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February 4, 2025

**VIA ELECTRONIC MAIL**

Town of Ulster Town Board  
1 Town Hall Drive  
Lake Katrine, NY 12449

To: Members of the Town Board

Re: Proposed Solar Energy Facility on Tuyten Bridge Road

Our firm represents Tuytenbridge PV LLC, a wholly owned subsidiary of Lightstar Renewables LLC (Applicant), in connection with its efforts to develop a 4.1-megawatt alternating current (MWac) community solar energy facility (Project) on Tuyten Bridge Road (Property) in the Town of Ulster (Town). The Project will be largely located in the Regional Commercial (RC) District, with portions also located in the R-10 Residence (R-10) District and R-60 Residence (R-60) District. The Applicant applied for a special use permit and site plan approval in October 2024. The special use permit application is currently before the Town of Ulster Town Board (Town Board). The purpose of this letter is to (1) respond to certain comments made at the public hearing held by the Town Board on January 16, 2025, (2) respond to the recommendations from the Ulster County Planning Board, and (3) underscore the fact that the Project is a specially permitted use and that solar energy facilities are public utilities for zoning and land use purposes under New York law.

**I. Response to Comments from the Public Hearing.**

The Town Board held a public hearing on the special use permit application on January 16, 2025. The Applicant appreciates the time local residents took to attend the meeting and share their questions and concerns. However, there were several comments made that require further discussion.

- a. The Project is specially permitted in the relevant zoning districts, and as such, has been determined to be appropriate on the Property and in the neighborhood and consistent with the Town’s land use plans – including the Town of Ulster Comprehensive Plan.**

The law on specially permitted uses in New York is clear: “[i]nclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood.” *North Shore Steak House, Inc. v. Bd. of Appeals of Incorporated Vill. of Thomaston*, 30 N.Y.2d 238, 243 (1972). New York law further holds a municipality cannot deny a special use permit based on the characteristics inherent in the use. *See id.*; *see also Holbrook Associates Development Co. v.*

*McGowan*, 261 A.D.2d 620, 621 (2d Dep’t 1999) (“The main reason set forth in the Town Board’s resolution, that the use is characterized by late hour noise, outdoor congregation, conversation, vehicular movement, rubbish and odors, amounts to an objection to the nature of the use itself. [It] is a permitted use, and since the foregoing characteristics are inherent in the operation of such a business, this reason for denying the [special use] permit is without merit.”).

Here, the Project is a specially permitted use in the RC, R-10, and R-60 Districts, and as such, it has already been legislatively determined by the Town Board to be “in harmony with the general zoning plan and will not adversely affect the neighborhood.” *See North Shore Steak House, Inc.*, 30 N.Y.2d at 243; *see also Edwards v. Zoning Bd. of Appeals of Town of Amherst*, 163 A.D.3d 1511, 1511-12 (4th Dep’t 2018) (“Petitioners contend that the ZBA’s determination to grant the special use permit is inconsistent with the Town’s comprehensive plan. We reject that contention. It is well settled that the inclusion of a permitted use in a zoning code ‘is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood[.]’” (*citing North Shore Steak House, Inc.*, 30 N.Y.2d at 243)). This is particularly true as the Project is fully compliant with the Zoning Local Law of the Town of Ulster, New York (Zoning Law) as no variances are required. The Project presents a low-density land use that can blend into the community since (1) it will not emit odor, emissions, or noise above background levels nor will it generate any traffic impacts; (2) visibility impacts have been demonstrated to be negligible according to the results of the provided visual simulations (*see* Visual Simulations dated Dec. 6, 2024); (3) there are no permanent concrete foundations, allowing for full removal of the Project and restoration of the Property; and (4) the Project will be decommissioned at the end of its useful life. The Project’s suitability to this area of the Town is also consistent with and fully supported by the plans and goals stated in the Town of Ulster Comprehensive Plan (Comp Plan):

- **Comp Plan Language – Areas of Higher Density Growth:**

- “Those areas adjacent to the City of Kingston *or the Route 9W corridor* are the *most densely developed areas in the Town* ... An important goal of this Plan is to *allow for growth in existing centers* while preserving large areas of open space in outlying areas that help to define the Town’s rural character. To do so, *higher density growth will need to be encouraged near residential and commercial centers*[.]” Comp Plan at E-2 (emphasis added).

