

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE FACILITY AND TAKING OFFICIAL ACTION AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AGREEMENTS AND TAKING OF CERTAIN OTHER ACTION PERTAINING TO THE FACILITY FOR **SHOREHAM SOLAR COMMONS LLC** AND/OR ANY OF THE PRINCIPALS OF **SHOREHAM SOLAR COMMONS LLC** AND/OR OTHER ENTITY TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING, INCLUDING APPOINTING **SHOREHAM SOLAR COMMONS LLC** AND/OR ANY OF THE FOREGOING PERSONS AND/OR ENTITIES AS AGENT OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, RENOVATING, AND EQUIPPING AN INDUSTRIAL DEVELOPMENT FACILITY.

WHEREAS, the Town of Brookhaven Industrial Development Agency (the "Agency") was created by Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York (collectively, the "Act"), with the authority and power to, among other things, acquire, construct, renovate and equip a project, provide financial assistance, and mortgage, lease, grant options with respect to and dispose of property; and

WHEREAS, SHOREHAM SOLAR COMMONS LLC; a New York limited liability company on behalf of itself and/or the principals of SHOREHAM SOLAR COMMONS LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the "Company"), has submitted to the Agency a proposal for the Agency (the "Project") (a) to assist with (i) the acquisition of an approximately 150 acre parcel of land located at 24 Cooper Street, Shoreham, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 200-0200-126.00-02.00-002.000; 0200-127.00-01.00-003.000; 0200-127.00-01.00-006.00; 0200-148.00-02.00-005.000; 0200-148.00-02.00-006.000) (the "Land"), and the demolition of the existing residence thereon, the renovation of existing structures (including outbuildings and clubhouse) for use as offices, storage, and related uses by the Company, the construction of a solar powered electric generation facility to be located thereon (the "Improvements"), and the acquisition and installation therein of certain equipment not part of the Equipment (as defined herein) (the "Facility Equipment"; together with the Land and Improvements, the "Company Facility"), to be initially leased by the Agency to the Company, (ii) to assist with the acquisition and installation therein of certain equipment and personal property (the "Equipment"), including an approximately 24.9MW (AC) ground mounted, stationary/non-tracking solar array installed on mounting racks, including approximately 125,944, 72-cell polycrystalline modules, combiner boxes, inverters, transformers, and other associated interconnect infrastructure to connect to LIPA's power grid which Equipment is to be leased by the Agency to the Company (the Company Facility and the Equipment are collectively referred to herein as the "Facility"), which Facility is to be used by the Company as a solar electric generating facility, (b) to grant mortgage liens thereon and security interests therein, and (c) to provide financial assistance within the meaning of the Act, including the following as they relate to the appointment of the Company as

agents of the Agency with respect to the acquisition, construction, renovation, and equipping of the Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, construction and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, construction, renovation and equipping of the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under the Facility; and

WHEREAS, the Act authorizes and empowers the Agency to acquire, renovate, construct, equip, promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general property and economic welfare of the people of the State of New York; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company, consistent with the policies of the Agency, in the form of (i) exemptions from sales and use taxes on the acquisition, construction, renovation and equipping of the Company Facility, including fixtures, furniture and equipment to be installed in the Company Facility or in connection with the purchase or lease of equipment, building materials, services or other personal property part of or to become part of the Company Facility, and on the acquisition and installation of the Equipment, including building materials, services or other personal property, in an amount not to exceed \$7,000,000.00, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), all consistent with the policies of the Agency; and

WHEREAS, the Agency contemplates that the Agency will acquire from the Company a leasehold interest in the Land and Improvements under a certain Company Lease Agreement (the "Company Lease Agreement") for a term of approximately twenty (20) years, by and between the Company and the Agency, and sublease the Company Facility to the Company under a certain Lease Agreement (the "Lease Agreement") for a term of approximately twenty (20) years, by and between the Agency and the Company; and

WHEREAS, the Agency contemplates that the Company will convey to the Agency lien free title to the Equipment pursuant to an Equipment Bill of Sale, dated June 8, 2016 (the "Equipment Bill of Sale");

WHEREAS, the Agency contemplates that the Agency will lease the Equipment to the Company under a certain Equipment Lease Agreement (the "Equipment Lease Agreement") for a term of approximately three (3) years, by and between the Agency and the Company; and

WHEREAS, the Agency contemplates that the Agency and the Company will enter into a certain Payment-In-Lieu-of- Tax Agreement (the "PILOT Agreement") in order to define the Company's obligations regarding payments in lieu of taxes with respect to the Facility; and

WHEREAS, the Agency contemplates the Agency, the Company, and Invenergy Solar LLC, will enter into a certain Recapture Agreement (the "Recapture Agreement") and a certain Equipment Recapture Agreement (the "Equipment Recapture Agreement") in order to provide assurances with respect to the recapture of certain benefits granted under or by virtue of the PILOT Agreement, the Lease Agreement, the Equipment Lease Agreement and/or other agreements; and

WHEREAS, the Agency contemplates the Agency and the Company will enter into a certain Environmental Compliance and Indemnification Agreement (the "Environmental Compliance and Indemnification Agreement") in order to provide assurances to the Agency with respect to the Company's compliance with environmental laws; and

WHEREAS, in order to finance a portion of the costs of the Project and the Company anticipates that the Company may obtain loans from a lender or lenders (collectively, the "Lender") and in order to secure the obligations of the Company and/or others to the Lender, the Agency contemplates that, at the request of the Company, the Agency, the Company and/or others will execute and deliver a mortgage or mortgages or a security agreement or security agreements in favor of the Lender, including replacements, substitutions, extensions and additions to such mortgages), with a limitation of the Agency's liability thereunder (collectively, the "Mortgage") for the purpose of subjecting the Agency's interest in the Company Facility and/or the Equipment to the lien of the Mortgage; and

WHEREAS, a public hearing (the "Hearing") was held on June 7, 2016, so that all persons with views in favor of, or opposed to either the financial assistance contemplated by the Agency or the location or nature of the facility, could be heard; and

WHEREAS, notice of the Hearing was given more than ten days prior thereto, such notice (together with proof of publication) having been filed with the records of this Agency; and

WHEREAS, the minutes of the Hearing having been filed with the records of this Agency; and

WHEREAS, the Agency has given due consideration to the application of the Company and to the representations by the Company that the proposed facility is either an inducement to the Company to maintain or expand the Facility in the Town of Brookhaven or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, "SEQR"), the Agency constitutes a "State Agency"; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency a Full Environmental Assessment Form and related documents (the "Questionnaire") with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Questionnaire has been reviewed by the Agency; and

WHEREAS, the Brookhaven Planning Board determined that the Action is a “Type 1 Action” for SEQR purposes, coordinated review with all potential Involved Agencies, and requested to act as Lead Agency for purposes of review of the Action under SEQR; and

WHEREAS, no Involved Agency objected to the Brookhaven Planning Board, acting as Lead Agency for purposes of review of the Facility under SEQR, and therefore, the Brookhaven Planning Board, was the Lead Agency; and

WHEREAS, the Company submitted to the Brookhaven Planning Board, Parts I and II of the NYS DEC Environmental Assessment Form and other related environmental documents (collectively, the “**Requisite Materials**”), for the Action and the Brookhaven Planning Board accepted such Requisite Materials; and

WHEREAS, the Brookhaven Planning Board held a public hearing on the Action, and the Brookhaven Planning Board accepted written comments; and

WHEREAS, the Brookhaven Planning Board issued its Lead Agency findings statement on March 7, 2016 (the “**Findings Statement**”); and

WHEREAS, as an Involved Agency, the Agency must make its own findings under SEQR prior to funding, undertaking, or approving an Action; and

WHEREAS, the Agency has reviewed the Requisite Materials and the documents incorporated by reference therein, as well as such other documents as the Agency felt it necessary or appropriate to examine to adequately review the proposed Action; and

WHEREAS, the Agency finds that the Findings Statement attached hereto as Exhibit B accurately and adequately examines environmental issues presented by the Action; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company.

