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Town of Neversink Planning Board  
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Dear Chairman Coombe and Board Members:

Re: NY Neversink I LLC Community Solar Proposal

We write to express some thoughts, questions and concerns about the proposed development of a large solar energy system by NY Neversink I LLC, an affiliate of Delaware River Solar, on tax map parcels 26.-1-6.1 (the “Garigliano Property”) and 18.-1-9.1 (together, the “Property”), located on Moore Hill Road and Hastings Drive in Grahamsville, NY.

We would first like to make clear that we support community solar projects generally. Our basic concern is whether this particular project is an appropriate special use for this location.

Under Article VII, §50-21 of the Neversink Town Code, a special use such as a large solar energy system is “permitted only after review, public hearing and approval by the Town of Neversink Planning Board pursuant to the express standards, procedures and criteria set forth” in the Code. Based on the information provided thus far by the developer to the Planning Board, we question whether this project meets the standards and criteria required for Planning Board approval.

As a procedural matter, given the scale and potential impact of this proposed project, we respectfully request that the Planning Board arrange to have all documents submitted with respect to this project to the Planning Board, the Zoning Board of Appeals, or otherwise to the Town, including any letters or other communications from or to the developer or its lawyers, promptly posted to the Town’s website in a publicly available location.

1. What other sites did Delaware River Solar consider in the Town of Neversink?

Based on the information provided thus far to the Planning Board by the developer, this site does not appear to be an optimal location for the project. What other sites in the Town of Neversink did the developer consider, and what are the specific reasons why this site was selected? The discussion in the developer’s Project Summary is too generic to provide any real explanation. (Project Summary, §2.1, pp 7-8)

## 2. What benefits will the Town of Neversink realize from the proposed project?

The specific benefits to the Town are not clear from the information provided thus far by the developer to the Planning Board. The developer's Project Summary states that "The Project Owner's goal is to provide residents and businesses in the Town the opportunity to enroll in the Project Owner's Community Solar Program." (Project Summary, §1.1, p 7) The developer's Environmental Assessment Form Part 1 (EAF) states that this opportunity would be limited to Central Hudson customers, who "would be able to receive a share of the solar power generated by the proposed action as well as a discount off their electricity bills." (EAF §A, p 1) It is not clear whether siting the project in the Town would have any specific financial benefit for Town utility customers in enrolling in that program – would any participating customer, whether or not a Town resident or business, get the same discount? Community solar participation is already otherwise available to local utility customers. In addition, a portion of the Town is served by NYSEG rather than Central Hudson. How would those Town residents and businesses benefit?

The Project Summary also outlines a number of very general benefits, but few if any are benefits specific to the Town. It notes that the project would provide "important economic and environmental benefits to the Utility and the municipality, including improving local air quality and public health, developing local energy sources, promoting local jobs, and diversifying the energy supply." (Project Summary, §1.1, p 7) Of these, the only benefit to the Town would appear to be "promoting local jobs." What specific local jobs will be generated by this project that otherwise would not exist?

Will the proposed solar project be eligible for exemption from Town and school taxes pursuant to §487 of the New York State Real Property Law? It does not appear that either the Town of Neversink or the Tri-Valley Central School District have opted out of the exemption, according to the list on the New York State website: <https://www.tax.ny.gov/research/property/legal/localop/487opt.htm> If the project is exempt, will the Town require the developer to enter into an agreement for payments in lieu of taxes (PILOT)? If it is not exempt, or is subject to a PILOT agreement, what will be the amount of the increased revenue for the Town? Any tax exemption, or increase in revenue, would need to be weighed carefully against adverse impacts that the project would have on the Town.

Will the project be subsidized by public funding or incentives, affecting our state, county or town taxes? Does the developer intend to apply to the Sullivan County Industrial Development Agency for any support? These would all be financial burdens on Town residents and businesses.

## 3. Is the proposed project consistent with the Town of Neversink Master Plan?

The developer's submitted EAF erroneously states that the proposed site location is not included in any municipally-adopted comprehensive land use plan. (EAF §C.2, p 2) The Town of Neversink has a Master Plan that applies to the entire Town, including this site location. The Master Plan contemplates that "Rural Residential Areas," such as the RR-3 zoned area in which the Property is located, will consist of "Extensive residential areas with larger lots and fewer commercial uses." (Master Plan §IV.C, p 4) The Master Plan states that one of its objectives is "to provide for commercial and industrial development where it is readily accessible to existing major connector roads, and to limit its development on secondary roads." (Master Plan §III, p 2) Hastings Drive and Moore Hill Road are secondary roads in quiet rural residential neighborhoods.

