

PO Box 160
Quaker Street, NY 12141

Eddie Bautista
Climate Justice Working Group

Transmitted via email: climatejusticeWG@dec.ny.gov

June 7, 2021

Re: Lack of consideration for disadvantaged communities across rural New York

Dear Eddie Bautista and the Climate Justice Working Group Members,

Thank you for your time and consideration of how the electrification of the grid will impact all New Yorkers. Thank you for recently posting the working groups email address on the groups webpage as requested in my May 25, 2021 email. I write to you today to share my experience with the Climate Leadership and Community Protection Act's (CLCPA) mandate for the construction of 6,000 MWac of solar energy power plants.

I am the fifth generation on my family homestead, a former dairy farm in Delanson, Schenectady County. September 19, 2019 the Duanesburg Planning Board approved a 65 acres solar array abutting my 2,500 foot property line. Since then, I have worked hard to educate myself and to engage in the deliberations of the Climate Action Council (CAC). Since June 2020, I have listened to more than 60 (CAC) meetings. I'm particularly concerned about the Climate Justice Working Group (CJWG) definition and mapping of "disadvantage communities".

It is obvious that the accelerated siting of solar and wind energy resources particularly affects our poor upstate communities. Indirectly, the CLCPA opened the door for developers to bully small town boards and abuse already disadvantaged rural taxpayers.

Solar and wind energy power plants require vast amounts of cleared land. Assuming 1 MW requires 6 acres of cleared land, the CLCPA-mandated 6,000-MW of solar energy will require at least 35,000 acres of land – about 56 square miles – suitably proximate to transmission lines.

I reviewed the New York State Independent System Operators (NYISO) and the New York State Interconnection Review (NYSIR) queues. These data sets are found on the Department of Public Service website <https://www3.dps.ny.gov/W/PSCWeb.nsf/All/286D2C179E9A5A8385257FBF003F1F7E>

It appears that there are more than 2,480 renewable energy projects that are 1-MW and larger to be constructed across New York State. To visualize the impact these solar, wind and battery energy projects will have on the taxpayers and environment I imported the data into google maps. *see* Exhibit A. Please view the interactive map at:

<https://www.google.com/maps/d/u/0/edit?mid=1AMHUNq5FbnetHFsmTkMBV11OKcDDneQe&usp=sharing>

This data represents only a small fraction of the number of renewable energy projects that will be required to comply with the CLCPA mandates.

Renewable energy developers are responsible to their investors, not to impacted residents, not to rate-payers, and not to the earth's warming climate. To achieve a profitable return on a project they require cheap land, and lots of it. Most renewable-energy power plants are sited in counties with the least expensive land. These rural towns suffer from the lowest average mean income, highest unemployment rates, and least education. The residents and taxpayers lack the resources to preserve the rural environment as documented in their Comprehensive Plans and Zoning Ordinances. Sophisticated developers are able to steamroll projects through volunteer town boards whose members in turn may stand to profit from project approval.

When developers are unable to gain town approval for Special Use Permits they threaten legal action. This most recently occurred between Borrego Solar and the Town of Schoharie at the May 2021 town board meeting. It was reported in the Cobleskill Times Journal on May 19, 2021. *see* Exhibit B.

If local zoning boards won't grant a variance then developers threaten to increase the project size and submit their profit driven projects as a state mandated Article 10 or the more recently, hastily adopted, Budget Bill Section 94-c. This was reported by Jason Subik on June 6, 2021 in the Schenectady Gazette. If Gloversville zoning board will not approve Eden Renewables Pine Brook Solar project Eden will quadruple the size to a nameplate capacity of 20-MWac and file the project as a state mandated Section 94-c. *see* Exhibit C. <https://dailygazette.com/2021/06/05/proposed-solar-project-seeks-zoning-variance/>

Article 10 and Section 94-c mechanisms strip our rural towns of Home Rule. Our local laws, zoning ordinances, and comprehensive plans are dismissed. State mandated projects do not utilize the State Environmental Quality Review Act (SEQRA) which has been in place since the 1970s. During the application process, local residents question whether the environment has been considered. They document violations such as clear-cutting of lands while SEQRA is in process. When construction begins, residents record the developers' failure to protect the environment.

