

Jeffery Schmitt, Planning Board Chair  
Dale Warner, Town Planner  
Melissa Deffer, Clerk  
Teresa Bakner, Board Attorney



Elizabeth Novak, Board Member  
Martin Williams, Board Member  
Thomas Rulison, Board Member  
Michael Harris, Board Member  
Joshua Houghton, Board Member  
Christopher Shoemaker, Board Member  
Michael Santulli Alternate Board Member

TOWN OF DUANESBURG  
SCHENECTADY COUNTY

RECEIVED

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Town of Duanesburg  
Planning Board Minutes  
July 16<sup>th</sup>, 2020  
**Final Copy**

AUG 21 2020

TOWN OF DUANESBURG  
TOWN CLERK

**MEMBERS PRESENT:** Jeffery Schmitt Chairman, Elizabeth Novak, Thomas Rulison, Joshua Houghton, Michael Harris, Martin Williams, and alternate member Michael Santulli. Also, in attending Planning Board Attorney Teresa Bakner, and Melissa Deffer Clerk.

**Roll Call:** Jeffery Schmitt yes, Josh Houghton yes, Tom Rulison yes, Mike Harris yes, Elizabeth Novak yes. Marty Williams yes.

**INTRODUCTION:** Chairman Jeffery Schmitt opened the meeting at 7:03pm. Jeffery welcomed everyone to tonight's Planning Board meeting.

**OPEN FORUM:**

**Novak/Rulison** made a motion to open the open forum at 7:04  
Novak yes, Rulison yes, Houghton yes, Harris yes, Williams yes, Schmitt yes. **Approved.**

No Public Comment.

**Schmitt/Rulison** made a motion to close the open forum at 7:06  
Schmitt yes, Rulison yes, Harris yes, Novak yes, Houghton yes, Williams yes. **Approved.**

**PUBLIC HEARINGS:**

**Schmitt/Williams** motion to open the public hearing for the **#20-01 Whittaker, Lisa** application at 7:07.

**#20-01 Whittaker, Lisa:** SBL# 75.00-3-11.3, (H) located at 10534 Duanesburg Rd is seeking a 4 lot Major Subdivision under section 3.5 of the Town of Duanesburg Subdivision Ordinance.

No public comments were received on the application during or preceding the public hearing.

**Harris/Novak** made a motion to close the public hearing for the **#20-01 Whittaker, Lisa** application at 7:11.

Harris yes, Novak yes, Rulison yes, Houghton yes, Williams yes, Schmitt yes. **Approved.**

**Novak/ Rulison** made a motion to reaffirm our preliminary SEQRA finding of a negative impact declaration.

Novak yes, Rulison yes, Harris yes, Williams yes, Houghton yes, Schmitt yes. **Approved.**

**Houghton/Rulison** made a motion to approve the application for **#20-01 Whittaker, Lisa**. Houghton yes, Rulison yes, Williams yes, Harris yes, Novak yes, Schmitt yes. **Approved.**

### **NEW BUSINESS:**

**#20-09 Conway, Adam:** SBL# 67.00-3-19.3, (R-2) located at 3882 Western Turnpike is seeking an amendment of his Special Use Permit under section 14.6.2.5 of the Town of Duanesburg Zoning Ordinance. Mr. Conway explained to the board that he would like to expand to 300 units from 150 on a 5-acre parcel. There are currently 3 storage buildings on the property and Adam would like to build 4 more. The process will be done in phases. Adam would like to build only 1 building consisting of 56 units in the fall and as time goes on will expand as needed. The property is all gravel with a 6- foot fence, a security passcode gate, and cameras to ensure safety. Building 1 will be 30X240, building 2 and 3 will be approximately 30X200, and building 4 will be an extension of a preexisting building and will be about 30-40 feet. Between each storage building there will be a minimum of 30 feet and maximum of 40 feet to allow for 2 vehicles to park and pass thru. The board would like Adam to fill out the full application and submit a short EAF for next meeting.

**#20-10 Papa, Daniel:** SBL# 35.10-2-3, (L-1) located at 228 Lake Rd is seeking a Special Use Permit for a two- family dwelling under the Town of Duanesburg Zoning Ordinance adopted 6/11/15 under section 15.4(I); section 7.1.4(1); of the Town of Duanesburg Zoning Ordinance. Daniel explained to the board that he built a garage a year and a half ago and would like to turn the upstairs into a studio apartment for himself. The apartment will just have one bedroom with a full bathroom and kitchen. Mr. Papa demolished the cottage and garage that was on the property as well as took trees down and cleaned up. In 2011 built a 2 bedrooms house with a bedroom in the basement now so that makes it a 3 bedroom with a detached garage with a studio apartment already built upstairs. It is all connected to the town sewer with 1 well to serve both the house and garage with about 8 gallons a minute. There are no concerns with neighbors with water. The parcel is 95X175 to the right of the property and to the left is 95X185. With enough road frontage. Domenic Viscariello the Deputy Code Enforcement Officer was at the property. The Board would like:

1. Hear back from the Code Enforcement Officer
2. Mr. Papa to talk to his neighbors to give them notice
3. Bring Photos of the property
4. Surveyed plot plan with location of the house, garage, well, and driveway

**Novak/Harris** made a motion to declare a Type II SEQRA action and approve holding a public hearing on August 20, 2020 for the application of **#20-10 Papa, Daniel** for a Special Use Permit.

Novak yes, Harris yes, Schmitt yes, Houghton yes, Williams yes, Rulison yes. **Approved.**

#### **OLD BUSINESS:**

**#20-03 Stewarts Shops Corp:** SBL#64.00-2-26.1, (C-1) located at 4032 State Highway 30 is seeking a Special Use Permit under section 11.4(7) of the Town of Duanesburg Zoning ordinance for a convenience store with motor vehicle fuel sales and retail business. Jim Gillespie representing Stewarts gave his presentation to the board. Stewarts is proposing to demolish the existing Stewarts and to replace it with a new Stewarts building and gas pump plaza on the adjacent parcel of land. Stewarts is on the ZBA agenda for a sign variance and an area variance for a front yard setback. Lead agencies letters for coordinate review to the Zoning Board of Appeals, DEC, DOT and Schenectady County DOH will be sent out. The board is waiting for the TDE to make comments on the SWPP. Mr. Gillespie represented to the Board that he would ensure that all of the TDE's comments would be addressed on the application, including the SWPPP prior to the deadline for submission for the next Planning Board meeting.