NOW, THEREFORE, BE IT RESOLVED by the Town of Brookhaven Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. The Agency hereby adopts the Lead Agency’s Findings Statement attached hereto as Exhibit B as its own Findings Statement under SEQR.

Section 2. Having considered the Requisite Materials, and such other documents as may be necessary or appropriate, the Agency certifies that:

- a. The requirements of 6 NYCRR Part 617 have been met;

b. Consistent with the social, economic and other essential considerations, from among the reasonable alternatives thereto, the Action is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including effects disclosed in the environmental impact statement; and

c. Consistent with social, economic, and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement will be minimized or avoided by incorporating as conditions those mitigative measures which were identified as practicable.

Section 3. The Agency hereby finds and determines:

a. By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

b. The Facility constitutes a “project”, as such term as defined in the Act; and

c. The acquisition, construction, renovation, and equipping of the Facility and the leasing of the Facility to the Company, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Brookhaven, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

d. The acquisition, construction, renovation, and equipping of the Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

e. Based upon representations of the Company and counsel to the Company, the Facility conforms with the local zoning laws and planning regulations of the Town of Brookhaven, Suffolk County, and all regional and local land use plans for the area in which the Facility is located; and

f. The Facility and the operations conducted therein do not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder; and

g. It is desirable and in the public interest for the Agency to lease the Facility to the Company.

Section 4. The Agency, in furtherance of the purposes of the Act, hereby determines to lease the Land and Improvements from the Company, lease the Facility to the Company, lease the Equipment to the Company, acquire, construct, renovate, equip, repair and maintain the Facility, and grant mortgage lien(s) and security interest(s) in the Facility.

Section 5. The Agency hereby authorizes and approves of the following economic benefits to be granted or inure to the benefit of the Company: (i) exemptions from sales and uses taxes on the acquisition, construction, renovation and equipping of the Company Facility, including fixtures, furniture and equipment to be installed in the Facility or in connection with the purchase or lease of equipment, building materials, services or other personal property part of or to become part of the Facility, in an amount not to exceed \$7,000,000.00, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), consistent with the policies of the Agency.

Section 6. Subject to the provisions of this resolution, the Company is herewith and hereby is appointed the true and lawful agent of the Agency to acquire, construct, renovate and equip the Facility, and is authorized to delegate its status as agent of the Agency to the Company's agents, subagents, contractors, subcontractors, suppliers, vendors and other parties as the Company may choose for the purpose of acquiring, constructing, renovating, or equipping the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agents of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. The appointment hereunder includes the following activities as they relate to the acquiring, constructing, renovating and equipping of the Facility, whether or not the materials, services or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquiring, constructing, renovating and equipping the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with acquiring, constructing, renovating and equipping the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Facility. This Agency appointment includes the power to make, execute, acknowledge and deliver any contracts, orders receipts writings and instructions, as the stated agents for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and with the same validity as the Agency could do if acting on its own behalf. The appointment hereunder shall expire upon the earliest of (a) December 31, 2019, (b) completion of the initial acquisition, construction, renovation and equipping of the Facility, and (c) the date on which the Company has realized exemptions from sales and use taxes by reason of the Agency's participation in the Project in an aggregate amount which equals or exceeds \$7,000,000.00; provided however, such appointments may be extended and the amounts of the exemptions may be increased at the sole discretion of the Agency, upon the written request of the Company, if such activities and improvements are not completed by such time or the additional sales and uses tax exemptions are necessary. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid agency appointments expressly exclude the Company from purchasing or leasing motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets.

Section 7. The Chairman, Chief Executive Officer and/or any other member of the Agency are hereby authorized and directed to, on behalf of and in the name of the Agency, execute, deliver and perform a Company Lease Agreement, Lease Agreement, Equipment Lease Agreement, PILOT Agreement, Equipment Recapture Agreement, Recapture Agreement, Environmental Compliance and Indemnity Agreement, Mortgage (including replacements, substitutions, extensions and additions to such Mortgages) with a limitation of the Agency's liability thereunder, and other instruments, including amendments and modifications of any or all of the such agreements and instruments, as above contemplated and in such form and containing such terms, conditions and provisions as the person executing same on behalf of the Agency shall deem necessary or desirable, and shall approve, such necessity, desirability, and approval, to be conclusively evidenced by his or her execution and delivery thereof.

Section 8. The Company hereby agrees to comply with Section 875 of the Act. The Company further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act and the Recapture Agreement.

Section 9. Weinberg Gross & Pergament LLP are hereby appointed Transaction Counsel to the Agency, and is authorized and directed to work with Counsel to the Company, Sublessee and others, to prepare, for submission to the Agency, all documents necessary to effect the transaction described in this resolution.

Section 10. Any and all acts, instruments, and other writings heretofore or hereafter performed and/or executed and delivered by any one or more of the Chairman, Chief Executive Officer or any member of the Agency, pursuant to this resolution, for and on behalf of and in the name of the Agency, in connection with the transactions contemplated thereby, be and the same hereby are, in all respects ratified, confirmed and approved.

Section 11. The documents, including the Company Lease Agreement, Lease Agreement, Equipment Lease Agreement, PILOT Agreement, Equipment Recapture Agreement, Recapture Agreement, Environmental Compliance and Indemnification Agreement, and Mortgage, and any amendments and modifications thereto, promptly following the execution, and delivery thereof, be identified by any of the Chairman, Chief Executive Officer or any member of the Agency by his or her endorsement thereon and when so identified be filed with the official records of the Agency.

Section 12. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any

expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 13. The Chairman, Chief Executive Officer, Counsel to the Agency or any member of the Agency are hereby authorized and directed (i) to distribute copies of this resolution to the Company, and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 14. This resolution shall take effect immediately.

Adopted: June 8, 2016

Accepted:

**SHOREHAM SOLAR COMMONS LLC**


By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_





EXHIBIT A

PROPOSED PILOT BENEFITS ARE FOR DISCUSSION PURPOSES ONLY  
AND HAVE NOT APPROVED BY THE AGENCY BOARD.

June 6, 2016

Year	PILOT
1	\$ 659,589
2	\$ 659,589
3	\$ 659,589
4	\$ 659,589
5	\$ 659,589
6	\$ 673,589
7	\$ 687,869
8	\$ 702,434
9	\$ 717,291
10	\$ 732,445
11	\$ 747,902
12	\$ 763,669
13	\$ 779,750
14	\$ 796,153
15	\$ 812,885
16	\$ 829,951
17	\$ 847,358
18	\$ 865,113
19	\$ 883,224
20	\$ 901,696

EXHIBIT B  
Town of Brookhaven Planning Board  
Findings Statement

RECEIVED

SEQR

2016 MAR 7 PM 6 40

NEGATIVE DECLARATION  
NOTICE OF DETERMINATION OF SIGNIFICANCE  
TOWN CLERK  
TOWN OF BROOKHAVEN

**Lead Agency:** The Planning Board of the Town of Brookhaven  
One Independence Hill  
Farmingville, NY 11738

**Title of Action:** Planning Board Special Use Permit and Site Plan  
Solar Electric Generating Facility  
S/S/o Cooper Street, 3,300' S/o North Country Road, Shoreham  
File Number: 15SP0030  
Suffolk County Tax Map #: 0200-12600-0200-002000, 12700-0100-003000, 12700-0100-006000, 14800-0200-005000 & 0200-14800-020-006000  
Size: Approximately 150 acres

**Applicant:** Shoreham Solar Commons, LLC (Invenergy, LLC)  
One South Wacker Drive, Suite 1800  
Chicago, Illinois  
Contact: Brad C. Pnazek  
415-692-7733

**SEQRA Status:** Type I                      **Project:** 15SP0030

**Location:** The project site is located on the south side of Cooper Street., approximately 3,300 feet south of North Country Road (AKA Rt. 25A) in the hamlet of Shoreham.