Residents' well-documented letters and complaints go unacknowledged by town officials, state agencies and the developers.

Rural residents may not have broadband which is necessary to review documents and participate in online meetings for both state and locally approved projects. Many rural towns do not hold meetings online and do not post application documents on their websites. Most towns do not have local newspapers or regional media coverage. Developers take advantage of the communication and media vacuum to isolate any opposition and push their projects past unsophisticated town boards. As a result renewable energy projects rarely become public knowledge until long after town approval when construction begins. By then the financial cost of filing an Article 78, hiring environmental experts and legal assistance is prohibitive.

For decades small upstate towns have written and supported comprehensive plans that protect the environment and lands we cherish. Zoning ordinances are written to protect and preserve what the townspeople value most; the rural view shed, spacious land use plans and rural community character. No matter how disadvantaged we may be, rural New Yorkers pay our taxes and support our towns. It is important to recognize that upstate residents already do their share to support a carbon-free grid by using 88% zero-emission electricity generated by hydro and nuclear power. *see* Exhibit D. NYISO Annual Grid and Markets Report. <https://www.nyiso.com/documents/20142/2223020/2020-Power-Trends-Report.pdf/dd91ce25-11fe-a14f-52c8-f1a9bd9085c2>

The CAC fails to include local representation from rural community residents, businesses and taxpayers. This has been pointed out at multiple CAC advisory panel meetings. At the May 13, 2021 Assembly Public Hearing CAC appointee Peter Iwanowicz drew attention to the omission of rural New York representation. Since December 2020 I have asked the CAC to include rural New Yorkers at the negotiation table. I have not received a reply. The CAC membership has not changed. We deserve to be seated and heard at the negotiation table. We deserve the same rights and privileges afforded all other state taxpayers to legislate our town's land use through home rule.

Rural New Yorkers want to protect what is most important and valuable to their livelihood: the environment. We want to protect the agricultural soils, grasslands and forests. Our carefully crafted land use plans and zoning ordinances are being disregarded by the CAC members and downstate politicians. The Department of Environmental Conservation, Agriculture and Markets and New York State Energy and Research Development Authority are not tracking the amount of agricultural soils, grasslands and forests lost to renewable energy development. *see* Exhibit E.

Rural New York State is being industrialized by weather dependent solar energy plantations with capacity factors typically as low as 14%. Our waters are being populated by weather dependent wind power plants with capacities of less than 30%. The state has not informed the public of how many more acres of land will be required to construct solar and wind power plants necessary to electrify the grid. However, based on NYISO wind power will require in excess of a million

acres. <https://www.nyiso.com/documents/20142/16884550/NYISO-Climate-Impact-Study-Phase-2-Report.pdf> Large-scale solar farms will need to blanket 13 square miles annually, from now until 2040.

The CAC needs to fully and fairly document costs and land-use impacts from weather-dependent renewable-energy power plants. The CAC must make some effort to understand and address the impact of irresponsible solar and wind buildout on rural communities. The CAC should acknowledge, as much research has shown, that intermittent renewable energy will never power New York.

In their paper, Brick and Thernstrom indicate that even at 80% renewable penetration, significant dispatchable power – as much as 40% -- will still be needed. <https://www.sciencedirect.com/science/article/pii/S1040619016300136> The NYISO Phase 2 Climate Impact Study cited earlier indicates the same thing: If the state miraculously covers a couple of million acres of forests and farms with wind turbines and solar panels by 2040, we will still need more dispatchable power (32,000 MW) than all the current fossil-fuel generation in the state.

Rural New Yorkers have listened to downstate politicians' hopes and promises. Hope is not a plan. Promises are meant to be broken. The CAC has not included New York State's rural disadvantaged communities and provided them with a long hard look and the consideration they deserve. It appears that the CLCPA and CAC are redlining rural New York with a green pen.

I look forward to your reply at lynnebruning@gmail.com

Thank you for your time and consideration.