- **Consistency of the Project:** The Project is proposed to be sited in the area of the Town earmarked in the Comp Plan for intensive development. The Route 9W corridor is an area of the Town with dense, mixed-use development and a high concentration of commercial and industrial uses. The Project site will abut the Route 9W corridor, near a gas station, car dealerships, restaurants, a laundromat, doctor’s offices, hair salons, a self-storage unit, and more. *See Exhibit A*, an image from the Town’s U.S. Route 9W Corridor Enhancement Plan (2014), demonstrating the Project’s location directly abutting this densely developed, highly commercial area of the Town.

- “Ulster Avenue Route 9W Corridor: This area has very good transportation infrastructure, public water & sewer, and few environmental constraints. This is an area where high density residential and non-residential development should be encouraged. This is also an area where mixed use residential/commercial/office development would be appropriate.” Comp Plan at 86 (emphasis added).
  - **Consistency of the Project:** Again, as noted above, the Project will abut the Route 9W Corridor, specifically earmarked by the Town for concentrated development of both residential and non-residential uses. Although the Project will be significantly less impactful than most other types of land uses (e.g., car repair shops, laundromats, chain restaurants, residential subdivision), it has been determined by the Town Board that this type of project is appropriate in this area of the Town.
- **Comp Plan Language- RC District:** “The RC-Regional Commercial District is the most permissive commercial business district in the Town of Ulster.” Comp Plan at 92 (emphasis added).
  - **Consistency of the Project:** The Project is primarily located in the RC District, which permits land uses such as one-, two-, and multi-family dwellings, country clubs, golf courses, hospitals, schools, automotive garage and service centers, gas stations and convenience stores, car washes, kennels, pet boarding and grooming facilities, offices, restaurants, retail businesses, theaters, contractor storage yards, light industry, manufacturing, recycling yards, trucking companies, and warehouses. See Zoning Law § 190-69. The Project will be much less impactful than these types of development, and as such, is appropriately suited for the Property. The Project, once installed, will make minimal noise, produce zero odor, will not use energy or produce any waste or emissions, will not be lighted at night, and will have a negligible impact on traffic. The Project is temporary and will be fully removed after the end of its useful life, and the Property restored to pre-construction conditions, leaving the land beneath it unaffected and available for a multitude of future uses. As such, the Project is a perfect candidate to be sited in the Town’s most permissive commercial business district.
- **Comp Plan Language – Supporting the Goals:** “Goal 1: Attract new businesses to the Town of Ulster” and “Goal 4: Strengthen the Town’s commercial tax base to reduce the burden on area homeowners.” *Id.* at E-8 (emphasis added).
  - **Consistency of the Project:** The Project furthers the Town’s goals in the Comp Plan to attract new business and strengthen the Town’s tax base, all without increasing demands on Town infrastructure. Construction of the Project will stimulate the local economy by construction and maintenance workers using accommodations, restaurants, and other services. The Applicant is intending to enter into a Payment in Lieu of Taxes (PILOT) Agreement with the Town, which would provide revenue to the Town while not posing any additional burden to many of the Town’s resources (e.g., school, sewer, roads etc.).

- **Comp Plan Language – Prior Proposed Development:** “a Land Use Transportation Plan for the area ... called for two new connecting roads to complete the existing highway system: 1) A road under Route 199 to link Boices Lane to John Clark Drive, and 2) an extension of Frank Sottile Boulevard over NYS Route 199 to US Route 9W at Grant Avenue ... The Final Environmental Impact Statement (FEIS) for the extension of Frank Sottile Boulevard was accepted by the Town Board on August 7, 2006 paving the way for this project to move forward. Completion of this roadway segment is strongly supported by this Plan.” *Id.* at 53 (emphasis added).
  - **Consistency of the Project:** This proposed Frank Sottile Boulevard extension would have traversed right through the Property (*see Exhibit B*), which would have required a significant amount of tree clearing and would have turned the southern portion of this Property into a highway – potentially leading to further commercial development adjacent to the new highway. This was specifically and fully supported by the Town in the Comp Plan. Currently, the Applicant is proposing a solar project, which will be decommissioned at the end of its useful life, and the areas of clearing will then have the opportunity to be revegetated. This Project will not result in a permanent impact, and it will not require clearing of the entirety of the Property. It will be a passive land use and will not negatively impact the land—unlike a highway that would result in a permanent change to the land, generating traffic, noise, air emissions, garbage, and increased runoff. The Project is indeed a less intense, less impactful use of the Property than a highway, which was fully supported by the Town Board.

