

April 25, 2017

State of New York  
County of Fulton  
Town of Oppenheim

Minutes of the Oppenheim Special Board meeting and Public Hearings held on April 25, 2017 at the Oppenheim Town Hall located at 110 Route 331, St. Johnsville, NY 13452.

**Present**

Cynthia Breh	--	Supervisor
Patricia Haberek	--	Councilwoman
Stephanie Gray	--	Councilwoman
John Houle	--	Councilman
Gloria Brys	--	Town Clerk

**Absent**

Cheryl Lynch	--	Councilwoman
Scott DeNinno	-	Codes Enforcement Officer

Supervisor Breh called the meeting to order at 6:30 pm with the Pledge to the Flag.

Supervisor Breh opened the public hearing on the Borrego Solar Energy Project – North  
At 6:30 pm

**NOTICE OF SPECIAL MEETING AND PUBLIC HEARING  
FOR THE TOWN BOARD OF THE TOWN OF OPPENHEIM  
BORREGO SOLAR ENERGY PROJECT - NORTH**

PLEASE TAKE NOTICE that the Town Board of the Town of Oppenheim will hold a Special Meeting and a Public Hearing on **April 25, 2017 at 6:30 pm at the Oppenheim Town Offices, 110 State Route 331, St. Johnsville, New York 12078** to hear all comments for and against the proposed Borrego Solar Energy Project – North to be constructed on a portion of the lands at 519 County Route 151, Oppenheim NY 13452 (Tax Map ID 125-1-19.1) which will generate 1.366 MW of renewable solar energy.

The Application and other project information are available for public review at the Oppenheim Town Offices located at 110 State Route 331, St. Johnsville, New York 13452

April 25, 2017 (cont)

Supervisor Breh opened the public hearing on the Borrego Solar Energy Project – South  
At 6:35 pm

**NOTICE OF SPECIAL MEETING AND PUBLIC HEARING  
FOR THE TOWN BOARD OF THE TOWN OF OPPENHEIM  
BORREGO SOLAR ENERGY PROJECT - SOUTH**

PLEASE TAKE NOTICE that the Town Board of the Town of Oppenheim will hold a Special Meeting and a Public Hearing on **April 25, 2017 at 6:35 pm at the Oppenheim Town Offices, 110 State Route 331, St. Johnsville, New York 12078** to hear all comments for and against the proposed Borrego Solar Energy Project – South to be constructed on a portion of the lands at 519 County Route 151, Oppenheim NY 13452 (Tax Map ID 125-1-19.1) which will generate 2.0 MW of renewable solar energy.

The Application and other project information are available for public review at the Oppenheim Town Offices located at 110 State Route 331, St. Johnsville, New York 13452.

Dave Aldrich, Attorney Mark Sweeney and Rob Garrity were present to explain and answer any questions during the Public Hearing.

Teresa Sammons and Mike Shaftic were the only residents that were present.

Dave Aldrich presented maps and explained the North and the South Borrego Solar Energy Projects. After the presentation, the residents present discussed their concerns.

Patricia Haberek made a motion to close the public hearings at 7:10 pm and Stephanie Gray seconded it and all board members were in favor.

Motion made by Stephanie Gray and second by John Houle to accept Resolution #41 issuing a Negative Declaration under SEQRA, Granting Waivers, approving Site Plans and issuing Solar Farm Permits Pursuant to Local Law No. 1 of 2017 for the Borrego Solar Energy – North Project and South Project.

Adopted

Ayes - 4 Gray, Houle, Haberek, Breh

Absent – Lynch

Resolution #41 is as follows:

**TOWN OF OPPENHEIM TOWN BOARD RESOLUTION #41  
ISSUING A NEGATIVE DECLARATION UNDER SEQRA, GRANTING WAIVERS,  
APPROVING SITE PLANS AND ISSUING SOLAR FARM PERMITS  
PURSUANT TO LOCAL LAW NO. 1 OF 2017  
FOR THE BORREGO SOLAR ENERGY - NORTH PROJECT AND SOUTH PROJECT**

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Date: April 25, 2017

**WHEREAS**, on or about March 30, 2017, PV Engineers, P.C. (c/o Borrego Solar Systems, Inc.) (“Borrego”) applied to the Town of Oppenheim Town Board (“Town Board”) for a Solar Farm Permit pursuant to the Town of Oppenheim Local Law No. 1 of 2017, entitled “A Local Law Establishing Regulations for Solar Farm Permits Within the Town of Oppenheim” (“Solar Farm Law”) for a 1.366 MW (AC) Solar Energy Project (“North Project”) to be located at 519 County Route 151 in the Town of Oppenheim, Fulton County, New York on the lands owned by Holly Marie Handy, (Tax Map ID -1-19.1) (“Property”);

