

Large-Scale Solar Energy Project Report
Town of North Collins Planning Board
Anderson I/II Solar Project
Applicant: CleanChoice Energy Shared Services, LLC
Final report Issued 5/19/23

Per the Town Board's referral and the Town's Solar law, the Planning Board issues the following report to the Town Board to assist with the Town Board's decision on this application (updated throughout the Planning Board process).

A. Application Description and Type of Solar project: The Anderson I/II project is made up of two ground-mounted solar energy system installations consisting of 28,500 modules, capable of producing 10 MW total of power (5 MW each). Two special use permits are required for this project, but it will be treated as one SEQR action to avoid segmentation. The project is located on 61.5 acres of undeveloped land on two parcels totaling 125.6 acres at 12274 and 12276 Gowanda State Road in the Town of North Collins, Erie County. The modules are approximately 9 feet high when mounted. Activities will also include the installation of new electrical equipment and accessories including concrete pads for equipment and gravel access roads.

B. Application Requirements: See attached checklist.

The project application materials/requirements appear to be met except as follows:

3. Copies of the owner's deed and property tax bill were not first provided.
 - Deeds and tax bills (County and school district) were now provided for both property owners. Municipal tax bills were not provided.
4. Specification sheets for mounts/racking systems were not originally provided.
 - Specification sheets were provided but did not specify color. Mounts/racking system will be galvanized steel.
5. Operations and maintenance plan originally did not include a safety plan or specifics regarding the frequency of maintenance.
 - Updates of O&M plans were provided on April 4 and May 16. A separate safety plan was provided.
6. Final plans (with an ALTA survey) will be submitted once the SUP and variance decisions are made.

A. Zoning Analysis: See attached checklist.

The project appears to meet the "bulk" zoning requirements for a utility-scale solar energy project except as follows:

2. Set back is only 50 feet from the property to the north and only 100 feet from the railroad (300-foot setback required from all property lines). The applicant has a Good Neighbor Agreement with the property owner to the north to allow the 50-foot

setback, which does not change the need for a variance, but can be utilized in the variance request.

- The Building Inspector agreed that variances for both setbacks will be needed and for the soils impact (see below).
- Based on the 3/10/23 meeting, per the Town Solar Energy law section 215-5, paragraph E, the Planning Board only has the power to issue variances for ground-mounted systems less than two acres. Therefore, the ZBA will need to decide on these variances.

A. Other Requirements (SUP and other law requirements): See attached checklist and EAF submitted for the project. The project meets these requirements except as follows:

2. A portion of site is in soil group 3-4. According to § 212-8, a utility-scale solar energy system shall not be located in an area consisting of soil groups 1-4. While the solar panels themselves are not located in an area consisting of soil groups 1-4, an access road which will service the system is proposed in an area consisting of soil groups 3-4.
 - Building Inspector agreed that this variance is needed. The Planning Board only has the power to issue variances for ground-mounted systems less than two acres. Therefore, the ZBA will need to approve this variance.
2. A visual impact assessment should be provided to determine whether the proposed screening for the project is sufficient.
 - Applicant sent an updated visual impact assessment, adding visualizations from the Lawton's area and other surrounding residential areas. The proposed screening (landscaping) may not be sufficient in the first few years after planting, as black spruce are only 4 feet tall at planting, whereas the solar panels will be 9 feet high when mounted at full tilt. Wendel recommends that the spruce be 8 to 10 feet tall at planting, and that the spruces are staggered to further limit visual impacts and present more of a natural look/aesthetic. Wendel also recommends use of at least one other tree species to reduce the possibility of disease or other issues, and that other plantings are also included (potentially deer resistant arborvitae - Baby Giant).

A. Public and Planning Board Comments and Responses

Summary of Public Comments:

From 3/10 meeting:

1. Project has grown from original plan.
2. Not all surrounding residents have a good neighbor agreement, and some were gotten without getting proper input. Some are opposed!
3. How is this impacting Lawtons?
4. Solar companies are bought and sold all the time.

5. This property is wet, has drainage problems (ditches on the property and along RR – both sides) and there are 3 creeks in the area.
6. More screening needed for the neighbors (berms/foliage, etc.).
7. What type of fence is being constructed?

