



February 2, 2022

Mr. John VanVorst, Chairman
Town of Ballston Planning Board
323 Charlton Rd
Ballston Spa, NY 12020

via email (jvanvorst@townofballstonny.org)

**Re: 60 Middleline Road Community Solar Installation (CSI)
The Spinney Group, Applicant
60 Middleline Road
Tax Lots 238.-2-26.2
MJ File: 1078.047
PB 2021-011**

Dear Mr. VanVorst and Planning Board Members,

Renovus Solar and The Spinney Group received the letter prepared by MJ Engineering and Land Surveying, P.C. (MJ), dated January 24, 2022, in which MJ reviewed the submission for the above referenced application within the Town of Ballston. Below is an item-by-item response to the comments and requests made in that letter which is being furnished prior to the 2/2/2022 submission deadline in anticipation of further discussion and consideration at the next Planning Board meeting on 2/23/2022. Thank you in advance for your consideration, and we look forward to continuing to work through the permitting process.

STATE ENVIRONMENTAL QUALITY REVIEW

MJ Comment: Based upon our review of Part 617 of NYS Environmental Conservation Law, the project appears to be a "Type I" action per NYCRR Part 617.4(b)(6)(i). For Type I actions, a full EAF must be used to determine the significance of such actions. The project sponsor must complete Part 1 of the Full Environmental Assessment Form (FEAF), including a list of all other involved agencies that the project sponsor has been able to identify, exercising all due diligence. Coordinated review is required for Type I actions. Under a coordinated review, involved / interested agencies to be engaged may include, but is not necessarily limited to the following:

- Town of Ballston Planning Board – Site plan approval.



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- Saratoga County Planning Department – General Municipal Law 239m referral due to the proximity of the project to Middleline Road and Saratoga Road.
 - NYS Historic Preservation Office – Correspondence with NYS OPRHP to ensure no archeologically sensitive resources on the project site. (letter received and noted)
 - NYS Department of Environmental Conservation – Permit coverage under SPDES GP-0-20-001.
 - US Army Corps of Engineers – Due to presence of USACOE wetlands on the property.

Additional agencies may be identified by the Town during its review of the project. The applicant has submitted Part 1 of the Short Environmental Assessment Form (SEAF). The applicant shall provide a complete FEAF for further review.

Response: Comments noted. A FEAF has been completed and submitted. It is noted that the Town identified NYS Ag & Markets as an additional agency at the 1/26/2022 meeting, and that the Planning Board declared its intent to act as lead agency. Additionally, we have received letters of No-Impact/No-Jurisdiction from NYS OPRHP and NYS DEC, respectively, copies of which have been enclosed.

Based upon our review of the submitted Part 1 SEAF, the following comments are offered:

MJ Comment: 1. Part I.12 – The response indicates that the project site is **not** located within or adjacent to an area designated as sensitive for archeological sites on the NY State Historic Preservation Office (SHPO) archeological site inventory. EAF mapper (<https://gisservices.dec.ny.gov/eafmapper/>) states it is. Applicant has included OPRHP Letter of No Impact.

Response: The mapper automatically filled in a negative response to Part I.12 which could not be modified. Per the above referenced correspondence from NYS OPRHP, no archeologically sensitive resources will be impacted by this project.

MJ Comment: 2. Part I.13 – The response indicates that a portion of the site or lands adjoining the site of the proposed action, do not contain wetlands or other waterbodies regulated by a federal, state, or local agency. EAF mapper (<https://gisservices.dec.ny.gov/eafmapper/>) states it is. The applicant has provided documentation that confirms the presence of federally regulated wetlands within the project site, as well as documentation confirming that there are not state regulated wetlands. However, these jurisdictional determinations were provided over approximately five years ago and therefore updated jurisdictional determination is required. The applicant shall provide current correspondence from NYSDEC and USACOE.



Response: NYSDEC has completed their review of this project and has issued an updated Letter of No Jurisdiction, a copy of which is enclosed. In addition, USACOE is presently reviewing this project under Nationwide Permit (NWP) 51 regarding Land-Based Renewable Energy Generation Facilities, which states that permit criteria and pre-construction notification procedures shall only pertain to projects where “the discharge results in the loss of greater than 1/10-acre of waters of the United States.” Gilbert VanGuilder Land Surveyors (GVG) has prepared a survey plan showing the limits of disturbance for the proposed solar array overlaid on their previous topographic and wetland surveys which USACOE has requested in order to confirm that the limits of disturbance of the proposed array do not encroach on any areas identified as waters of the United States and that no NWP is required for this project. A copy of the GVG survey submitted to USACOE on 2/1/2022 is enclosed for your reference. In addition, the foundation systems anticipated for this project entail piles or helical piers. To the extent these items take place over any jurisdictional wetlands, all work will conform with USACOE guidelines for potential development in and around wetlands. Per USACOE guidelines, driving piles into wetlands does not constitute wetland disturbance.