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

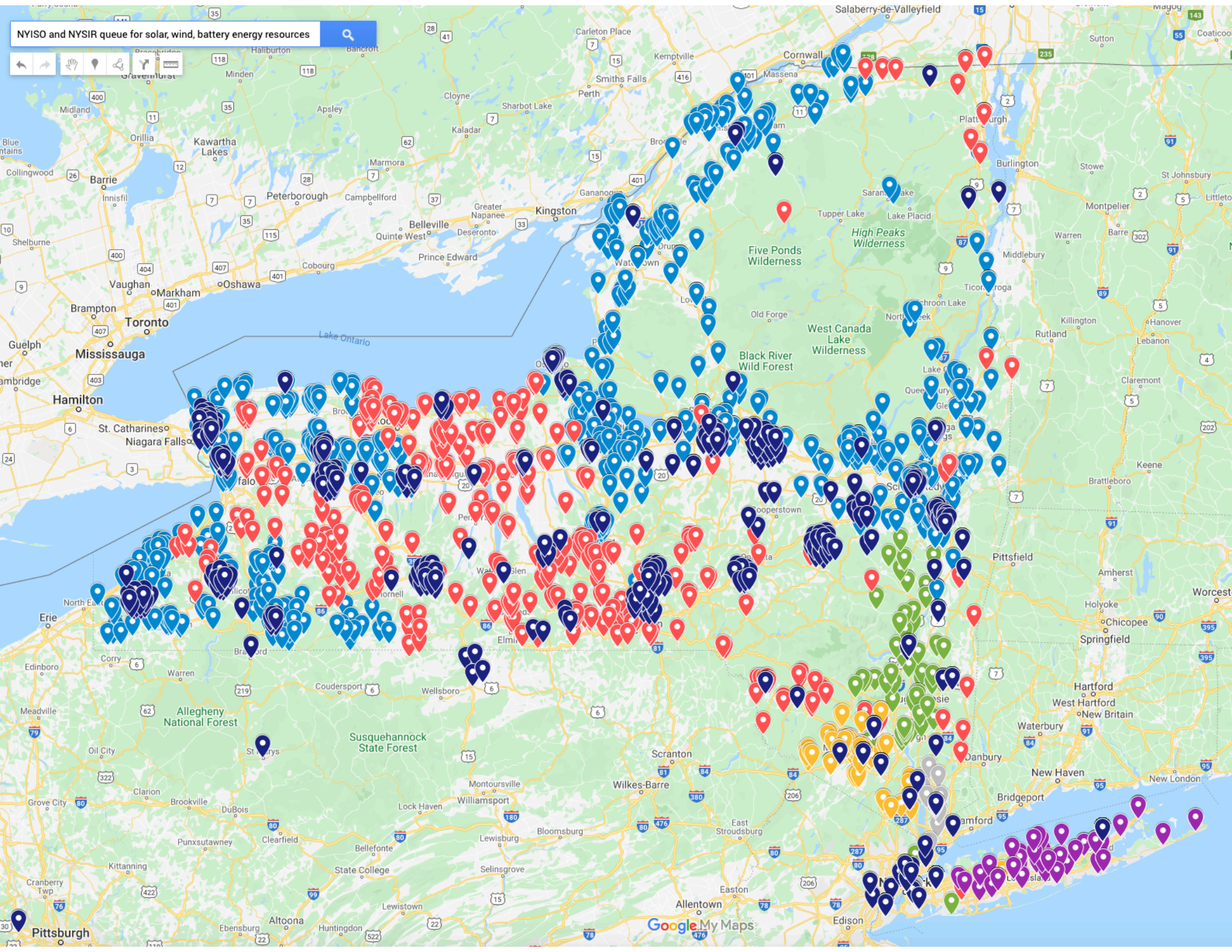
Enclosed: Exhibits A through E

Cc: Doreen Harris, Climate Action Council Co-Chair
Basil Seggos, Climate Action Council Co-Chair
Peter Iwanowicz, Climate Action Council Appointee

EXHIBIT

A

NYISO and NYSIR queue for solar, wind, battery energy resources



EXHIBIT

B

Schoharie still firm: No solar

By Patsy Nicosia

In an anti-climatic 3-2 decision Thursday, the Town of Schoharie stood with its March 31 straw vote denying a special use permit to Borrego solar.

Expect a lawsuit, said attorney Ben Botelho, one they're confident they'll win.

"The judge will overturn this and we'll be back in two years," Mr. Botelho, an associate attorney for The Murray Law Firm in Glens Falls told Supervisor Alan Tavenner and councilmen Thursday before the vote.

