

TOWN OF BROOKHAVEN

Findings Statement for the Middle Island Solar Farm@ Mastic – 15SP0044 March, 2017

Lead Agency: Brookhaven Town Planning Board

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The following is a Findings Statement for the project known as the Middle Island Solar Farm @ Mastic – Application 15SP0044 and represents the final stage in the SEQR Process. This document has been prepared in accordance with Article 8 of the Environmental Conservation Law and contains all the information required by Section 617.11(d) and (e)

AGENCY JURISDICTION:

The Planning Board of the Town of Brookhaven is an appointed municipal body whose duties include: Review of Land Use Applications and Planning Board Special Permits for proposed projects on commercial and industrially zoned parcels of land within the Town of Brookhaven.

The proposed Middle Island Solar Farm @ Mastic was referred to the following agencies for review and recommendations at the time when the application was deemed complete:

- Federal Aviation Administration – Eastern Region;
- Suffolk County Department of Health Services;
- Central Pine Barrens Joint Planning and Policy Commission¹;
- Suffolk County Planning Commission;
- Suffolk County Department of Planning;
- Suffolk County Water Authority;
- New York State Department of Environmental Conservation, Region 1;
- Long Island Power Authority / PSEG

The Brookhaven Planning Board has the ultimate approval authority and sole discretion over the submitted application for the Middle Island Solar Farm @ Mastic, which includes requested approval for a Site Plan and Special Permit for a proposed solar energy production facility including a field of solar panel arrays and 4,032 sq. ft. maintenance and operations building. The Town of Brookhaven Board of Zoning Appeals previously heard and approved a lot frontage

¹ The proposed project is located outside of the official boundaries of the Central Pine Barrens. However, the boundary is represented by Moriches-Middle Island Road, which borders the northern access point of the subject property. The Central Pine Barrens Joint Planning and Policy Commission informed the Town after the initial coordination that they do not wish to be included in future communications due to the fact that the property is outside of their official jurisdiction.

variance as this variance was outside of the Planning Board’s jurisdiction. Findings for that decision are available from the Board of Zoning Appeals upon request.

LOCATION OF THE ACTION:

The application is for one (1) parcel of land currently zoned Light-Industrial-1 (L-1) totaling 100.33 acres.² The subject parcel is located on the S/S/o Moriches Middle Island Road & E/S/of Cranford Boulevard in the hamlet of Mastic in the County of Suffolk in the State of New York and is identified as SCTM # 0200 71200 0900 001000.

DESCRIPTION OF THE ACTION:

The applicant is seeking approval of a site plan and special permit to develop 100.33 acre parcel into a 19.6 megawatt solar energy production facility in accordance with the provisions in the Renewable Energy Systems section of Town Code. A 4,032 sq. ft. maintenance and operations building is also proposed along with associated site improvements including drainage, parking, access roads, fencing, plantings and related.

These Findings are issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the New York State Environmental Conservation Law. A Final Environmental Impact Statement (FEIS) has been completed and accepted for the proposed action described as above, dated November 2016. A copy of this document is available from the Planning Division of Brookhaven Town upon request.

HISTORY OF ACTION:

The proposed project was initially submitted in 2013 to the Town Board for a Special Permit for an electric generating facility under the Light-Industirla-1 code. On 6/24/14 the Town Board

² 94.20 acres are zoned L-1, while the remaining 6.13 acres are zoned A-Residential-1. As per Town Code, the L-1 zoning is considered the prevailing zoning category.

adopted a SEQRA Positive Declaration for the proposal and a public scoping was held on 7/22/14. On 8/6/15, the Renewable Energy Systems section of Town Code was amended to permit solar energy production facilities on L-1 parcels, subject to a Special permit by the Planning Board. Also on 8/6/15, the Town Board transferred their Special Permit file and fees to the Planning Board.

A Positive Declaration of Environmental Significance was then adopted by the Planning Board on 9/21/15. As part of the issuance of this Positive Declaration, it was noted that Scoping would not be conducted as scoping was previously conducted for a nearly identical proposal on 7/22/14 at Brookhaven Town Hall when the application was before the Town Board. The information gathered from that scoping process would then apply to the proposal before the Planning Board.

A Notice of Positive Declaration was posted to the New York State Environmental Notice Bulletin (ENB) on 9/30/2015 in accordance with SEQR regulations after having been adopted by the Planning Board.³ After the Planning Board, as Lead Agency, adopted the SEQRA Positive Declaration in order to thoroughly analyze environmental concerns to determine if there may be any adverse impacts associated with the action, the Board, in accordance with 6 NYCRR §617.9, required that Environmental Impact Statement (EIS) be prepared using the following procedure (From 6 NYCRR §617.9 [a]):

Environmental impact statement procedures.

(1) The project sponsor or the lead agency, at the project sponsor's option, will prepare the draft EIS. If the project sponsor does not exercise the option to prepare the draft EIS, the lead agency will prepare it, cause it to be prepared or terminate its review of the action. A fee may be charged by the lead agency for preparation or review of an EIS pursuant to section 617.13 of this Part. When the project sponsor prepares the draft EIS, the document must be submitted to the lead agency.