**SCTM #:** See Above (Approximately 150 acres, covering five [5] tax lots)

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described above will not have a significant effect on the environment.

This determination has been made in consideration of the criteria for determining environmental significance outlined in SEQR Part 617.7 using the information available and comparing it with thresholds set forth in section 617.4 and 617.5.

**Description of Action:** The proposed project seeks to redevelop the existing Tallgrass Golf course into a solar energy production facility. This facility will consist of a 24.9 MW<sub>AC</sub> ground-mounted stationary/non-tracking solar array installed on racks with associated interconnect infrastructure needed to connect to LIPA's 69 kilovolt (kV)

overhead distribution lines along Randall Road, which in turn are connected to LIPA's Wildwood Substation in Shoreham, approximately 3.2 miles to the east-northeast of the subject property.

The applicant proposes to construct an approximately eight foot (8') tall fence around the perimeter of the property along with substantial landscaping for screening purposes. Additional landscaping within the facility will consist of grassland species (shrubs, grasses, forbs) which will be low-maintenance and non-fertilizer dependent. The proposed facility will be unmanned and will not produce sanitary wastewater and there will be no demand for potable water. An existing single-family residential dwelling located in the extreme southwestern corner of the property (SCTM # 0200 14800 0200 005000) will be utilized for storage during construction and will be demolished prior to the facility being operational. Several existing outbuildings located along Cooper Street (just south of Sherwood Drive) will remain and be used for storage of materials and maintenance equipment and will be screened from Cooper Street with vegetation. The existing clubhouse will remain and be utilized for office space and storage of materials and equipment.

Twice per year, for approximately two (2) to three (3) weeks, semi-annual maintenance will occur. This maintenance will include minor inverter and switchyard maintenance and visual inspection of all panels checking for damage, loose racking and or/cabling. Additionally, panels will be washed when needed via a water truck to remove soil and debris from the panels.

All storm water will be stored and recharged on site via the proposed drainage reserve areas and grading will occur on less than 53% of the overall site in order to create a stable grade for installation of the panels. The facility is anticipated to generate electricity during the highest electricity demand time periods and is anticipated to offset carbon dioxide and other greenhouse gases that would have resulted on an annual basis from producing an equivalent amount of electricity utilizing generators powered by fossil fuels.

**Reasoned Elaboration  
Shoreham Solar Commons  
Special Permit & Site Plan for Solar  
Electric Generating Facility**

*SEQRA Status and Classification:*

*Type I Action – 6 CRR-NY 617.4(b)(6)(i): A project or Action that involves the physical alteration of 10 acres;<sup>1</sup>*

The Division of Environmental Protection (DEP), on behalf of the Planning Board (Board) of the Town of Brookhaven, has conducted a thorough and detailed review of the proposed action, the conceptual plan submitted and all of the relevant environmental documents submitted by the applicant and has determined that there will be no significant adverse environmental impacts. As a result, it is appropriate for the Planning Board to issue a Negative Declaration pursuant to SEQRA regulations. This determination is based on the preparation, analysis and review of the Part I and II FEA's, as well as a thorough comparison of the proposed action to the surrounding area, community, existing site conditions and conditions allowable under the special overlay district (PCOD). The required hard look and a complete summary of the analysis conducted by DEP, and thus, the Board, are contained within this document as well as the documents submitted by the applicant.

*Conformance with the Planned Conservation Overlay District (PCOD):*

At a public hearing of the Town of Brookhaven Board of Zoning Appeals held on November 4, 2015, application No. 10 (originally of 9/30/15<sup>2</sup>) was duly considered and action taken as follows:

*The Board hereby determines that the Brookhaven Town Code Sec. 85-709(A)(1) was intended to apply to two separate categories of lands: (1) those cleared prior to the enactment of the Code Section, or, (2) those lands currently used for agricultural purposes. In accordance with the applicable land use plan overlay district (Section 85-704), applicants parcel is eligible to apply for a special permit for solar production facility to the Planning Board.<sup>3</sup>*

As such, the Planning Board has authority to issue a special permit for the subject parcel under the PCOD overlay district, which is what the applicant is seeking. Due to this determination by the Board of Zoning Appeals, the Board can apply the findings statement from the adopted Route 25A LUP to the proposed development as the land use

<sup>1</sup>

[https://govt.westlaw.com/nycrr/Document/I4ec3a764cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Document/I4ec3a764cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

<sup>2</sup> <http://brookhaventownny.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=1434&Inline=True>

<sup>3</sup> <http://brookhaventownny.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=1435&Inline=True>

plan contemplated parcels greater than 35 acres for development as solar energy generating facilities.

Documents submitted by the applicant and extensively reviewed by DEP staff and discussed in detail with the applicant and Planning Division staff in an effort to ensure all of the information was accurate are as follow:

- Part I Full Environmental Assessment Form (revised; Jan. 2016)
- Expanded Environmental Assessment, Vol. 1 and 2, (Revised Jan. 2016)
- Site Plan and related sheets (Revised – Jan. 2016)
- New York Natural Heritage Program Northern Long-eared Bat fact sheet<sup>4</sup>
- Visual schematics showing existing conditions and proposed conditions
- Response letter to Central Pine Barrens JPPC regarding compliance (Jan. 2016)
- Grading and Disturbance Plan (Jan. 2016)
- USFWS Final Listing for Northern Long-eared Bat – 4(d) Rule (April, 2015)<sup>5</sup>

In addition to the above referenced documents, DEP staff reviewed current aerial imagery, historic aerial imagery and utilized all accessible and relevant layers on the Town's GIS database in an effort to gather as much information as possible. Two (2) site inspections were conducted. The first was in the summer of 2015 and the second was in the winter of 2016. The second inspection was conducted with staff from the Department of Planning and the Division of Engineering.

*Studies and Documents Considered:*

DEP, along with planning staff have reviewed the following documents in order to make the determination that the proposed project will not have a significant environmental impact: the Long Island Regional Planning Board's 1978 Long Island Comprehensive Waste Treatment Management Plan (208 Study), the Long Island Regional Planning Board's 1986 Special Groundwater Protection Area Project (205j Study), the Long Island Regional Planning Board's 1982 Long Island Segment of the Nationwide Urban Runoff Program (N.U.R.P.S.), the 1995 Central Pine Barrens Comprehensive Land Use Plan (CLUP) and subsequent amendments, the Town of Brookhaven's 1996 Land Use Plan, and the Town of Brookhaven's adopted Route 25A – Mount Sinai to Wading River Final Land Use Plan, September 2012 were utilized to assess the potential site specific and cumulative land use impacts resulting from the proposed action.

