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March 18, 2021

Chairperson Leslie Weisman &
Members of the Zoning Board of Appeals (ZBA)
Town of Southold
P.O. Box 1179
Southold, NY 11971

Re: Suffolk County Energy Storage II, Inc.

Dear Chairperson Weisman & Members of the Zoning Board of Appeals:

On behalf of Group for the East End, I offer the following comments and recommendations related to the proposal made by Suffolk County Energy Storage II, LLC to construct a battery energy storage facility at 69430 Main Road, Greenport.

Summary Statement:

Based on our assessment of the Special Exception permit requirements, the goals of the duly adopted Town of Southold 2020 Comprehensive Plan, and the numerous comments provided by involved agencies, we find that **the subject application does not meet the Special Exception requirements outlined in the Town Code and should therefore be denied.**

Should the ZBA elect to continue with the further consideration of this plan, we believe the previously adopted Negative Declaration (March 3, 2021) is inadequate to provide the ZBA with sufficient information about the potential significant environmental impacts associated with this project.

Thus, **Group for the East End strongly recommends that the ZBA acting as Lead Agency pursuant to the State Environmental Quality Review Act (SEQRA), rescind the Negative Declaration, and issue a Positive Declaration so that a Draft Environmental Impact Statement (DEIS) be completed.**

Supporting Comments:

Rescission of the Negative Declaration:

Pursuant to section 617.7 (f) of SEQRA, a Lead Agency must rescind a negative declaration if a significant environmental impact may result from project modification, a change in circumstance which was not previously addressed by the Lead Agency, or new information is discovered. Group for the East End would like the record to reflect several substantive issues with the Negative Declaration, which should be considered "new information" not previously addressed by the ZBA and provide substantive justification for the rescission.

Pursuant to section 617.7 (c), the threshold for issuing a positive declaration is considerably low and must be prepared if, "one or more adverse environmental impacts may be significant." The ZBA's coordinated review with involved agencies clearly resulted in qualified comments verifying one or more potential adverse environmental impacts and even concluded that the proposed action stands in direct

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conflict with several Town of Southold adopted plans, policies and the Town Code, which itself is a standard for determining significance.

Specifically, the Department of Land Management Memo (January 29, 2021), the Local Waterfront Revitalization Plan's "Inconsistent" finding (March 1, 2021) and the Town of Southold Planning Board's comments (March 1, 2021) all identify potential adverse impacts that are not fully addressed within the Negative Declaration or are dismissed (without a substantive reference or explanation) as not posing potential impact. Group for the East End strongly believes that the impacts identified by these boards are in fact potentially "significant" and do not fall under the categories of "moderate" or "small."

Deficiencies of the Negative Declaration:

According to the implementing rules governing SEQRA, a Negative Declaration must include a "brief statement of the reasoning that supports the determination," and provide rationale for the determination, "**Simply stating that the Lead Agency believes that the action will have no significant impact is insufficient**" (SEQRA Handbook, Fourth Edition 2020). That being said, the following potential impacts outlined in the Negative Declaration do not offer sufficient detail to ensure that the impacts identified will be mitigated to the maximum practicable extent.

Impact From Flooding

The entire section identifies a number of significant impacts related to flooding. For instance,

"Although proposed structures are not proposed to be located within a mapped FEMA flood zone, the potential for adverse impacts from flooding on site are expected due to poorly drained soils, seasonal high groundwater with an expected water table of less than 3 feet and storm surge influence. As noted above, site construction should be designed to tolerate flooded conditions and avoid disrupting drainage patterns and site topography to the greatest extent practicable."

The Negative Declaration does not elaborate on how the proposed action should be designed to mitigate flood conditions other than stating that it should be designed in that matter.

Impact on Plants and Animals

The Negative Declaration identifies that a portion of the parcel is located within a Significant Coastal Fish and Wildlife Habitat Area and that the DEC pointed out that several threatened species have been identified as occurring adjacent to the parcel.

"The extent of occurrence or use of the above species on site is currently unknown. However, the use of the parcel by wildlife is expected due to its proximity to Moore's Drain."