(2) The lead agency will use the final written scope, if any, and the standards contained in this section to determine whether to accept the draft EIS as adequate with respect to its scope

³ http://www.dec.ny.gov/enb/20150930_not1.html

and content for the purpose of commencing public review. This determination must be made in accordance with the standards in this section within 45 days of receipt of the draft EIS.

(i) If the draft EIS is determined to be inadequate, the lead agency must identify in writing the deficiencies and provide this information to the project sponsor.

(ii) The lead agency must determine whether to accept the resubmitted draft EIS within 30 days of its receipt.

(3) When the lead agency has completed a draft EIS or when it has determined that a draft EIS prepared by a project sponsor is adequate for public review, the lead agency must prepare, file and publish a notice of completion of the draft EIS and file copies of the draft EIS in accordance with the requirements set forth in section 617.12 of this Part. The minimum public comment period on the draft EIS is 30 days. The comment period begins with the first filing and circulation of the notice of completion.

(4) When the lead agency has completed a draft EIS or when it has determined that a draft EIS prepared by a project sponsor is adequate for public review, the lead agency will determine whether or not to conduct a public hearing concerning the action. In determining whether or not to hold a SEQR hearing, the lead agency will consider: the degree of interest in the action shown by the public or involved agencies; whether substantive or significant adverse environmental impacts have been identified; the adequacy of the mitigation measures and alternatives proposed; and the extent to which a public hearing can aid the agency decision-making processes by providing a forum for, or an efficient mechanism for the collection of, public comment. If a hearing is to be held:

(i) the lead agency must prepare and file a notice of hearing in accordance with section 617.12(a) and (b) of this Part. Such notice may be contained in the notice of completion of the draft EIS. The notice of hearing must be published, at least 14 calendar days in advance of the public hearing, in a newspaper of general circulation in the area of the potential impacts of the action. For state agency actions that apply statewide this requirement can be satisfied by publishing the hearing notice in the ENB and the State Register;

(ii) the hearing will commence no less than 15 calendar days or no more than 60 calendar days after the filing of the notice of completion of the draft EIS by the lead agency pursuant to section 617.12(b) of this Part. When a SEQR hearing is to be held, it should be conducted with other public hearings on the proposed action, whenever practicable; and

(iii) comments will be received and considered by the lead agency for no less than 30 calendar days from the first filing and circulation of the notice of completion, or no less than 10 calendar days following a public hearing at which the environmental impacts of the proposed action are considered, whichever is later.

(5) Except as provided in subparagraph (i) of this paragraph, the lead agency must prepare or cause to be prepared and must file a final EIS, within 45 calendar days after the close of any hearing or within 60 calendar days after the filing of the draft EIS, whichever occurs later.

(i) No final EIS need be prepared if:

(a) the proposed action has been withdrawn or;

(b) on the basis of the draft EIS, and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment. A negative declaration must then be prepared, filed and published in accordance with section 617.12 of this Part.

(ii) The last date for preparation and filing of the final EIS may be extended:

(a) if it is determined that additional time is necessary to prepare the statement adequately;

or

(b) if problems with the proposed action requiring material reconsideration or modification have been identified.

(6) When the lead agency has completed a final EIS, it must prepare, file and publish a notice of completion of the final EIS and file copies of the final EIS in accordance with section 617.12 of this Part.

A Draft Environmental Impact Statement (DEIS), dated January 2016, was prepared for the proposed action. On 2/10/16 the Town of Brookhaven deemed the DEIS complete with respect to its scope and content for the purposes of commencing public review, in accordance with 6 NYCRR §617.9(a)(2). The DEIS subsequently was circulated for review and to solicit comments from interested agencies and the public, pursuant to 6 NYCRR §617.12. On 2/24/2016, a Notice of Acceptance of Draft EIS and Public Hearing was posted on the NYS ENB in accordance with SEQR regulations.⁴ On 3/21/16 a public hearing was held on the application at Brookhaven Town Hall and written comments were accepted until 4/8/16.⁵

The Final Environmental Impact Statement (FEIS) was prepared to respond to inquiries and comments received during the public hearing and comment period. The Brookhaven Planning Board accepted the FEIS as complete at the 12/12/16 meeting. Lastly, on 12/14/2016 a Notice of Acceptance of Final EIS was posted on the NYS ENB in accordance with SEQR regulations.⁶

The applicant has, in response to the submitted comments, questions and concerns as well as the Town's own analysis, revised the submitted plans and DEIS accordingly. The revisions noted in the FEIS clarify and ultimately add to the level of detail but do not fundamentally change the proposal, thus not requiring further review.

INTRODUCTION:

This Findings statement has been prepared pursuant to the requirements of *Part §617.11* of the State Environmental Quality Review Act regulations (SEQRA) which state: no agency shall make a decision on an action which has been the subject of a Final EIS until a written Findings Statement has been prepared in regard to the facts and conclusions contained within the Draft and Final EIS relied upon to support its decision. To conform to the SEQRA provisions, the Planning Board of the Town of Brookhaven has prepared this Findings statement.