*Brookhaven National Lab Long Island Solar Farm (BNL LISF) studies:*

The construction of a large solar facility has the potential to affect surrounding flora and fauna in a variety of ways. One potential impact is a change in air temperatures due to a potential "heat island" effect.<sup>6</sup> A study by the Office of Education Programs at Brookhaven National Lab looked at changes in air temperature at the complexes solar

<sup>4</sup> <http://www.acris.nynhp.org/report.php?id=7407>

<sup>5</sup> <http://www.fws.gov/Midwest/endangered/mammals/nleb/index.html>

<sup>6</sup> <https://www.bnl.gov/isd/documents/83190.pdf> *Heat Island effect of the Long Island Solar Farm*

facility (Long Island Solar Farm – LISF) for an entire calendar year and determined that there was no measurable increase or decrease caused by the 32 MW facility<sup>7</sup>. As such, no impact would be expected from the proposed project, which is smaller in acreage and megawatts produced. Similarly, another study was conducted at BNL, which analyzed soil temperatures in the LISF and the relative impact on local flora and fauna. While the study was conducted over one year's time, the results were as expected: soils beneath the panels were cooler than the unobstructed walkways during warm months, with the inverse true for colder months. While the study did not note any significant impacts as a result, it indicated that this may have a potential benefit to wildlife as the area beneath the panels may provide a warmer "home" for animals during winter months, thus providing a potential benefit.<sup>8</sup>

Another potential impact from such a large solar energy production facility is the impact the panels and equipment could have on wildlife. A study at the LISF at BNL was conducted on Odonate species (dragonflies and damselflies) and how they interacted with the solar panels and various wetlands. The study found that there was no significant impact caused by the solar panel project on the various Odonate species and it noted that overall populations were healthy despite the presence of the panels.<sup>9</sup> While extrapolating the results of this study toward other species are speculative, the fact that no substantial impacts were found and the fact that the study area is approximately nine and one half (9.5) miles south, southeast of the subject property (thus containing similar species and localized conditions) is significant.

*Endangered / Threatened / Special Concern Species:*

As the property is currently used as a year round golf course (weather permitting), there is very little suitable nesting habitat for species of bird which utilize grasslands. Additionally, routine-mowing activities on site to maintain the fairways, greens and rough areas and to ensure no tree growth, severely limits the number of species which can utilize the bulk of the project site for nesting.

There are two (2) species of New York State endangered birds, which utilize grassland habitat: Short-eared Owl and Loggerhead Shrike.<sup>10</sup> Loggerhead Shrikes are very uncommon within Suffolk County and are not listed in the 2000-2005 Breeding Bird Atlas for Block 6753C<sup>11</sup> and a check of "ebird.org" shows no records within Suffolk County between 2012 and 2016<sup>12</sup>. As such, no impact to this species is expected.

<sup>7</sup> <https://www.bnl.gov/lisd/documents/83195.pdf> *Investigation of Air Temperatures on the Long Island Solar Farm*

<sup>8</sup> <https://www.bnl.gov/lisd/documents/83195.pdf> *Analysis of soil temperatures in the Long Island Solar Farm (LISF) and its impact on the local fauna and flora*

<sup>9</sup> <https://www.bnl.gov/lisd/documents/83195.pdf> *The use of mark-recapture techniques to study migration and population densities of Odonate species on a utility scale solar farm*

<sup>10</sup> <http://www.dec.ny.gov/animals/7494.html>

<sup>11</sup> <http://www.dec.ny.gov/cfm/xtapps/bba/index.cfm?RequestTimeout=250>

<sup>12</sup>

[http://ebird.org/ebird/map/logshr?bmo=1&emo=12&byr=2012&eyr=2016&\\_\\_hstc=75100365.3fd566c955](http://ebird.org/ebird/map/logshr?bmo=1&emo=12&byr=2012&eyr=2016&__hstc=75100365.3fd566c955)

Short-eared Owls are an uncommon winter species, which are not listed within the breeding atlas for Block 6753C. This species has been recorded on ebird.org between 2012 and 2016 within Suffolk County. All observations have been in winter months and no observations have occurred on or near the subject property. The closest observation of this species has been approximately four and one quarter (4.25) miles to the east, southeast, within the Township of Riverhead at a property colloquially known as "EPCAL" (Enterprise Park at Calverton). The EPCAL property, while containing similar vegetation, has approximately 700 acres of suitable habitat, compared to less than 150 acres at the subject property and is subject to very little human activity. Due to the absence of records, relatively small habitat size and human activity on-site, it is not expected that Short-Eared Owls are currently using the subject parcel and thus no impact to this species would be expected.

There are two (2) species of New York State threatened birds, which utilize grassland habitat: Northern Harrier and Upland Sandpiper. Northern Harriers are a relatively common species within Suffolk County and frequent areas of abundant grassland as well as saltwater marshes. There are no records of this species in New York State's breeding bird atlas (2000-2005) for Block 6753C and due to regular human activity as a result of the golf course operation, it is not expected that Northern Harriers are common on-site. Based on data posted on ebird.org, there have been several observations of Northern Harriers within a several mile radius between 2012 and 2016. However, none of these observations were on or directly adjacent to the subject site and the scattered observations do not indicate that this species is prevalent in the immediate area.

The Upland Sandpiper is known as a "shorebird of the prairies" as the preferred habitat of this species is open grasslands.<sup>13</sup> DEP consulted the aforementioned breeding bird atlas, which reveals no records of Upland Sandpipers within the appropriate census block. Additionally, ebird.org reveals no records of this species on the subject or adjacent properties, though observations were made at EPCAL and within the Rocky Point DEC area (however this property is over 5,000 acres in size and it is unclear where the species were observed). Due to these reasons, the proposed development is not expected to impact these protected species.

There are two (2) species of New York State special concern species, which utilize grassland habitat: Grasshopper Sparrow and Eastern Box Turtle. The Grasshopper Sparrow is listed within the New York State Breeding Bird Atlas for 2000-2005 within Block 6753C and it is probable that this species has or continues to utilize the subject property for feeding and/or nesting.<sup>14</sup> While there are no records on ebird.org of this species within the properties immediate vicinity, the bird is not easily observed and is secretive in nature, thus making observation difficult. Due to the fact that the proposed project seeks to eliminate a managed golf course use and replace it with a solar energy

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61e38d4b6278246d52c72c.1409845456174.1453310616781.1454079960873.61&\_\_hssc=75100365.8.1454079960873&\_\_hsfp=735290054#\_ga=1.106313667.1552236481.1407158200

<sup>13</sup> <http://www.dec.ny.gov/animals/59582.html>

<sup>14</sup> <http://www.dec.ny.gov/animals/59577.html>



facility with nearly 150 acres of grassland (upon completion), it is expected that habitat for this species will actually improve as a result of the project. The drastic decrease in mowing, golf cart usage and human disturbance, pesticides/herbicides (which decrease insects), combined with increased grassland habitat (manicured fairways, greens and bunkers will be eliminated); Grasshopper Sparrows may have increased fecundity on-site. This is particularly important for Grasshopper Sparrows as they raise two (2) to three (3) clutches of young per breeding season.

The second species, the Eastern Box Turtle, is also likely to flourish as a result of the proposed project for many of the same reasons<sup>15</sup>. Eastern Box Turtles are long-lived, slow to mature and have relatively low annual offspring numbers. Habitat loss and human disturbance has reduced their populations considerably leading to their listing as a special concern species. While the preferred habitat for this species of "land turtle" is forested or mixed woods land, Eastern Box Turtles utilize grasslands and do require bodies of water, albeit infrequently. With the proposed development of the site, no permanent impacts are expected to Eastern Box Turtles populations and as previously stated, the species will likely benefit from increased grassland habitat and reduced mortality rates from equipment strikes (from mowing). Additionally, research conducted during construction of the Long Island Solar Farm (Brookhaven National Lab, Upton, NY) indicated that construction activities had little to no impact on Eastern Box Turtles near the vicinity of the new facility.<sup>16</sup> Due to these facts, no significant environmental impacts are expected to occur to the Eastern Box Turtle or Grasshopper Sparrow.

