

TOWN OF HOOSICK ZONING BOARD OF APPEALS

REGULAR MEETING

January 2, 2024

**RESOLUTION GRANTING CONDITIONAL SITE PLAN APPROVAL REGARDING
HAWTHORN SOLAR, LLC SOLAR ENERGY SYSTEM**

WHEREAS, Hawthorn Solar, LLC (a subsidiary of CS Energy, LLC) filed applications for special use permit, site plan, and area variances to construct, operate and maintain a solar energy system on 130 acres of land including a new 48,125-square-foot substation along Pine Valley Road and Fords Road within the Agricultural/Residential Zoning District; and

WHEREAS, the Hawthorn Solar proposed solar energy system project site is on lands of Dale Ford (Tax Map Parcel No. 36.-1-9.2) and Timothy and Brittany Marbot (Tax Map Parcel Nos. 36.-1-10.1, 36.-1-11.1, and 46.-1-10.11); and

WHEREAS, the Hawthorne Solar application materials included a Full Environmental Assessment Form (“FEAF”) pursuant to the New York State Environmental Quality Review Act (hereinafter “SEQRA”); and

WHEREAS, the Town of Hoosick Zoning Board of Appeals (hereinafter “Zoning Board”) determined to undertake a coordinated environmental impact review pursuant to SEQRA; and

WHEREAS, the Zoning Board served a notice of SEQRA lead agency coordination to all involved agencies concerning this action, indicating that it sought to be declared lead agency for this action; and

WHEREAS, following service of the notice of SEQRA lead agency coordination, no other involved agency objected to the Zoning Board serving as SEQRA lead agency for this action; and

WHEREAS, the Zoning Board declared itself lead agency pursuant to SEQRA through resolution at its August 7, 2023 meeting; and

WHEREAS, the Zoning Board, in consultation with its designated technical review consultant, reviewed all Hawthorn Solar application materials to determine completeness of the applications for purposes of holding a public hearing; and

WHEREAS, the Zoning Board determined such application materials to be complete and sought to hold a public hearing on such applications as required under the Town of Hoosick Land Use Regulations; and

WHEREAS, the Zoning Board, through resolution, scheduled a public hearing on such applications to be held at its meeting to be held September 5, 2023; and

WHEREAS, public notice of the public hearing, to be held September 5, 2023, was duly published, posted, and mailed by the Zoning Board in compliance with the requirements of the Town of Hoosick Land Use Regulations; and

WHEREAS, the Zoning Board held a public hearing on such applications on September 5, 2023, at which public comment on such applications was received; and

WHEREAS, the Zoning Board continued the public hearing on such applications on October 2, 2023, and accepted further public comment at that time; and

WHEREAS, the Zoning Board closed the public hearing on such applications on October 2, 2023, but established a 14-day period for submission of any additional written comments on such applications through and including October 16, 2023; and

WHEREAS, the 14-day period for written submission of any additional written comments on such applications ended on October 16, 2023; and

WHEREAS, additional written comments were received, considered by the Zoning Board, and provided to the applicant; and

WHEREAS, the Zoning Board required the applicant to respond to all public hearing comments and all written comments in writing; and

WHEREAS, the applicant thereafter submitted written responses to all public hearing comments and written comments; and

WHEREAS, the applicant reviewed its written responses to all public hearing comments and written comments at the Zoning Board's November 6, 2023 meeting; and

WHEREAS, the Zoning Board considered the applicant's written responses to the public comments and the applicant's presentation of the same at its November 6, 2023 meeting, and further deliberated on such applications at the November 6 meeting, including but not limited to the issues of screening and potential visual impacts; and

WHEREAS, the Zoning Board thereafter received and considered additional information from the applicant on tree planting species and a revised planting plan; and

WHEREAS, the Zoning Board has fully reviewed all application materials, including the site layout map and plan, the project narrative, the FEAF, all supporting technical information, public comments, agency comments, applicant responses to comments, and recommendation of the Rensselaer County Department of Economic Development and Planning, and has considered the comments of its designated technical review consultant; and