**WHEREAS**, on or about March 30, 2017, Borrego applied to the Town Board a Solar Farm Permit pursuant to the Solar Farm Law for a ±2.0 MW (AC) Solar Energy Project (“South Project”) to be located at the Property;

**WHEREAS**, the two projects, while designed to be entirely separate systems with separate permit holders with separate off-takers for the electricity produced, the Town Board determined to review the applications for each project together to evaluate the potential environmental impacts under the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617, collectively referred to as “SEQRA”];

**WHEREAS**, on April 10, 2017, the Town Board determined to be Lead Agency and classified the North Project and South Project to be Unlisted actions under SEQRA;

**WHEREAS**, on April 10, 2017, the Town of Oppenheim Code Enforcement Officer (“CEO”) reviewed the applications and determined the applications to be complete pursuant to Section 7 of the Solar Farm Law and sufficient to be presented at the April 18, 2017 regular meeting of the Town Board;

**WHEREAS**, on April 10, 2017, the Town Board, resolved to place the North Project and South Project on its regular meeting agenda for April 18, 2017 and to hold a special meeting for the purpose of holding a **public hearing on the North Project and South Project applications on April 25, 2017 at 6:30 pm and 6:35 pm respectively at the Town offices located at 110 State Route 331, St. Johnsville, NY** and referred the applications to the County for review pursuant to GML § 239-m;

**WHEREAS**, the Town Clerk caused the Notice of Public Hearing to be published in the Town's Official Newspaper on April 18, 2017;

**WHEREAS**, on April 18, 2017, upon referral from the Town Board, the Fulton County Planning Board issued a determination pursuant to GML § 239-m that the North Project and the South Project were matters of local concern;

**WHEREAS**, on April 18, 2017, the Town Board, upon recommendation of the Code Enforcement Officer, and after its review of the applications and a presentation of t the North Project and South Project by the Applicant at its regular meeting, determined the applications for the North Project and the South Project to be complete; and

**WHEREAS**, on April 25, 2017, the Town Board held a duly noticed public hearing to hear all comments on both the North Project and the South Project;

**NOW, THEREFORE, BE IT RESOLVED**, by the Town Board as follows:

1. That, after reviewing the documentation submitted by the applicant including the Applications, site plans, decommissioning plans and reviewing the Full EAFs for each project, and reviewing the potential impacts of both projects together hereby determine that there will be no significant adverse environmental impacts associated with the North Project, the South Project and from both projects cumulatively. Accordingly, the Town Board therefore issues this negative declaration of significance under SEQRA for the reasons set forth in the attached Exhibit A.
2. That Town Board's findings set forth below demonstrate the proposed construction of the North Project and the South Project, each a separate Solar Farm, at the Property satisfies the requirements of the Solar Farm Permit Law:
  - a. The Project meets the applicable requirements of the Town of Oppenheim Solar Farm Permit Law, §§ 6 (A) except for the requested waivers discussed below;
  - b. The North Project and the South Project are each to be located on a parcel in excess of 10 acres and the solar panel coverage for each project does not exceed 80% of either parcel as required under Solar Law § 6(A)(2) and (3);
  - c. The South Project meets the requirements for as no solar panels with be mounted in excess of 8' in height as required under Solar Law § 6(A)(4);
  - d. For the North Project, Borrego has requested a waiver from the height requirement to allow for the installation of solar panels to a height of 9'6" in excess of the 8' limitation required under Solar Law § 6(A)(4).
    - i. The Town Board hereby finds that the additional height will create no additional visual impacts due the slope of the ground away from Route 151 and changing

the lowest elevation of the solar panels from 30" above ground could cause lost production due to snow cover and changing the tilt of the panels would also decrease production.

- ii. The Town Board therefore grants the requested waiver from the 8' height limitation under Solar Law § 6(A)(4) for the South Project.
- e. The North Project meets all of the required setbacks set forth in Section 6(A)(9) except for:
- i. the northern internal property line where the proposed set back is 26'. However, the Town Board finds that the reduction of setback is warranted as the Applicant demonstrated a unique hardship that would result such that the Handy's remaining lands would be more significantly impacted if the setback were enforced and no additional visual impacts would result from this waiver;
  - ii. the internal property line between the north parcel and the south parcel where the proposed set back is 31'. However, the Town Board finds that the reduction of setback is warranted as the Applicant demonstrated a unique hardship that would result such that the Handy's remaining lands would be more significantly impacted as the entire 100' area would be unusable if the setback were enforced and no additional visual impacts would result from this waiver;
  - iii. The Town Board hereby grants the requested waivers from the requirements of Solar Law § 6(A)(9) for the North Project.
- f. The South Project meets all of the required setbacks set forth in Section 6(A)(9) except for:
- i. the internal property line between the north parcel and the south parcel where the proposed set back is 31'. However, the Town Board finds that the reduction of setback is warranted as the Applicant demonstrated a unique hardship that would result such that the Handy's remaining lands would be more significantly impacted because the entire 100' wide area would be unusable if the setback were enforced and no additional visual impacts would result from this waiver;
  - ii. the southern and south-eastern property lines where the proposed set back is 23'. However, the Town Board finds that the reduction of setback is warranted as the Applicant demonstrated a unique hardship that would result such that the Handy's remaining lands would be more significantly impacted if the setback were enforced and no additional visual impacts would result from this waiver;
  - iii. The Town Board hereby grants the requested waivers from the requirements of Solar Law § 6(A)(5) for the South Project.
- g. A 7' fence shall be provided for both the North Project and the South Project which will have a solid slats forming a screen along Route 151 and on the southern areas near the adjacent properties as shown on the plans. Borrego provided an analysis explaining the