In the initial SEQRA review of this proposed site plan and special permit, the Town of Brookhaven identified several potential significant adverse environmental impacts for this

⁴ http://www.dec.ny.gov/enb/20160224_not1.html

⁵ Originally April 6, 2016 (as written within the accepted DEIS) but subsequently amended to April 8, 2016.

⁶ http://www.dec.ny.gov/enb/20161214_not1.html

action, which are detailed in the Positive Declaration adopted by the Planning Board on 9/21/15. As such, the Town required that an Environmental Impact Statement (EIS) be prepared for the proposed action as it is required after the adoption of a Positive Declaration as per SEQR regulations in order to provide the most comprehensive environmental review of the project and allowed for the greatest degree of public awareness and input. The scope of the DEIS was based on the adopted Positive Declaration as well as the previous public scoping session held on 7/22/14. As noted earlier in this document, while the public scoping session was held on an application submitted to the Town Board, the project proposal before the Planning Board was nearly identical in nature, thus the scope of environmental concern remained the same.

The Middle Island Solar Farm @ Mastic is a specific, detailed and highly engineered proposal for the creation of 19.6 MW of solar generated energy. The proposed site plan and requested special permit, through the DEIS and FEIS identify important social, economic and environmental reasons as to why the project is appropriate and how this proposal balances with the natural local ecosystem, community, Brookhaven Town, PSEG (LIPA) power grid and the future of energy generation on Long Island.

For many decades, the subject property has existed in the same configuration with Industrial Zoning (previously L-Industrial-3 dating to 1968) in place. In this time, surrounding land to the east and south has been proposed for development and subsequently purchased and preserved by Suffolk County and Brookhaven Town. Residential development to the west slowly increased, starting around 1960 before being nearly fully developed by the late 1980's. In 2013, the property owner took the first steps to develop the subject land for a solar electric generating facility, resulting ultimately in the application currently before by the Planning Board.

SUMMARY OF FACTS AND CONCLUSIONS IN THE EIS RELIED UPON TO SUPPORT THE DECISIONS:

As set forth in 6 NYCRR §617.10, this section of the Findings Statement considers the relevant environmental impacts, facts and conclusions of the main environmental issues relating to the Proposed Action and provides the rationale for the decision(s) made by the Brookhaven Planning Board regarding this matter.

This summary is organized by nine (9) subject headings that generally correspond to the section headings for the DEIS. The full information supporting the decision-making process, which were considered in preparing this Findings Statement, are contained within the January 2015 DEIS and the November 2016 FEIS.

EXISTING CONDITIONS:

Currently, the subject parcel is 100.33 acres in size and is undeveloped woodland. There are a number of informal animal trails that cross the rolling topography; however there are no physical improvements with respect to roadways, fencing, buildings or related infrastructure. The parcel is zoned Light-Industrial-1, is located outside of the Central Pine Barrens Compatible Growth Area and is bounded on the north, east and south by publicly owned open space and bounded on the west by residential development. There is a 50' wide access way fronting on Moriches-Middle Island Road to the north and a vestigial easement along the southern portion of the property for the future construction of a road, however there are no plans for construction of a road.

GEOLOGIC RESOURCES:

The Proposed Action should not have an adverse impact on geologic resources as the proposed project does not seek to remove any materials from the site, nor are there any unique geological features present on site (such as glacial erratics or steep slopes). As such, no mitigation measures are required.

WATER RESOURCES AND PLANS:

The Proposed Action should not have an adverse impact on the surface waters, wetlands, or water resources. The subject property is located over a sole source aquifer and is located within the Suffolk County Water Authority's (SCWA) Distribution Area 12 and is within the County's Hydrogeologic Zone VI. A deepwater recharge area known as "Zone III" is located due north of the project site, with Moriches-Middle Island Road representing the boundary.

Based on the proposed use of the site, impacts to water resources are minimal. Panels will need to be washed periodically via a water truck and the ~4,000 square foot building will have a connection to SCWA water for sanitary purposes. Based on the 100+ acre size of the parcel, the amount of water expected to be utilized on-site is trivial.

Furthermore, the project site will recharge all stormwater runoff on-site, in accordance with Town of Brookhaven requirements. A series of drainage swales in conjunction with formal drainage structures have been designed for the project and have been thoroughly reviewed and deemed appropriate by the Town. While the subject parcel is within the Forge River watershed, the nearest surface waters are located approximately 1,121 feet to the east of the southeast corner of the subject property.⁷ No runoff from the site would be expected to reach these surface waters due to topography, vegetation and stormwater retention design.

During the public comment period, concerns were raised about impacts to the Forge River from the clearing of vegetation on-site. However, as the proposed project will have a trivial amount of sanitary flow and will produce no by-product wastewater (as some industrial uses such as manufacturing would) and as the proposed project will be re-vegetated with meadow vegetation (grasses and shrubs); no impact is expected to occur. To further this point, the applicant prepared a detailed Nitrogen Mass Balance calculation to quantify the change in nitrogen loads from the site due to the development of the proposed project. This exercise demonstrated that the proposed project would result in a minimal increase in nitrogen loading to the Forge River system, particularly when compared to the development of the site under a “worst-case” scenario and when comparing a similar acreage of residential units and their associated sanitary waste. The proposed use represents approximately the bare minimum nitrogen impact for any use on-site that would require a sanitary system. Due to the design of the project, there are no significant impacts expected and thus no significant mitigation is required.