WHEREAS, the Zoning Board has adopted a Negative Declaration pursuant to SEQRA for this action; and

WHEREAS, following review of the complete record and upon due deliberation, and considering the review comments of the Zoning Board's designated technical review consultant, the Zoning Board makes the following findings with respect to the general site plan review standards set forth in Hoosick Code Section 301-15:

- A.** Location, arrangement, appearance, size, design, and general site compatibility of buildings, structures, lighting, and signs.
- In accordance with the Detailed Project Description provided on 4.11.23 and in reviewing the revised Site Plans provided on 7.31.23, this project has been designed to accommodate land features and avoid environmentally sensitive areas. By separating this array into a series of smaller array blocks, the visual impact has been reduced through project design features. Each component has been designed to limit the infrastructure necessary to interconnect the system including electrical lines, electrical conduit, fencing, access roads, and equipment pads. There are no significant lighting or signage impacts from this action.
- B.** Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers, and traffic controls.
- In accordance with the revised Site Plans provided on 7.31.23 and the Proposed Haul Route provided on 10.30.23, the general circulation pattern is adequate to access the site during construction and operation to provide the least impact on local roads. All portions of the site are accessible via internal access roads which will be built above NYSDEC minimum standard. All intersections between local roads and access roads are to be cut at 90-degree angles with sufficient turning radii to accommodate delivery and construction vehicles. A road use and repair agreement between the applicant and the Town will be required, and must be executed prior to the commencement of any construction. Such road use and repair agreement will address the local roads to be used, inspection requirements, coordination with the Town Highway Department, road repair responsibility, and adequate repair security.
- C.** Location, arrangement, appearance, and sufficiency of off-street parking and loading.
- In accordance with the revised Site Plans provided on 7.31.23, all construction staging will be on site and will not impact the local flow of traffic. Upon the completion of construction, there will be minimal need to park more than one vehicle at a time on site.
- D.** Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic, and overall pedestrian convenience.
- There is no significant traffic impact from this action. Impact to traffic during construction is deemed to be short-term. No pedestrian access to the site is anticipated.
- E.** Adequacy of stormwater and drainage facilities.
- The applicant has supplied a Draft Stormwater Pollution Prevention Plan which has been revised as of July 2023 to reflect the Town Designated Engineer's (TDE) comments. These

facilities have been deemed adequate to sustain the existing drainage rate if TDE recommendations are followed.

- In response to a public comment concerning stormwater impacts, the applicant provided the following response within “Hawthorn Public Hearing Questions (10.23.23)”:

A certified engineer will perform regular stormwater inspections throughout the construction of the project, per the Department of Environmental Conservation requirements. The applicant has drafted a stormwater pollution prevention plan (SWPPP) for the project which will ensure that stormwater control measures are in place for the construction and operation of the project. The engineer will assess the site to ensure the proposed stormwater control measures are in place and are maintained per the SWPPP requirements. The Applicant has also submitted a stormwater management agreement with the application materials, that ensures stormwater controls are maintained throughout the project's operational life. Through the proposed stormwater management measures, the project's construction and operation will not result in any additional runoff outside of the site, including roads, other properties, or adjacent to the project boundaries.

F. Adequacy of water supply and sewage disposal facilities.

- This project will neither create a demand for water nor generate liquid wastes.

G. Adequacy, type, and arrangement of trees, shrubs, and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.

- The FEAF Section E.1.b., Revised Site Plans (7.31.23), Visual Assessment Memo, Visual Renderings, Viewshed Analysis, and the Revised Landscaping Plan (11.29.23) taken together create a robust record of the applicant's effort to accommodate the adequacy of visual mitigation. The applicant has provided additional information in response to public hearing comments on visual impact within “Hawthorn Public Hearing Questions (10.23.23)”:

The applicant will commit to planting trees that are 6 feet tall at planting and will plant during the first available planting season in construction, rather than planting at the operation of the project. This will allow for the trees to provide, at operation and throughout the project life, viewshed mitigation at a faster rate than is typical for projects.