Under Article VII, §50-21 of the Neversink Town Code, a special use such as a large solar energy system is required to be “in harmony with purposes, goals, objectives and standards of the Town of Neversink Master Plan, this chapter and all other laws and regulations of the Town and other governmental agencies.” We question whether a large solar panel installation, adjacent to and accessed from a quiet, rural residential neighborhood on Hastings Drive, and likely visible from the Town of Neversink Park on Route 42, and potentially other nearby locations, meets this requirement.

The character of this part of the Town is rural residential. There is an existing right of way from Hastings Drive, which shows that future residences were planned for this area. The addition of a solar farm would preclude the possibility of creating an addition to this attractive housing development and adding to the positive development of the Town. There are currently solar farms in the area that provide community solar for local consumers. A wooded, mountainous site that requires considerable disturbance does not appear to be an appropriate location for a solar farm.

4. What will the impact of the proposed site development be on nearby neighborhoods and areas?

Under Article VII, §50-21 of the Neversink Town Code, the project is not permitted to “result in a substantial or undue adverse effect on other property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites, rights-of-way or other matters affecting the public health, safety and general welfare of the Town.” We question whether this project meets this standard.

The construction phase of this project clearly will have a substantial adverse effect on the quiet, all-residential Hastings Drive neighborhood. Hastings Drive itself is a residential roadway that does not appear suitable for sustained heavy vehicle traffic. Any viewscape impact on the Town of Neversink Park or elsewhere will clearly be an adverse effect as well, as discussed further below. And the project may have a substantial or undue adverse effect on nearby property, including on property values. Tax parcel 26.-1-5.2, for example, is so close to the project site that the requested setback variance includes a portion of its border, as discussed further below.

5. What will the project’s impact be on Town infrastructure and services?

Under Article VII, §50-21 of the Neversink Town Code, the project is not permitted to “impose an undue burden on any of the improvements, facilities, utilities and services of the Town, whether such services are provided by the Town or some other agency.”

- (1) Hastings Drive is a residential roadway that does not appear suitable for sustained heavy vehicle traffic. Will the developer commit to repave and restore Hastings Drive to its current well-maintained condition after any damage or deterioration resulting from construction traffic – without arguing about whether any damage or deterioration is due to the construction of the project?
- (2) The current private road to the Garigliano Property from Hastings Drive will presumably serve as the access to the site, and will accordingly need to be upgraded and widened to support construction and maintenance traffic, as well as Town fire and EMS access. Will it remain private, or will the property owners and developer request that the Town accept it as public? If the Town is

asked to accept the road as public, what will the cost be to the Town to maintain it, and what will be the offsetting revenue?

- (3) As discussed further below, the developer's Operations and Maintenance Plan (O&M Plan) discusses the potential for "'Emergency Situations' that would endanger the health and/or safety of surrounding area" and the actions that will be taken in an "Emergency Situation." What emergency situations can be expected, and what are the potential risks to neighboring areas, and potential demands on Town resources?

6. What will the project's impact be on the viewscape for nearby areas?

Under Article VII, §50-21 of the Neversink Town Code, the project is required to be "adequately screened or buffered from residential uses located proximate to the proposed use," and in addition, the Planning Board is required to consider, and impose conditions to cure, the "adequacy, type and arrangement of trees, shrubs or fencing providing necessary screening or buffering between the applicant's land and lands potentially affected by the applicant's proposal. Where possible, preference should be given to the retention of existing vegetation or the planting of dense evergreen nursery material."

The project's proposed siting is at or near the top of a significantly elevated area. Based on Walter Garigliano's comments at the October 4, 2023 Planning Board meeting, the project will likely be visible from the Town of Neversink Park on Route 42, and potentially other locations. The Time and the Valleys Museum, and in particular the Lost Catskills Farm above and behind the Museum, are directly south of the proposed project site. We believe that the viewscape impact is potentially significant.