**Schmitt/Novak** made a motion to approve holding a public hearing on August 20<sup>th</sup>, 2020 for the application of **#20-03 Stewarts Shops Corp.**

Schmitt yes, Novak yes, Williams yes, Harris yes, Rulison yes, Houghton yes. **Approved.**

#### **SKETCH PLAN REVIEW:**

**#20-08 Floccuzio, Fabio:** SBL# 68.00-1-2.11, (R-2) located at 250 Suits Rd is seeking a Minor Subdivision under section 3.4 of the Town of Duanesburg Subdivision Ordinance. Representing Fabio Floccuzio is his son Michael Floccuzio. Michael explained to the board that they would like to split 100 acres into 2 lots. Lot 1 will consist of 40 acres with a preexisting structure on it and Lot 2 will be 60 acres. There are 2 keyhole entries that go onto the property of Suits Rd and they meet the distance requirements. Both lots have driveways already as well. Lot 2 has a shale parking lot. Mike has applications into the town and to the county for a raised septic bed that's been approved, the well has also been approved by DEC.

**Novak/Rulison** made a motion to refer the application of **#20-08 Floccuzio, Fabio** to Dale Warner for administrative action/subdivision plat review approval.

Novak yes, Rulison yes, Harris yes, Schmitt yes, Houghton yes, Williams yes. **Approved.**

**#20-09 Mikus, Robert:** SBL# 54.00-2-8.4, (R-2) located at 6083 Scotch Church Rd is seeking a Minor Subdivision under section 3.4 of the Town of Duanesburg Subdivision Ordinance. Bob owns 6.5 acres and wants to give his daughter 3.5 acres of it. Bobs wants to keep just 3 acres for himself.

**Novak/Rulison** made a motion to refer the application of **#20-09 Mikus, Robert** to Dale Warner for administrative action/lot line adjustment approval.

Novak yes, Rulison yes, Harris yes, Schmitt yes, Houghton yes, Williams yes. **Approved.**

**Elizabeth Novak** recused herself from the next application and stepped away from the computer.

**#20-13 Novak, Kevin:** SBL# 33.00-1-6.111, (R-2) located at 719 Miller Corners Rd is seeking a Minor Subdivision under section 3.4 of the Town of Duanesburg Subdivision Ordinance. Kevin explained he has 99 acres on the east and west side of Millers Corners Rd. An existing single-family home sits on 57 acres on the west side of the road. Mr. Novak is in the process of selling 42 acres on the east side of the property. The road will be the division point for the parcel.

**Harris/Houghton** made a motion to refer the application of **#20-13 Novak, Kevin** to Dale Warner for administrative action/subdivision plat review approval.

Harris yes, Houghton yes, Rulison yes, Schmitt yes, Williams yes, Novak recused. **Approved.**

**#20-14 Lands of Carlie Coolidge:** SBL# 66.00-3-4.1, (H) located at 5434 Western Turnpike is seeking a Minor Subdivision under section 3.4 of the Town of Duanesburg Subdivision Ordinance. Frederick Metzger, is representing Bruce O'Dea. Mr. Metzger explained to the board that the parcel is slightly larger than 2 acres with 2 existing primary buildings located on the property. The gentlemen who is looking to purchase lot 1 consisting of 43,560 sq ft is the owner of Outlander Supply who has already received his special use permit. lot 2 will be 45,517 sq ft with a single-family home. Fred made lot 2 a U shape and the 2 parcels will share a well and the board has some concerns. The board would like to see for the next meeting:

1. Letter from Paul Callahan stating that Bruce owns the land
2. Location of well and septic to both parcels with notes on plan
3. Proposed location for the new well

**Novak/Rulison** made a motion to table the **#20-14 Lands of Carlie Coolidge** application until August 20, 2020

Novak yes, Rulison yes, Schmitt yes, Houghton yes, Harris yes, Williams yes. **Approved,**

**#20-11 Moen, Randi:** SBL# 75.00-3-24.14, (R-2) located at 730 Thousand Acre Rd is seeking a Lot Line Adjustment under Local Law #2 of 2017 of the Town of Duanesburg Subdivision Ordinance. Randi explained to the board that she would like to buy land from her neighbor to merge onto her lot. The board would like to see for the next meeting a better plot plan showing both houses well, house, septic

**Novak/Williams** made a motion to table the **#20-11 Moen, Randi** until August 20, 2020

Novak yes, Williams yes, Houghton yes, Schmitt yes, Harris yes, Rulison yes. **Approved,**

### **OTHER:**

Eden Renewables is seeking and extension for another year on their approved special use permit that runs out in September, but they wanted to be timely on the matter.

Whereas the Town of Duanesburg Planning Board issued site plan and special use permit approvals by resolution dated September 19, 2019 to the two five megawatt solar projects proposed by Oak Hill 1, LLC and Oak Hill 2, LLC.

Whereas Oak Hill 1, LLC and Oak Hill 2, LLC through their attorney James Muscato has requested that the approvals be amended to allow for additional time to satisfy the conditions and

obtain a building permit to commence installation of the solar panels and related equipment, all as shown on the approved plans;

Whereas additional time is required due to factors beyond the control of the applicants including the pandemic and litigation commenced last year which is still awaiting a judicial determination by the Appellate Division Third Department.

Whereas a request for an extension of time to complete an action is a Type II action under SEQRA, i.e. a renewal.

Now therefore be it resolved as follows:

The Planning Board hereby finds that the request for an additional year is warranted under the circumstances and hereby amends its approvals to grant an additional year, i.e. until September 19, 2021.

**Harris/Rulison** made a motion to approve the resolution for Oak Hill 1, LLC and Oak Hill 2, LLC.

Harris yes, Rulison yes, Williams yes, Novak yes, Houghton yes, Schmitt yes. **Approved.**

#### **MINUTES APPROVAL:**

**Harris/Schmitt** made the motion to approve the June 18<sup>th</sup>, 2020 Planning Board minutes with one minor corrections.