ECOLOGICAL RESOURCES:

The Ecological Resources section of the EIS provide a detailed discussion of the various significant natural resources located on the subject property and outline the relevant concerns

⁷ These waters are the unofficial headwaters of the Forge River.

present. These resources include rare (special concern) and threatened species of animal as well as 100 acres of woodland vegetation and the presence of one (1) federally listed (threatened) species of bat (northern long-eared).

Between the initial submission date of the project to the Town Board (before the application was transferred to the Planning board) and the completion of the FEIS, the United States Fish and Wildlife Service (USFWS) listed the northern long-eared bat (NELB) as federally threatened as well as finalized and formalized recommendations and regulations with respect to protection of the bat. The timing of this process made for an on-going communication between federal and state agencies along with the Town of Brookhaven and the applicant's agents. A 4/27/16 update to the decision by the USFWS clarified and specified that summer habitat did not need to be federally designated as “critical” as summer habitat is not a limiting factor for the survival of the species. Due to this update and subsequent communications with the USFWS and the NYSDEC (Region 1), it has been determined that no significant impact to this federally (and state) listed species are expected to occur provided that clearing of vegetation not occurring between April 1st and October 31st.

While the subject property is located within two (2) miles of a known roosting tree for the NLEB and while the subject property does contain habitat which is known to be used by the NELB for roosting and pup rearing, limiting the tree cutting season is an adequate mitigation measure that the applicant has proposed to follow. This mitigation measure not only meets federal and state requirements but results in mitigating impacts to other species which lack federal protection as the majority of species that would occupy the site would not be using the woodlands between the allowable clearing time-frame for rearing young.

In addition to the above, there were concerns related to several species of raptor that are likely to use woodland habitat as well as eastern box turtles which are listed as a species of special concern by New York State. As site-clearing will occur outside the time period where these species are most active, destruction of turtles due to clearing is essentially mitigated and furthermore the applicant has proposed to create box turtle nesting sites along the perimeter of the project area in accordance with scientific standards. Additionally, the proposed re-vegetation of the site with grasses and shrubs between and underneath panels provides key and unique habitat for eastern box turtles, thus a reduction of woodland will not reduce their useable

territory. The same rings true for species of raptor that are known to utilize meadow habitat and edge-of-woods habitat to hunt and forage in addition to the more familiar woodland habitat.

Another mitigation measure offered by the applicant is to install boxes for bluebirds and related songbird species along the perimeter of the property. As mentioned above, the habitat to be created between and beneath panels is unique on Long Island and will be considered valuable for a variety of species that would not be able to utilize the existing woodland. Additionally, the subject property is a mere ½ mile from Town of Brookhaven controlled Calabro Airport which features hundreds of acres of a similar grassland habitat. As such, the animals supported by the habitat at the airport are expected to utilize the subject property as well. When balancing the impacts of clearing 60 acres of trees, the potential to create a unique and uncommon habitat on-site is an appropriate balance, particularly when the use of the site by wildlife will be encouraged due to the inert nature of the industrial “use”.

Lastly, while the removal of nearly 60 acres of woodland vegetation is notable, the project will retain a minimum of 35% of the existing woodlands. Furthermore, there are hundreds of acres of similar woodland habitat to the north, east and west of the subject site in public ownership, which is expected to be adequate for the relocation of any species that were dependent upon the existing woodlands. This acreage, when combined with the ~620+ acres due north of the site that are currently vacant and wooded represent significant habitat that can be utilized by species present on the subject site. Additionally, the impacts of removing the trees on-site (and their associated carbon sequestration) are offset overtime by the “clean” generation of power from solar panels, as detailed within the EIS. The proposed project and subsequent mitigation measures represent a sufficient balance with respect to environmental impacts.

AIR RESOURCES:

The Proposed Action should not have any adverse impact with respect to air quality, and in fact is expected to have a net positive impact when looking at a regional view. The only emissions that are expected are from construction equipment during site development, which is an unavoidable impact that would be present with any development project of the subject site. The proposed development will likely result in lower-than-average equipment emissions compared to other large-scale development projects due to the minimal requirements of

construction. Additionally as the proposed project is designed to generate “clean” energy and as Long Island’s energy needs are expected to decline or stay level over the near future, less power would be expected to be generated from fossil fuel based plants, which produce significant levels of emissions.⁸ Thus, the project should have an overall net positive effect when looking at the region of Suffolk County and Long Island. Due to the above, no significant impacts are expected and thus no mitigation is required.