From 4/21 meeting:

1. Concerns about groundwater contamination, especially of aquifer that supplies Village's water.
Response: As a condition of the special use permit, the developer will have to provide proof that the panels themselves as well as any coatings on the panels do not contain any per- and polyfluoroalkyl substances (PFAS), which are the main source of groundwater contamination. We also recommend that the small amount of liquids in the inverters be "organic" based.
2. Concerns that the solar project will increase the cost of leasing land for farmers, forcing some farmers out of business and resulting in higher food prices.
Response: The applicant has provided documentation that this small impact on agriculture will not have a significant impact (see NOI).
3. Concerns that the solar project will interfere with the drainage on site and affect drainage on neighboring properties.
Response: The applicant submitted a Stormwater Pollution Prevention Plan (SWPPP) for both sites. The hydrologic analysis compared pre- and post-development conditions and found that runoff will not increase, and in fact for parts of the site, will decrease post-development. The analysis modeled various 24-hour storm events, including a 100-year storm event with 5.46 inches of rain in a 24-hour period. The Town should still determine if any drainage easements will be needed on the site.
4. Concerns about wildlife on site, including frogs, woodcocks, and bald eagles that inhabit these wetlands.
Response: A six-inch gap at the bottom of the fence will allow movement of small wildlife. NYSDEC has encouraged the developer to increase this gap to one foot. No tree clearing is proposed and NYSDEC and US Fish and Wildlife mapping indicates that the site is not a significant natural community or critical habitat.
5. Setback variances should not be granted – Clean Choice Energy can reduce the size of the project to meet the solar law. Clean Choice Energy responded by saying they will move part of the project to the other side of the railroad tracks if variances are not granted.
Response: Variances are the responsibility of the ZBA. The Planning Board does not recommend moving any panels to the other side of the railroad.
6. Concerns that the project will be abandoned, and the Town will have to pay for decommissioning of the site. Also concerns about problems during construction and the project being abandoned during construction.
*Response: As a condition of the special use permit, the developer will have to provide a decommissioning bond or other approved security to the Town to cover decommissioning costs **before** starting construction. The decommissioning*

estimate provided by Clean Choice Energy is \$715,927.85 for both projects, which includes \$190,120 for salvage value. The Town's solar law requires the decommissioning bond to be 150% of the decommissioning costs, not including salvage value, so the decommissioning bond will need to be approximately \$1.36 million. The Town's solar law requires the bond to be increased each year to account for inflation and reviewed at least every five years to ensure it is sufficient to cover the estimated decommissioning costs.

A. SEQR Issues (Type I SEQR action):

This action was classified as a Type I action, as the project involves the physical alteration of more than 10 acres and includes a nonagricultural use occurring within an agricultural district.

The Town Board declared Lead Agency and coordinated review mailings were sent to interested and involved agencies on March 10. Involved and interested agencies included:

- Erie County Department of Environment and Planning
- Erie County IDA
- Erie County Department of Public Works
- NYSEERDA
- NYS Department of Environmental Conservation
- NYS Department of Agriculture and Markets
- Town Planning Board
- Town Code Enforcement Dept
- Town Highway Dept
- Lawtons Volunteer Fire Company

No agencies objected to the Town Board acting as Lead Agency. One agency (NYS Department of Environmental Conservation) responded (see attached for response).

The attached draft Part 2 of the Full Environmental Assessment Form identifies several potential "moderate to large impacts" that may occur as a result of the project:

Impacts on Land:

1. The proposed action may involve construction on land where depth to water table is less than 3 feet.
2. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).
3. The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body.
4. The proposed action may create turbidity in a waterbody, either from upland erosion, runoff or by disturbing bottom sediments.
5. The proposed action may cause soil erosion, or otherwise create a source of stormwater discharge that may lead to siltation or other degradation of receiving water bodies.

The project will be subject to a Stormwater Pollution Prevention Plan (SWPPP). The applicant has provided a draft SWPPP and an Erosion & Sediment Control Plan. The water table will not be impacted by the construction of this project (driving support poles approximately 4 feet into the ground). The project will not adversely affect any wetlands.

Impacts on Water Resources:

6. The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action.
7. The proposed action may have the potential to introduce contaminants to groundwater or an aquifer.

The applicant has provided a statement that the panels and/or anti-reflective coating do not contain PFAS, but will also be required to provide this documentation before issuance of the building permit as a condition of the SUP (in case the units/equipment change).

Impacts on Plants and Animals:

8. The proposed action may cause reduction in population or loss of individuals of any threatened or endangered species, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.
9. The proposed action may result in a reduction or degradation of any habitat used by any rare, threatened or endangered species, as listed by New York State or the federal government.

