figure down to 550 homes.

analysis. *See* 6 N.Y.C.R.R. § 617.7(c)(v). Here, the Project would further the Town’s express goals to encourage the development of renewable energy sources that will serve the community.

Specifically, the Town recognizes that “[t]he use of solar energy to provide electrical power for the needs of the Town’s residents and businesses is consistent with the Town of Yorktown’s commitment to green infrastructure and practices, and consistent with its goal of promoting long-term sustainability.” *See* Town of Yorktown Zoning Ordinance, § 300-81.4B(2).

Additionally, the Town enacted the solar regulations to:

advance and protect the public health, safety, and welfare of the Town of Yorktown, including: (a) Taking advantage of a safe, abundant, and nonpolluting energy resource; (b) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses; [] (c) Increasing employment and business development in the region by furthering the installation of solar energy systems; (d) Decreasing the use of fossil fuels, which reduces the carbon footprint of the Town, aids in energy independence of the Town and nation, and reduces polluting greenhouse gas emissions; [and] (e) Increasing resiliency of the energy grid during storm events and times of peak energy demand.

See id., § 300-81.4B(4).

As these policy statements confirm, solar power provides numerous *benefits* to the Town. Any quantification of land use and planning policy impacts under SEQRA, therefore, must start with the fact that the Town’s adopted plans and goals encapsulated in the Zoning Code recognize the benefits of introducing solar power to the local grid.

“Where Will This Power be Utilized?”

A related question raised during the public information sessions was whether the local grid was already at “capacity,” such that the electricity produced by the Project would not reach local homes. As one commentor posited, the Project would not produce local benefits because Consolidated Edison’s (“Con Ed”) grid already reaches its “peak load” from existing sources, and therefore, any electron produced by the Project would be re-routed to “down county communities or the City of New York.”

Initially, the Board should recognize the erroneous technical assumption underlying the theory that the 6,220,000 kW/hour of renewable energy produced by the Project annually would bypass Yorktown and only be delivered to 550 homes “down county.” The local electrical grid is not a closed system where all electricity is already produced and distributed locally. Rather, Con Ed purchases electricity from a variety of sources throughout the region, and then channels it into the local grid from the point of generation. The source of electricity can change based upon where Con Ed decides to purchase it.

According to the U.S. Energy Information Administration (“US EIA”), in 2022, approximately 58% of New York’s electricity generation came from natural gas producers² - none of which are located in the Town of Yorktown.³ To the contrary, most of this fossil fuel is produced by plants in upstate and western New York, or in neighboring states.⁴

The next two highest sources of energy in the state are hydropower (21%) and nuclear (21%). Again, there are no hydropower or nuclear power plants in Yorktown, or anywhere near it. Indeed, the closest source of nuclear power, Indian Point, was closed in 2021. This reduced the overall amount of nuclear power in the grid from 32% to 21%.⁵

What this means in Yorktown is that the vast majority of electricity in the local grid is currently produced at far away plants, many of which still rely on fossil fuels. The Project would be connected directly to Con Ed’s Buchanan network.⁶ The Buchanan network has a peak demand of 113 MW, while only 12.75MW is produced within the network.⁷ The remainder must be purchased from outside sources and transmitted through main transmission lines to the area. The local production is expected to reach only 34.30MW once approved distributed solar projects come online (not including the Project). Thus, even with the new solar development in the queue, Con Ed will need to purchase over 78MW from outside sources, and then pass any transmission costs onto the user.

By introducing 3.125 MW/ac of distributed community solar to the Buchanan network, Con Ed would be able to replace electricity in the grid currently purchased from far away plants, and distribute it directly to homes in Yorktown and the surrounding area. Again, this is a benefit of any distributed community solar development - supply costs passed onto the consumer should be reduced since there would be no need to build new utility infrastructure, or use long distance mains, to provide this electricity. Instead, through the community solar program,⁸ local homeowners can direct Con Ed to use electricity generated by the Project to power their houses. Currently, homeowners enrolling in the community solar plan are entitled to a reduction between 5% to 20%,⁹ depending on household income, on their monthly electric bills. Even with the other

² See U.S. EIA, New York State Energy Profile, <https://www.eia.gov/state/?sid=NY>.

³ See US EIA, U.S. Energy Atlas (last updated April 17, 2024); available at <https://atlas.eia.gov/apps/895faaf79d744f2ab3b72f8bd5778e68/explore>.

⁴ *Id.*

⁵ See U.S. EIA, New York State Energy Profile, <https://www.eia.gov/state/?sid=NY>.

⁶ See Con Edison Hosting Capacity Web Application, <https://coned.maps.arcgis.com/apps/MapSeries/index.html?appid=edce09020bba4f999c06c462e5458ac7>.

