

May 31, 2022

Secretary of the Board  
NJ Board of Public Utilities  
44 South Clinton Avenue, 1st Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Re: Docket No. QO21101186

Dear Secretary of the Board,

New Jersey Conservation Foundation and the NJ League of Conservation Voters support the continued growth of cost-effective, well-sited solar energy as one of numerous strategies needed to achieve 100% clean energy. In general, we commend the staff proposed solar siting rule as consistent with the underlying statute, and in keeping with the goals of advancing solar energy while respecting the state's long-standing commitment to open space and farmland preservation, and natural resource protection. We offer the following specific comments and concerns.

Our primary concern is with the waiver provisions. The waiver process has the potential to become an enormous loophole that completely undermines the otherwise generally sound siting provisions unless it is more tightly defined than the current staff recommendation.

In addition to considering waiver requests in consultation with the NJ DEP and Secretary of Agriculture, the Board should make public any requested waivers and provide an opportunity for impacted and interested parties to comment on these waivers before the Board acts upon them. The 'public interest' can't be determined without a provision for input from the public. Furthermore, a more detailed definition of 'public interest' should be developed. This could be based upon the public interest determination under the NJ Freshwater Wetlands Act and Regulations.

In considering mitigation measures proposed by project proponents, mitigation should not become the default mechanism to approve all requested waivers. Mitigation may be appropriate in instances where a project is determined to be in the public interest but would result in impacts to critical natural resources. But mitigation should not be an excuse for granting a waiver to a project that is not in the public interest and would cause unacceptable impacts to critical natural resources. The board should adopt mitigation requirements similar to those required under the Green Acres diversion rules.

We support the staff recommendation to require that all solar facilities, regardless of whether they seek to participate in the CSI Program, must register their respective solar projects with the Board. Similarly, we support the recommendation that all grid support or net metered projects over 5 MW in size be required to meet the siting criteria. These steps will enable the board to

more fully track solar development in the state and, as the draft rule notes, “ensures that the State’s interest in preserving open space and agricultural lands will be applied to all solar projects, on an equal basis.” Applying the rules only to projects seeking state incentives would result in piecemeal, ineffective implementation of the siting goals.

We support the Board’s policy preference of promoting solar on impervious surfaces and the built environment, and the staff recommendation to provide an expedited siting process for projects sited on impervious land cover or surfaces that meet the solar siting criteria. Solar developers should get clear signals that such locations are desirable sites for projects and benefit from expedited review.

We support the staff recommendation that the Board establish rules that prohibit the siting of solar facilities on forested lands, and for the clear recognition that clearing forests that sequester carbon for solar development undermines the clean energy goals that solar development is designed to address. NJ DEP’s Global Warming Response Act 80x50 report sets a goal to maintain and increase carbon stored in forests and other lands in order to meet 2050 emissions targets. Clearing forests for solar development would directly undermine one of the state’s strategies for meeting 2050 emissions targets.

We have concerns about the proposal to calculate the 2.5% statewide threshold set forth in 6(f) based upon all Prime Soils and Soils of Statewide Importance within Agricultural Development Areas (ADAs). In our view this exemption should not have been provided in the legislation, especially given the provision for a waiver process that allows developers to seek exemptions. The waiver process would provide a suitable mechanism for determining whether the sound siting guidelines should be waived, whereas simply exempting 2.5% of the most important farmland in New Jersey, the most densely populated state in the nation (approx. 8,500 acres), could result in very poorly sited projects without any review.

At minimum, a more conservative calculation should be utilized, such as excluding any preserved farmland from the calculation in the same manner that the 5% development limit in each county will be calculated, so that taxpayer preserved farmland does not add to the amount of non-preserved farmland exempted. It is irresponsible to exempt nearly 8,500 acres of the best farmland in the state from the siting restrictions and the waiver process. Prime Agricultural Soils and Soils of Statewide Importance are rapidly disappearing in New Jersey due to development pressures, including significant warehouse development that has intensified during the recent global pandemic.

We support the recommendation that the 5% development limit in each county be calculated by excluding all preserved lands as well as Highlands and Pinelands designated lands. It is important to bear in mind that the ADAs were established to maintain large, contiguous areas of farmland needed to sustain a viable agriculture industry in the state. Allowing solar development on significant amounts of undeveloped farmland within certain county ADAs could jeopardize the future viability of agriculture in those counties. We would also note that the 5% development limit in each county was included in early versions of the statute, while the

legislation was amended to include the 2.5% statewide threshold very late in the legislative process, signaling clear legislative intent and commitment to the 5% limit.

In closing, we support the staff recommendations outlined above, but urge the Board to significantly tighten up the waiver provisions to ensure that the important goals of the legislation to foster development of clean, solar energy are met while protecting the state's forests and critical agricultural soils.

Thank you for considering our views on this important matter.

Sincerely,

Thomas A Gilbert  
Co-Executive Director  
NJ Conservation Foundation

Ed Potosnak  
Executive Director  
NJ League of Conservation Voters