LAND USE PLAN AND ZONING:

The proposed use of the property as a solar electric generating facility is in keeping with permissible uses within the L-Industrial-1 zoning code of the Town of Brookhaven at the time of application to the Planning Board. The Town of Brookhaven has recently amended said code; however, the project was deemed substantially completed at the time of this code amendment and thus is not subject to the provisions of the code revision.⁹

With respect to a “Land Use Plan”, the subject property is not specifically referenced in any current Town adopted Land Use Plans¹⁰, but rather was referenced in the Tri-Hamlet Comprehensive Plan (June 1995). The plan called for development of the subject property (as well as other, nearby industrially zoned parcels) to be developed with “high-tech industrial, office or R&D” uses. Development of the subject site as a solar electric generating facility is in keeping with this recommendation. Additionally, the project complies to all of the special permit criteria set forth in §85-107 as well as the special permit criteria for solar energy production facilities required under §85-815.

As no significant impacts are expected as a result of land use plans or zoning, no significant mitigation measures are required.

TRANSPORATION:

⁸ <http://www.newsday.com/long-island/lipa-full-of-excess-power-sees-no-need-for-new-plants-until-2035-1.13204856>

⁹ This determination was due to the fact that at the time of adoption of the code amendment, the applicant had submitted all of the documents required by SEQR and Town regulations and was only awaiting a Final EIS to be completed, which is the responsibility of the lead agency, as per SEQR regulations.

¹⁰The purposes of the word “current” relate to LUPs adopted within the past twenty (20 years)

The proposed project will result in virtually zero impacts to traffic patterns, flow or volume other than during construction activities. The proposed project would be expected to generate noticeable traffic during the construction phase due to the need to deliver materials to the site and remove vegetative materials from the site as well as bring specialized equipment from time to time. The number of vehicles will vary depending upon the phase of the project, however the expected volume and flow are similar to any large construction project within the Town and is not expected to have a significant impact. After the project has been completed, site occupancy will be low (up to six employees at any given time) and thus daily traffic increases will be imperceptible. As such, no significant impact is expected and thus no significant mitigation measures are required.

AESTHETICS, VISUAL RESOURCES AND NOISE:

The Proposed Action is not expected to have any adverse impacts with respect to ambient noise levels in the study area nor will it impact visual or aesthetic resources. Due to the nature of the proposed project, virtually no discernible noise would be expected at neighboring residential properties because of the implementation of the proposed project. The project proposes significant buffers of natural vegetation as well as fencing and evergreen screening, further protecting adjacent property owners from visual impacts from the proposed panels. Additionally, due to the nature of the project, the panels will not exceed the height of the existing woodlands and the project site would not be visible from the road (other than through the gated entrance of the 50' wide access point) or from surrounding properties. As no significant impacts are expected, no significant mitigation measures are required.

ENERGY / SOLID WASTE:

The proposed project is for a solar energy electric generating facility and is designed to have a generating capacity of 19.6 MW. By the very nature of the project, a significant influx of “clean”¹¹ energy is to be generated on-site and purchased by the local power company (PSEG / LIPA). As per the EIS, the facility has the potential to power up to 6,666 homes¹² by generating 38,000 to 44,000 MWh annually. By generating energy without the combustion of fossil fuels,

¹¹ The term “clean” is used as the proposed solar facility will not burn fossil fuels or create emissions.

¹² The EIS also notes a more conservative figure of 5,281 homes based on older technologies.

no emissions are created and natural gas is not required. This proposal fits into active programs and energy plans by Brookhaven Town, PSEG / LIPA, Suffolk County and New York State under the auspice of reducing dependency on fossil fuels and obtaining energy from “green” facilities.

The proposed project does call for the construction of an approximately 4,000 square foot building which will be used to house equipment and which would contain limited office space and bathroom facilities. The facility will generate typical amounts of solid waste associated with a small office space and a very low sanitary load (when compared with the allowable “flow” of the site as per SCDHS standards). Additionally, the proposed building will feature a geothermal heating system with a propane gas backup system.

Due to the fact that the project is designed to generate power emission-free energy, there are no significant impacts expected and thus no impacts are required to be mitigated.

MITIGATION:

The DEIS identified significant environmental impact concerns related to the northern long-eared bat and the preservation of said species. However, as the USFWS released additional information and as the applicant and Town of Brookhaven worked closely with the NYSDEC (Region 1), it became apparent that potential impacts to the species could be avoided through mitigation measures. Specifically, the federal government determined that, “*designating critical habitat for the northern long-eared bat is not prudent*” and that potential loss of habitat is not a limiting factor. However, in order to mitigate the potential for harming (take) this species, a restriction on site clearing has been recommended by the NYSDEC. The applicant is not to clear trees between April 1st and October 31st of any year. Clearing within this time frame may not be authorized without adequate proof that the parcel is not being used for summer roosting by the NLEB.