If the extent of occurrence of these species is unknown how can it be assured that no significant impact will occur? Moreover, if the "use of the parcel by wildlife is expected due to its proximity to Moore's Drain," how will the impact be mitigated?

Impact on Agricultural Land Resources & Soils

The Negative Declaration notes under “Soil Types” that:

“Test hole data was not provided therefore depth to groundwater on-site is unknown. High groundwater is expected. Flooding of the parcel due to soil characteristics was observed on the parcel on February 25, 2021. The poorly drained soils on site also increases the potential for future flooding and surface runoff under normal conditions.”

If test hole data does not exist, but flooding has been observed and conceivably will be again in the future (due to “poorly drained soils”) how can the town conclude that this is not a significant impact that needs mitigation for a battery storage facility?

Consistency with Community Plans

The Negative Declaration states, “The proposal is not fully consistent with community plans” and outlines all of the inconsistencies but provides virtually no level of detail on how this significant impact will be mitigated. In some cases, potential mitigation is noted to be deferred to the Planning Board’s review of the project’s site plan proposal. Being inconsistent with numerous adopted plans, policies and the Town Code should clearly be considered a “significant” impact.

Additional Support For DEIS:

In our review of the project documentation, we note the following significant areas of concern that would additionally benefit from an in-depth review provided by the DEIS.

Assessment of Need:

The DEIS would discuss in detail, the need for the proposed project. Documentation from PSEG/LIPA discussing projected need and future energy demands and plans for facilities such as these should be included. In determining need, the DEIS should take into consideration other proposed battery energy storage facilities on the North Fork, in particular the large-scale proposal under initial review by the Village of Greenport (at its scavenger waste site located on Moore’s Lane). The following questions should also be addressed:

What is the facility’s projected lifespan?

How many battery energy storage facilities are projected to be needed on the North Fork?

Are there any plans for future development to increase the size of the facility?

What are the potential growth-inducing aspects of this particular proposal?

Alternatives:

A DEIS will importantly examine alternatives within the “Alternative” section. SEQRA requires that “the description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed.”

Given the documented, ecologically sensitive nature of this particular site and the adjacent land, it’s incumbent on the Lead Agency to determine whether there are alternative sites that would mitigate potential environmental harm and therefore provide a better location for this facility.

In the matter of determining alternative sites, Group for the East End strongly suggests that the Town of Southold, in addition to our region’s utility company, be consulted

within this discussion. From a sound community planning perspective, if only a certain number of these types of facilities are needed, it would be in the Town's best interest to identify sites where citing battery energy storage units makes the most sense.

Negative Declaration Precludes In-depth Review by Other Boards/Agencies

The proposed action requires multiple approvals from Town of Southold regulatory boards and outside agencies. The adoption of the Negative Declaration essentially concludes that the project does not pose a significant environmental impact and limits the other agencies, particularly the Planning Board, in their review of the site plan and efforts to further mitigate the environmental impacts raised through the current review.

Conclusion:

The proposed action raises significant concerns relevant to the criteria for Special Exception Use approval under the Town Code. A number of these issues include matters of environmental and community character concern, which have been clearly articulated by commenters and involved agencies through the review of this proposal. Based on this input and the requirements for Special Exception approval, we believe the project should be denied.

If the ZBA elects not to deny this application based on its lack of conformity with the Town's Special Exception criteria, we respectfully request that the ZBA, as Lead Agency, reconsider the SEQRA review input of involved agencies and the public, apply the "hard look" test required by SEQRA, rescind the Negative Declaration and require a comprehensive environmental review as provided for through a Positive Declaration pursuant to SEQRA.

Thank you for taking the time to review our recommendations. Please contact me at your convenience should you have any questions or concerns. I can be reached at jhartnagel@eastendenvironment.org.

Sincerely,

Jennifer Hartnagel

Jenn Hartnagel
Senior Environmental Advocate

Cc: Heather Lanza, Director of Planning
Mark Terry, Assistant Town Planning Director, LWRP Coordinator
Bill Duffy, Town Attorney