In an exchange not nearly as heated as the language, Mr. Botelho said developers for the Bliss Road solar project had offered—again—to create a fund that would pay for town-led screening of the five-megawatt project.

If the town voted officially to deny the permit, he said, they would file an Article 78 action—essentially charging the town's decision was arbitrary and capricious.

Attorney David Brennan, who drafted an 18-page decision for the town based on the project's three-year history and the issues raised at the March 31 meeting, said there's never a guarantee with any legal advice.

"There are two sides to every application," he said. "Not every application needs to be approved.

"I'll work on anything you want to revise, but I doubt I can write any more."

And there's no need, Mr. Tavenner said.

His biggest concerns—and the reason he voted to deny the special use permit—is that its size is inconsistent with the town's Comprehensive plan—in place well before its solar law was written.

Councilman Floyd Guernsey again argued Borrego had done everything that was asked and addressed every concern.

"They met all the goals," he said, voting against the denial.

Councilman Cody Cooper, who'd voted against denying the permit at the March 31 meeting, was absent because of work Thursday and excused.

That meant he couldn't vote.

In a text message he said the project meets all of the town's requirements and should be allowed.

Councilmen Matt Brisley and Ben Oevering also stood by their March 31 statements.

"The hurdle for me is the size," Mr. Brisley said. "If it was half the size, I think we'd be talking something different."

Mr. Guernsey voted against denying the special use permit and Mr. Tavenner, Mr. Brisley, and Mr. Oevering voted to deny it.

For school votes, visit
cobleskilltimesjournal.com

EXHIBIT

C

Proposed solar project in Gloversville seeks zoning variance

By Jason Subik | June 5, 2021

<https://dailygazette.com/2021/06/05/proposed-solar-project-seeks-zoning-variance/>

GLOVERSVILLE — Solar developers Eden Renewables on Wednesday asked the city Zoning Board of Appeals to grant a “Public Utility Variance” to allow the company to build a proposed \$10 million 32-acre 7.5-megawatt solar farm on the site of the former Pine Brook Golf Club.

The location of the property is 280 South Main St., located in a neighborhood zoned for residential use.

During the meeting, ZBA Chairman Jeffrey Ashe, of 22 Wheaton Ave., recused himself because he lives adjacent to the property. Acting ZBA chairman David Esler, of 43 Oakland Ave., led the board in tabling the matter, claiming members had only received Eden Renewables’ application at the end of last week and needed more time to consider the company’s arguments for why the project should be granted a Public Utility Variance.

Eden Renewables application is different from the typical zoning use variances considered by the Gloversville ZBA. Normally to get a zoning use variance, an applicant must prove an “unnecessary hardship” to the property owner by showing the applicant can’t achieve a reasonable rate of return from owning the property under the current zoning restrictions. Applicants have to show the hardship relating to the property is unique, granting the use variance wouldn’t change the essential character of the neighborhood and the alleged hardship was not self-created.

But Giovanni Maruca, the chief developer for Eden Renewables, said his company is arguing the use variance should be granted under the legal standard established in New York state case law for Public Utility Variances. Maruca said under New York state law electricity generating facilities are given “special dispensations” for where they can be built because they are already limited to choosing properties near electrical grid connections sufficient to accommodate the power generation.

“If there isn’t electrical infrastructure to interconnect with, you can’t do it, and there are only so many places around the state that you can actually make an interconnection — I’ve seen 200 hundred and 300 hundred acre parcels and there’s no ability to interconnect,” Maruca said. The 280 South Main St. property is near what solar developers call “good grid,” power line interconnections that allow for distribution of generated electricity, low voltage sub-transmission of electricity or high voltage electrical transmission.

“So, it’s at a location that from an interconnection perspective you have three different options that can support small or medium size at the distribution level to medium size projects on the sub-transmission to really big stuff on the transmission side,” Maruca said.

Another element of Eden Renewables’ argument is New York state has mandated 6-gigawatts (GWs) of renewable energy generating capacity be installed into New York state’s electricity grid by 2025. One gigawatt of electricity is the equivalent of 1,000 megawatts.