Without any mitigation or existing vegetation accounted for, the project may be visible from 12 residences. A photo is included below which shows how the panels will look like from the western side of the project – where the most residences were identified that have a potential viewshed. This photo with mitigation shows the panels entirely shielded after the first five (less as trees will be planted at construction) years of growth. We anticipate the number of residences identified above being significantly less, provided the existing hedgerows and vegetation adjacent to the project and throughout the general area around the project, and with mitigation measures that will be implemented. It is the applicant's experience that, although agricultural land is viewed as optimal to some, others may have a different view and may prioritize land that is adjacent to areas that have uses other than farming taking place, balancing any perceived potential impacts to property value.

The project is set back at least 250 feet from Pine Valley Road, and on average over 600 feet from Pine Valley. In most locations along the project the topography from Pine Valley Road will shield the view of the panels. Vegetative screening is proposed along the majority of the locations where the panels are visible from residential properties and public vantage points, including along Fords Road and Pine Valley Road. There will be minimal impact to travelers. The panels will have little visibility from the road and it is not anticipated that drivers will be impacted on their commute. The project will have no glare impacts on roads or any residences or neighboring properties. Through landscape mitigation, over 1,000 trees are anticipated to be planted during construction.

- Noise is not considered to be impactful after construction for this project and therefore a noise buffer is not required; however, noise was of concern to the public and the applicant provided the following response within “Hawthorn Public Hearing Questions (10.23.23)”:

It is not anticipated that the project will have noise impacts at any adjacent property throughout the project's 25 + year operational life. The stables located on the Windy Lea parcel are located over 2000 feet from any project components. Of the 74-acre parcel under the ownership of Windy Lea, approximately 2 acres are within 600 feet of any project components. The property boundary of Windy Lea is, at the closest, approximately 350 feet from any project components. The substation, which will be located just east of the 115 kV lines that the project will interconnect to, is the closest project component. The property boundary of Windy Lea is located over 650 feet from the nearest location where any racking will be installed. The closest field owned by Windy Lea is located approximately 420 feet from any project component.

During operation, at 400 feet, the substation will emit noise that is 40 dB, or approximately the sound of a refrigerator. Construction of the substation will produce noise levels, at 425 feet, that are equivalent to the following:

- *Excavator will produce noise that is approximately 57 dB, which is the general noise level at a restaurant.*
- *Concrete trucks used for construction will create noise at 65 dB or the noise level approximately equivalent to that of a car driving by.*
- *A grader will create noise levels at approximately 59 dB, or the approximate noise level of conversation.*
- *The noise of a flatbed truck is approximately 55 dB, or a noise level between rain and conversation.*

At 600 feet, the substation will produce noise throughout operation that is approximately 35 dB, between the noise level of a whisper and a refrigerator. At 500 feet, the construction of a racking system and piling would be 65 dB, between voices and a car driving by. At 500 feet, inverter installation will be approximately 70 dB, approximately equivalent to a car passing by. While topography may be a factor, the overall noise levels will be limited enough that impacts from topography should not create significant additional impacts. Fans that are

located at the transformer have been incorporated into the overall noise levels anticipated, as identified above.