⁷ See Con Ed Load Curve Chart, <https://www.coned.com/-/media/files/coned/documents/business-partners/local-generation-facilities/systemdata/loadcurve/W-13-LC>.

⁸ The Community Solar Program provides homeowners with the opportunity to benefit from locally-generated renewable energy, and associated reduction in electricity costs, without the installation of solar panels on their roofs, through a subscription service. See NYSEDA, Solar Program, “How Community Solar Works,” <https://www.nyserda.ny.gov/All-Programs/NY-Sun/Community-Solar/How-It-Works>.

⁹ See NYSEDA, Solar Program, “How to Choose a Project,” <https://www.nyserda.ny.gov/All-Programs/NY-Sun/Community-Solar/Choosing-a-Project>.

renewable energy projects available in the area, there is more than ample “capacity” in the Buchanan network to ensure that all of the 550 homes that could benefit from the Project would be located in Yorktown and the surrounding area.

Project Operations

Your Board and other commenters also sought additional details concerning Project operations.

First, and foremost, we reiterate that the Project **will not include a battery storage component**. The New York City Department of Environmental Protection erroneously stated in its October 17, 2024 letter that the Project would include a 116MW battery energy storage unit. This has never been the case. Whereas the conceptual site plan submitted in April 2024 included a future “placeholder” area for a small storage unit encased in a fireproof box (with no more than 1.8MW capacity), this area has been removed from the site plan.

Second, Freestone has entered into a 25-year lease with the property owner with the option to renew the lease for another 5 years following the end of the lease term. This lease term is typical for solar leases, which on average last between 20-25 years. Site operations would consist solely of solar power generation, which, as explained above, would flow directly into the grid using existing utility infrastructure.

Third, Freestone has prepared an Operations, Maintenance, and Sustainability Plan, enclosed herein, which sets forth procedures for system monitoring, operations and maintenance of the equipment, management of the vegetative screening, inspections, and compliance with safety and regulatory standards. For example, system monitoring procedures would include daily reporting, which would provide regular insight into the health and safety of the system, and escalation procedures to ensure any issues are resolved in a timely manner by the appropriate personnel. Additionally, there is a plan in place for both maintenance of vegetation within the fenced area (*i.e.*, grass and weeds surrounding the equipment) and maintenance of the vegetation outside of the fenced area planted for screening purposes. Specifically, the vegetative screening would be inspected on a monthly basis for the first year to identify any gaps or damaged plants and replace plants as necessary. After the first year, this inspection would take place on an annual basis.

Finally, decommissioning in accordance with the enclosed Decommissioning Plan would occur at the end of the facility’s life. As set forth in the enclosed Decommissioning Plan, the site would be restored to its original condition, including replanting of native vegetation. The panels removed from the site would not be disposed of in a landfill; rather, the materials would be recycled to the greatest extent practicable and what cannot be recycled would be disposed of in a manner consistent with local, state, and federal law. Specifically, the materials in the panels would likely be recycled in the following ways:

- Aluminum and Glass: Easily dismantled and reused for other applications.

- Silicon Photovoltaic Cells: Melted down to extract silicon for reuse in new panels or other products.
- Backsheet: Recycled through chemical processes to separate and recover valuable materials.
- Glass Cullet: If direct recycling is not feasible, the panels are ground into “glass cullet,” which is repurposed in building materials like bricks, reflective road markings, and new glass products.

In addition, as the panels do not contain any hazardous materials, disposal would not pose any risk of harm to the community.

Removal of Trees and Wildlife Habitat

Several commentators opined that the Project would result in significant adverse impacts to wildlife habitat due to the removal of trees to accommodate the solar panels. The quantification of habitat impacts must start with an assessment of the ecological value of the existing habitat to be removed. *See generally*, EAF Part 2, Section 7 (Impact on Plants and Animals).

Enclosed herewith is a Wildlife Memorandum, prepared by LaBella Associates, which assesses the habitat on-site to determine potential impacts to species found within the woodland areas on-site (“Habitat Assessment Report”). This report supplements a report completed in June 2023, which was included in the EAF narrative for the Project, previously submitted to your Board. Prior to performing the on-site habitat assessment, LaBella performed a species screening for the site. Then, LaBella visited the Property on April 19-20, 2023 to complete a field survey to document existing habitats, plants, and wildlife on the site. The scope of the survey included the potential for the presence of habitat on the site for certain protected species flagged by USFWS, including the Indiana bat, northern long-eared bat, bog turtle, and monarch butterfly, which species are known to occur in the general range of the site. There are no known occurrence records for State-listed protected species associated with the site.