There is one (1) species of federally endangered bat, which has been recorded in the northeastern portion of Brookhaven Township: Northern Long-eared bat.<sup>17</sup> This species has been federally listed since 2015 due to loss of habitat and white-nose syndrome, which has drastically reduced the population. This species of bat utilizes dense areas of forest and thus is not typically present in an open grassland habitat represented by the current golf course facility. However, the subject property does contain a large freshwater pond, which attracts a significant variety of insects, potentially providing a source of food and water for this species of bat. As the proposed project will not eliminate the pond, the habitat potentially utilized by this federally listed species will not be impacted.

Additionally, the applicant has met with Tim Green, PhD, at Brookhaven National Lab (BNL) who has researched the northern long-eared bat within Brookhaven Township.<sup>18</sup> Dr. Green has confirmed that it is unlikely that this species of bat utilizes the site, and that no habitat on-site is suitable for roosting bats and that no impact is expected from the proposed development. Additional documentation from the federal government has been reviewed by DEP staff and it has been determined that no significant impact would be expected upon the federally listed bat species.

<sup>15</sup> <http://www.dec.ny.gov/animals/44401.html>

<sup>16</sup> [https://www.bnl.gov/esd/wildlife/PDF/Research\\_papers/Mancuso%20Poster%202011.pdf](https://www.bnl.gov/esd/wildlife/PDF/Research_papers/Mancuso%20Poster%202011.pdf)

<sup>17</sup> [https://www.bnl.gov/esd/wildlife/PDF/Research\\_papers/Cane\\_paper\\_2011.pdf](https://www.bnl.gov/esd/wildlife/PDF/Research_papers/Cane_paper_2011.pdf)

<sup>18</sup> <https://www.bnl.gov/esh/env/wildlife/>

Adjacent to the southeast corner of the subject property are several parcels of Brookhaven Town owned parcels which contain a state regulated freshwater wetland and which acts as a natural drainage area. This site is listed as a sensitive site as per New York State with the most recent observation of an endangered species occurring in 1984. Since this over thirty year old observation record, the subject parcel has been re-developed into a golf course (previously a sod farm) with no requirements from the State to provide additional protection to the adjacent wetlands. No covenanted buffer or similar mitigation measure was required on the approved site plan for the Tall Grass golf course, as evidenced by the Town's official records.<sup>19</sup>

Furthermore, in 1988 a Town approved subdivision was filed with Suffolk County (*Map of Larkwood at Northshore*) surrounding the wetland on the east, south and west<sup>20</sup>. The subdivision did not require any significant mitigation measures related to the potential presence of an endangered species. In 1994, another subdivision adjacent to this wetland was approved by Brookhaven Town (*Map of North Hills*) which did not require any special mitigation measures aimed at protecting endangered species.<sup>21</sup> However, the subdivision did require the dedication of 4.33 acres of land adjacent to said wetland, further protecting any potential habitat for this rare species. Due to these facts and the fact that the applicant will be maintaining a significant buffer (100+ feet) in the southeastern corner of the property, no impacts are expected to any endangered/protected species which may have been historically present at the adjacent wetland.

*Other potential impacts on wildlife:*

The construction of a solar energy production facility has potential to affect a wide variety of species of wildlife – including those not explicitly listed as “*endangered, threatened or special concern*” by the state or federal government. Some of those species are protected under the migratory bird act, while others have no formal level of protection. In an effort to lessen impacts on wildlife, the applicant will be constructing bordering fences to aid the passing of wildlife beneath/through the fence so small mammals and turtles will be able to move to and from the site freely. This design change was implemented after the applicant toured the LISF and met with BNL staff.<sup>22</sup> Additionally, the proposed project will feature several strategically placed gates within the fencing. These gates will allow property managers to “herd” any deer out of the property and onto public land while placing minimal stresses on the deer.

In a letter from the Shoreham Civic Organization, Frederick Eisenbund (attorney for Shoreham Wading River Advocates for Justice [SWRAJ]) raised concerns regarding the impact commercial solar facilities could have on wildlife, including migratory birds.<sup>23</sup> The letter references two (2) “reports” regarding these impacts. One report is from the

<sup>19</sup> See May 19, 1999 survey prepared by Kenneth H. Beckman, L.S. # 049841 that references the location of wetlands on Town of Brookhaven property, identified by Land Tech Design, on 7/9/1997.

<sup>20</sup> Map of Larkwood at Northshore, File # 8464, Filed January 22, 1988 with the Suffolk County Clerk

<sup>21</sup> Map of North Hills, File # 9503, Filed May 9, 1994 with the Suffolk County Clerk

<sup>22</sup> [https://www.bnl.gov/community/cac/docs/CAC\\_12\\_12\\_Hlgbie.pdf](https://www.bnl.gov/community/cac/docs/CAC_12_12_Hlgbie.pdf)

<sup>23</sup> January 24, 2016 – submitted to the Town of Brookhaven

Birdlife International Migratory Soaring Birds Project, which notes that there are impacts associated with large-scale solar projects including water use, habitat loss/fragmentation, risk of collision and pollution.<sup>24</sup> While the letter indicates "habitat loss/fragmentation" is potentially the largest impact, extensive review of the project has shown otherwise. Specifically, the proposed project will increase usable grassland habitat (by removing cart paths, sand traps, tee boxes and manicured greens), greatly reduce the amount of human disturbance on-site (mowing, golf cart activity, pedestrian activity) and utilize native species of grasses and enhance wetland vegetation on-site.

A second report referenced in the letter comes from the National Fish and Wildlife Forensics Laboratory, which looked at the death of birds at Ivanpah solar power plant in California.<sup>25</sup> This solar power plant is drastically different from the proposed facility as Ivanpah is a "solar thermal power plant" meaning solar panels are angled to reflect light in a concentrated beam to a water-filled tower, which creates energy from the generation of steam. As such, this type of solar facility creates a "solar flux" field generating temperatures of 800+ degrees Fahrenheit, which can instantly kill wildlife.<sup>26</sup> Furthermore, the Ivanpah facility is over 3,500 acres in size and located within a desert near the California/Nevada border. Due to these stark differences, it is impossible to compare the impacts referenced in the federal report with potential impacts at the proposed solar facility.<sup>27</sup> Due to the information referenced above, no significant impacts are expected to non-protected species of wildlife as a result of this project.