- H.** Service, storage, and utility areas shall be designed to the side and rear yards of any building and shall be appropriately screened by walls, earth, berms, and/or vegetation, in the Review Board's discretion.
- Per the Revised Site Plans (7.31.23), no permanent or temporary buildings have been proposed for this project. Utility and temporary storage areas will be located in the designated staging areas. Post-construction, the utility area will be around each equipment pad and at the substation. Reference is also made to the findings listed above in item G concerning visual impact considerations.
- I.** Paving, parking, or storage shall not be permitted within seven feet of any side or rear line of the site plan presented, and no parking or paving except for entrances will be permitted within 10 feet of the front line of said site plan. These areas shall be maintained as a landscaped area. Where such a requirement restricts the effective development of a site, the Review Board may take any appropriate action it deems necessary to modify these requirements while maintaining the intent of this provision.
- The Revised Site Plans (7.31.23) reflect this provision and all roads only cross property lines at direct angles rather than running parallel to any property boundaries.
- J.** Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- The applicant is required to provide access to the property for the fire department and EMS and will provide training to all responsive emergency agencies. The site layout has been deemed adequate for emergency access.
- K.** Special attention to the adequacy and impact of structures, roadways, and landscaping in areas with susceptibility to ponding, flooding, and/or erosion.
- As impact to local roads were of concern to the public, the applicant provided the following response within “Hawthorn Public Hearing Questions (10.23.23)”:

The project has provided a road use agreement to the town in the special permit application materials which states that the applicant will repair all roads damaged from the construction of the project. The only road impacts that may occur will happen during the construction of the project, as this will be the only time large equipment and deliveries will be consistently made. The haul routes have been designed to minimize impact to town roads, and CS will coordinate with the Hoosick Highway Superintendent to get feedback on the optimal haul routes and times for delivery. Deliveries of the project components will occur regularly throughout a 6–9-month period of the 12–18-month construction timeframe. Smaller vehicular traffic is anticipated to occur regularly through the 12–18-month construction timeframe, but not at a volume that would significantly increase the traffic volumes on local roads. This agreement includes the repair of any Town of Hoosick roads damaged through the construction of the project. The current proposed haul route will run from Route 7 to Route 105 and on to Pine Valley Road or Fords Road, but may be altered based on feedback

and coordination from relevant town officials, such as the zoning board or the Highway Superintendent.

As stated above in item B, a road use and repair agreement in form and content acceptable to the Town of Hoosick will be required.

L. In the case of an apartment complex or other multiple-family dwelling, the adequacy of usable open space for play areas and informal recreation.

- This provision is not applicable to this project.

M. Overall impact on the neighborhood, including compatibility of design consideration.

- The applicant provided the following response when asked about the project's consistency with community character within Memorandum SEQR EAF Part 2 (7.5.23):

The Project will have minimal to no impact on Community Character. The Project will not eliminate existing structures of historic importance to the community and would not generate a need for additional community services (schools, police, fire). The Project does not displace low-income housing.

The Project may be inconsistent with architectural scale and natural landscape when compared to existing structures (houses, farm buildings) currently on the Project Parcels.

However, the Project is consistent with other solar projects being installed in surrounding communities to Fort Edward, such as: Easton, Schaghticoke, Greenwich, Pittstown, Stillwater, Mechanicville, Saratoga, etc. Additionally, the project will work with non-participating adjacent properties and the local municipality to install vegetative screenings and buffer areas to minimize impact to these adjacent properties. These screenings will include proposed tree plantings of Eastern White Pine ranging from three to four feet in height at maturity and spaced according to the planting schedule submitted to the Town for review and comment.

- Public comment has been received that this project is inconsistent with the Town Comprehensive Plan. However, it is noted that the Town of Hoosick has identified large scale commercial solar facilities as allowable use in all zoning districts in the Town. This legislative determination must be considered, as the Town Board has determined that large scale solar facilities can be compatible with existing land uses in all zoning districts, subject to special use permit review. It is further noted that upon construction completion and facility operation, and in light of consideration of mitigating visual impact through vegetative screening, the facility will have a minimal impact upon the day-to-day function of the residents and businesses of the neighborhood since the use is predominantly passive. It is also noted that impact to agricultural lands was also a repeated public comment. Again, it is noted that the Town Board legislative determination allowed use of agricultural lands for large scale commercial solar projects. Also, while the land would not be in active agricultural use during the period of solar facility operation, the Hoosick Town Code and specific project review requirements include decommissioning the facility after it is taken out of service and the site restored, allowing for future reversion to active agricultural use. Adequate decommissioning security will be required to ensure that the site is fully decommissioned and restored following facility closure.