Given this clear language of the Comp Plan, it is further supported that the Project—a “utility company structure” pursuant to the Zoning Law—is consistent with the Town’s zoning and land use plans. And the Town Board has determined such uses to be suitable to this area of the Town given its classification of utility company structures as specially permitted uses in the RC, R-10, and R-60 Districts. *See North Shore Steak House, Inc.*, 30 N.Y.2d at 243.

**b. The Applicant will be clearing only the minimum necessary vegetation—roughly 35% of the parcel and not the entirety of the Property.**

The Applicant is not intending to clear vegetation on the entire 70-acre parcel. Rather, the Applicant has proposed to clear the minimum necessary vegetation in order to develop the Project. This will require clearing vegetation on approximately 35% of the Property. There are sections of forest within the lease area that the Applicant is preserving specifically to reduce environmental impacts. In particular, the lower western section of the Property that contains a wetland feature and the southwestern portion of the Property that contains a potential culturally sensitive area will be left untouched to avoid any impacts. As a result, the Project will be outside of the protected zone for the Bald Eagle nest identified nearby.

Further, the Project will be sited on private property, owned by a landowner and leased by the Applicant. Because it is private property, in theory, there is nothing currently

stopping the landowner from clearing trees on the Property simply because they do not like them.<sup>1</sup> Even worse, if the landowner sought to develop another type of specially permitted land use on the Property, such as a multifamily housing development or residential subdivision, the entire 70 acres could be cleared and subject to permanent soil impacts in the form of concrete foundations and roads. By contrast, the landowner simply intends to permit the Applicant to develop the Project, which will not result in permanent land conversion. Once the Project reaches the end of its useful life and is fully decommissioned, the property can be reforested or used for any other purpose the Town deems suitable. Few, if any, other land uses can be removed from a property like a community solar project, leaving the property to be utilized for another use.

Additionally, per the U.S. Environmental Protection Agency (EPA) Greenhouse Gas Equivalencies Calculator, the carbon offset by installing a 4.125-MW solar project is equivalent to the carbon sequestered by 3,110 acres of forests per year, 18.5 acres of forests preserved from conversion to cropland per year, or 51,263 tree seedlings grown over 10 years.<sup>2</sup> Therefore, by generating clean renewable energy that otherwise would be created via consumption of fossil fuels, the Project will offset far more carbon than what could be sequestered by the forested area that is proposed to be cleared. The Project will have a large net positive impact on the environment by offsetting substantially more carbon than the untouched forested area could potentially sequester. And, as explained by the Applicant previously, the proposed vegetation clearing will not impact any protected species in the area, including Bald Eagles.

**c. The Town Board should not consider unrelated commercial projects when deliberating on the special use permit application or the environmental review for the Project.**

Multiple residents mentioned during the public hearing that there is a housing development proposed in the general vicinity of the Project and such residents urged the Town Board to consider the impacts of such development in its review of the Project. There has been similar concern regarding a nearby hotel as well. This is improper. The State Environmental Quality Review Act (SEQRA) prohibits segmentation—the “division of the environmental review of an action such that various activities or stages are addressed ... as though they were independent, unrelated activities, needing individual determinations of significance.” 6 NYCRR § 617.2(ah). But, where projects “are, in fact, independent and not part of a larger plan of development, cumulative review is not required” and if anything, should be avoided so as not to prejudice the review of either project. *Friends of Stanford Home v. Town of Niskayuna*, 50 A.D.3d 1289, 1291 (3d Dep’t 2008); *see also Forman v. Town of Northumberland Planning Bd.*, 76 Misc.3d 1220(A) (Sup. Ct. Saratoga Cty. 2022) at \*2 (“the possible construction of a home along the road at some undefined time in the future, if it were to happen at all, would be an independent unrelated activity and would require an individual determination of significance.”); *Forman v. Trustees of State University of New York*, 303 A.D.2d 1019, 1020 (4th Dep’t 2003) (“Because their only common

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<sup>1</sup> See Zoning Law § 190-25(E). There does not appear to be anything in the Zoning Law preventing this. Section 190-25(E) of the Zoning Law seems to only regulate commercial forestry and clearing. It does not appear to control private property owners clearing their land.

<sup>2</sup> See U.S. ENVTL. PROTECTION AGENCY, *Greenhouse Gas Equivalencies Calculator* <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator> (last accessed Nov. 2024).

element is their general location, mandatory cumulative analysis of the four other campus housing projects with the housing project at issue herein is not required.”).