*Lot Coverage calculations:*

As per the PCOD, if a property is developed for solar energy, the total lot coverage for the panels and related equipment cannot exceed 53% of the total property. The subject application proposes lot coverage of 43.93% under the "worst case scenario".<sup>28</sup> This number was achieved by multiplying the size of an individual panel (6.54' X 3.28' = 21.45 SF) by the total number of modules (125,944). When the square footage per panel and the number of modules are multiplied, the result is 2,701,499 total square feet (assuming the panels are parallel with the ground, thus having 0 degrees of tilt). When taking into consideration that the proposed panels will be tilted at a 25-degree angle, the lot coverage is reduced slightly to 2,445,833 square feet. When the "worst case" coverage is combined with coverage from the clubhouse, parking lot, maintenance buildings, switchyard and inverters, a total square footage of 2,866,799 is achieved. When this lot coverage is divided by the total lot size (6,525,288 square feet), the result is 43.93% of total lot coverage. As this number is nearly 10% below the maximum allowable lot coverage as per the requirements of the PCOD no impacts above and

<sup>24</sup> <http://migratorysoaringbirds.undp.birdlife.org/en/sectors/energy/solar-energy-toe>

<sup>25</sup> [http://docketpublic.energy.ca.gov/PublicDocuments/09-AFC-07C/TN201977\\_20140407T161504\\_Center\\_Supplemental\\_Opposition\\_to\\_Motion.pdf](http://docketpublic.energy.ca.gov/PublicDocuments/09-AFC-07C/TN201977_20140407T161504_Center_Supplemental_Opposition_to_Motion.pdf)

<sup>26</sup> <http://www.theatlantic.com/technology/archive/2014/04/how-to-stop-solar-power-plants-from-incinerating-birds/361318/>

<sup>27</sup> <http://www.ivanpahsolar.com/about>

<sup>28</sup> Please see Letter and Calculations Sheet from Land Design Associates Consulting Group, Dated February 3, 2016 and officially filed with the Planning Department of Brookhaven Town for additional details.

beyond what were considered under the Route 25A LUP and related Pine Barrens regulations are expected.

*Cumulative Impacts:*

The proposed project is not expected to have any significant negative cumulative impacts. The project will provide a clean source of energy, produce no emissions or sanitary waste nor require water usage and the project will not require the clearing of trees. Additionally, the existing on-site habitat will be enhanced with a significantly reduced mowing schedule, no use of pesticides, herbicides or fertilizers and no need for irrigation (after re-vegetated areas have been established). Furthermore, after the construction phase, noise from the site will be minimal and virtually all vehicular traffic to and from the site will cease. Development of the site results in no additional requirements from public services, such as police, fire, or EMS and will result in no impacts to the local school district. By providing emission-free energy to the public grid, a reduction in fossil-fuel-generated energy will be realized by the local power authority, which is expected to have a positive impact on local air quality. The on-site pond will remain, as it will collect a significant portion of stormwater runoff and continue to provide crucial habitat for a wide variety of species as this is the only area of surface water within a significant radius. Due to these reasons, no significant, negative cumulative impacts are anticipated because of the subject project.

*Conformance with Pine Barrens Regulations:*

As the subject site is located within the Compatible Growth Area (CGA) of the Central Pine Barrens, it must comply with certain provisions of the underlying comprehensive land use plan (CLUP) or seek a hardship from the Commission. On December 4, 2015 a SEQRA coordinated review for Type I actions was transmitted from the Town of Brookhaven Planning Board to the Central Pine Barrens Joint Policy and Planning Commission (CPBJPPC) for lead agency determination. On December 21, 2015, the CPBJPPC responded with a five-page letter, stating they would not seek lead agency and providing a series of comments related to their jurisdiction. The applicant responded to the CPBJPPC comments and made several amendments to their application materials for clarity. Additionally, after meeting with Town staff, the applicant significantly revised their plans to reduce the amount of land disturbed via grading to approximately 54 acres (from a previously planned 125 acres).

On January 22, 2016, the CPBJPPC submitted a letter to the Town after having reviewed the applicant's revised documents. The letter acknowledges changes to the site plan as well as the expanded environmental assessment form, which clarifies that the existing site vegetation (aside from a small area of woods) consists of managed, fertilized, irrigated and mowed turf areas and thus does not contain "natural vegetation". As such, the removal of existing grasses and small shrubs does not constitute "clearing" and the applicant has revised their plans to grade less than 53% of the overall site. The CPBJPPC in their letter acknowledges that the Town can determine if the proposed project conforms with the standards of the CLUP and that, provided the project is not a Development of Regional Significance, "Then no automatic Commission review is

required". Additionally, when the subject parcel was converted from a sod farm to golf course, the CPBJPPC ruled that the project was "non-development" pursuant to ECL57-0107(viii), therefore the CPBJPPC had no jurisdiction.<sup>29</sup>

After a complete and thorough review by the Town of Brookhaven and the CPBJPPC, it has been determined that the proposed application is in conformance with all applicable CLUP standards. Specifically, the applicant has addressed the sections of the CLUP referenced in the original December letter from the CPBJPPC. These standards include:<sup>30</sup>

- *Standard 5.3.3.4.2 Buffer delineations, covenants and conservation easements* – Minimum 100' buffers are required around the entire project and are depicted on the proposed site plan.
- *Standard 5.3.3.4.1 Nondisturbance Buffers* – A buffer greater than 100' in width is provided to the adjacent Town owned property, which contains a regulated wetland.
- *Standard 5.3.3.6.1 Vegetation Clearance Limits* – The property contains a small section of native, wooded vegetation that will remain untouched. The remainder of the property consists of historically managed turf grasses and virtually no trees. No more than 53% of the project area will be graded, thus preserving the minimum area required for parcels zoned A-residential-1 within the CGA of the Pine Barrens.
- *Standard 5.3.3.6.2 Unfragmented Open Space* – The proposed development will be encumbered by a 100'+ buffer around the entire property, along with undeveloped areas between and beneath the rows of panels and the existing drainage pond. The open space is contiguous within the parcel and contiguous to the Town open space in the southeast quadrant. Additionally, the eastern buffer on the subject property is adjacent to a filed subdivision map which contains a covenanted 150' buffer along the western property line, thus creating a minimum 250' vegetated corridor running north/south. On the western side of the subject property, adjacent residential parcels and a recharge basin all have a minimum 150' vegetated buffer adjoining the golf course property and a Church contains clearing limits, which prevent further clearing of natural vegetation. As such, not only does the proposed development contain un-fragmented open space, but also the required buffers will nearly double the size of existing natural areas, increasing natural habitat and provide substantial wildlife corridors.
- *Standard 5.3.3.6.4 Native Plantings* – The applicant will be utilizing a native grass mix for areas disturbed during site development and will utilize native

<sup>29</sup> December 18, 1997 letter from the CPBJPPC to Mr. Leonard DeLalio. From the Town's official records.

<sup>30</sup> [http://pb.state.ny.us/cpb\\_plan/altered%20chapter%205\\_ministerial%20amendments%20only.pdf](http://pb.state.ny.us/cpb_plan/altered%20chapter%205_ministerial%20amendments%20only.pdf)

species of trees and shrubs and/or natively grown species (where needed/appropriate) for landscaping purposes. Additionally, DEP is requesting that additional wetland species are planted along the pond to enhance habitat and that milkweed plants be installed along internal roadways to provide habitat for migrating monarch butterflies.

- *Standard 5.3.3.7.1 Special species and ecological communities* – The potential for impacts to protected species are extensively covered elsewhere in this document.
- *Standard 5.3.3.12.1 Commercial and industrial compliance with Suffolk County Sanitary Code* – The applicant has stated in their submitted documents that no fertilizers, insecticides or pesticides will be used for on-site vegetation and the panels will only require cleaning via pressurized water on a bi-annual basis. Additionally, there will be no on-site wastewater flow and the existing wells feeding the pond area are to be disconnected.

Due to the changes made by the applicant and the overall conformance with the standards of the CLUP, the project does not require additional review or a hardship from the CPBJPPC and no significant environmental impacts are expected in relation to the standards of the CLUP.

*Impacts to Recreation:*

The property is currently used as a private golf course and is open to the public seven (7) days a week, weather permitting. The golf course represents a fee-based recreational opportunity within Brookhaven Township, which will cease operation upon approval of the proposed application. As the golf course is privately owned, no publically guaranteed parkland or recreational opportunity exists on-site and thus no parkland alienation or otherwise is needed. While the loss of a recreational opportunity may not be desirable to nearby residents, the property owner is under no obligation to continue this use. Additionally, the Town of Brookhaven owned golf course (AKA Rolling Oaks – privately operated) exists approximately three (3) miles west, northwest of the subject property and offers discounts to Town of Brookhaven residents<sup>31</sup>. As such, no significant recreational loss is represented by the conversion of the existing golf course to a solar electric generating facility.