N. Consideration of the location and preservation of historical sites or landmarks.

- The applicant submitted its project to the NYS Historic Preservation Office (SHPO), and the record does not include any requirement by SHPO to conduct a Phase 1A/1B archaeological survey.
- The applicant has conducted a Trekker survey in order to avoid any potential impacts to the cemetery at the north end of the property along with any additional resources within the area. Minimization and mitigation measures requested by SHPO will be followed so that historic sites are effectively preserved.

O. Consideration of whether the project promotes the health, safety, and general welfare of the Town of Hoosick.

- The record includes a report concerning Health and Safety Impacts of Solar Photovoltaics, the Product Safety Data Sheet for the Hanwha Q Cells Solar PV Modules, and language from the Exemptions from the Hazard Communication standards.
- The applicant has also provided the following information in response to the public hearing comments within “Hawthorn Public Hearing Questions (10.23.23)”:

Studies on these panels have determined that there is no risk of leaching posing a risk to human health or the environment - see below for additional details. Some panels used in projects in the past were cadmium telluride panels, which may have posed a risk of leaching. The panels used here will not be cadmium telluride, and will not contain cadmium. No panels in projects in the state of New York, either constructed or proposed, use cadmium panels.

There are minimal risks that accompany energy facilities. Some of those risks include the risk of small, self-contained fires, and the risk of injury through the construction and maintenance of the project. Each of these risks are limited – fires associated with solar projects are typically contained around the electrical equipment and are self-contained, damaging only the system or the area directly around the system. Small brush fires can occur, but the system itself is not conducive to spreading fires as none of the project components are particularly flammable. The fire department will receive training prior to the operation of the project in the correct response measures. Prior to the operation of the project, the applicant will coordinate with first responders to determine whether or not there is specialized equipment that is necessary to effectively respond to emergencies on site. Should any special equipment be needed, the applicant will work with the fire departments to determine what can be provided by the project. There are no battery/energy storage facilities associated with this project.

P. Consideration of whether the project enables optimum overall conservation, protection, preservation, development, and use of the natural and man-related resources of the Town.

- The Detailed Project Description provided on 4.11.23 states that the project is being designed specifically to avoid any significant adverse impacts to the environment, will avoid all impacts to state wetlands, threatened and endangered species, minimize soil disturbance, will not cause erosion or increase stormwater runoff, and will follow or exceed the NYS Agriculture and Markets guidelines in order for the land to be returned to agricultural use at the end of the project’s life.

- According to the EAF Mapper, the project is outside the vicinity of any state-identified Significant Natural Communities and will have no impact on threatened or endangered species of animals or plants
- The project is being designed specifically to encourage the long-term feasibility of the underlying agricultural resource. The project site will be restored to its current agricultural state at the end of the project life, effectively preserving the site's agricultural heritage for the long term.
- The project layout is optimized to minimize impacts to wetland areas. The project area was surveyed by wetland scientists in the Spring and Fall of 2022. The site design has been developed to utilize timber bridges such that the construction of solar arrays and access roads avoids all impacts on wetland areas. Additionally, the site design has been developed so that electrical crossings will have no impact to wetland areas. The wetland delineation report was received in January of 2023. A Letter of No Jurisdiction regarding species from the DEC, was received in November of 2022.
- For an abundance of caution, tree cutting of all trees that are 4 inches in diameter or greater at breast height (DBH) shall be restricted to October 31st through March 31st to limit potential impacts of any threatened or endangered bat species.
- Limited grading will be taking place on site, and site work should be limited to the removal of tree stumps, installing gravel access roads, trenching for electric conduit/conductors, installing equipment pads, and installing swales, ponds, and other stormwater controls as determined necessary in our final construction design and our Stormwater Pollution Prevention Plan (SWPPP); and