The impacts that a proposed housing development or a hotel could pose to the Town—noise, traffic, sewer, water, and energy use, emissions, garbage, etc.—are not potential concerns that arise during review of a community solar project. There will be negligible impact on noise and traffic from the Project; there will be no use of Town resources like sewer and water (the Project will be a generator of power, not a user); and there will be no emissions or wastes generated. These are simply not concerns to be considered in tandem. The proposed housing development and hotel are entirely separate, unrelated projects that have no bearing on the impacts of the Project or the appropriateness of issuing a special use permit for the Project. And it is not even clear at this point if this proposed housing development will even go forward. These projects should not influence the Town Board’s decisions on this Project.

Lastly, the environmental impacts of siting a solar project—a utility company structure—in this area of the Town have already been reviewed by the Town Board when it permitted such uses in the RC, R-10, and R-60 Districts. The Town Board necessarily concluded that specially permitting such use in these districts would not adversely impact the community. *See Matter of WEOK Broadcasting Corp. v. Planning Bd. of Town of Lloyd*, 79 N.Y.2d 373, 383 (1992) (“it should not be overlooked that the aesthetic visual impact of the towers, was, we presume, considered at the time that radio and television towers were included as permitted uses in the Designed Business zone”). As such, any future housing development, or hotel, in the vicinity of the Project should be evaluated independently and should have no bearing on the Town Board’s current review of the Project, nor should an entirely unrelated hotel.

**d. Certain comments made during the public hearing seemed to indicate that the Project is not appropriate in this area of the Town; however, there is another solar project near the Project site.**

There is another solar project that similarly abuts the Route 9W Corridor, just beyond the Hudson Valley Mall, Home Depot, and ShopRite, on a parcel of land in the RC District and the Office and Manufacturing (OM) District. As discussed above, the Project is in harmony with the surrounding neighborhood and the Town’s land use plans as it is specially permitted in the RC District and will not negatively impact the area. This is particularly true given the Town’s approval of another very similar solar project in the same area of the Town. *Tall Trees Constr. Corp. v. Zoning Bd. of Appeals of Town of Huntington*, 97 N.Y.2d 86, 93 (2001) (A “decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious.”). As such, the Project is suitable for this area of the Town, as the Town Board has previously determined by specially permitting this use in these zoning districts and by permitting a similarly situated project.

**II. Response to the Recommendation of the Ulster County Planning Board.**

In response to the referral of the Application to the Ulster County Planning Board (UCPB) pursuant to General Municipal Law § 239-m, the UCPB issued a recommendation to the Town of Ulster Planning Board (Planning Board) on January 8, 2025. The UCPB recommends the Town consider amending the Zoning Law to include specific provisions regarding solar projects

in the Town to address certain potential concerns like setbacks, screening, native species, plantings, fencing types, maximum coverage, etc. However, the Project as designed already meets—or easily can meet—all the criteria outlined for a future solar law provision in the Zoning Law and addresses (or will address) the concerns raised by the UCPB.

- UCPB recommendation: setbacks of 100 feet or more.
  - The Project complies with the Town Code requirements, maintaining setbacks of over 50 feet in the front, over 30 feet on the side, and over 50 feet in the rear. On the western side, the closest panel is over 300 feet from the property line, and on the eastern side, it is over 1,000 feet away. The closest row of panels is located 57 feet from the front property line, which is approximately 620 feet from the edge of the road. While there is another property separating this section of the parcel from the road, the closest building is more than 100 feet from the panels, with woods providing further buffering between the two. The closest row of panels is located 59 feet from the rear property line. The closest edge of road is over 1000 feet away and the closest building is approximately 560 feet away both having a buffer of woods similar to the front portion of the site. As such, increasing the applicable setbacks to 100 or more feet would not provide any benefit here as the Project is sufficiently buffered and distanced from all adjoining properties and structures.
- UCPB recommendation: limiting clearing on the western portion of the Project site near any residential properties.
  - The Applicant does not propose clearing in that area given the existence of wetlands. That area will be left as is.
- UCPB recommendation: adding “wildlife-friendly” fencing.
  - This is typical for solar projects and can easily be added to the plans.
- UCPB recommendation: placing the undisturbed portions of the Property into a conservation easement or other type of restriction.
  - The Applicant is not the fee owner of the Property and as such, cannot place a permanent easement on the Property. However, the Applicant and landowner are open to discussing potential approval conditions that would restrict the use of the remainder of the Property, within the Lease Area, to preserve such space during the life of the Project. Any such condition, however, would need to be approved by the landowner before the Applicant could commit to it.
- UCPB recommendation: regular site visits to the Project site by the Town’s stormwater inspector.
  - The Applicant will abide by the Stormwater Pollution Prevention Plan (SWPPP) for erosion and sedimentation control on the Project site and welcomes the idea of having the Town’s stormwater inspector visit the Project site as needed. At a minimum, weekly site inspections by LaBella Associates or another hired engineering firm are required by the SWPPP.