The applicant has provided correspondence from the US Fish and Wildlife Service that no threatened or endangered species would be impacted. NYSDEC has commented on the project and recommended increasing the gap at the bottom of the fence from six inches to one foot to allow wildlife movement.

Impacts on Agricultural Resources:

10. The proposed action may impact soil classified within soil group 1 through 4 of the NYS Land Classification System.
11. The proposed action may irreversibly convert agricultural land to non-agricultural uses, either more than 2.5 acres if located in an Agricultural District, or more than 10 acres if not within an Agricultural District.
12. The proposed action may disrupt or prevent installation of an agricultural land management system.

The applicant has submitted an agricultural data statement, which will be sent to adjoining farmers, and filed a Notice of Intent with NYS Department of Agriculture and Markets (NYSDAM). The applicant is avoiding most areas of soil groups 1-4, except for the access road location.

Impacts on Historic and Archaeological Resources:

13. The proposed action may occur wholly or partially within, or substantially contiguous to, an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory.

The applicant has provided “findings of no effect” letters from SHPO.

Impacts on Noise, Odor, & Light:

14. The proposed action may produce sound above noise levels established by local regulation.

The applicant has provided information on noise. Due to the distance to the nearest “receptor,” there will be no significant impact from noise.

Impact on Transportation:

15. The project may have construction related transportation impacts.

These impacts will be temporary and the Town will require a construction routing plan and potentially a Road Use Agreement.

Impact on Human Health:

16. The proposed action may result in an increase in the rate of disposal, or processing, of solid waste.

The applicant has provided information on the management and disposal of solid waste during construction.

Impacts on Community Character:

17. The proposed action’s land use components may be different from, or in sharp contrast to, current surrounding land use patterns.
18. The proposed action is inconsistent with the predominant architectural scale and character.
19. The proposed action is inconsistent with the character of the existing natural landscape.

The applicant has submitted visualizations of the project and has proposed a vegetative buffer to screen the project from Seneca Nation (Young Road), Seneca Road and Main Street. We have also recommended additional landscaping and the final plan to be approved at site plan.

Based on the information provided by the applicant and mitigation measures proposed by the applicant, it is expected that the Town Board may be able to issue a negative declaration.

A. Other Comments:

At the 5/19/23 meeting, the following questions were raised:

- How to address changes to the system after installation (see new recommendation).
- Discussion of HCA issue (Town wants HCA, no PILOT)
- Project will return to PB, if SUP and variances granted.
- Bonding amount needs to be finalized and in place prior to construction.

A. Planning Board Report Recommendation (including any conditions):

The Planning Board, based on their review of the project and materials submitted by the applicant, and input from Town residents, other agencies, and the Town's consultants, recommends approval of the special use permits with the following conditions:

1. The variances noted in Sections C and D of this report are approved by the Zoning Board of Appeals (recommend not putting the panels on the other side of the railroad).
2. Any change in the nameplate (5 MW each) will necessitate a return to the Town Board for review of a new Special Use Permit application.
3. Site disturbance, including but not limited to, grading, soil removal, excavation, soil compaction, and tree removal in connection with the installation of this solar energy system shall be as shown on the approved plans. Violation of these disturbance limits will require returning to the Town Board to get a mitigation plan approved (replanting of disturbed areas to the satisfaction of the Town).
4. Following construction of this solar energy system, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust as shown in the approved erosion and sediment control plan.
5. This solar special use permit can be assignable or transferable to future users of that system on the approved parcel so long as they are in full compliance with this article and all conditions of this SUP, and the Town Clerk is notified of the property transfer at least 30 days prior thereto.
6. Any post-construction changes or alterations to this solar energy system shall be done by amendment to the solar special use permit only and subject to the requirements of the law.
7. After completion of this solar energy system, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans. The applicant shall further provide certification from the utility that the facility has been inspected and connected.