“There aren’t a lot of places to do these projects, to do 6-gigawatts, you need about 30,000 to 35,000 acres of usable land, so that’s a lot of 7.5-megawatt projects, no one developer could do all of that,” he said. “The state is mandating you’ve got to put these projects together. You’ve got to find more than 800 community solar projects. It’s not a goal, it’s a law.”

Maruca said Eden Renewables has about 10 solar farm projects throughout New York state ready to be built this summer, adding up to about 75-megawatts of renewable power generation, and another 10 projects, including the one in Gloversville, in various stages of the local and state approval process. He said the 280 South Main St. property in Gloversville has been the most difficult project for local approvals of any of the solar farms in Eden Renewables’ portfolio.

“We must have gone in front of the city boards, from the city council to the city Planning Board, to the Zoning Board, probably somewhere between 10 and 15 times over the last two years,” he said. “The city has said they want it used for residential, but we’re still leaving behind 100 acres at this property, and in the past, the owners have even had talks with residential developers about five years ago, and the locations they wanted to build on were not where we’re planning to construct, so there’s plenty of room for both to exist, with plenty of woodland screening for where a residential project was discussed only a few years ago.”

During the three common council public hearings on the proposal there were a few speakers who voiced opposition to the idea of the solar farm, claiming they think it would be loud and bad for the residential neighborhood. John Synakowski, who lives near the project, objected to Eden Renewables’ proposal to use sheep to groom the grass around the solar farm, part of several nature-based features of the project along with having beehives, wildflowers, and a community garden.

Maruca said sheep aren’t allowed in the city anyway, so Eden Renewables has dropped that part of its concept. He said some of the critics are being unfair to the owners of the property.

“They’re trying to dictate to landowners what they can do with their land, and that’s really not the spirit of America really,” he said. “There are rules you have to follow, but the landowners have done a number of things in good faith, and the city boards just keep saying no.”

The city’s Planning Board only narrowly approved by a 3-2 vote in October for an application to subdivide the 155-acre parcel of the former Pine Brook Golf course into four parcels: a 57-acre plot in the center for the solar farm, a 2-acre parcel encompassing the former golf clubhouse, a 1.46-acre parcel to be combined with the neighboring Antonucci Foods property and a 91-acre parcel running along the perimeter of the existing property.

The subdivision vote was effectively held three times over a three-month period before the approval was finalized. The Planning Board voted 3-1 at its Aug. 4, 2020 meeting to approve the subdivision, but that vote was nullified due to a problem with the notice for the public hearing not being published in the Leader-Herald newspaper on time. Then the Planning Board deadlocked at 2-2 over the same issue on Sept. 1 when planning board member Matthew Donde flipped from having been a yes vote previously to voting no and planning board member Pete Semione was absent.

When Semione returned for the October meeting he voted in favor of the subdivision, allowing it to pass 3-2.

Maruca said the ZBA deciding to table Eden Renewables application for another month is another example of the many unfair delays the project has endured.

“We submitted our application on May 20, and we were more than 10 days out from the ZBA meeting, so we met the guidelines; we were within the rules, and we get to the meeting Wednesday night and the board says ‘we only saw these yesterday’,” he said. “And this is not the first time this has happened with the city of Gloversville, where we’ve submitted our stuff on time and then been delayed because they’ve said they hadn’t gotten the information until the day before. One-off you wouldn’t question, but having had it happen multiple times for this project, resulting in multiple delays, just seems a bit odd.”

A phone call made to David Esler Friday at the phone number listed for him at the cityofgloversville.com/departments/zoning web page indicated the number was no longer in service.

ZBA member Ronald Sutler on Friday said he received his copy of Eden Renewables application in the mail postmarked May 28 from Gloversville city hall. He said the standard operating procedure for Zoning Board of Appeals applications has been for the applicant to mail the information to city hall where city officials then copy the application and send it out to ZBA members.

“I received it on May 29, and I assume the other members received it about the same time I did,” Sutler said. “I have not had time to review the information in the packet. There are many pages, without sitting down and counting them, I would think it’s at least 50 pages to this document. There were two cases under consideration for that evening and we got both of them in the same packet, and we received it a couple of days prior to a holiday weekend, so none of us had time to review the information.”

Gloversville City Clerk Jennifer Mazur said applications for the ZBA and the Planning Board go to the Gloversville Fire Department secretary Tracy Gutowski, who also acts as the secretary for those boards. She said she is unaware of whether there are rules for when Gutowski is required to mail information to ZBA and Planning Board members.