- UCPB recommendation: use of a “NY Pollinator Habitat Seed Mix” or something comparable designed for the Project site and avoidance of turf grass and non-native species.
  - The Applicant intends to reseed the site with a native, pollinator-friendly seed mix and does not intend to use any turf grass or non-native species.
- UCPB recommendation: demonstration of coordination with the New York State Historic Preservation Office (SHPO) regarding review of potential impacts to historic or archaeological resources.
  - The Applicant has coordinated with SHPO and now that the Project site plans are largely finalized, SHPO can issue the “No Effect” letter. This will be provided to the Town as soon as the Applicant receives it.

**III. The Zoning Law permits the Project with a special use permit pursuant to the plain meaning of the Zoning Law as well as New York case law.**

The Town Board has confirmed that the Project qualifies as a “utility company structure,” which is a specially permitted use in the RC, R-10, and R-60 Districts pursuant to the Zoning Law, and that solar projects qualify as “utility company structures” as that term is used in the Zoning Law. *See* Resolution of Town of Ulster Town Bd., *Initiation of SEQOR Type I Action, Tuytenbridge Solar a/k/a Lightstar Renewables LLC, Site Plan and Special Use Permit, Tuytenbridge Road, S-B-L: 39.20-2-22* (Dec. 19, 2024) (“Town of Ulster precedent is to define solar installations as “utility company structures” requiring special use and site plan approval in the RC and R60 zoning districts[.]”). The Town Board is certainly correct, and this precedent is binding on the Town Board.<sup>3</sup>

The term “Structure” is defined in the Zoning Law as “[a]nything constructed with a fixed location on the ground or attached to something already in a fixed location[.]” (Zoning Law § 190-4), which a solar array certainly qualifies as. However, neither “utility” nor “utility company” is defined in the Zoning Law. It is a basic tenet of statutory interpretation that “the text of a provision is the clearest indicator of legislative intent and courts should construe unambiguous language to give effect to its plain meaning[.]” and, where “the interpretation of a statute turns on the meaning of words not defined therein,” [courts] [ ] construe words of ordinary import with their usual and commonly understood meaning, and ... have regarded dictionary definitions as useful guideposts in determining the meaning of a word or phrase.”<sup>4</sup> And in any case, any ambiguity as to whether the Project is a utility company structure should be resolved in favor of the Applicant.<sup>5</sup>

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<sup>3</sup> *See Tall Trees Constr. Corp.*, 97 N.Y.2d at 93 (A “decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious.”); *see also Matter of Corona Realty Holdings, LLC v. Town of N. Hempstead*, 32 A.D.3d 393, 395 (2d Dep’t 2006).

<sup>4</sup> *Ronkese v. Tilcon New York, Inc.*, 153 A.D.3d 259, 262 (3d Dep’t 2017) (internal citations omitted); *see also Matter of Level 3 Communications, LLC v. Clinton County*, 144 A.D.3d 115, 120 (3d Dep’t 2016).

<sup>5</sup> *See Allen v. Adami*, 39 N.Y.2d 275, 277 (1976) (“Since zoning regulations are in derogation of the common law, they must be strictly construed against the municipality which has enacted and seeks to enforce them. Any ambiguity in the language used in such regulations must be resolved in favor of the property owner.”) (internal citations omitted).

Black’s Law Dictionary defines a utility as a “business enterprise that performs an essential public service and that is subject to government regulation.”<sup>6</sup>

The Project meets the ordinary definition of a “utility company structure” since the Project—a “structure” under the Zoning Law—will be owned by Tuytenbridge PV LLC, a wholly owned subsidiary of Lightstar Renewables LLC, a “business enterprise” (*i.e.*, a solar energy company) that operates to provide clean, renewable electricity to the grid for consumers—an “essential public service.” And as the Appellate Division, Third Department recently held, there is an inherent public necessity in siting of solar energy projects as it furthers the State’s long-term renewable energy goals. *See Freepoint Solar LLC et al. v. Town of Athens Zoning Bd. of Appeals*, 2024 WL 5160744 at \*1 (3d Dep’t 2024) (*Freepoint*).<sup>7</sup> This implies that provision of renewable electricity is an essential service. Further, the Project will be subject to “regulation and supervision” by the New York State Public Service Commission (PSC), as discussed further below.<sup>8</sup>