In addition to the above, there were several other issues that were discussed and addressed throughout the DEIS with subsequent mitigation offered. Specifically, the applicant has proposed the following items in an effort to mitigate potential negative environmental impacts:

- Fencing designed to allow small mammals access to and from the property
- Box turtle nesting sites in accordance with guidelines established by Massachusetts Natural Heritage Program (or similar)
- Installation of breeding boxes for bluebird and other avian species
- Geothermal heating system for the proposed building
- Permeable road surfaces for all interior roads to allow for natural drainage
- Strategic placement of access gates to allow safe herding of deer that may end up within the fenced in facility
- Native vegetation to be planted between the panel rows and beneath the panels which provide a unique and important habitat to a wide variety of species
- Reconfiguration of the layout in order to locate the interconnection substation in the northeast corner of the property
- A maximized buffer between the proposed panels and the residentially developed properties located to the west

The Town of Brookhaven finds that the above mitigation measures, combined with communications with the NYSDEC and USFWS are adequate in offsetting potential negative environmental impacts that could occur as a result of the proposal as originally submitted.

ALTERNATIVES:

Four (4) alternatives to the Proposed Action were considered by the Brookhaven Planning Board and each alternative was examined thoroughly in the DEIS. Under Alternative 1, the proposed project would not be considered further and no development would occur, referred to as the “No-Action” alternative. This was determined to not meet the property owner’s goals and does nothing to prevent future development on-site.

The “Second Alternative” listed in the EIS is for “Sale / Transfer of Land to a Government Entity for Preservation” – an option which is preferred by many local members of

the public. This recommendation would require the property owner to not only be a willing seller, but to accept an offer made by a municipality or combination of municipalities (Town, County, State or otherwise). The property owner, through his representatives has made it clear this is currently not a viable option. The second part of this alternative is for the property owner and the Town (and/or related other municipality) “swap” the 100+ acre site in exchange for another site which would be suitable for development of a solar facility. Due to the myriad social, economic, geographic and legal issues that are involved in such an agreement, this is not a viable option.

The “Third Alternative” relates to approval of the proposed project without Variance relief. This is moot as the relief has been granted by the Board of Zoning Appeals. Additionally, the variance is required for any development of the site, regardless of the proposed use and thus is not a unique circumstance related to impacts resulting from the development of a solar electric generating facility.

The fourth and final alternative is for “Development in Accordance with Existing L Industrial 1 / A Residence 1 District Zoning [As-of-Right]”. This alternative is examined in detail with nine (9) subsections explaining potential environmental impacts. This alternative would undoubtedly result in additional environmental impacts compared to the use and thus is not a desirable option from an environmental standpoint.

FUTURE SEQRA ACTION:

The State Environmental Quality Review Act (SEQRA) provides guidance on the steps after an EIS and FEIS have been prepared and accepted by an approving authority. According to 6 NYCRR 617.11:

(a) Prior to the lead agency's decision on an action that has been the subject of a final EIS, it shall afford agencies and the public a reasonable time period (not less than 10 calendar days) in which to consider the final EIS before issuing its written findings statement. If a project modification or change of circumstance related to the project requires a lead or involved agency to substantively modify its decision, findings may be amended and filed in accordance with section 617.12(b) of this Part.

(b) In the case of an action involving an applicant, the lead agency's filing of a written findings statement and decision on whether or not to fund or approve an action must be made within 30 calendar days after the filing of the final EIS.

(c) No involved agency may make a final decision to undertake, fund, approve or disapprove an action that has been the subject of a final EIS, until the time period provided in subdivision (a) of this section has passed and the agency has made a written findings statement. Findings and a decision may be made simultaneously.

(d) Findings must:

(1) consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS;

(2) weigh and balance relevant environmental impacts with social, economic and other considerations;

(3) provide a rationale for the agency's decision;

(4) certify that the requirements of this Part have been met; and

(5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

(e) No state agency may make a final decision on an action that has been the subject of a final EIS and is located in the coastal area until the agency has made a written finding that the action is consistent with applicable policies set forth in 19 NYCRR 600.5. When the Secretary of State has approved a local government waterfront revitalization program, no state agency may make a final decision on an action, that is likely to affect the achievement of the policies and purposes of such program, until the agency has made

a written finding that the action is consistent to the maximum extent practicable with that local waterfront revitalization program.

CONCLUSION:

After lengthy review and comparisons of relevant environmental impacts, facts and conclusions disclosed in the Final EIS, weighing and balancing relevant environmental impacts with social, economic and related considerations, it is the determination of staff that the project, as proposed be approved, with conditions and as such, a positive findings statement be issued pursuant to SEQR regulations 6 CRR-NY 617.11.

The DEIS and FEIS detail the ways that the Proposed Action would reduce potential environmental impacts as compared to the as-of-right maximum build-out potential. The No-Action alternative may appear favorable to some members of the local community, because of fears related to the removal of woodland vegetation and impacts to the nearby Forge River. Some community members may feel clearing “green”, undeveloped land to construct a “green”, non-polluting energy generating facility is not what is best for the local environment. However, the “No-Action” alternative fails to meet the objectives of the property owner who has a right to develop the land and realize a return on a long-held investment, in conformance with local zoning codes. Furthermore, a “No-Action” alternative would not prevent future development proposals or projects, many of which would likely result in uses deemed more “intensive”. Potential future projects which conform to the zoning code could result in significant levels of wastewater being generated on-site and/or other uses which could have significant impacts related to energy, air quality, water quality, wildlife or related matters. Adoption of a “No-Action” alternative does not prevent development of the property nor does it preserve the property.