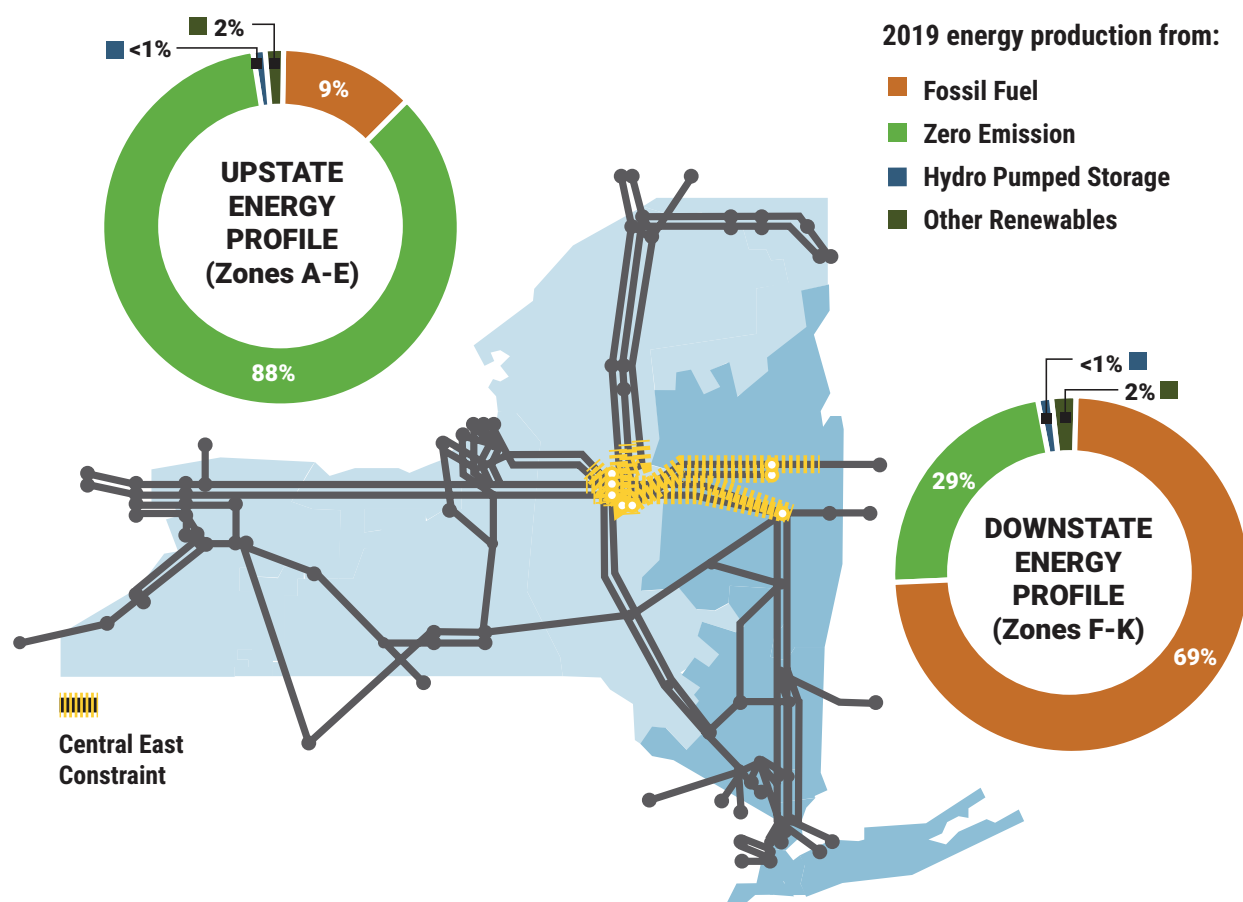
Gutowski could not be reached for comment Friday.

Maruca said he is hopeful the Gloversville ZBA will rule on Eden Renewables' application by its July 7 meeting. He said if the use variance is not granted his company could scale up the size of the project to a 20 to 25-megawatt peak solar farm eligible to take advantage of a new New York state law passed in 2020 called the "Accelerated Renewable Energy Growth and Community Benefit Act," which would bypass local regulatory board approvals.