And although this statutory interpretation exercise demonstrates that the Project is certainly a “utility company structure” under the Zoning Law, this issue has already been squarely addressed by New York courts. Several courts have determined that renewable energy projects are public utilities for purposes of land use and zoning approvals, upholding determinations by local zoning boards that renewable energy projects are public utilities, even where the local zoning laws do not define public utility or where such definitions are unclear.<sup>9</sup>

Moreover, New York courts have treated renewable energy facilities as public utility uses for quite some time. The different treatment of public utilities for zoning purposes, which began with the Court of Appeals decision in *Consolidated Edison Co. of New York, Inc. v. Hoffman*, 43 N.Y.2d 598 (1978), was expanded to “less traditional” public utilities, like renewable energy projects, given the more inclusive definition of a public utility developed by the Court of Appeals in *Cellular Tel. Co. v. Rosenberg*, 82 N.Y.2d 364 (1993) (*Rosenberg*). *See e.g., Delaware*

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<sup>6</sup> *Utility*, BLACK’S LAW DICTIONARY (12th ed. 2024); *see also Public Utility*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/public%20utility> (last accessed Jan. 22, 2025) (“a business organization (such as an electric company) performing a public service and subject to special governmental regulation”).

<sup>7</sup> *See Freepoint*, 2024 WL 5160744 at \*3 (“Given the foregoing, certainly one cannot quarrel with the premise that New York State’s goal of transitioning to renewable energy is designed to benefit the public at large, and this project is in line with that goal.”)

<sup>8</sup> *See W. Beekmantown Neighborhood Ass’n, Inc. v. Zoning Bd. of Appeals of Town of Beekmantown*, 53 A.D.3d 954, 956 (3d Dep’t 2008) (*citing* N.Y. PUB. SERV. LAW §§ 2(2–b), (12), (23); § 5(1)(b); § 66–c).

<sup>9</sup> *See e.g., W. Beekmantown Neighborhood Ass’n, Inc.*, 53 A.D.3d at 956 (“While ‘public utility’ is not defined by the zoning law at issue, it is undisputed that the wind turbines ... will generate energy, a useful public service, and will be subjected to regulation and supervision by the Public Service Commission.”) (*citing Cellular Tel. Co. v. Rosenberg*, 82 N.Y.2d 364, 371 (1993)); *see also Matter of Wind Power Ethics Group (WPEG) v. Zoning Bd. of Appeals of the Town of Cape Vincent*, 60 A.D.3d 1282 (4th Dep’t 2009) (where a town zoning law defined a utility as “telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities,” the Fourth Department held the Zoning Board of Appeals’ classification of a series of wind-powered generators as a utility within the meaning of the zoning law to be rational, reasonable, and supported by substantial evidence.).

*River Solar, LLC, et al. v. Town of Aurora Zoning Bd. of Appeals*, Index No. 808123/2022 (Sup. Ct. Erie Cty. Nov. 7, 2022); *Cipriani Energy Grp. Corp. v. Zoning Bd. of Appeals of the Town of Minetto, New York et al.*, Index No. EFC-2022-0043 (Sup.Ct. Oswego Cty. Apr. 12, 2022) (“[*Rosenberg*] directly applies to this situation and compels the determination as a matter of law that Cipriani [a solar developer] is a public utility.”); *RPNY Solar5, LLC v. Zoning Bd. of Appeals of the Town of Stockport, New York*, Index No. E012024022076 (Sup. Ct. Columbia Cty. June 21, 2024). Most recently, the Appellate Division, Third Department confirmed that solar energy facilities, specifically, are public utilities, marking the first decision from the Appellate Division finding as such. See *Freepoint*, 2024 WL 5160744.