MJ Comment: 3. Part I.15 – The response indicates that the project site does not contain species of animals or associated habitats, listed by the State or Federal government as threatened or endangered. EAF mapper (<https://gisservices.dec.ny.gov/eafmapper/>) states the Bald Eagle. The applicant provided Department of Environmental Conservation Letter of No Impact. The applicant should also provide correspondence from the NY Natural Heritage Program to confirm the presence or absence of rare plants or animals and significant natural communities as well as the US Fish and Wildlife Service IPaC database.

Response: NY Natural Heritage has confirmed receipt of our inquiry and has advised that they rely upon the Environmental Resource Mapper for project screening, and that they would have nothing additional to report beyond NYS DEC’s previous review of this site. A copy of correspondence with NY Natural Heritage is enclosed. In addition, NYSDEC has written an additional Letter of No Jurisdiction regarding the Bald Eagle, a copy of which is enclosed, stating that any nest is far enough away from the site that there should be no disturbance and therefore no permit or further action is required. Also enclosed for your review are the US Fish and Wildlife Service IPaC database findings indicating there are no critical habitats at the project site. The IPaC report also contains general advisory information on the presence of migratory birds, and while no permit is required, Nationwide Standard Conservation Measures will be taken to minimize disturbance (this is easily accomplished given the low-impact nature of solar facility installation).

SITE PLAN REVIEW (Chapter 138 – Zoning)



In reviewing the proposed project materials for conformance with zoning, the following observations and/or potential deficiencies have been identified:

MJ Comment: 4. The project parcel is split-zoned, with the majority located within the Town's Rural District. A portion of the site is located in the Rural Highway Transition District. It appears that the proposed Community Solar Installation exists solely within the Rural District.

Response: Comment noted.

MJ Comment: 5. Pursuant to §138-115.2, the project is considered to be a Type III Solar – Community Solar Installation (CSI). CSIs require a Special Use Permit and Site Plan Review in the Rural District.

Response: Comment noted.

MJ Comment: 6. The project site meets the minimum land area requirement as required by §138-115.4.D of 60 acres. The land area is approximately 62.79 acres.

Response: Comment noted.

MJ Comment: 7. The project area is located within the Ballston Lake Watershed Overlay District, therefore the "system coverage perimeter" shall not exceed 20% of the parcel size pursuant to §138-115.4.D. Based on our review of the concept plan submitted, the applicant is proposing coverage of approximately 35.3%, which exceeds zoning limits. The applicant shall revise the plans accordingly.

Response: We have revised the plans in accordance with the current interpretation of the "system coverage perimeter"; a copy of the revised site plan is enclosed.

MJ Comment: 8. The bulk requirements and proposed conditions are provided below. Non-conforming items are shown in **red**.

Response: While we understand that it is not the role of the Planning Board to interpret zoning laws, we wish to respectfully reiterate our remarks made during the 1/26/2022 Planning Board meeting relating to the provision of the Town's solar law at issue under §138-115.4(D) (Permitting) which states that "System coverage perimeter may not exceed 20% of parcel if the property is located within the Watershed Overlay District. For other District there is no coverage maximum. Solar collectors are considered both



structures and impervious surfaces.” We respectfully disagree with the Town’s application of the term “system coverage perimeter” for three main reasons.

First, because “System coverage perimeter” is not a defined term under §138-115.2 (Definitions) of the Town’s solar ordinance, it should be interpreted in a manner consistent with the Town’s definition of “lot coverage”. In fact, MJ’s 1/24/2022 comment letter characterizes “system coverage perimeter” as “lot coverage” in Comment 8 relating to its assessment of bulk requirements for the proposed project. In turn, the Town of Ballston Zoning Code defines “lot coverage” as “the percentage of the lot area covered by the combined area of all buildings, structures, parking areas, or other impervious surfaces on the lot.” Applying the above language that “solar collectors are considered both structures and impervious surfaces” in conjunction with the Town’s definition of “lot coverage” to the first iteration of our site plan results in a “system coverage perimeter” of 12%, which is well below the 20% threshold established by the Town. This is the only instance in which open space is considered “lot coverage” under the Town’s zoning code; for instance, accessory structures under the code are treated independently of one another, and not assembled to constitute a larger coverage area which encompasses open space or undisturbed areas between them.