*Noise:*

The proposed project, in its final form, will generate little to no operating noises. While the construction phase will result in noise levels typically above existing levels, this is a temporary impact, lasting six (6) to nine (9) months. As per Brookhaven Town Code, construction noise is exempt from maximum sound levels, though is only permitted during specific hours of the day, which the applicant will be required to conform to.<sup>32</sup> The maximum level of noise projected during construction will result from the

<sup>31</sup> <http://www.golfrollingoaks.com/aboutus/rates/>

<sup>32</sup> <http://ecode360.com/8593764>

installation of pile driven platforms for the solar panels. This activity will have a noise level of up to 101 dBA at a distance of 50 feet.<sup>33</sup> However, the nearest panels will be located no closer than 110' from any property line, doubling the reference distance. Furthermore, the nearest residential dwelling is located approximately 100' from the subject property line with many residential dwellings being set much further back. This means that the closest residence will be greater than 200' away from any pile driven structure (with the majority of homes being 250'+ away) resulting in a noise level well below 101 dBA during construction.

After the project is completed and operational, noise levels are projected to be between 28 dBA (daytime – maximum) and 21 dBA (nighttime – minimum) as per Table 3.8-4 of the applicant's submitted Expanded Environmental Assessment Volume 1 of 2. To compare these levels to relatable noise levels, a level of 30 dBA is similar to the sound level inside a library, and a noise level of 20 dBA is similar to a quiet rural area at night.<sup>34</sup> Based on these projects, the location of noise generating equipment on-site and the distance to residential dwellings (combined with existing and proposed vegetative buffers), no noticeable impact (beyond the construction phase) is expected to result from the proposed project.

*Traffic:*

Currently, the golf course is open and operational year round (weather permitting). While the facility sees little traffic during the winter months, the summer months can result in significant levels of traffic along Cooper Street throughout the day and particularly on weekends dependent upon events held at the catering facility. After a review of the applicant's submitted traffic assessment within the Expanded EAF, it has been determined that the proposed project will represent a significant decrease in traffic as the site will have no employees and will only benefit from semi-annual maintenance work. While the construction phase of the project will result in frequent trips by contractors, workers and equipment delivery, this impact will be minimal in nature, lasting six (6) to nine (9) months. The proposed solar project is projected to last a minimum of twenty (20) years meaning no significant increases in traffic patterns to and from the site would be expected over that period. Due to these reasons, no significant environmental impacts are expected to result from traffic patterns.

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<sup>33</sup> Page 3-44 Expanded Environmental Assessment Form, Volume 1 of 2.

<sup>34</sup> <http://www.dot.ca.gov/dist2/projects/sixer/loud.pdf>

*Mitigation Measures:*

The Town of Brookhaven has requested the following mitigation measures from the applicant in order to lessen environmental impacts associated with the proposed project:

- Significant reduction in area of the site to be graded (reduced from approximately 125 acres to approximately 54 acres)
- Installation of native, supplemental vegetation along the existing pond shore to enhance the wetland vegetation and create additional habitat for wildlife species dependent upon freshwater wetlands
- Installation of milkweed plants along internal roadways to provide habitat for monarch butterflies, which utilize the milkweed plant during their northern migration<sup>3536</sup>
- No removal of sand/soil materials from the site
- Vegetative screening around the entire perimeter of the site to lessen visual impacts to passersby and adjacent property owners
- Preservation of all existing trees within the perimeter of the site
- Demolition of the single family dwelling along Randall Rd. (after construction phase)

*Alternatives:*

The applicant, in their extensive Expanded Environmental Assessment Form (Part 1 of 2) has detailed alternative development options that the property owner could pursue on the subject property.<sup>37</sup> The main alternative for the site is residential development – with a yield of approximately 120 homes. Developing the site with 120 residential homes would represent a substantial environmental impact beyond the proposed project due to increases in traffic, public water usage, generation of wastewater, sewage and solid waste, increased impervious surfaces, increased use of fertilizers/pesticides, increased noise, additional emissions from vehicles and home heating systems along with other impacts. While a development of this nature would result in 70% of the property being preserved in municipally owned open space (as per the Land Use Plan), the aforementioned impacts would far outweigh the benefit of this dedicated open space, when compared to the proposed use of a solar energy production facility.

Furthermore, by not constructing the proposed facility, approximately 24.9 Megawatts of green energy would not be added to the grid. The shortfall for the power would need to come from existing gas-fired plants, resulting in significant harmful emissions from existing power plant facilities and usage of fossil fuels.

<sup>35</sup> [http://www.nytimes.com/2014/11/18/science/monarchs-may-be-loved-to-death.html?\\_r=0](http://www.nytimes.com/2014/11/18/science/monarchs-may-be-loved-to-death.html?_r=0)

<sup>36</sup> <http://monarchwatch.org/bring-back-the-monarchs/campaign/the-details/>

<sup>37</sup> Section 5.0 Alternatives (5-1 EEAF Part 1 of 2) – on file with the Town of Brookhaven



*Additional Considerations:*

A Storm Water Pollution Prevention Plan (SWPPP) will be developed prior to site development. Plantings and seeding will be employed throughout the property in order to stabilize soils and reduce the potential for erosion of soils during site development. Best Management Practices (BMPs) will be employed during construction to minimize the amount of land disturbance, erosion, dust, and storm water impacts. The project will conform to applicable Town requirements for storm water control and recharge so that potential impacts to surface water bodies will be minimized. There are no anticipated significant adverse impacts to ground or surface waters.

A complete decommissioning plan will be required prior to site development. The decommissioning plan will consist of the removal of all solar farm materials, infrastructure, and roadways. All disturbed areas will be reclaimed and restored to natural vegetation through seeding and or natural re-vegetation. Additionally, proposed site development represents a minor impact to natural resources (energy, water), the local school district, groundwater (via nitrogen input from fertilizers and wastewater) and natural recharge of the aquifer via stormwater recharge, particularly when compared to the existing use and the alternative of a housing development.

*Conclusion:*

In conclusion, the Town of Brookhaven Planning Board, after review and analysis of the applicant's Expanded Environmental Assessment Parts I and II, the criteria contained in section §617.7 of NYS Law, current and historic aerial maps of the subject property, as well as documents from interested and involved agencies and other supporting information thoroughly outlined above in this document which identify the relevant areas of environmental concern, finds that the proposed solar energy generating facility is not anticipated to have a significant effect upon the environment.

To wit: While environmental impacts will occur as a result of the proposed activity, the impacts are below the threshold that requires an Environmental Impact Statement under the State Environmental Quality Review Act. No significant impact is expected to occur to: air, land, aesthetics, ground water, surface water, wetlands, cultural, open space, recreational, transportation or energy resources.

