

AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON FEBRUARY 9, 2022 AT 6:00 P.M.

RESOLUTION #4-81/2022

To approve the proposed alteration to the site plan and tree clearing limits of Special Use Permit No. 2020-003 as twice amended.

On Motion of
Supervisor Schultz

Seconded by
Councilmember Page

WHEREAS, Delaware River Solar has approached the Town Board to expand the limits of tree clearing, cutting, and trimming previously approved under Special Use Permit No. 2020-003 through Town Board Resolution #5-94/2020, as well as its corresponding SEQR Determination and Negative Declaration through Town Board Resolution #5-93/2020; and

WHEREAS, the above said decisions were based upon the proposed site plans for solar arrays, which included 0.72-acres of tree removal, beyond the harvesting of the Christmas Trees situated on the site of the proposed solar arrays, as per SEQR FEAF Part 1, E.1.b, filled in by Kyle Sundman, Project Developer for the Namaste Solar Project (now Delaware River Solar Project), on January 17, 2020, as well as indicated on the site plan map associated with the Special Use Permit application; and

WHEREAS, based on the limited clearing of trees, the Town Board issued a Negative Declaration saying that the impact on the natural habitat, on the nearby wetlands, and on the agricultural activity taking place on the working farm would be minimally affected; and

WHEREAS, Delaware River Solar has proposed additional tree clearing shown on the map to a larger extent than what was originally proposed, referred to henceforth as the "Expanded Tree Activity Area;" and

WHEREAS, the Town Board, at a public hearing on December 22, 2021, expressed to Delaware River Solar by Resolution #27-339/2021 that this Expanded Tree Activity Area appeared to be a significant departure from the site plan approved under Special Use Permit No. 2020-003 and thus would not be permitted under the currently approved Special Use Permit and associated SEQR Action and instructed Delaware River Solar to work with Town officials to refine their proposed plan to reduce the amount of clearing and the impact in order to avoid the need to submit for a new Special Use Permit and associated SEQR Action in order to seek approval for the updated plan; and

WHEREAS, Town officials explained to Delaware River Solar their significant concerns with the proposal and went to the work site on at least two occasions to identify and geo-tag which trees were being cleared, which trees were being topped, which trees were being trimmed, and which trees would remain untouched as part of the revised plans; and

WHEREAS, through those discussions, Delaware River Solar has been made aware that a negative vote on this resolution would mean no additional tree clearing could take place beyond what is allowed on the original plans unless a new Special Use Permit was applied for and granted; and

WHEREAS, the Town has made clear to Delaware River Solar that removing those trees in contradiction to the approved site plans as part of the Special Use Permit could result in the Town revoking Special Use Permit No. 2020-003, or its successor, and issuing a subsequent stop work order on the project; and

WHEREAS, representatives from the Town and representatives from Delaware River Solar met virtually to walk through the findings and attempt to find compromises that the Town believed would still

work within the original approval granted; and

WHEREAS, based on those discussions, Delaware River Solar has modified their proposed plan, dated "2.4.2022," to include the following, as per the annotated plans:

- Tree clearing would not take place within the wetland buffers, only tree topping or branch trimming, as per NYSDEC, and would occur with a NYSDEC or Town official present.
- Shrub landscaping with wetland buffers, as per NYSDEC, will no longer include arborvitae due to deer predation.
- 1 untagged mature white oak on the eastern side of the wetland buffer is marked to be cut; however, the Town believes it should remain as is.
- 1 untagged mature white oak on the western side of the wetland buffer is marked to be cut.
- A small portion outside of the wetland buffer would be added to the area designated for a potential future cut if the trees present fall hazards.
- 2 tagged mature trees in or at the edge of the wetland buffer (#018E and #018W) are marked to remain and be cleared, respectively; however, the Town needs to verify that tree #018W is okay for removal.
- 3+ untagged mature spruce trees to the east of the site to remain; the Town will tag the trees to clarify which trees are to remain.
- Rather than removing the trees, just the protruding branches that reach to the east from the mature trees in the northwest corner will be removed.
- 8 Gray Dogwoods would be added to increase buffering in the northwest corner.
- A double row of approved landscaping trees would be added to the west to increase buffering.
- The evergreens in the southwest corner, rather than be removed, would instead be topped at 25' in height.
- 8 tagged mature trees (#001, #003, #004, #006, #009, #011, #012, #020) are okay to be removed along the southern border.
- 5 tagged mature trees (#002, #005, #007, #008, and #010) are marked to remain along the southern border.
- 3 untagged mature maple trees (between #008 & #009), 1 untagged mature white oak (just east of #012), and 1 untagged mature sassafras tree (west of #011) are marked to remain along the southern border.
- 0.6-acres of scrub trees and brush are okay to be removed along the southern border.