The Project also meets the definition of a public utility created in *Rosenberg*.<sup>10</sup> As discussed above, the Project will be owned by a solar energy company operating to provide clean, renewable electricity to the grid for consumers, which is an essential public service. It simply cannot be argued that electricity is not essential to our everyday life.<sup>11</sup> Second, the Project will be subject to regulation by the PSC because it will generate electricity to be injected into the bulk power grid. See *W. Beekmantown Neighborhood Ass’n, Inc.*, 53 A.D.3d at 956 (citing N.Y. PUB. SERV. LAW §§ 2(2–b), (12), (23); § 5(1)(b); § 66–c). The Project will be an integral part of the electricity generation and distribution system, generating clean, renewable energy and distributing it to consumers through the electric grid—a utility in its own right, subject to significant public regulation. And even though the more modern utility model has decoupled generation and transmission, companies that generate electricity for sale to consumers through the State’s transmission system are still treated as public utilities. Specifically, as a community solar development, installation and operation of the Project will be subject to the provisions of the PSC’s “New York State Standardized Interconnection Requirements and Application Process for New Distributed Generators and Energy Storage Systems 5MW or Less Connected in Parallel with Utility Distribution Systems.”<sup>12</sup>

Lastly, the product—electricity—can only be distributed by way of the electric grid. There is no other feasible method for an electricity generator to deliver electricity to consumers. Both the generator and the consumer are beholden to the distribution system to send and receive electricity service, and because of the ever-present demand for power, adequate supply must be

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<sup>10</sup> In *Rosenberg*, the Court defined “public utility” as “‘a private business, often a monopoly, which provides services so essential to the public interest as to enjoy certain privileges such as eminent domain and be subject to such governmental regulation as fixing of rates, and standards of service.’ Characteristics of the public utility include (1) the essential nature of the services offered which must be taken into account when regulations seek to limit expansion of facilities which provide the services, (2) ‘operat[ion] under a franchise, subject to some measure of public regulation,’ and (3) logistic problems, such as the fact that ‘[t]he product of the utility must be piped, wired, or otherwise served to each user \* \* \*[,] the supply must be maintained at a constant level to meet minute-by-minute need[, and] [t]he user has no alternative source [and] the supplier commonly has no alternative means of delivery.’” *Rosenberg*, 82 N.Y.2d 371 (internal citations omitted).

<sup>11</sup> Quoted in Ralph Cavanagh, “Restructuring for Sustainability: Toward New Electric Service Industries,” *Electricity Journal* (July 1996): 71 (“[e]lectricity is just another commodity in the same way that oxygen is just another gas.”).

<sup>12</sup> See N.Y. PUB. SERV. COMM’N, CASE 15-E-0082, *Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions For Implementing a Community Net Metering Program*.

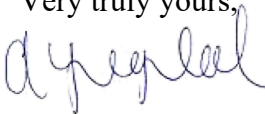
maintained at all times. There are significant logistical constraints in siting solar projects. Most properties in a municipality are not economically feasible for solar development. The size and layout of the parcel have to be at such a scale to accommodate the project, which often cannot be reduced to fit a smaller property given that such projects are only economically feasible at a certain size. The property must also be located near existing utility infrastructure to interconnect the project to the utility grid. Without these crucial pieces, a project of this type simply could not go forward. There is also the question of topography of the site and solar access. Installation of solar panels is significantly more expensive on certain challenging terrain (*e.g.*, excessive wetlands and steep slopes). And access to sunlight at the site as it exists, without having to modify it at exponential cost, is similarly crucial.

As such, the Project is a “utility company structure”—specially permitted in the RC, R-10, and R-60 Districts pursuant to the Zoning Law.

In conclusion, the Project has been designed to comply with the Town’s Zoning Law and Comp Plan and the special use permit and site plan approval should be granted. The Town has made a legislative finding that solar projects like this one, as specially permitted uses, are consistent with the Town’s land use plans and will not negatively impact the neighborhood. Regardless, the Project is significantly less intensive than many of the other uses specially permitted within the relevant zoning district. The Applicant has consulted with state agencies to mitigation any potential impacts to wildlife habitat and wetlands. The Project will be fully decommissioned at the end of its useful life, and a decommissioning plan and bond will be provided to the Town prior to construction. Finally, other unrelated commercial developments in the Town should not be reviewed with the in tandem with Project.

We thank you for your consideration of this letter. If you have any questions or concerns, please do not hesitate to contact me at (518) 433-2416 or [alegland@hodgsonruss.com](mailto:alegland@hodgsonruss.com).

There is also a Frequently Asked Questions (FAQ) page about the Project, which can be found at <https://www.lightstarsolar.info/tuytenbridge>.