Harris yes, Schmitt yes, Williams yes, Houghton yes, Rulison abstained, Novak abstained. **Approved.**

**Harris/Rulison** made a motion to go into executive session to seek legal counsel.

Harris yes, Rulison yes, Williams yes, Houghton yes, Schmitt yes, Novak yes. **Approved.**

**Harris/Rulison** made a motion to come out of executive session.

Harris yes, Rulison yes, Williams yes, Houghton yes, Schmitt yes, Novak yes. **Approved.**

#### **ADJOURNMENT:**

**Harris/Novak** made the motion to adjourn at 9:47pm.

Harris yes, Novak yes, Houghton yes, Schmitt yes, Williams yes, Rulison yes. **Approved.**

PO Box 160  
Quaker Street, NY 12141  
[azurevista@hotmail.com](mailto:azurevista@hotmail.com)

Jeffery Schmitt, Chairman  
Planning Board  
Town of Duanesburg  
5853 Western Turnpike  
Duanesburg, NY 12056

July 5, 2020

Re: Eden Renewables request for extension of Oak Hill Special Use Permit

Dear Chairman Schmitt,

Please read my letter into the official record and include this with the official meeting minutes.

The June 18, 2020 Planning Board Agenda included Eden Renewables request for an extension of Oak Hill Solar 1 and 2 Special Use Permit to be constructed at 13590 Duanesburg Road, Delanson, NY 12053, the ("Project"). The Planning Board postponed the vote until July 16th.

I would like the Planning Board to deny Eden Renewable's request until both the Town and Planning Boards have carefully and thoroughly considered the following items which may negatively impact the town's finances and increase the possibility of additional lawsuits against the town over the developer's estimated 25 to 40 year lifetime of the Project.

January 17, 2020 documents filed with New York State Department of Public Services ("NYSDPS") Document and Matter Management ("DMM") Case 17-02273 reflects that the Project is now owned by Amp Solar Group, Exhibit "A". When did Eden notify the the town of the Project's sale to Amp? Is this in compliance with the town's requirements for change of ownership notification? Should Amp request the extension of the Special Use Permit?

SEQR Negative Declaration for the Project was approved September 19, 2019 but, was not published in the Department of Conservation Environmental Notice Bulletin. Publication is required by New York State Environmental Conservation Law, Exhibit "B". Why wasn't it published? Who is responsible? How does this omission impact the legitimacy of Oak Hill Solar and any permits issued?

Eden Renewables did not provide electrical diagrams or tracking panel specifications to the Planning Board. Freedom of Information request to Department of Environmental Conservation included Environmental Design Partnership August 9, 2019 drawings "Above Ground Wiring Details Sheets 1 and 2" which reflect the Project's tracking panel system, Exhibit "C". The

photos indicate minimal to no ground cover. How will an unknown number of wiring harnesses less than 30 inches above the ground impact the operation and maintenance on 65 acres covered with 45,455 solar panels operated by an undefined number of motorized gears in Duanesburg's lush vegetation? Will the tracking panel's wiring harnesses impede Eden Renewables operation and maintenance plan? Exhibit "D" Did the Planning Board approve the use of herbicide and pesticide? Will the town and adjoining neighbors be notified when these cancer causing chemicals are used? How will herbicide use impact the neighbors health, adjacent parcels land use, downstream well water and storm water run off?

April 15, 2020 letter from Douglas H. Zamelis, Esq. to New York State Energy Research and Development Authority ("NYSERDA"), Exhibit "E", outlines that on September 23 and 26, 2019 Duanesburg Town Planner Dale Warner signed "Confirmation of Local Land Use Approval" reflecting the Project as "5mWAC/7.5mWDC" with no battery storage, Exhibit "F". Then on October 4, 2019 Mr. Warner signed "Presentation to Planning/Zoning Board for Energy Storage" forms changing Oak Hill Solar to include 10 MW/AC of battery storage, Exhibit "G". These forms are required to be signed by a Planning/Zoning Board member, of which he is not. The Resolution and Site Plan as approved by the Planning Board September 19, 2019 do not mention or show any battery storage. Why did Mr. Warner sign these documents effectively changing the scope of the project? How does this impact the construction of Oak Hill Solar? Is this why the town adopted a fraud policy at the May 14, 2020 town board meeting? What is the new owner Amp, or subsequent owners, expecting to construct and is this in alignment with the approved Resolution and Site Plan?

I look forward to your reply at [azurevista@hotmail.com](mailto:azurevista@hotmail.com). Please address these significant concerns about Oak Hill Solar in writing before voting on Eden Renewables request for an extension for Oak Hill Solar Special Use Permit which expires in September.

Your vote maybe placing the town at further financial and legal risk for the lifetime of the Project.

Thank you for your time and consideration. I look forward to hearing from you.

Regards,

Susan Biggs

Cc: Roger Tidball, Supervisor Town of Duanesburg  
Terresa Bakner, Esq., Counsel to Town of Duanesburg  
Douglas H. Zamelis, Esq., Counsel to Susan Biggs

# **EXHIBIT**

**A**





**New York State Public Service Commission**  
Office of Consumer Services  
Service Provider Contact Information

*Completed forms should be submitted by fax to 518-472-8501*

Date January 17th, 2020

Company Name Oak Hill Solar 1 LLC

Service Type (Check all that apply): Gas ☐ Elec ☒ ESCO ☐ Cable TV ☐  
Water ☐ ILEC ☐ CLEC ☐ Toll Only ☐ Other \_\_\_\_\_

**President** Jared Donald - SVP, Head of USA  
Mailing Address 1550 Wewatta St. 4th Floor Denver, CO 80202  
Email Address jdonald@amp.energy  
Phone Number 1-403-993-8700 Fax Number \_\_\_\_\_

**Vice President / Director of Customer Service** Nicole LeBlanc - Director of US Transactions and Asset Management  
Mailing Address 1550 Wewatta St. 4th Floor Denver, CO 80202  
Email Address nleblanc@amp.energy  
Phone Number 1-303-653-9805 Fax Number \_\_\_\_\_

**Primary Regulatory Complaint Manager** Riley Hutchings - US Policy Analyst  
Mailing Address 1550 Wewatta St. 4th Floor Denver, CO 80202  
Email Address rhutchings@amp.energy  
Phone Number 1-303-653-9805 Fax Number \_\_\_\_\_

**Secondary Regulatory Complaint Manager** Dana Miller - Transaction Coordinator  
Mailing Address 1550 Wewatta St. 4th Floor Denver, CO 80202  
Email Address dmiller@amp.energy  
Phone Number 1-303-653-9805 Fax Number \_\_\_\_\_

The PSC electronically transmits consumer complaints to service providers. You must identify a fax number and/or an email address box that is shared by a group of people. (NOTE: WE WILL NOT SEND COMPLAINTS TO PERSONAL EMAIL ADDRESSES. A SHARED EMAIL ADDRESS MUST BE IDENTIFIED OR THE TRANSMISSION WILL DEFAULT TO THE FAX NUMBER) Please identify the address/es to which we should transmit our complaints:

Email: communitysolar@amp.energy Fax: \_\_\_\_\_



**New York State Public Service Commission**  
Office of Consumer Services  
Service Provider Contact Information

*Completed forms should be submitted by fax to 518-472-8501*

Date January 17th, 2020

Company Name Oak Hill Solar 2 LLC

Service Type (Check all that apply): Gas ☐ Elec ☒ ESCO ☐ Cable TV ☐  
Water ☐ ILEC ☐ CLEC ☐ Toll Only ☐ Other \_\_\_\_\_

**President** Jared Donald - SVP, Head of USA  
Mailing Address 1550 Wewatta St. 4th Floor Denver, CO 80202  
Email Address jdonald@amp.energy  
Phone Number 1-403-993-8700 Fax Number \_\_\_\_\_

**~~Vice President~~ / Director of Customer Service** Nicole LeBlanc - Director of US Transactions and Asset Management  
Mailing Address 1550 Wewatta St. 4th Floor Denver, CO 80202  
Email Address nleblanc@amp.energy  
Phone Number 1-303-653-9805 Fax Number \_\_\_\_\_

**Primary Regulatory Complaint Manager** Riley Hutchings - US Policy Analyst  
Mailing Address 1550 Wewatta St. 4th Floor Denver, CO 80202  
Email Address rhutchings@amp.energy  
Phone Number 1-303-653-9805 Fax Number \_\_\_\_\_

**Secondary Regulatory Complaint Manager** Dana Miller - Transaction Coordinator  
Mailing Address 1550 Wewatta St. 4th Floor Denver, CO 80202  
Email Address dmiller@amp.energy  
Phone Number 1-303-653-9805 Fax Number \_\_\_\_\_

The PSC electronically transmits consumer complaints to service providers. You must identify a fax number and/or an email address box that is shared by a group of people. (NOTE: WE WILL NOT SEND COMPLAINTS TO PERSONAL EMAIL ADDRESSES. A SHARED EMAIL ADDRESS MUST BE IDENTIFIED OR THE TRANSMISSION WILL DEFAULT TO THE FAX NUMBER) Please identify the address/es to which we should transmit our complaints:

Email: communitysolar@amp.energy Fax: \_\_\_\_\_

# **EXHIBIT**

**B**

PO Box 160  
Quaker Street, NY 12141

Jeffery Schmitt, Chairman  
Town of Duanesburg Planning Board  
5853 Western Turnpike  
Duanesburg, NY 12141

June 18, 2020

Re: Eden Renewables Oak Hill Solar, 13590 Duanesburg Road, Delanson, failure to publish finding in the Environmental Notices Bulletin

Dear Chairman Schmitt and the Planning Board,

Please read my statement during Privilege of the Floor and included it in tonight's official meeting minutes.

Why wasn't Eden Renewables Oak Hill Solar 1 & 2 SEQR Type 1 Negative Declaration published in the Department of Conservation ("DEC") Environmental Notice Bulletin ("ENB") as required by Part 617.12 State Environmental Quality Review?

*"(c) Publication of notices.*

*(1) Notice of a Type I negative declaration, conditioned negative declaration, positive declaration, draft and final scopes and completion of an EIS must be published in the Environmental Notice Bulletin (ENB) in a manner prescribed by the department. Notices must be submitted by the lead agency to the Environmental Notice Bulletin by e-mail to the address listed on the ENB's webpage or to the following address: Environmental Notice Bulletin, 625 Broadway, Albany, NY 12233-1750. The ENB is accessible on the department's website."*

January 2020 I spoke with Patricia Gabriel at DEC Region 4 and she confirmed that Oak Hill Solar was not published in the ENB.

Did the town provide the DEC with Oak Hill Solar ENB publication information?

How does this lack of publication impact the legitimacy of Oak Hill Solar SEQR findings?

Laws are made to protect the residents. Failure of town officials to uphold these laws erodes resident's trust in the planning board, building department, town and state. Failure to publish SEQR findings makes a mockery of the entire process.

Please investigate this matter and hold the appropriate parties responsible.

I look forward to hearing from your about this very important matter.

Thank you for assistance.

Regards,


Lynne Bruning  
lynnebruning@gmail.com  
720-272-0956

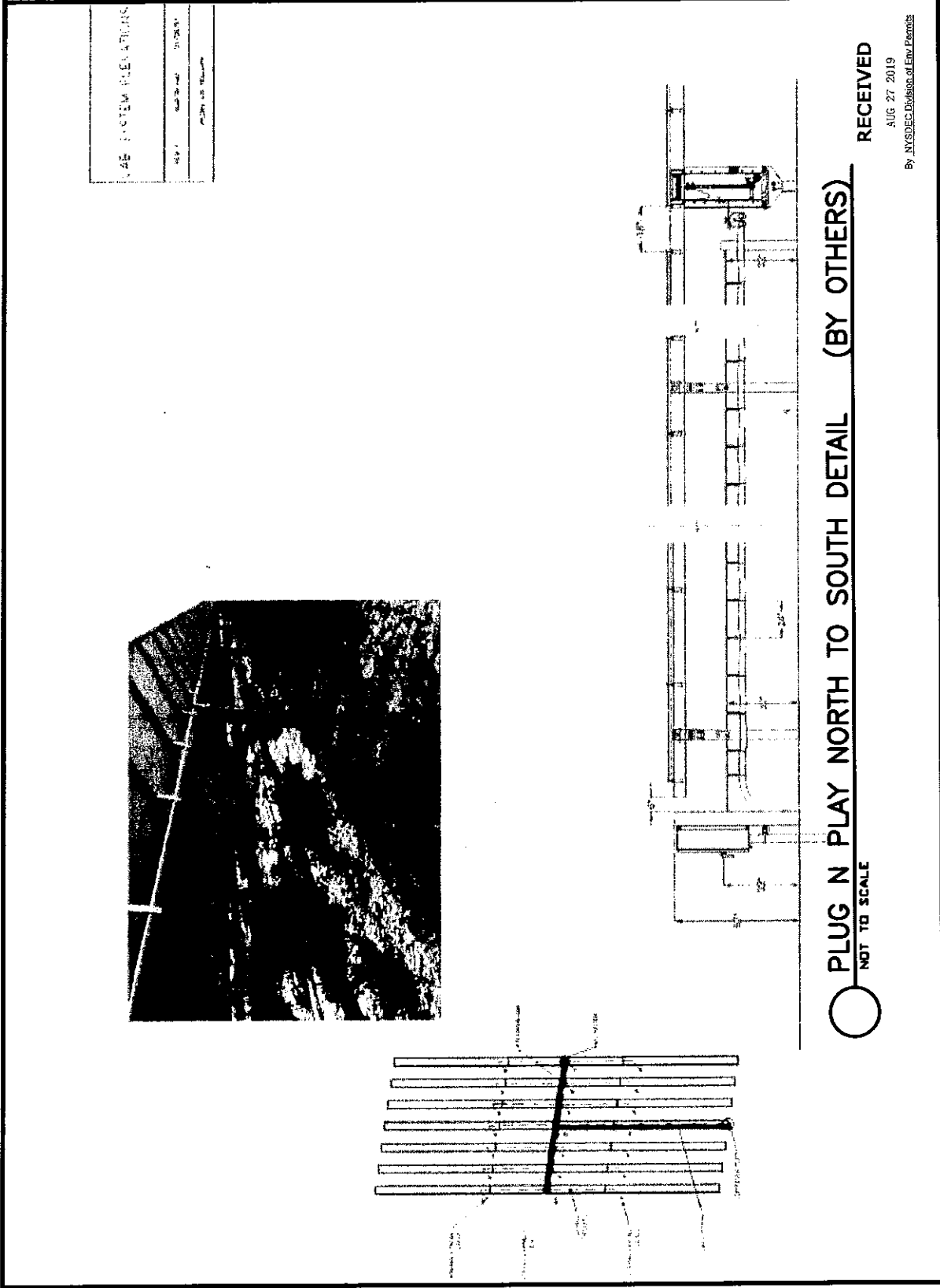
cc: Commissioner Basil Seggos, NYS Department of Conservation  
Hon. Letitia James, NYS Attorney General  
Alicia Barton, NYSERDA President and CEO