WHEREAS, in addition to and beyond the plan negotiated above, rather than preserve the 10 mature trees (5 tagged trees #002, #005, #007, #008, and #010; 3 untagged mature maple trees; 1 untagged mature white oak; and 1 untagged mature sassafras) along the southern border, Delaware River Solar is proposing to instead donate 14 trees, or their cash equivalent, to the Town's Tree Bank, in accordance with Town Code §261-13, Tree bank for restoration of public trees; and

WHEREAS, after careful review of all relevant documentation, information, and investigations, including but not limited to, the original site plan submitted as part of the Special Use Permit application, the original determination as part of the SEQR determination process for Special Use Permit No. 2020-003, the "Expanded Tree Activity Area" plan proposed by Delaware River Solar, the February 4, 2022 update of the "Expanded Tree Activity Area" proposed by Delaware River Solar, Article XVI of Town Code Section 295 Zoning pertaining to Solar Energy Systems, the 2019 Update to the Comprehensive Land Use Plan in which the goals and justification for the addition of large scale solar projects were added as part of the Farmland Protection Plan and incorporated into the Comprehensive Land Use Plan, applicable New York State Solar regulations, discussions with the New York State Department of Environmental Conservation regarding the proposed tree clearing within the wetland buffers, discussions with the resident operating the farm on which the solar project is being constructed, multiple site visits, multiple discussions at Town Board Meetings, multiple emails seeking clarification on the proposal, and numerous discussions

among the Town Board Members, the Town Board has determined that the proposed "Expanded Tree Activity Area," as submitted on February 4, 2022 and annotated by Town personnel, is consistent with the original Special Use Permit No. 2020-003.

THEREFORE, BE IT RESOLVED, that the Town Board has determined that the proposed "Expanded Tree Activity Area" as presented by Delaware River Solar in a plan to the Town Board on February 9, 2022 is consistent with the original Special Use Permit No. 2020-003 and its associated SEQR Determination that no unmitigated significant environmental impact would occur from the proposed project, as modified by the attached updated plan.

BE IT FURTHER RESOLVED, that the Town Board has agreed to the proposal from Delaware River Solar to remove and replace ten (10) trees (5 tagged trees #002, #005, #007, #008, and #010; 3 untagged mature maple trees; 1 untagged mature white oak; and 1 untagged mature sassafras) along the southern edge of the property containing the solar arrays with twenty (20) trees of sufficient caliper of a species to be selected by the Town for planting, by Delaware River Solar at locations selected by the Town, in Town Parks, or through donations of \$400 per tree to the Tree Bank in accordance with Town Code §261-13, Tree bank for restoration of public trees.

BE IT FURTHER RESOLVED, that should the tree clearing of the trees along the southern edge of the parcel create an insufficient agricultural wind barrier, as determined by Monroe County Agriculture and Markets in conjunction with the landowner, the developer is responsible for replenishing the windbreak in a manner consistent with Monroe County Agriculture and Markets and the landowners' decision.

Duly put to a vote:

Councilmember Sefranek	Aye
Councilmember Bolzner	Aye
Councilmember Page	Aye
Councilmember Bellanca	Aye
Supervisor Schultz	Aye

RESOLUTION ADOPTED

Proposal from Delaware River Solar under Town Code §261-13

Delaware River Solar (DRS) proposes an amendment to the Remelt Solar Landscape Plan to cut, trim and remove various additional trees from the Remelt property that present fall hazards and shading risks to the Remelt Solar Project (the Project) over the course of its operations. This action will improve safety in operations, and allow the Project to generate at greater capacity, and involves the planting of 229 additional screening and replacement trees and shrubs around the property well in excess of those that will be cut, trimmed or removed. The additional trees and shrubs will be planted to maintain and strengthen the natural habitat on the property, and to provide better screening from adjoining properties.

Those trees to be replaced in the tree bank are identified as:

- 3 Tagged Mature Trees on the property (#002, #007, and #008)
- 2 Tagged Mature Trees south of the property line (#010 & #005)
- 3 Untagged Maple Trees on the property (between #008 & #009)
- 1 Untagged White Oak Tree on the property (just east of #012)
- 1 Untagged Sassafras Tree on the property (west of #011)

In recognition of the Town's determination that ten (10) of the mature trees proposed to be removed provide habitat and agricultural value to the property (those labeled "Mature Tree to Remain" on the proposed Landscape Plan dated February 2, 2022), and therefore should not be removed - DRS proposes under § 261-13.C of Town Code "Tree Bank for Restoration of Public Trees", to provide either:

A) twenty (20) trees to the Town Tree Bank, in order to mitigate for the necessary removal of these ten (10), so that these new trees may be enjoyed by the public and provide habitat in public spaces owned by the Town, or

B) funds to the tree bank for twenty (20) replacement trees, at a fee determined by assessing the size and suitability of trees to be replaced in kind to the Town Tree Bank, or

C) a combination of A and B above.