The “Second Alternative” listed in the EIS is for “Sale / Transfer of Land to a Government Entity for Preservation” – an option which is preferred by many members of the public. While this alternative would have no negative impacts on the environment and thus is the most desirable from an environmental impact point of view, it is a complicated matter which requires a willing seller and funding from a government agency (for a sale). Based on communications between the Town of Brookhaven and the property owner, a sale of the property

is not viable at this time and the Town of Brookhaven cannot compel or require the property owner to sell the land to the Township, County, State or other government / not-for-profit agency. An offshoot of this alternative is for the Town of Brookhaven to “swap” a parcel of Town owned land with the applicant’s property. Under this scenario, the subject parcel would be preserved in perpetuity while the “swapped” parcel would be developed for a solar energy generating facility. This alternative is not viable as the Town of Brookhaven does not have an adequate parcel of land that could reasonably be “swapped” with the applicant’s, when taking into consideration a large number of factors including: acreage, surrounding land use, environmental constraints, unique environmental considerations, proximity to public utility lines and substations with adequate capacity, topography, deed restrictions and related. Additionally, a swap would not necessarily eliminate negative environmental impacts. As such, while the preservation alternative is arguably the best from a strictly environmental standpoint, it is not viable nor does it necessarily meet the balance of social, economic and environmental considerations.

The third alternative within the EIS is for “Solar Development without Variance Relief”. This alternative is not viable, as it would result in the parcel not being developed because of a tax-map anomaly. As stated in the alternative, the variance would be required for any type of development (regardless of the proposed use) and furthermore, the variance has been granted by the Board of Zoning Appeals, complete with a detailed findings statement as to why a variance is appropriate.

The fourth and final alternative is for “Development in Accordance with Existing L Industrial 1 / A Residence 1 District Zoning [As-of-Right]”. Within the EIS, this alternative spans nine (9) detailed subsections looking at the impacts related to the following:

- Geological Resources
- Water Resources / Groundwater Impacts (including a Nitrogen Mass Balance computation) / Stormwater Impacts / Surface Water, Wetlands and Floodplain Impacts
- Ecological Resources
- Air Resources

- Land Use, Zoning and related Plans
- Transportation
- Aesthetics, Visual Resources and Noise Impacts
- Energy
- Other Considerations

While it is difficult to compare the proposed solar electric generating facility to a generic “as-of-right” development, the facts remain that as per Suffolk County’s sanitary code and provisions within the Town’s code, the maximum impact from nitrogen to groundwater would be severe. As per the EIS’s Nitrogen Mass Balance calculations, the nitrogen load could be 7,829.25 lbs N/year, which is a 2,260% increase compared to the nitrogen load expected for the proposed plan. Furthermore, the same number of trees could be removed from the site, without the benefit of native grasses, wildflowers and shrubs being planted over the majority of the cleared area. While there have been speculative arguments about development of the site with an “as-of-right” use in conjunction with rooftop solar panels, the underlying impacts would still remain. It is clear that the “as-of-right” alternative, as generic as it may be, has the potential for a far greater negative impact on the local environment (as well as traffic and visual impacts) than the proposed solar facility, thus resulting in this alternative being undesirable.

While the proposed project will result in the loss of nearly 61 acres of healthy woodland forest, this impact is not a clear and deciding factor as to whether or not the project should be approved or denied. One must consider the proposed use of the cleared area (electric generating solar panels capable of producing 19.6 MW of clean energy¹³) as well as mitigating measures offered by the applicant, local, state and federal regulations with respect to tree removal and the protection of animal species, the as-of-right potential for the site, the current state of energy production and use within Brookhaven Town and on Long Island as well as other factors detailed within the exhaustive DEIS.

¹³ In this instance, the word “clean” refers to the absence of combusting fossil fuels and the production of harmful emissions.

As detailed in the DEIS, the loss of 60+ acres of woodlands is significant and is likely to have some level of impact on a variety of species which depend upon this forested land for foraging, breeding and raising young. However, the parcel does not exist in a vacuum, but rather is surrounded by hundreds of acres to the east and south of formally protected land as well as land on the subject property that will remain intact. Additionally, directly to the north of the subject property is a 620+ acre tract of undeveloped land which benefits from being within the Compatible Growth Area (CGA) of the Central Pine Barrens, offering an added level of protection with respect to future development proposals and the preservation of vegetation and habitat. While the loss of trees on the subject property will undoubtedly impact various species of land mammals, reptiles and birds, it is wholly expected that these animals will be able to continue to live in the surrounding woodlands without a significant impact upon population numbers or the ability to successfully breed.

While the surrounding undeveloped acreage does not match that which is present at Brookhaven National Lab, the proposed project is similar to the existing facility (known as the *Long Island Solar Farm*) in which a large swath of native vegetation is proposed to be removed and replaced with solar panels and native vegetation beneath said panels. The animals, which were present at the Brookhaven National Lab property (which features nearly identical habitat and is located a mere 1.5 miles due north of the project site) moved to the adjacent surrounding woodlands and continue to have healthy populations based on preliminary research and conversations with BNL staff.