# **EXHIBIT**

**C**



|   |      |   |  |   |  |
|---|------|---|--|---|--|
|  |      | <b>OAK HILL SOLAR</b><br>SOLAR FARM DETAILS FOR |  | 13590 DUANESBURG RD<br>TOWN OF DUANESBURG<br>SCHENECTADY COUNTY<br>TAX MAP, NO. 74.00-2-5<br>AUGUST 8, 2019 | 13590 Duaneburg Road, US-deg, detailed Plans, ATTENDING, WIRING DETAIL, Schenectady, NY 12308<br>(518) 571-1521<br>edp@edp.com |
| REVISION  | DATE | BY  |  |   |  |
| SCALE: AS NOTED   |      |   | SHEET TITLE:<br>ABOVE GROUND<br>WIRING DETAILS |   |  |
| SHEET NO.   |      |   | 2 of 2   |   |  |





# **EXHIBIT**

**D**



- Eden Renewables – Oak Hill Solar Projects 1 & 2 -
- In response to questions received from town re construction/O&M activities -

Construction Phase:

Eden Renewables solar project construction typically lasts three to four months. Work is limited to the hours of 7am to 6pm. Lights will not be used between the months of April and October. Should construction occur between November and March, we will likely employ some form of concentrated lighting to allow work between the hours of 7am to 6pm. In terms of traffic during construction months we expect: 25 - 30 cars daily. Additionally, we expect 50 - 60 truck deliveries and 10 onsite machines operating over the course of construction.

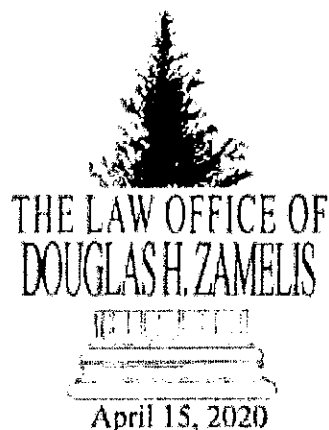
Ongoing Operations and Maintenance Phase (O&M):

On an annual basis, we expect 4 to 5 visits to the site by a maintenance vehicle. Ongoing maintenance includes: standard mechanical/electrical inspections, solar module cleaning, minor repairs and grass cutting as required. Typically solar modules are cleaned only once each year using water. O&M work is limited to the hours of 7am to 6pm.

As part of the ground maintenance, there will be additional traffic from the annual movement of livestock, daily sheep farmer visits, annual visits from an ecologist and occasional visits from beekeepers. Any actual impacts will be minimal to unnoticeable for the community.

# **EXHIBIT**

**E**



April 15, 2020

Hon. Richard F. Kauffman, Chair  
& Members

New York State Energy Research and Development Authority  
17 Columbia Circle  
Albany, New York 12203-6399

Re: Oak Hill 1 Solar LLC and Oak Hill 2 Solar LLC, Duanesburg (T), Schenectady County

Dear Chairman Kauffman and Members of the Authority:

This office represents Ms. Susan Biggs and Ms. Lynne Bruning in connection with two community solar projects identified as Oak Hill 1 Solar and Oak Hill 2 Solar (the "Projects") in the Town of Duanesburg, Schenectady County, with listed addresses at 13590 Oak Hill Road and 13686 Duanesburg Road, Delanson, New York, respectively. Ms. Biggs and Ms. Bruning reside at 13388 Duanesburg Road, adjacent to the Projects, and are petitioners in a proceeding pursuant to CPLR Article 78 entitled *Biggs, et al. v. Eden Renewables LLC et al.* presently pending in Schenectady County Supreme Court (Index Number 2019-2217) which seeks invalidation and annulment of the Projects' local land use approvals.

The Authority has awarded funds for the Projects totaling \$7,713,456.00 based on representations by Eden Renewables LLC (and/or a successor-in-interest) concerning the size and capacity of the Projects approved by the Town of Duanesburg Planning Board, and the purported approval of energy storage facilities by that Planning Board. This correspondence clarifies that the combined size and capacity of the Projects approved by the Town of Duanesburg Planning Board is only 65.2 acres and 10 MW, not 95 acres and 15 MW as reportedly represented to the Authority. This correspondence further confirms that, notwithstanding what has been represented to the Authority, the Town of Duanesburg Planning Board did not actually review or approve any energy storage facilities in connection with the Projects.