Review Agency: The Planning Board of the Town of Brookhaven  
Contact Person: Anthony Graves, Chief Environmental Analyst, Division of  
Environmental Protection  
Address: One Independence Hill, Farmingville, NY 11738  
Phone: (631) 451-6455


**Copies of this notice sent to:**


NYS Department of Environmental Conservation (NYSDEC) Environmental Notice Bulletin  
John W. Pavacic, Executive Director, Central Pine Barrens Joint Planning & Policy Commission  
Michael Deering, LIPA  
Andrew Freleng, Suffolk County Planning

Applicant: Shoreham Solar Commons, LLC (Invenergy, LLC)  
One South Wacker Drive, Suite 1800  
Chicago, Illinois  
Contact: Brad C. Prazek

Owner: TallGrass Land Holding, LLC  
652 Deer Park Avenue  
Dix Hills, NY 11746

**This determination is not authorized and complete until signed and dated as follows:**

  
\_\_\_\_\_  
Vincent E. Pascale, Chairperson

  
\_\_\_\_\_  
Steve J. Wilson, Vice Chairman

Date Resolution Adopted: 3/7/16

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY CONSENTING TO THE TRANSFER OF OWNERSHIP OF SHOREHAM SOLAR COMMONS LLC TO DUKE ENERGY RENEWABLES SOLAR, LLC, OR A COMPANY WHOLLY OWNED BY DUKE ENERGY RENEWABLES SOLAR, LLC, OF 100% OF THE INTEREST IN SHOREHAM SOLAR COMMONS LLC AND FINANCING IN CONNECTION THEREWITH.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”) was created with the authority and power, among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency previously provided assistance to SHOREHAM SOLAR COMMONS LLC, a Delaware limited liability company authorized to transact business in the State of New York (collectively, the “**Company**”), in the acquisition of an approximately 150 acre parcel of land located at 24 Cooper Street, Shoreham, Town of Brookhaven, New York (SCTM #0200-126.00-02.00-002.000; 0200-127.00-01.00-003.000; 0200-127.00-01.00-006.00; 0200-148.00-02.00-005.000; and 0200-148.00-02.00-006.000) (the “**Land**”), the demolition of the existing residence thereon, the renovation of existing structures thereon, including outbuildings and clubhouse, for use as offices, storage, and related uses by the Company, the construction of a solar-powered electric generation facility thereon (the “**Improvements**”), and equipping thereof, including, without limitation, approximately 25MC (AC) ground mounted, stationary/non-tracking solar array installed on mounting racks, including approximately 125,944, 72-cell polycrystalline modules, combiner boxes, inverters, transformers, and other associated interconnect infrastructure to connect to LIPA’s power grid (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility is leased and sub-leased by the Agency to the Company, and used or to be used by the Company as a solar electric generating facility.

WHEREAS, the Agency previously acquired a subleasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of February 1, 2017 (the “**Company Lease**”), by and between the Company and the Agency, a memorandum of which Company Lease was to be recorded in the office of the Suffolk County Clerk;

WHEREAS, the Agency previously acquired title to the Equipment pursuant to a certain Bill of Sale (the “**Bill of Sale**”), from the Company to the Agency; and

WHEREAS, the Agency is currently sub-subleasing and leasing the Facility to the Company, pursuant to a certain Lease and Project Agreement, dated as of February 1, 2017 (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, pursuant to Section 8.3 of the Lease Agreement, the Company may not change, directly or indirectly, more than 49% of the ownership or control of the Company or sell or transfer, directly or indirectly, more than 49% of the equity interests in the Company without the prior written consent of the Agency; and

WHEREAS, DUKE ENERGY RENEWABLES SOLAR, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of DUKE ENERGY RENEWABLES SOLAR, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, “**DERS**”), has now applied to the Agency for the Agency’s consent to (i) the acquisition by DERS or a company wholly owned by DERS (the “**Holding Company**”) of one hundred percent (100%) interest in the Company; (ii) the subsequent creation and transfer of a class of passive, non-voting interests in the Company or the Holding Company to one or more institutional investors (the “**Investors**”), with limited veto and consent rights regarding economic and financial matters of the Company (i.e., DERS, directly or indirectly, will retain day-to-day management, and operation and control, of the Company following the investment in the Company by the Investors); (iii) the pledge of DERS’ interest in the Company or the Holding Company to an institutional lender or institutional lenders to be determined as security for DERS’ financial obligations to the lender or lenders; and (iv) the purchase by DERS or the Holding Company, as applicable, of the Investors’ interest in the Company or the Holding Company (collectively, the “**Change In Control and Ownership of the Company**”) ; and

WHEREAS, the Company has requested the Agency’s consent to the Change In Control and Ownership of the Company pursuant to Section 8.3 the Lease Agreement; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Company and DERS have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the Change In Control and Ownership of the Company and the continued leasing and sub-subleasing of the Facility; and

WHEREAS, a public hearing (the “Hearing”) was held on October \_\_, 2017, so that all persons with views in favor of, or opposed to either the Agency’s consent to Change In Control and Ownership of the Company, could be heard; and

WHEREAS, notice of the Hearing was given more than ten days prior thereto, such notice (together with proof of publication) having been filed with the records of this Agency; and

WHEREAS, the minutes of the Hearing having been filed with the records of this Agency; and

WHEREAS, the Agency has given due consideration to the application of the Company and DERS and to the representations by the Company and DERS that the proposed Change In Control and Ownership of the Company is either an inducement to the Company to maintain or expand the Facility in the Town of Brookhaven or is necessary to maintain the competitive position of the Company in its respective industries.

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Facility continues to constitute a “project”, as such term is defined in the Act; and

(c) The Change In Control and Ownership of the Company and the continued subleasing and leasing of the Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The Change In Control and Ownership of the Company and the continued subleasing and leasing to the Company is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

(e) Based upon representations of the Company and its counsel, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located; and

(f) It is desirable and in the public interest for the Agency to consent to the Change In Control and Ownership of the Company and to the continued sub-subleasing and leasing of the Facility to DERS or the Holding Company.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) consent to the Change In Control and Ownership of the Company to DERS or the Holding Company and the continued subleasing and leasing to the Company; (ii) execute, deliver and perform such consents, agreements and related documents as may be, in the judgment of the Chairman, Vice Chairman, Chief Executive Officer or counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (the “Consent”).

Section 3. Subject to the provisions of this resolution, the Lease Agreement and the Consent, the Agency hereby consents to the Change In Control and Ownership of the Company to DERS or the Holding Company and the continued sub-subleasing and leasing to the Company, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such Change In Control and Ownership of the Company and the continued sub-subleasing and leasing to the Company are hereby approved, ratified and confirmed.

Section 4.

(a) Subject to the provisions of this resolution and the Lease Agreement, the Chairman, Chief Executive Officer, and/or all other members of the Agency are hereby authorized, on behalf of and in the name of the Agency, to execute and deliver the Consent and

such other certificates, agreements, instruments and documents, in such form and containing such terms, conditions and provisions as the person executing same on behalf of the Agency shall deem necessary or desirable, and shall approve, such necessity, desirability, and approval, to be conclusively evidenced by his or her execution and delivery thereof (the “**Agency Documents**”).

(b) The Chairman, Chief Executive Officer, and any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives of the Agency.

(c) The Chairman, Chief Executive Officer and/or any other member of the Agency are hereby authorized and directed, on behalf of and in the name of the Agency, to pay all fees, charges and expenses incurred, to cause compliance with the terms, conditions and provisions of agreements binding upon the Agency, and to do all such further acts and things, in furtherance of the foregoing as such person shall deem necessary or desirable, and shall approve.

Section 5. Any expenses incurred by the Agency with respect to the transactions contemplated herein shall be paid by the Company, DERS and/or the Holding Company. By acceptance hereof, the Company, DERS and/or the Holding Company agree to pay such expenses and further agree, jointly and severally, to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Facility.

Section 6. This resolution shall take effect immediately.

ADOPTED: October 25, 2017

ACCEPTED: October \_\_\_\_, 2017

**SHOREHAM SOLAR COMMONS LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DUKE ENERGY RENEWABLES SOLAR, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_