WHEREAS, based upon such findings, and upon review of the complete application record, record of proceedings, public comments and responses thereto, the SEQRA record and Negative Declaration, and upon due consideration and deliberation, the Zoning Board is prepared to act upon the site plan application;

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Appeals of the Town of Hoosick in regular session duly convened as follows:

1. The Town of Hoosick Zoning Board of Appeals approves the site plan for the Hawthorne Solar, LLC commercial solar facility located along Pine Valley Road and Fords Road, subject to the following conditions:

- a. Subject to posting and maintenance of financial security for decommissioning of the commercial solar facility equipment in form and amount acceptable to the Town of Hoosick. Decommissioning security amount shall be subject to periodic review as to amount adequacy as to be determined by the Town Board.

- b.** Subject to final comments of the Zoning Board of Appeals Reviewing Engineer and Town of Hoosick Water Department on final stormwater pollution prevention plan (SWPPP) for this facility, and Notice of Intent to comply with NYSDEC General Permit 0-15-002.
- c.** Coordination with local emergency services regarding on-site facilities, layout, equipment, and access; provide safety notices and safety training to such local emergency services; provision by the applicant, at applicant cost, of emergency response vehicle and equipment to the Hoosick Fire Department.
- d.** All panels used for the solar facility must have an anti-glare coating or consist of materials that will not produce offensive glare.
- e.** No further removal of any vegetation from the property without further review and approval by the Town of Hoosick Zoning Board of Appeals. Tree cutting on the site is limited to the tree clearing limits as shown on the Removals Plan, Sheet C-201 of the Site Plan Set submitted on 8.7.23.
- f.** All approvals of the Public Service Commission for this solar facility must be filed with the Town of Hoosick.
- g.** Access to the commercial solar equipment is limited to three access roads off of Fords Road and one access road off of Pine Valley Road as shown on Sheet C-300 of the Site Plan Set submitted on 8.7.23.
- h.** All waste materials generated during site construction, including all packaging materials, must be contained and removed from the site within a reasonable time and no later than the issuance of a certificate of compliance.
- i.** The security fence around the perimeter of the community solar facility shall be 7-foot high fixed knot farm fence, with a Knox box installed for emergency access at the entry gates.
- j.** The solar facility equipment must be constructed and operated in compliance with all requirements of the National Electric Code.
- k.** Use of pesticide and/or herbicide is prohibited in relation to operation and maintenance of the commercial solar facility and a note regarding such prohibition shall be added to the site plan.
- l.** A Payment In Lieu of Taxes (PILOT) Agreement is required.

- m.** A Stormwater Management Facilities Maintenance and Easement Agreement is required.
- n.** A road use and repair agreement is required.
- o.** Construction activities are limited to Monday through Friday, 7:00 a.m. – 4:00 p.m.
- p.** Strict compliance with the approved site plan set submitted on 8.7.23 is required.
- q.** Strict compliance with the landscaping plan submitted on 12.4.23 is required; all vegetation/trees must comply with the approved species list, and the applicant/operator must replace/replant all vegetation/trees installed pursuant to the approved landscaping plan that do not survive during all periods of time that the facility is in operation.
- r.** Subject to requirements under Nationwide Permit for land-based renewable energy generation facilities of the United States Army Corps of Engineers and determination from the Army Corps of Engineers that coverage is provided for this project thereunder.

The foregoing Resolution, offered by _____ and seconded by _____, was duly put to a vote as follows:

MEMBER ZIEHM	VOTING _____
MEMBER BAILEY	VOTING _____
MEMBER PIRIE	VOTING _____
MEMBER SUSSMAN	VOTING _____
CHAIRMAN HOAG	VOTING _____

The foregoing Resolution was/was not thereupon declared duly adopted.

January 2, 2024