The Duanesburg Planning Board's September 19, 2019 "Resolution Approving Special Use Permit and Subdivision and Site Plan Approval for the Eden Renewables Oak Hill Solar Energy Projects - 1206 Oak Hill Road" (the "Local Approval Resolution"), a copy of which is attached herewith as Exhibit "A", purported to approve the two 5 MW Projects, for a combined generation capacity of 10 MW. Because Ms. Biggs and Ms. Bruning brought to the Duanesburg

Planning Board's attention that the Local Approval Resolution overstated the size of the Projects, the Local Approval Resolution was amended by resolution embodied in the minutes of the Duanesburg Planning Board's October 17, 2019 meeting, a copy of which are attached herewith as Exhibit "B", which set forth the correct "coverage" for the Projects as "32.8 acres" and "33 acres" for a combined total of 65.8 acres. The Duanesburg Planning Board therefore approved two solar projects with a combined generation capacity of 10 MW to cover a combined +/-65.8 acres.

The combined coverage of +/-65.8 acres for the Projects is consistent with the "Proposed Site Plan for Oak Hill Solar 1&2, Sheets 1 through 11" dated February 8, 2019 (the "Approved Site Plan") prepared by Environmental Design Partnership, LLC resubmitted to the Duanesburg Planning Board on June 6, 2019 which indicates "proposed coverage" of "32.2 acres" and "33 acres" for a combined coverage of +/-65.2 acres.

Sheets 9 and 10 of the Approved Site Plan show site plan details for limited use pervious access roads, limited use pervious wetland crossings, solar field fences, silt fences, construction entrance, trenches, spare parts containers, DC to DC converters, PV tracker systems, CCTV poles, transformer stations, and inverters on poles, the Approved Site Plan does not provide any details for any type battery or energy storage system facilities. Likewise, neither the State Environmental Quality Review Act Full Environmental Assessment Form, Negative Declaration, nor the Local Approval Resolution, as amended, references battery storage anywhere in their texts. The only reference to battery storage in the record of the Duanesburg Planning Board's proceedings is in the minutes of the board's March 21, 2019 meeting where it is indicated "There will be battery storage proposed in ten (10) small enclosures with containment and fire protection". Such facilities were never actually proposed or reviewed though, and both the Approved Site Plan and the Local Approval Resolution, as amended, fail to show, discuss or approve any energy storage facilities in connection with the Projects.

Notwithstanding the omission of energy storage facilities from the Approved Site Plan and absence of any mention of energy storage facilities in the SEQRA documents or Local Approval Resolution, Town of Duanesburg Planner/Building Inspector/Code Enforcement Officer Dale R. Warner somehow acknowledged and confirmed to the Authority on "Confirmation of Local Land Use Approval" forms dated September 23, and 26, 2019 copies of which are attached herewith as Exhibit "C", that "Required Energy Storage Land Use Approvals" had in fact been granted on September 19, 2019, i.e., the date of the Local Approval Resolution which makes no mention of energy storage facilities. Thereafter, Officer Warner acknowledged and confirmed to the Authority on "Presentation to Planning/Zoning Board for Energy Storage" forms dated October 4, 2019 attached herewith as Exhibit "D" which provide "NYSERDA respectfully requests that the municipality sign a copy of this form acknowledging receipt of the below information as part of the Applicant's presentation to the Planning/Zoning Board" for projects of "Energy Storage Size, MW (AC): 5MW AC" and "Solar Project Size, MW (DC) (if applicable): 7.5MW DC". Officer Warner, who is not a member of the Duanesburg Planning Board or Zoning Board of Appeals, acknowledged and confirmed the Authority's "Presentation to Planning/Zoning Board For Energy Storage Facilities Forms" despite the clear indication on the form that they were to be "ACKNOWLEDGED & CONFIRMED BY

MUNICIPALITY Planning/Zoning Board Member". The Duanesburg Planning Board approved no energy storage facilities, and approved only two 5 MW DC community solar projects.

Records obtained from the Authority pursuant to the Freedom of Information Law and filed on the New York State Department of Public Service Document and Matter Management system for matter number 17-02273 indicate that substantial financial incentives by the Authority were contingent and conditioned upon the a) Projects actually comprising a total of 15 MW; and b) approval of associated commercial battery storage facilities by the Duanesburg Planning Board.

By way of demonstration, correspondence from the Authority to Oak Hill Solar 1, LLC dated October 31, 2019 attached herewith as Exhibit "E" states that "Your award in the amount of \$1,498,728 is contingent upon the installation and grid interconnection of a 7,493.64 kW solar electric system for: Oak Hill Solar 1, LLC at 13590 Duanesburg Rd., Delanson, NY 12053 as outlined in the project application. Virtually identical correspondence for Oak Hill Solar 2 LLC of the same date which states that "Your award in the amount of \$1,498,728 is contingent upon the installation and grid interconnection of a 7,493.64 kW solar electric system for: Oak Hill Solar 2, LLC at 13686 Duanesburg Rd., Delanson, NY 12053 as outlined in the project application" is also included herewith as Exhibit "E". Therefore, while awards by the Authority totaling \$2,997,456.00 are contingent on the interconnection of a combined 15 MW of solar electrical systems, the Duanesburg Planning Board's Local Approval Resolution only authorizes the construction of a combined 10 MW.

The "Salesforce" printout for Oak Hill Solar 1, LLC filed with the Authority, a copy of which is attached as Exhibit "F", represents that Oak Hill Solar 1 "Total System Size" is "7,493.640" kW and indicates "Total Number Acres: 46.00". The "Salesforce" printout for Oak Hill Solar 2, LLC filed with the Authority, a copy of which is included in Exhibit "F", represents that Oak Hill Solar 2 "Total System Size" is also "7,493.640" kW and indicates "Total Number Acres: 49.00". These records, filed *after* the issuance of the Duanesburg Planning Board's Local Approval Resolution which authorized a combined 10 MW on only +/-65.2 acres, purport to represent to the Authority that the Projects would have a combined generation capacity of 15 MW on 95 acres.

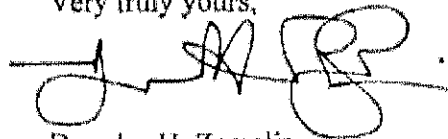
In addition to the \$2,997,456.00 awarded by the Authority for the Projects under the "NY-Sun Program", according to correspondence from the Authority dated October 28, 2019 attached herewith as Exhibit "G" indicates the Authority awarded \$2,358,000.00 each for Oak Hill 1 Solar and Oak Hill 2 Solar under the "Retail Energy Storage Incentive Program" which funds were "contingent upon the installation and grid interconnection of a 5,000.00 kW/11,790.00 kWh (useable installed energy capacity measured in AC) energy storage system". However, as established above, neither the SEQRA EAF, Negative Declaration, Approved Site Plan, nor the Local Approval Resolution reference any energy storage facilities in connection with the Projects, and therefore such storage facilities were never in fact reviewed or approved by the Duanesburg Planning Board. The Authority has therefore granted \$4,716,000.00 in incentives for energy storage systems for the Projects when Eden Renewables LLC never obtained approval from the Duanesburg Planning Board for any energy storage facilities in connection with the Projects.