The Habitat Assessment Report establishes that there are no known protected rare, threatened, or endangered species designated by the state or federal governments on or within the vicinity of the site.¹⁰ *See* Habitat Assessment at 1; cf. EAF Part 2, Questions 7(a) & 7(b). Nor do the wooded areas support species of special concern or conservation need, as listed by the state or federal governments. *See* Habitat Assessment at 1; cf. EAF Part 2, Questions 7(c) & 7(d). Nor has the wooded area on the Property been designated as a significant natural community or a forest of locally important habitat. *See* Habitat Assessment at 1; cf. EAF Part 2, Questions 7(f) & 7(h). Rather, the plant and animal species identified on the site are typical suburban species that are commonly found in habitats across the general area.

¹⁰ We note that while no bats have been observed on-site, the site does have habitat that could support Indiana bats and northern long-eared bats. Accordingly, it is recommended that tree clearing occur between October 30 and March 31, during the time when the bats would be in hibernation and not present at the Project site.

As several neighbors corroborated during the public information sessions, the wooded areas on the Property are used by species typical throughout suburban areas in Westchester, such as coyotes, squirrels, deer and the like. *See* Habitat Assessment at 1. The Project would not substantially interfere with the habitat of these species because there will be *ample* alternative wooded areas in the area for these animals to use post-construction. This includes 27 acres of wooded area that will remain on the Property. More importantly, there are approximately 6.7 square miles of wooded areas connected to the Property that will remain available. This includes, for example, the nearby Hunter Brook Preserve, which consists of 45 acres of protected forest. The extent of the woodland habitat in the area to remain is illustrated in the Aerial of Site Disturbance and Surrounding Woodland Area included herewith.

As this aerial demonstrates, the Project area constitutes a “dot” in a sea of woodland. As such, the Project would not “substantially interfere with nesting/breeding, foraging, or overwintering habitat for the predominant species that occupy or use” the Property. *See* EAF Part 2, Question 7(g).

Your Board should also consider that, unlike other residential or commercial developments, the footprint of disturbance will contain land that can sustain new habitat in conjunction with the solar use. For example, Freestone is proposing to plant pollinator plants in the area between the perimeter fence and the limit of disturbance, including milkweed habitat for the monarch butterfly. In these minimally maintained 3.5 acres outside the fence, pollinator plants will grow as naturally intended and can continually support the species that benefit from these plants. Also, areas between and underneath the panels will be maintained as a well-vegetated grass surface, consisting mainly of turf grasses.

Freestone is also proposing to plant 782 trees to replace those to be removed. The trees include a mix of White Spruce, Fraser Fir, and Green Giant Arborvitae. These species of trees were chosen due to their superior screening abilities, and the specific tree heights were carefully chosen based on the topography of the area where the trees would be planted so that views of the panels would be blocked from surrounding viewpoints. Although the principal purpose of these trees is to achieve adequate screening, they will also provide natural functions, such as habitat for birds and small mammals, as well as transpiration of stormwater runoff.

Therefore, based upon the criteria set forth in Part 2 of the EAF, it is respectfully submitted that the Project would not result in any adverse impact to plant or animal habitat that could be quantified as significant under SEQRA.

Impacts to Community Character

Classifying the significance of a potential impact on community character requires a lead agency to consider whether a project would result in “the creation of a material conflict with a community’s current plans or goals as officially approved or adopted” and/or “the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character.” *See* 6 NYCRR, § 617.7(c)(1)(iv) & (v). This includes assessing the potential visual impacts of a project, as well as whether the proposed use is

consistent with the “expression of the community’s desired future state or character as encapsulated in a comprehensive plan or zoning code.” NYSDEC, SEQR Handbook (4th Ed. 2020), at 83-84.

Here, as set forth above, the Town Zoning Code sets forth objectives that include a commitment to green energy infrastructure and practices and the promotion of long-term sustainability, including the development of solar energy systems. *See* Zoning Code § 300-81.4B(2). Moreover, The Town recognized in the Zoning Code that solar power generation provides numerous benefits to the community through the generation of power through a nonpolluting energy resource, reduction of energy costs for residents and businesses, employment and business development opportunities, and the strengthening of the local grid’s resiliency. *See id.*, § 300-81.4B(4).

To carry out these laudable green energy goals, the Town allowed large scale solar projects as specially permitted uses in the R1-80 District, including on the Property. The Town’s decision to allow large scale solar in the R1-80 District was a recognition that the proposed use could exist harmoniously with residential uses in a neighborhood. It was “tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood.” *Twin Cnty. Recycling Corp. v. Yevoli*, 90 N.Y.2d 1000, 1002 (1997); *see also Marcus v. Planning Bd. of Vil. of Wesley Hills*, 199 A.D.3d 1007, 1008 (2d Dep’t 2021) (“A use permitted by a special use permit is a use that has been found by the local legislative body to be appropriate for the zoning district and in harmony with the general zoning plan and will not adversely affect the neighborhood.”) (internal quotation omitted).