Second, the current interpretation is inconsistent with NYS DEC stormwater management guidelines for solar arrays. The NYS DEC SPEDS General Permit for Stormwater Discharges defines “Impervious Area (Cover)” as “impermeable surfaces that cannot effectively infiltrate rainfall.” Because the Town’s solar ordinance states that “solar collectors are considered both structures and impervious surfaces”, it is improper to include the areas between panel rows as “system coverage” areas since they are not impervious.

Additionally, NYSDERDA considers the following components of a ground-mounted solar energy system “impervious:” foundation systems, pad-mounted structures, and paved roads. Undisturbed soil beneath a panel or between panel rows is not considered impervious nor part of a “coverage area” under existing NYS guidelines. Therefore, the interpretation issued is unreasonably restrictive, particularly since all CSI’s must already provide a complete SWPPP in conformity with DEC guidelines per §138-62.4(D)(5)(d).

Lastly, the term “system coverage perimeter” is potentially in conflict with other provisions of the Town’s solar law and may lead to confusion and negative environmental consequences. For instance, the code’s treatment of solar panels as “impervious surfaces” arguably necessitates a SWPPP that requires additional stormwater basins and other mitigation measures that are not only unnecessary but will



cause additional land disturbance. In addition, strict interpretation of “system coverage perimeter” leads to the possibility of a developer assembling the same number of panels which would otherwise be permitted in more densely arranged array, thus meeting the Town’s requirement while maintaining the same panel coverage area, but making stormwater conditions significantly worse.

Considering that NYS DEC guidelines for stormwater management of solar arrays specifically does not treat solar panels as “impervious” or “coverage”, there is no practical purpose served by treating them as such through application of the term “system coverage perimeter”. To illustrate this inconsistency, below is a comparison of the four solar projects submitted to date. With the original proposed site plan, our project application proposes the second lowest percentage of “system coverage perimeter” related to parcel size and is the only project with no work proposed in jurisdictional wetlands.

Project Name; PB #; Address; SBL #	Acreage of Parcel(s)	"System Coverage Perimeter" (Area)	"System Coverage Perimeter" (%)	"System Coverage Perimeter" in Jurisdictional Wetlands
Middleline West & East CSI (PB 2021-010) 284 Middleline Rd; SBL #227.-1-16.11	91.90	47.13	51.28%	Yes
60 Middleline Rd CSI (PB 2021-011) 60 Middleline Road; SBL 238.-2-26.2	62.79	22.19	35.34%	No
Active Solar - Randall Road CSI (PB 2021-012) Randall Road; SBL 226.-1-43.1	79.05	20.15	25.49%	Yes
Bloomfield Solar CSI (PB 2021-017) Mann and Garrett Road; SBL 215.-1-48.1	86.00	37.70	43.84%	Yes

It is also worth noting that the racking specified for this project is compatible with the existing slopes of the project area, therefore no grading is required for panel installation. Our project is among the smallest and arguably the least impactful of all the projects proposed, yet it is being required to downsize by 43% because of the current interpretation of “system coverage perimeter.”

We understand and support the extra care wished to be taken in the Watershed Overlay District; protecting this area from excess drainage and runoff is a concern of utmost importance. To the extent the Town is concerned with potential adverse impacts of



solar arrays to the Ballston Lake watershed, §138-63(C) of the Town’s watershed overlay district zoning regulations provide that the Planning Board “may impose appropriate conditions as it deems necessary, and shall make a written finding of fact that the proposed development has been designed in a manner that minimizes damage to water resources consistent with this chapter.”

It is recognized that solar power facilities, when installed thoughtfully, are a benefit to the community. Unnecessarily limiting this benefit with narrow construction of excessive regulations is contrary to the intention of the law under §138-115.1 Purpose, Intent and Authority, which not only states that solar energy is a “necessary component of the Town of Ballston's current and long-term sustainability agenda”, but also remarks that “[t]he purpose of this legislation is to balance the potential impact on the community when solar collectors may be installed while preserving the rights of property owners to install solar collection systems without excess regulation.”