Please be advised Ms. Biggs and Ms. Bruning reserve all their statutory and common law rights and remedies to enforce the Town of Duanesburg Zoning Law and Final Approval Resolution in a Declaratory Judgment Action in Schenectady County Supreme Court in the event Eden Renewables LLC (or its successor-in-interest) constructs the Projects in excess of 10 MW, 65.8 acres, and/or attempts to install any energy storage facilities.

On behalf of Ms. Biggs and Ms. Bruning, we respectfully request that this matter be investigated, and if the Authority determines that the Projects do not satisfy the contingencies of the \$7,713,456.00 in incentives as set forth above, that it revoke or withhold such incentives as appropriate.

Thank you very much for the Authority's careful consideration of this important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. H. Zamelis', written over a horizontal line.

Douglas H. Zamelis

cc:

Alicia Barton, NYSEDA President & CEO  
Hon. Letitia James, NYS Attorney General  
Hon Letizia Tagliaferro, NYS Inspector General  
Hon. Thomas DiNapoli, NYS Comptroller  
Hon. Roger Tidball, Supervisor, Town of Duanesburg  
Terresa M. Bakner, Esq., Counsel to Town of Duanesburg  
Daniel A. Spitzer, Esq., Counsel to Eden Renewables LLC

# **EXHIBIT**

**F**



**CONFIRMATION OF LOCAL LAND USE APPROVAL**  
Planning and Zoning Form



NY-Sun

| Applicant Information |  |                   |                       |
|-----------------------|--|-------------------|-----------------------|
| Company Name:         | Oak Hill Solar 1, LLC                  |                   |                       |
| Contact Name:         | Stephanie Pullafico                    | Title:            | Project Administrator |
| Email Address:        | stephanie.pullafico@edenrenewables.com | Telephone Number: | 518-326-0259          |

| Project Information                        |  |
|--|--|
| Project Name:                              | Oak Hill Solar 1                         |
| Project Address:                           | 13590 Duanesburg Road Delanson, NY 12053 |
| Solar Project Size (AC/DC):                | 5mW/7.5mW                                |
| Energy Storage Size AC:<br>(if applicable) |  |

| Municipality Information |                     |                   |              |
|--------------------------|---------------------|-------------------|--------------|
| Municipality Name:       | Town of Duanesburg  |                   |              |
| Contact Name:            | Dale Warner         | Title:            | Town Planner |
| Email Address:           | dale@duanesburg.net | Telephone Number: | 518-895-2040 |

| Required Solar Land Use Approvals                                      |   |                |           |
|--|---|----------------|-----------|
| Land Use Approval and Date Approved (check all that apply):            |   |                |           |
| <input checked="" type="checkbox"/>                                    | Special Use Permit  | Date Approved: | 9/19/2019 |
| <input checked="" type="checkbox"/>                                    | Site Plan Review  | Date Approved: | 9/19/2019 |
| <input checked="" type="checkbox"/>                                    | SEQR Negative Declaration (if municipality is lead agency)  | Date Approved: | 9/19/2019 |
| <input checked="" type="checkbox"/>                                    | Other (list type): <u>Minor Subdivision</u>                 | Date Approved: | 9/19/2019 |
| <input type="checkbox"/>   | No Land Use or Zoning Approval is required for this project |                |           |
| Required Energy Storage Land Use Approval(s) (if applicable)           |   |                |           |
| List type of approval required: <u>Building and Electrical Permits</u> |   | Date Approved: | 9/19/2019 |

*File stamped subdivision letter within 45 days of approval*  
 NYSEDA respectfully requests that the municipality sign a copy of this form acknowledging and confirming the above is accurate and correct, and that this project has received all required local land use approvals for the solar PV project. If Energy Storage is part of the project, the Contractor is responsible for providing to NYSEDA, a copy of the meeting minutes confirming the Energy Storage system was presented to or approved by the municipality. NYSEDA may contact the municipality to confirm approvals if needed.

**ACKNOWLEDGED & CONFIRMED BY MUNICIPALITY**

Dale Warner  
 Signature  
 Dale Warner  
 Print Name

9/23/19  
 Date  
 Town Planner  
 Title

**CONFIRMATION OF LOCAL LAND USE APPROVAL**  
Planning and Zoning Form



NY-Sun

| Applicant Information |                                     |                   |                       |
|-----------------------|-------------------------------------|-------------------|-----------------------|
| Company Name:         | Oak Hill Solar 2                    |                   |                       |
| Contact Name:         | Stephanie Pulliafico                | Title:            | Project Administrator |
| Email Address:        | stephanie.pulliafico@edenrenewables | Telephone Number: | 518-326-0259          |

| Project Information                        |  |
|--|--|
| Project Name:                              | Oak Hill Solar 2                         |
| Project Address:                           | 13686 Duanesburg Road Delanson, NY 12053 |
| Solar Project Size (AC/DC):                | 5mW AC/7.5mW DC                          |
| Energy Storage Size AC:<br>(if applicable) |  |

| Municipality Information |                     |                   |              |
|--------------------------|---------------------|-------------------|--------------|
| Municipality Name:       | Town of Duanesburg  |                   |              |
| Contact Name:            | Dale Warner         | Title:            | Town Planner |
| Email Address:           | dale@duanesburg.net | Telephone Number: | 518-895-2040 |

| Required Solar Land Use Approvals                                    |   |                |           |
|--|---|----------------|-----------|
| Land Use Approval and Date Approved (check all that apply):          |   |                |           |
| <input checked="" type="checkbox"/>                                  | Special Use Permit  | Date Approved: | 9/19/2019 |
| <input checked="" type="checkbox"/>                                  | Site Plan Review  | Date Approved: | 9/19/2019 |
| <input checked="" type="checkbox"/>                                  | SEQR Negative Declaration (if municipality is lead agency)  | Date Approved: | 9/19/2019 |
| <input checked="" type="checkbox"/>                                  | Other (list type): <u>Minor Subdivision</u>                 | Date Approved: | 9/19/2019 |
| <input type="checkbox"/>   | No Land Use or Zoning Approval is required for this project |                |           |
| Required Energy Storage Land Use Approval(s) (if applicable)         |   |                |           |
| List type of approval required: <u>Building + Electrical Permits</u> |   | Date Approved: | 9/19/2019 |

*Note stamped Subdivision bylaw within 45 days of approval*  
 NYSEDA respectfully requests that the municipality sign a copy of this form acknowledging and confirming the above is accurate and correct, and that this project has received all required local land use approvals for the solar PV project. If Energy Storage is part of the project, the Contractor is responsible for providing to NYSEDA, a copy of the meeting minutes confirming the Energy Storage system was presented to or approved by the municipality. NYSEDA may contact the municipality to confirm approvals if needed.