We note that, as discussed further below, the project site is so close to one adjacent property, tax parcel 26.-1-5.2, that the requested setback variance would extend to a portion of the boundary with that parcel. In addition, the developer's variance site map shows substantial additional tree cutting beyond the project footprint, near or up to the property line. It is not clear how the project site could be sufficiently screened from view given how close to the property line the installation is proposed to be located. By way of comparison, the Solar Energy Systems law recently adopted by the Town of Forestburgh requires any large scale system to be set back 200 feet from any property line. (Forestburgh Town Code §134-15(C)(1)) The NYSERDA Model Solar Energy Local Law (Model Law) provides for a 100 foot setback requirement in residential low density zoning areas. (Model Law, Appendix 2)

We believe that, at a minimum, the Planning Board should require the developer to prepare and submit detailed elevation views showing exactly how much of the project will be visible from surrounding areas, taking into account (i) the portions of the property to be cleared, (ii) the additional areas where trees will be cut or lopped, (iii) the extent to which the existing trees on the property are deciduous and will lose their leaves in the fall, making the project seasonally more visible, and (iv) the extent to which the trees on the property that would otherwise screen the project may be impacted or die because of pests such as the emerald ash borer (EAB) and hemlock woolly adelgid (HWA).

## 7. What will the project's impact be on stormwater flows and erosion?

Under Article VII, §50-21 of the Neversink Town Code, the Planning Board is required to consider, and impose conditions to cure, the “adequacy of stormwater drainage facilities,” the “adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding and flooding,” and the “adequacy of erosion and sedimentation control plans.”

*Stormwater drainage:* The developer's EAF states that there will be an increase of only 1.44 acres of impervious surface. (EAF, §§D.2.e.i and E.1.b, pp 6 and 9) The developer's Project Summary similarly asserts that “As per the New York State Department of Environmental Conservation, (i) only the inverter station is considered impermeable surface coverage and (ii) the panel surface area is considered permeable.” (Project Summary, §2.3, p 9) However, under the updated stormwater regulations of the New York State Department of Environmental Conservation (DEC), the solar panels may be considered a “disconnected impervious surface” and may be counted as a partial impervious surface. In addition, the project area soils, given the disturbance from clearing and tree stump removal, would tend to be more compacted and less permeable than the existing forest cover and produce additional stormwater runoff in comparison to existing conditions.

The developer's EAF proposes a one-quarter acre stormwater detention pond, with a high-density polyethylene (HDPE) liner and rock outlet protection. Its location is not shown on the preliminary site maps filed by the developer with the Planning Board. The New York State Stormwater Manual recommends using green infrastructure such as bioretention areas that allow water to infiltrate to mimic natural processes before using detention ponds. It is not clear to us why the developer selected a lined detention pond for stormwater management in this area. A pond with a liner would not allow infiltration and would tend to concentrate runoff and create a stagnant pool that could act as an undesirable biological sink. The developer's EAF states that 83% of the project site's soils are well drained, and the remaining 17% are moderately well drained. (EAF, §E.2.e, p 11) If so, a bioretention area would appear to be a superior choice, based on the information provided by the developer.

The stormwater detention pond would change the surface drainage of the area since it would be gathering stormwater in one location, with potential exiting in a concentrated area. Contrary to the developer's EAF, it would change the flow of water in comparison to pre-construction conditions. The pond is stated to handle a 7” storm. (EAF, §D.2.e.iii, p 6) However, if the detention basin is already full because of the liner and lack of infiltration, less than a 7” storm would create additional concentrated stormwater runoff. As the Planning Board is aware, repeated rain storms are not uncommon in our area.

*Erosion:* A stream runs along the eastern edge of the project area. It flows down toward the Tri-Valley school complex, and is a drainage way where a portion of stormwater from the project would flow. Because of steep slopes and erodible soils, the clearing of the area could pose an erosion and sedimentation problem for the stream, especially during construction. The developer's EAF states that the percentage of the project on slopes from 10-15% is 19%, and on slopes over 15% is 40%, of the project area. (EAF, §E.2.f, p 11) That would seem to suggest that over half of the project will be on steep slopes, and accordingly may pose an erosion hazard, especially during construction.

In his comments at the October 4, 2023 Planning Board meeting, Walter Garigliano stated that a stormwater management plan would be implemented. However, the developer's Project Summary filed

with the Planning Board states only that a “storm water pollution prevention plan (“SWPPP”) will be conducted as necessary.” (Project Summary, §2.13, p 23) Given the potential downstream impact on the Tri-Valley school complex and other neighbors, we believe that the Planning Board should require such a plan to be implemented and should review it to ensure that it is adequate. Since the project site is in the New York City watershed, we presume that such a plan would be required in any event.