8. If this solar energy system has not been in active and continuous service for a period of one year, it shall be removed at the owner's or operator's expense per the Town Law and decommissioning plan. Decommissioning shall include removal of all energy facilities, structures and equipment including fencing and any subsurface wires and footings from the parcel (in accordance with the approved decommissioning plan).
9. Full restoration of the parcel is required unless restoration is unnecessary because the parcel is to be put into active agricultural use (decommissioned in accordance with NYSDAM standards) or approved for other development in accordance with the Town of North Collins Zoning Code within that twelve-month period.
10. All safety hazards created by the installation and operation of the solar energy system shall be eliminated and the site restored to its pre-existing condition within six months of the removal of this large-scale solar energy system.
11. A bond or other approved security shall be provided to ensure satisfaction of the above at the time of construction. Security shall be in an amount equal to 150% of the estimated cost to restore the property as presented in the approved decommissioning plan. Security shall cover the full decommissioning costs without recoverable costs from salvage value.
12. Proof of said decommissioning and site restoration bond shall be filed prior to construction and on an annual (or agreed upon) basis with the Town Clerk. The bond amount shall be increased each year to account for inflationary costs. The sufficiency of such bond shall be reviewed at least every five years in accordance with Section 212-7(E) of the Town of North Collins Solar Energy Systems regulations.
13. Prior to facility start-up and during construction, a Town Engineering consultant shall be provided access to the facility to inspect the drainage and stormwater provisions (SWPPP reports to be provided by Applicant's engineer).
14. Landscaping shall be installed/planted as shown on the approved plans (final approval at site plan and meeting any conditions placed by the Town Board and/or the Planning Board) and properly maintained. Any landscaping that does not survive over the life of the project shall be promptly replaced and/or replanted. Landscaping must be 8 to 10 feet tall at the time of planting, staggered, and with multiple indigenous species.
15. Grass and other vegetation within the fenced area of the array and immediately surrounding the fenced area must mowed at least twice per year. Fencing and signage must also be inspected annually for damage and repaired/replaced if needed.
16. Mounts/racking systems shall be painted a subtle or earth tone color and repainted as needed to reduce reflectivity.
17. The Applicant shall install a fence surrounding the project as shown on the approved plans. Fencing must not prevent the maintenance of drainageways. Keys for access to the site must be provided to the Fire Department. Fencing shall incorporate features to allow the movement of wildlife per the approved plan, including a one-foot gap along the bottom of the fence.
18. Prior to start-up, appropriate emergency personnel shall be provided appropriate training and be given a tour of the facility before final sign-off, at the Applicant's expense.

19. Prior to start-up, the operators/owners shall appear before the Town Board to discuss the operation of the facility and the meeting of the conditions of the Special Use Permit. It is the operators/owner's responsibility to ensure that they are placed on that meeting's agenda.
20. Immediately preceding start-up, the Town will complete a final inspection of the facility.
21. Emergency plans shall be reviewed and potentially updated on an annual basis with emergency service providers.
22. The roads and accessways into and within the site shall be properly maintained, including plowing for potential emergency personnel access.
23. The Applicant, after one year of operation, shall return to the Town Board for review of any Special Use Permit condition violations or for review of a new application for a Special Use Permit attributable to any change in use and/or change in nameplate.
24. The Applicant shall return to the Town Board/Planning Board for the final site plan approval and must receive all other required regulatory approvals prior to a building permit being issued.
25. Prior to the building permit being issued, the Applicant shall provide a certification from the manufacturer of the panels used in the solar energy system that the panels themselves as well as any coatings on the panels do not contain any per- and polyfluoroalkyl substances (PFAS) or other toxic materials.
26. The solar energy system must be removed in accordance with the Decommissioning Plan if the Special Use Permit is revoked or the system has been deemed inoperable and/or abandoned as defined in the Section 212-9(G) of the Town of North Collins Solar Energy Systems regulations.
27. The applicant must provide the appropriate insurances, and these must be maintained throughout the life of the project as dictated in the Town Law. Proof of insurance must be provided on a yearly basis.
28. Final design plans must illustrate any drainageways, swales, culverts, etc. and the Town will determine if easements will be required to maintain these "waterways" in emergency situations.
29. The Town will also determine if a road use agreement is needed.
30. The Town will finalize a Host Community Agreement with the applicant and will work with the ECIDA and finalize if a PILOT agreement will be also utilized.
31. Any changes to the system after construction, including repairs, replacement of any units or adding anti-glare materials will require notification to the North Collins Building Department at least 10 days prior to this work beginning. This is to ensure conformance to the SUP and its conditions, including no hazardous substances. This could result, depending upon the amount and type of work, in the project needing to return to the Town Board and/or Planning Board.

- A.** Attachments: Zoning checklist and engineering checklist. Documentation submitted by the applicant (provided to the clerk at the 5/19/23 meeting).