The habitat on-site is unique to Long Island in that it is represented by “Pine Barrens” vegetation, though the parcel lies just south of the official boundaries of the Central Pine Barrens. While there are a number of species dependent or semi-dependent upon this particular habitat, there is one (1) species that is listed by both the Federal Government and the State of New York as threatened. The species is the northern long-eared bat (*Myotis septentrionalis*) which has been documented within two (2) miles of the subject property within the Township of Brookhaven. As such, the removal of habitat for this species is of significant concern with respect to not only the proposed project but also any development project on the subject parcel that results in substantial tree clearing.

As the application moved forward, the Federal Government made several key decisions with respect to the protection of the northern long-eared bat. On January 14, 2016, the “*United States Fish and Wildlife Service (USFWS) issued a Final 4(d) Rule for the Northern long-eared bat (NLEB), imposing a number of specific conservation measures.*”¹⁴ On March 31, 2016, the Town of Brookhaven received a letter from Kevin Kispert, Environmental Analyst II at the New York State Department of Environmental Conservation (NYSDEC) Region 1.¹⁵ The letter acknowledged that the project site is within two (2) miles of a known summer roost for the species and recommended that the applicant undertake a survey of the property to determine whether NLEBs use the site in accordance with guidelines provided by the USFWS.

On April 27, 2016, the USFWS released an update to their Final 4(d) Rule noting “*Critical Habitat Determination [is] Not Prudent*”.¹⁶ This update stated the following”

We have determined that designating critical habitat for the northern long-eared bat is not prudent. Northern long-eared bat summer habitat is not limited or in short supply and summer habitat loss is not a range-wide threat to the species. Designating critical habitat in the areas where it summers would not benefit the northern long-eared bat, and therefore, would not be prudent.

Following this update, Kevin Jennings, Biologist at the NYSDEC (Region 1), supplied a letter to the applicant’s agent on August 5, 2016 stating the following¹⁷:

*Thank you for the habitat assessment you provided for the proposed Middle island Solar farm. After reviewing the document, I concur with the conclusion that the Pitch Pine-Oak Forest, which occurs on the subject property, contains areas of varying suitability for northern long-eared bats (NLEB) (*Myotis septentrionalis*). Therefore, the Department recommends that the proposed project minimize clearing and disturbance within the Habitat Area A and Habitat Area B, as identified in the 6/28/16 Memorandum, to the extent practicable.*

¹⁴ <http://www.dec.ny.gov/animals/106090.html>

¹⁵ A copy of this letter is available from the Town of Brookhaven Division of Environmental Protection upon request

¹⁶ <https://www.fws.gov/Midwest/endangered/mammals/nleb/index.html>

¹⁷ A copy of this letter is available from the Town of Brookhaven Division of Environmental Protection upon request

The Department also recommends that any tree clearing on the site occur between November 1st and March 31st of any year, to avoid any potential impacts to the NLEB. Any proposed clearing outside of this window would need to be supported by surveys that rule out the presence of NLEB at the site.

It is important to point out and understand that environmental concerns related to impacts on a federally (and state) threatened species of bat are not unique to the specific proposal for the site, rather these concerns lie with development of the site as a whole, regardless of the use. An alternative proposal for the site, be it a warehouse, outdoor storage, office space, manufacturing or similar, would still result in the same potential impact to the northern long-eared bat. Due to the above facts, and the conditions listed below, the Town of Brookhaven believes that potential impacts to the federally threatened species of bat are adequately mitigated and that no significant impact will result to this species because of site plan and special permit approval.

Given the extensive planning effort and the comments received through the SEQRA process, the Brookhaven Planning Board is satisfied that the Proposed Action is the best and most viable alternative for the subject property when taking into consideration the property owner's rights, development desires, code requirements, restrictions and all relevant social, economic and environmental considerations detailed in the EIS process. Having considered the FEIS (including the DEIS), and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR Part 617.11, this Statement of Findings certifies that:

- 1) The requirements of 6 NYCRR Part 617 have been met by the EIS process for the proposed action; and
- 2) This statement of Environmental Findings has considered the relevant environmental impacts, facts and conclusions disclosed in the FEIS, as summarized herein; and
- 3) Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the current proposed action does not avoid or minimizes adverse environmental impacts to the maximum extent practicable; and

4) Consistent with social, economic and other essential considerations, adverse environmental impacts revealed in the EIS process have been minimized or avoided to the maximum extent practicable by the current proposed action, and;

5) Conditioned upon the following:

- No removal of trees until the applicant is able to produce a power purchase agreement (PPA) from LIPA / PSEG for the proposed 19.6 MW of power.
- In the event that a PPA is not obtained from the approving authority for the all of the 19.6 MW of power, the applicant shall submit a revised site plan to the Town of Brookhaven Planning Board for consideration and approval, prior to the removal of any trees on-site.
- No removal of trees between the dates of April 1st and October 31st, without satisfactory proof that no northern long-eared bats reside on the property and with the approval of the New York State Department of Environmental Conservation and the United States Fish and Wildlife Service along with any conditions these agencies wish to impose.