The Planning Board’s evaluation of potential erosion impacts should include the impact of the upgrading of the access road from Hastings Drive to the proposed solar site, and the potential for any resulting increase in surface water flow. The Town has encountered erosion issues with the installation of access roads and driveways in the recent past, as Highway Superintendent Preston Kelly is aware.

#### 8. Depth to bedrock and soil types.

We understand from the discussion at the October 4, 2023 Planning Board meeting that the developer is undertaking a geotechnical study that will determine the depth to bedrock at the project site and may alter the precise location of the proposed solar installation. The information provided by the developer thus far is potentially inconsistent. The EAF states that the average depth to bedrock on the project site is around 3 feet to 164 feet, and the proportion of the site with rock outcroppings is less than 1%. (EAF, §§E.2.a and E.2.b, p 11) However, the stated predominant soil group at 20% of the site is Arnot-Rock Outcrop Complex (ARF) 35-70% slopes. (EAF, §E.2.c, p 11) According to the USDA Soil Survey, this soil group consists of 40% rock outcroppings and the average depth to bedrock is 17 to 27 inches. A shallow depth to bedrock would be a limiting factor for solar panel footings. The Project Summary states that “To minimize ground disturbance, the supporting bases will be pile driven into the ground, considering the results of a geotechnical study.” (Project Summary, §2.4.3, p 11) The results of the geotechnical study accordingly may affect the method of installation for the solar panel supports, and the amount of ground disturbance involved – which will already be substantial given the need to clear the site of trees and remove tree stumps.

#### 9. Impact on native habitat and species.

The developer’s EAF states that endangered species on the project site include bald eagles. The EAF does not provide any further detail, including whether the development would endanger any bald eagle nesting sites. (EAF, §E.2.o, p 12) We believe that the Planning Board should require the developer to provide more information on the presence of bald eagles on the Property. The Project Summary states that the developer “will send a Project Screening Request Form on behalf of the Project Owner to the New York Natural Heritage Program (NYNHP), and a NYSDEC Region 3 Wildlife Office consultation request. The responses from both the NYNHP and the NYSDEC Region 3 Wildlife Office are pending with scheduled response in 2023.” (Project Summary, §4.1.1, p 28) We believe that the Planning Board should require the developer to submit the responses for review.

The developer’s EAF states that “the project area would be hydroseeded with native grasses upon clearing.” (EAF, §A, p 1) Similarly, the developer’s Project Summary states that “Native vegetation (low growing grasses) will be planted after construction to grow amongst the solar panels.” (Project Summary, §2.14, p 23) However, neither the EAF nor the Project Summary, nor the developer’s O&M Plan, provide for any ongoing native plant management plan, or any commitment by the developer to fund such a plan. The O&M Plan states only that “Vegetation may need to be trimmed or cut back to avoid shading of the solar modules. Shading inspections will be done semi-annually, and trimming will

occur as needed. This would include ground cover, existing vegetation, and screening vegetation. ... Ground cover will be either mowed or the Project Owner will have the option to utilize sheep to graze the array area to manage vegetation on the Project Site within the Code's requirements.” (O&M Plan, §4, p 5)

In the absence of an ongoing, active native plant management plan, any native grasses initially planted will likely be displaced by nonnative, invasive vegetation. Japanese stiltgrass, an aggressive nonnative invasive, is already present in the area, including along the sides of the private road to the Garigliano Property. The ground disturbance for the proposed project, and the movement of construction equipment and vehicles, will provide a significant opportunity for invasives to take hold, and from there to spread into nearby areas, with the potential for greatly exacerbating the adverse impact on nearby properties in comparison to existing conditions.

#### 10. Operation and maintenance of the project.

The developer’s O&M Plan states that it is a general overview only, with details on the scope of work to be set forth in an Operations and Maintenance Contract with a third party maintenance provider. (O&M Plan, §1, p 1) We believe that the Planning Board should require that contract and third party provider to be satisfactory to the Town.

The O&M Plan discusses the potential for “‘Emergency Situations’ that would endanger the health and/or safety of surrounding area” and the actions that will be taken in an “Emergency Situation.” The Plan goes on to state that the “Project Owner can provide a full Emergency Action Plan to the Town on request.” (O&M Plan, §§3.2 and 3.3, p 4) We believe that the Planning Board should require the developer to submit a full Emergency Action Plan to the Town for review and approval, and to explain what typical Emergency Situations may occur, so that the Planning Board can assess the potential risks to neighboring areas, as well as the potential demands on Town resources.