Notwithstanding the above, we have submitted a revised site plan that complies with the current interpretation of the 20% “system coverage perimeter” limitation in the Watershed Overlay District. Should circumstances allow our initial site plan to be reconsidered as a result of a reinterpretation of the relevant provision, issuance of an area variance, and/or possible change to the existing zoning code, we will seek to conform our project application accordingly.

MJ Comment: 9. Pursuant to §138-115.3.G, a majority of the Planning Board members shall conduct a site visit before approval. Members shall be accompanied by the applicant’s design professional. The site visits are intended to provide a personal perspective of the site, regarding topography, site conditions, hedge rows, or neighboring residences and how the site may be buffered.

Response: We look forward to the opportunity to conduct this visit and representatives from The Spinney Group and Renovus Solar will attend. Please feel free to contact us to make the necessary arrangements.

MJ Comment: 10. The project is located within Saratoga County Agricultural District 2; therefore the project must follow all NYS Department of Ag & Markets guidelines for solar energy projects.

Response: Comment noted. This project will adhere to all NYS Department of Ag & Market guidelines as appropriate. It is further noted that the applicant has submitted an



application for removal of this parcel from Saratoga County Ag District No. 2 and that the review process is anticipated to be completed in 2022.

MJ Comment: 11. Pursuant to §138-115.4.D(2), total CSI coverage in the Town of Ballston shall not exceed 150 acres. This is the second CSI application received by the Town of Ballston Building Department to date. With this application, the aggregate area proposed in the Town of Ballston is 77.15 acres. Therefore, CSI coverage allowance in the Town has not been exceeded.

Response: Comment noted.

MJ Comment: 12. The applicant has indicated that the CSI will be enclosed by a 7-foot tall chain link fence, which is in compliance with §138-115.4.D(2)(d). The fencing shall also be in compliance with National Electric Code Section 110.31.

Response: Comment noted. The fencing will be in compliance with NEC Section 110.31.

MJ Comment: 13. A curb cut and working within the County Highway right-of-way is proposed. The applicant shall obtain a work permit from the Saratoga Highway Department prior to commencement of the work of this project.

Response: Comment noted. We will obtain a work permit from the Saratoga Highway Department prior to commencement of work.

MJ Comment: 14. The proposed driveway shall comply with the 2020 Fire Code of New York State. Details or description of the proposed drive materials of construction shall be provided, confirming it can support the load of the responding emergency vehicles. Written acceptance of the fire access shall be provided by the local fire jurisdiction, Burnt Hills Fire District. Additionally, a truck turn analysis shall be provided to confirm and document the turning movements of an emergency vehicle on the access road.

Response: Comment noted. The proposed driveway will comply with the 2020 Fire Code of NYS and other all requirements will be met.

MJ Comment: 15. The New York State Fire Code requires a 10' clear, brush-free area around the array. It appears that this requirement is met, however the applicant shall provide annotation on the project plans to confirm that a 10' clear area is provided between each row.

Response: Comment noted. This detail is indicated on the revised site plan.



MJ Comment: 16. Subsequent submissions shall include the following for review:

1. Detailed project plans, details and elevations
2. Photo simulation pursuant to §138-115.4D(5)(a)
3. Stormwater Pollution Prevention Plan (SWPPP)

Response: The revised site plan shows the requested details and elevations. If more detail is required, please specify. Photo simulations are forthcoming. A slideshow presentation of project site photos has been submitted. A SWPPP is forthcoming.

Thank you in advance for your consideration of the above responses and supporting documents. Please contact us should you have any questions or remarks, and we look forward to continuing to work with the Town of Ballston on this project application.

Sincerely,

Amanda Postma, Project Developer
Renovus Solar

cc (via email):

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Enclosures:

- Revised Site Plan dated 2/1/2022
- Full Environmental Assessment Form dated 2/1/2022
- US Fish and Wildlife IPaC Findings dated 2/1/2022
- Revised Agricultural Data Statement dated 2/1/2022
- Project Site Photo Slideshow dated 2/1/2022
- GVG survey prepared for USACOE determination re: NWP 51 dated 1/31/2022
- Correspondence with NYS Natural Heritage dated 2/1/2022
- NYSDEC Letter of No Jurisdiction (Wetlands) 2/1/2022
- NYSDEC Letter of No Jurisdiction (Endangered Species) 2/1/2022