EXHIBIT

D

► Tale of Two Grids



necessary to meet system needs and conditions as demands on, and conditions faced by, the grid change over time.

Enhancing Grid Resilience

In 2019, the NYISO's *Fuel & Energy Security Initiative* examined potential reliability challenges associated with the risk of possible fuel disruptions. The assessment did not identify any reliability risks that warrant the development of immediate market rule enhancements. The NYISO will continue to monitor New York's evolving fuel security needs.

The NYISO has a comprehensive program for addressing cyber and physical security risks. This program draws from mandatory and other industry standards and guidelines. The NYISO implements its compliance with mandatory cyber and physical security requirements as part of a layered, defense-in-depth strategy that relies on processes, state-of-the-art technology, and skilled staff to protect its critical infrastructure assets from incursion. The NYISO has also established a comprehensive organizational business continuity and disaster recovery program that safeguards business information systems and provides contingency plans in the event of a significant disruption of NYISO systems or facilities.



EXHIBIT

E



Agriculture and Markets

ANDREW M. CUOMO
Governor

RICHARD A. BALL
Commissioner

April 1, 2021

Lynne Bruning
Via E-Mail: lynnebruning@gmail.com

Re: FOIL Number DAM-21-03-006

Dear Lynne Bruning:

This letter responds to your request for records under the Freedom of Information Law (FOIL) received by the Department of Agriculture and Markets on March 09, 2021 for “acres of agricultural land converted to renewable energy resources.” On March 24, 2021, you clarified the scope of your request to records which consist of a report of the Department’s tracking system across some soil categories with regard to Agriculture and Markets Law section 305(4) Notice of Intent filings.

Enclosed is the record responsive to your request. Please be advised that, as indicated to you in previous correspondence, **the Department does not maintain a comprehensive record listing acreages impacted by renewable energy projects throughout the state since the Department does not have the authority to review any and all renewable energy projects affecting farmland.** Therefore, the enclosed record consists of filing data compiled over the past three years pertaining to filings reviewed by the Department, specific to solar photovoltaic projects reviewed pursuant to the Notice of Intent process. The Department does not have any information concerning whether the projects listed in the enclosed record have been constructed. Further, this record does not include projects for which no final determination has been rendered by the Department.

You have the right to appeal this decision within thirty (30) days, if you so desire. Your appeal should be addressed to Stephen McGrattan, First Deputy Commissioner, at 10B Airline Drive, Albany, NY 12235 or sent to foil@agriculture.ny.gov. If I can be of further assistance, please feel free to contact me at 518-457-2449.

Sincerely,

A handwritten signature in brown ink, appearing to read "Nicole D. Persaud".

Nicole D. Persaud
Senior Attorney



NYSERDA

ANDREW M. CUOMO
Governor

RICHARD L. KAUFFMAN
Chair

DOREEN M. HARRIS
President and CEO

SENT VIA ELECTRONIC MAIL

Email: lynnebruning@gmail.com

May 20, 2021

Lynne Bruning
PO Box 160
Quaker Street, NY 12141

RE: Your Freedom of Information law request (FOIL No. 2021-50)

Dear Lynne Bruning:

I write with respect to the FOIL request you submitted to the New York State Energy Research and Development Authority (“NYSERDA”) on May 4, 2021 which is assigned the above-referenced tracking number. Your request seeks “from January 1, 2010 to May 4, 2021 Acreage of forested agricultural and grass lands land lost for the construction of solar, wind and battery energy resources in New York State.”

Unfortunately, NYSERDA does not compile and, therefore, does not have a record that shows the “acreage of forested agricultural and grass lands land lost for the construction of solar, wind and battery energy resources in New York State.”

Some projects submitted to NYSERDA may include, for example, information pertaining to the State Environmental Quality Review Act, the Public Service Law Article 10, or the Office of Renewable Energy Siting. This information may take the form of project maps or responses to questions pertaining to environmental and health impacts. However, the information provided in the project maps and the responses to the environmental impact questions vary and it is unclear whether the information would directly respond to your FOIL request.

Accordingly, your request is now complete.

Very truly yours,

Colleen Dawson

Colleen Dawson
Senior Counsel and Records Access Officer