**ACKNOWLEDGED & CONFIRMED BY MUNICIPALITY**

Dale Warner  
 Signature  
 Dale Warner  
 Print Name

9/20/19  
 Date  
 Town Planner  
 Title

# **EXHIBIT**

## **G**

**NYSERDA****PRESENTATION TO PLANNING/ZONING BOARD FOR ENERGY STORAGE****Planning and Zoning Form**

The New York State Energy Research and Development Authority (NYSERDA) developed the first comprehensive set of guidelines for reviewing and evaluating battery energy storage systems. The Battery Energy Storage System Guidebook helps municipalities develop a battery energy storage system permitting and inspection processes to ensure efficiency, transparency, and safety in their communities. Municipalities can download the New York Battery Energy Storage System Guidebook at <https://www.nyserdera.ny.gov/All-Programs/Programs/Clean-Energy-Siting/Battery-Energy-Storage-Guidebook>.

NYSERDA offers continuing free technical assistance to local governments to help implement the best practices outlined in the Battery Energy Storage System Guidebook. Municipalities interested in free technical assistance may reach out to the NYSERDA Clean Energy Siting Team at [cleanenergyhelp@nyserdera.ny.gov](mailto:cleanenergyhelp@nyserdera.ny.gov).

NYSERDA respectfully requests that the municipality sign a copy of this form acknowledging receipt of the below information as part of the Applicant's presentation to the Planning/Zoning Board.

| <b>Applicant Information</b>                        |   |                          |                       |
|---|---|--------------------------|-----------------------|
| <b>Company Name:</b>                                | Oak Hill Solar 2, LLC                   |                          |                       |
| <b>Contact Name:</b>                                | Stephanie Pullano                       | <b>Title:</b>            | Project Administrator |
| <b>Email Address:</b>                               | Stephanie.Pullano@edenrenewables.com    | <b>Telephone Number:</b> | 516-929-0058          |
| <b>Project Information</b>                          |   |                          |                       |
| <b>Project Name:</b>                                | Oak Hill Solar 2                        |                          |                       |
| <b>Project Address:</b>                             | 13666 Duaneburg Road Delanson, NY 12053 |                          |                       |
| <b>Energy Storage Size, MW (AC):</b>                | 54MW AC                                 |                          |                       |
| <b>Energy Storage Technology Type:</b>              | DC Coupled Lithium Ion                  |                          |                       |
| <b>Solar Project Size, MW (DC) (if applicable):</b> | 74MW DC                                 |                          |                       |
| <b>Municipality Information</b>                     |   |                          |                       |
| <b>Municipality Name:</b>                           | Town of Duaneburg                       |                          |                       |
| <b>Contact Name:</b>                                | Dale Warner                             | <b>Title:</b>            | Town Planner          |
| <b>Email Address:</b>                               | dale@duaneburg.net                      | <b>Telephone Number:</b> | 516-924-4242          |

**ACKNOWLEDGED & CONFIRMED BY MUNICIPALITY Planning/Zoning Board Member**

Dale Warner  
Signature

10.4.19  
Date

Dale Warner  
Print Name

Town Planner  
Title

**NYSERDA****PRESENTATION TO PLANNING/ZONING BOARD FOR ENERGY STORAGE****Planning and Zoning Form**

The New York State Energy Research and Development Authority (NYSERDA) developed the first comprehensive set of guidelines for reviewing and evaluating battery energy storage systems. The Battery Energy Storage System Guidebook helps municipalities develop a battery energy storage system permitting and inspection processes to ensure efficiency, transparency, and safety in their communities. Municipalities can download the New York Battery Energy Storage System Guidebook at <https://www.nyserdera.ny.gov/All-Programs/Programs/Clean-Energy-Siting/Battery-Energy-Storage-Guidebook>.

NYSERDA offers continuing free technical assistance to local governments to help implement the best practices outlined in the Battery Energy Storage System Guidebook. Municipalities interested in free technical assistance may reach out to the NYSERDA Clean Energy Siting Team at [cleanenergyhelp@nyserdera.ny.gov](mailto:cleanenergyhelp@nyserdera.ny.gov).

NYSERDA respectfully requests that the municipality sign a copy of this form acknowledging receipt of the below information as part of the Applicant's presentation to the Planning/Zoning Board.

| <b>Applicant Information</b>                        |   |                          |                       |
|---|---|--------------------------|-----------------------|
| <b>Company Name:</b>                                | Oak Hill Solar 1, LLC                   |                          |                       |
| <b>Contact Name:</b>                                | Stephanie Palfino                       | <b>Title:</b>            | Project Administrator |
| <b>Email Address:</b>                               | Stephanie.palfino@edenrenewables.com    | <b>Telephone Number:</b> | 516-624-4856          |
| <b>Project Information</b>                          |   |                          |                       |
| <b>Project Name:</b>                                | Oak Hill Solar 1                        |                          |                       |
| <b>Project Address:</b>                             | 43680 Duaneburg Road Delanson, NY 12053 |                          |                       |
| <b>Energy Storage Size, MW (AC):</b>                | 5MW AC                                  |                          |                       |
| <b>Energy Storage Technology Type:</b>              | DC Coupled Lithium Ion                  |                          |                       |
| <b>Solar Project Size, MW (DC) (if applicable):</b> | 7.8MW DC                                |                          |                       |
| <b>Municipality Information</b>                     |   |                          |                       |
| <b>Municipality Name:</b>                           | Town of Duaneburg                       |                          |                       |
| <b>Contact Name:</b>                                | Dale Warner                             | <b>Title:</b>            | Town Planner          |
| <b>Email Address:</b>                               | dale@duaneburg.ny.us                    | <b>Telephone Number:</b> | 516-395-2244          |

**ACKNOWLEDGED & CONFIRMED BY MUNICIPALITY Planning/Zoning Board Member**

Signature

10-4-19

Date

Dale Warner

Print Name

Town Planner

Title

AUGUST 2019