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December 2, 2022

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Chairperson Lee Bergus
And Members of the Planning Board
Town of Goshen
41 Webster Avenue
Goshen, New York 10924

RE: Broadlea Road and Vivian Lane Solar
New Leaf Energy, Inc.
Property: 142 Broadlea Road & 29 Vivian Lane (Tax ID: 9-1-4 & 6.2)

Dear Chair Bergus and members of the Planning Board:

On behalf of our client, New Leaf Energy, Inc. (Applicant), developer of the proposed 5 MW solar energy facility at 142 Broadlea Road and the proposed 5 MW solar energy facility at 29 Vivian Lane (collectively the “Project”), we respectfully submit this letter to accompany the updated photo simulations prepared by Saratoga Associates in furtherance of the Planning Board’s ongoing SEQRA review. As you may be aware, our office was recently retained by the Applicant, and we look forward to working with the Board to finalize the review of this Project.

SUBSTANTIAL PROJECT MODIFICATIONS MADE TO ADDRESS VISIBILITY CONCERNS FROM THE HERITAGE TRAIL

The Applicant has incorporated several substantial Project modifications to address potential visibility concerns from the Heritage Trail. The modifications made over the life of the Project include:

- The number of trees planted has increased from 308 to 329. This increase further enhances the already robust planting plan.
- The number of existing trees removed has been substantially reduced from 280 to 231. The result is a net gain of 98 trees. This and the other reductions noted below were accomplished by redesigning the site through the removal of panels adjacent to the Trail and moving them north.
- The acreage of trees cut has been significantly reduced from 0.89 acres to 0.19 acres. This represents a 78.7% decrease in acreage of trees cut.
- The acreage of land cleared and grubbed has been reduced from 3.71 acres to 3.54 acres.
- The distance from the Heritage Trail to the proposed landscape tree line was increased from 124 feet to 139 feet. This permits 15 more feet of existing, natural vegetation to remain as screening, in addition to the Applicant’s proposed plantings.
- The distance from the edge of the Heritage Trail to the nearest solar panel has significantly increased from 85 feet to 211 feet. This represents a 148.2% increase in distance.

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December 2, 2022

Page 2

- A berm was added to further increase the degree of visual screening.
- Proposed tree height of the plantings was also increased from the standard 4–6-feet to 8 feet to further increase the degree of visual screening and reduce the number of years for the plantings to reach maturity.

SEQRA: ASSESSING VISIBILITY

The New York State Department of Environmental Conservation (DEC) instructs that “mere visibility of a project should not be a threshold for decision making.” *See DEP-00-2 / Assessing and Mitigating Visual and Aesthetic Impacts*, Section VII “Glossary,” last revised December 13, 2019.¹ Stated differently, mere visibility is not indicative of an impact.

The DEC Full Environmental Assessment Form (FEAF) Workbook Part 2, Question 9, further clarifies that there are several mitigating factors the reviewing agency should consider when assessing the potential aesthetic impact of a Project. These mitigating factors can include:

- the distance between the Project and the officially designated scenic or aesthetic resource;
- whether the project’s visibility is seasonal (“If so, is the project site visible at the same time of year that the public views the scenic or aesthetic resource?”); and
- how much of the project site is visible.

If a limited portion of the project site will be visible from very few publicly accessible locations and/or vegetation and other factors such as distance and topography screen and soften the visibility of the Project, a finding of no or small impact should be made. *See FEAF Workbook Part 2, Question 9.*

ANALYSIS: THERE ARE NO SIGNIFICANT ADVERSE VISUAL OR AESTHETIC IMPACTS CAUSED BY THE PROJECT

The limited visibility of the Project does not, in and of itself, cause an impact. *See DEP-00-2 / Assessing and Mitigating Visual and Aesthetic Impacts, supra.*² Indeed, the Project is only visible at very few limited locations when accounting for the updated landscaping plan. The limited visibility of the Project from the very few publicly accessible locations warrants a finding of no significant adverse environmental impact, as noted in the FEAF Workbook Part 2. Vegetation, both natural and man-made, also softens the limited parts of the Project that remain

¹ **Aesthetic Impact**: An aesthetic impact occurs when there is a detrimental effect on the perceived beauty of a place or structure. Mere visibility of a project should not be a threshold for decision making. Instead a project, by virtue of its visibility, must clearly interfere with or reduce the public’s enjoyment or appreciation of the appearance of a significant place or structure.”

² Please note that the FEAF Workbook Part 2, Question 9, directs agencies to consult the DEC Policy when reviewing the visual aspects of a project. Likewise, the DEC Policy directs the agency to the EAF Workbooks.



December 2, 2022

Page 3

visible. To further enhance this softening effect, the Applicant has increased the number of trees to be planted, reduced the number of existing trees to be removed, and increased the height of the proposed supplemental landscape screening.

In addition, other modifications made during the course of the review have further mitigated any potential for a significant adverse environmental impact. For example, the distance from the edge of the Heritage Trail to the nearest solar panel has significantly increased from 85 feet to 211 feet, and the solar facility is located wholly outside the 500-foot Broadlea Road Scenic Road Corridor Overlay at 1,925 feet from the road. Zoning Law § 97-29B. The increase in distance from the Heritage Trail was accomplished by substantially redesigning the site through the removal of panels adjacent to the Trail and moving them north. The Applicant has also added a berm to the plans to further increase the degree of visual screening.

With respect to seasonal visibility, the Heritage Trail is recreational amenity that is mainly used during the warmer months (spring/summer/early fall). Thus, the Project is naturally screened by existing deciduous vegetation during peak usage of the Heritage Trail, which is in addition to the Applicant's year-round supplemental planting plan.

Based on the foregoing, it is respectfully submitted there are no significant adverse visual or aesthetic impacts caused by the Project when considering the DEC Policy and FEAF Workbook analysis.³ Moreover, given the demonstrated lack of a visual impact, it is respectfully submitted the proposed Project does not require further mitigation.⁴

Conclusion

The Applicant appreciates the Town's continued diligence and attention to this matter. The Applicant respectfully requests placement on the upcoming December 15, 2022 meeting agenda for the continued SEQRA review of this Project. Should anything further be needed in the interim, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in blue ink that reads 'Alec Gladd'.

Alec R. Gladd

³ See Merson v. McNally, 90 N.Y.2d 742 (1997) (project modifications incorporated by the project sponsor to mitigate concerns identified by the public and reviewing agencies warrant the adoption of a Negative Declaration).

⁴ See, e.g., Conroy v. Town of Woodbury Zoning Board of Appeals, 21 A.D.3d 957, 958 (2d Dept. 2005).