We respectfully submit that this legislative history supports the finding that the Project furthers future planning goals previously adopted by the Town, and thus, would not result in a significant adverse impact on community character. *See, e.g., Vill. of Chestnut Ridge v. Town of Ramapo*, 45 A.D.3d 74, 94 (2d Dep’t 2007).

Nonetheless, Freestone is aware of the neighbors’ concern that the Project may result in visual impacts, or a perceived “blight” to residential character of the neighborhood, if it can be seen from certain vantage points. We submit that the potential visual impact of the Project is limited to views from private homes adjacent to the Property, rather than from nearby roadways or other well-traveled public viewsheds where the Property cannot be seen. This is why Freestone, with the guidance of your Board, incorporated various design measures to reduce or eliminate views of the panels from adjacent residential properties. This includes increasing the wooded buffer area around the perimeter of the Property from 20’ to 80’. It also includes increasing the planting height of the double-row tree screen, particularly along the western side of the Project.

As the previously submitted visual analyses demonstrate, these measures will ensure that nearby residential property owners will have limited views (if any) of the Project. We anticipate that the updated visual analyses that will be submitted once the Town Board updates the zoning regulations will continue to demonstrate this. As such, the record would not establish that the Project results in “the impairment of the character or quality of important historical, archeological,

architectural, or aesthetic resources or of existing community or neighborhood character” that could be classified as significant. *See* 6 NYCRR, § 617.7(c)(1)(iv) & (v).

We submit that the other generalized objections to large-scale, ground-mounted solar developments as “blight” are the result of reactions to previously constructed projects in the area, rather than the specific qualities of Freestone’s well-screened Project. Indeed, several speakers during the public information sessions pointed to these other solar farms as evidence of the Project’s alleged visual impact. Freestone must emphasize that its Project is not comparable to these other solar farms with respect visual impacts. Freestone has devoted (and will continue to devote) significant investments in screening and avoidance of visual impacts. Enclosed herein are photos of the Old Hill Farm and Hemlock Hills solar projects taken from public vantage points in the Town. As the Board can see, these projects do not provide the wooded buffer or thick tree screen Freestone is proposing in connection with the instant Project.

Given these substantial differences in visibility and screening, the other projects cited during the public information sessions do not constitute reliable analogies to support a finding that the Project would result in significant visual impacts or other detriment to the community character, which could be classified as significant.

Noise Impacts

Freestone anticipates noise levels from the equipment – specifically, the inverters – would be about 54 dBA from a distance of 100’ away (similar to the hum of a residential refrigerator¹¹). Thus, noise levels would be generally low and not intrusive, as such noise typically blends into background noise in most residential settings. And significantly, this noise would only occur when the equipment is operational—*i.e.*, during the day. Accordingly, there would be no significant adverse noise impacts.

Conclusion

Finally, we must respond to a suggestion made during the last meeting that the Project should be subject to a positive declaration, and an EIS prepared. As the Board is aware, SEQRA determinations, including a finding that the Project may result in a significant adverse impact, cannot be premised upon conjecture or generalized community opposition. *See, e.g., WEOK Broad. Corp. v. Plan. Bd. of Town of Lloyd*, 79 N.Y.2d 373, 384-85 (1992) (“To permit SEQRA determinations to be based on no more than generalized, speculative comments and opinions of local residents and other agencies, would authorize agencies conducting SEQRA reviews to exercise unbridled discretion in making their determinations and would not fulfill SEQRA’s mandate.”). Rather, determinations of significance must be supported by empirical evidence or other objective factual bases in the record. *Id.*, 79 N.Y.2d at 384 (annulling lead agency’s finding that a project would result in a visual impact because it was “unsupported by any factual data, scientific authority or any explanatory information such as would constitute substantial evidence.”)


¹¹ *See* Decibel Level Comparison Chart, <https://ehs.yale.edu/sites/default/files/files/decibel-level-chart.pdf>.

As summarized above, the data and objective facts in the record demonstrate that all areas of environmental concern raised (e.g., visual impacts, habitat, noise, operations, etc.) would not rise to a level that could be quantified as “significant” under SEQRA. Accordingly, we respectfully submit that the Record would not support the conclusion that the Project may result in a potentially significant adverse impact, and a negative declaration is warranted.

We look forward to continuing review of the Project at the Board’s January 27th meeting, and we thank the Board for its continued attention to this matter. If you have any questions or require any additional information, please do not hesitate to contact us.

Respectfully Submitted,

ZARIN & STEINMETZ LLP

By: 

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Encls.

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