The developer’s Decommissioning Plan refers to a Site Agreement, consisting of a “Contract to Lease.” (Decommissioning Plan, §2.1, p 4) This document presumably is the lease between the Property owners and the developer. We note that the lease will only cover 15.81 acres, less than half of the total acreage to be disturbed by construction. (EAF §A, p 1) We believe that it would be important for the Planning Board to understand the terms of the lease arrangement, and that the Planning Board should require the developer to submit the lease for review.

#### 11. Decommissioning of the project.

The developer’s Decommissioning Plan addresses the process and cost of decommissioning the project after its expected 30-year life. The Decommissioning Plan states that the developer will provide the Town with a performance bond in an amount equal to the estimated cost of decommissioning. (Decommissioning Plan, §6, p 7) We note that the bond would be renewed annually, with an annual 2.5% increase, and a reevaluation of its sufficiency every 10 years.

We presume that the Planning Board will discuss the proposed performance bond with legal counsel, including with respect to (i) whether the Planning Board should obtain an independent estimate of the decommissioning cost, at the developer’s expense, (ii) whether a 2.5% annual increase is sufficient, (iii) whether the ten year reevaluation period should be shorter, (iv) whether the bond’s terms and the

bond provider are satisfactory, and (v) whether the annual renewal should be subject to a required minimum credit rating for the bond provider.

12. Scope of requested zoning variance.

We recognize that the zoning variance request falls within the jurisdiction of the Zoning Board of Appeals, not the Planning Board. However, we are including the following observation on the variance request because we believe it is relevant to the Planning Board's review of the proposed siting of the project. The presentation at the October 4, 2023 Planning Board meeting suggested that the variance was for the setback requirement between the two parcels proposed to be developed. However, the variance site map submitted by the developer to the Planning Board shows a section of the setback variance area on the boundary with the neighboring tax parcel 26.-1-5.2.

13. Other comments and questions on the developer's submissions.

Our review of the developer's submissions to the Planning Board is preliminary only. However, our review thus far shows that these submissions appear to include a significant number of inaccuracies. That in turn raises questions about the credibility of the developer and its proposal.

- (1) The developer erroneously stated that the Town did not have a comprehensive plan. (EAF, §C.2.a, p 2) How could a developer propose a plan of this sort without taking the Neversink Master Plan into account?
- (2) The developer's statement of the acreage to be developed is misleading. While the project site would occupy around 27 acres, a note states that another 15 acres of trees may be cut or lopped to prevent panel shading, for a total of 42 acres. (EAF, §§D.1.b and E.1.b, pp 3 and 9) In addition, it is not clear whether that acreage includes any clearing necessary for the access road from Hastings Drive to the project site, for the interconnection line from the project site to the Central Hudson network, or for the temporary construction staging referred to in the Project Summary. (Project Summary, §§2.3, 2.11 and 3.2, pp 9, 22 and 25)
- (3) The developer's Project Summary states that the "Project Site consists of open fields." (Project Summary, §2.14, p 23) The project site in fact is currently forested, as the Project Summary itself recognizes elsewhere, and the developer's EAF confirms. (Project Summary, §4.1, p 28; EAF, §E.1.b, p 9) The project site in fact will require considerable clearance and removal of tree stumps prior to construction.
- (4) The site is covered by the Grahamsville Fire Department and Grahamsville First Aid Squad, not the Neversink Fire Department, and is additionally covered by the New York City Department of Environmental Protection police. (EAF, §C.4, p 3)
- (5) The developer's EAF fails to note that the project site is inside the Blue Line for the Catskill Park, an officially designated and publicly accessible scenic or aesthetic resource. The Catskill Park is a state designated resource, not a "National Park Preserve." (EAF, §E.3.h, p 13)
- (6) The developer's Decommissioning Plan refers to the wrong Project Owner in its description of the Site Agreement. (Decommissioning Plan, §2.1, p 4)



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We would like to reiterate that we support community solar projects generally. However, we believe that there are very serious questions about whether this project is an appropriate special use for the proposed location, and whether it meets the standards and criteria required for special use approval by the Planning Board.

Sincerely yours,

David Brittenham   Barbara Restaino  
David Munford   Carolyn Summers

cc: Town of Neversink Zoning Board of Appeals  
Planning and Zoning Board Attorney Kenneth C. Klein, Esq.  
Town Supervisor Chris Mathews  
Town Clerk Lisa Garigliano  
Town Code Enforcement Officer Keith Stryker