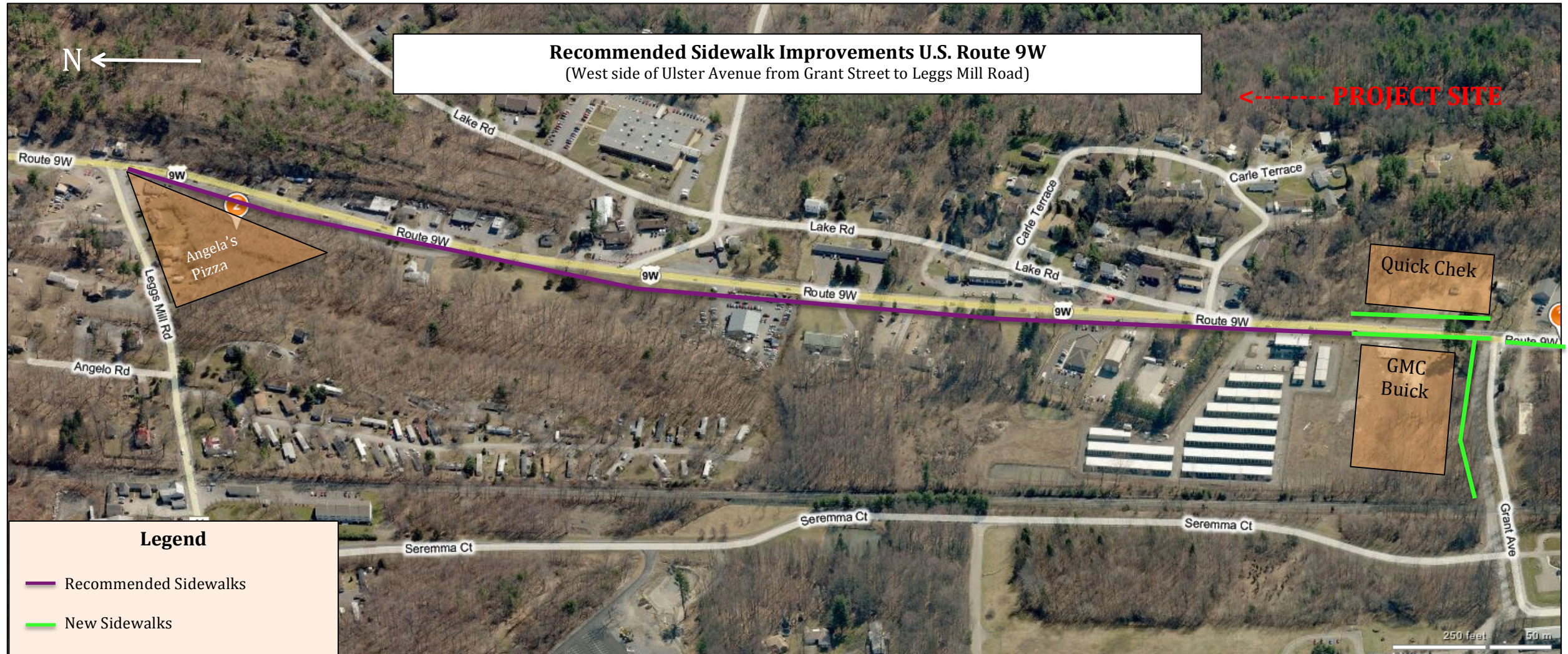
Very truly yours,  


Alicia R. Legland

ARL  
Enclosures

cc: Suzanne Reavy, *Town Clerk*, Town of Ulster (*via email*)  
Town of Ulster Planning Board (*via email*)  
Olivia Feldman, *Development Manager*, Lightstar Renewables LLC (*via email*)

# Exhibit A



# Exhibit B

6.3.3 Connector Roads

Over the years, the Town of Ulster and NYSDOT have completed a series of transportation studies designed to improve the transportation system in the Route 9W corridor surrounding the Route 209/199 Interchange. In 1997, Creighton Manning completed a Land Use Transportation Plan for the area as shown on the map to the right. That Plan called for two new connecting roads to complete the existing highway system: 1) A road under Route 199 to link Boices Lane to John Clark Drive, and 2) an extension of Frank Sottile Boulevard over NYS Route 199 to US Route 9W at Grant Avenue.

The completion of these connector roads would result in a looped transportation system that would help to ensure an acceptable level-of-service on area roadways as development occurs in the future. The Final Environmental Impact Statement (FEIS) for the extension of Frank Sottile Boulevard was accepted by the Town Board on August 7, 2006 paving the way for this project to move forward. Completion of this roadway segment is strongly supported by this Plan. However, future land use along the extension will affect traffic flow and a more detailed analysis of appropriate uses north of Route 209/199 is needed. The SEQRA Findings Statement calls for this area to remain RC-Regional Commercial provided there is a cap on the amount of trips that can be generated from adjacent sites. A more detailed discussion of land use for this area is provided in Chapter 11.