need for this waiver from the applicable requirements of the Solar Law § 6(A)(4) and demonstrated that adjacent views will not be affected by the use of a 7' fence;

- i. The Town Board finds that the reduction of fence height is warranted as the Applicant demonstrated a unique hardship that would result and that resulting views will not be negatively impacted by this waiver; and
  - ii. The Town Board hereby grants the requested waivers from the requirements of Solar Law § 6(A)(5) for the North Project and South Project.
- h. The North Project and South Project each require a waiver from the provisions of Solar Law §6(A)(6) to vary the means of providing a buffer along Route 151 and requiring a vegetative buffer around the perimeter of the project to allow for the installation of an 7' fence which will be opaque along Route 151 for both projects and in the Southeastern portion of the South Project.
- i. Borrego has demonstrated the existing utility lines along Route 151 and the potential of installed vegetation to block sun from the solar array will reduce production of the solar system and that the use of an 7' opaque fence will adequately screen views of the North and South Projects along Route 151 due to the topography of the site, existing vegetation which will remain and the relative height of the panels.
  - ii. The Town Board hereby grants the requested waivers from the requirements of Solar Law § 6(A)(6) for the North Project and South Project.
- i. The site plans demonstrate that the North Project and South Project:
- i. are designed and located to layout ensure that the solar panels will not reflect solar radiation or glare onto any habitable buildings or adjacent roads and that the solar panels include a non-glare coating and is designed to absorb the maximum amount of solar rays such that it will not misdirect or reflect solar rays onto such habitable buildings or adjacent roads in excess of that which already exists as required under Solar Law § 6(A)(7);
  - ii. all transmission/interconnection lines on the North Project and South Project shall be underground and within necessary easements and in compliance with applicable electrical and town codes as required under Solar Law § 6(A)(8) as shown on C-100 dated March 1, 2017;
  - iii. the solar farm modular panels will not contain hazardous materials as required under Solar Law § 6(A)(10);
  - iv. the requirements of Solar Law § 6(A)(11) have been met;
  - v. no artificial lighting is proposed in accordance with Solar Law § 6(A)(12);
  - vi. that any signage will be in accordance with the applicable town requirements and the manufacturers and/or installers identification and appropriate warning signage shall be posted as required under Solar Law § 6(A)(13);
  - vii. the North Project and the South Project each provide sufficient off-street parking as required under Solar Law § 6(A)(14);

3. The requirements of Solar Law § 6(B) have been met;
  - a. Borrego has provided the site plans and project summary to the local fire department and will cooperate with the department in developing and updating its emergency response plan;
  - b. Borrego will identify a contact person for the life of the project and update the contact with the Town Clerk as needed;
  - c. Borrego submitted the required documentation to demonstrate the utility has approve the interconnections of the North and South Projects;
  - d. Borrego shall maintain the North and South Projects in good condition, maintain its access road and coordinate access for emergency services
  
4. As required under Solar Law § 6(C), the sum of \$105,319.00 for the North Project and the sum of \$85,792.00 for the South Project, or an equivalent value surety bond or irrevocable letter of credit for decommissioning of each Project, as set forth in the Decommissioning Plan submitted as part of the applications shall be provided to the Town of Oppenheim Town Clerk to be held in escrow, prior to commencement of the construction; and
  
5. That the Town Clerk is hereby directed and shall issue a Solar Farm Permit for the North Project and a Solar Fam Permit for the South Project; and
  
6. That this resolution shall be filed in the office of the Town Clerk and take effect immediately.

**PASSED AND ADOPTED** by the Town Board of the Town of Oppenheim on the 25<sup>th</sup> day of April, 2017

<u>Roll Call Vote:</u>	<u>Yes</u>	<u>No</u>	<u>Abstain/Absent</u>
Supervisor Cynthia Breh	X		
Councilwoman Patricia Haberek	X		
Councilwoman Stephanie Gray	X		
Councilwoman Cheryl Lynch			X
Councilman John Houle	X		




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Gloria Brys, Town Clerk

**NEGATIVE DECLARATION**  
**Determination of Non-Significance**

**Town of Oppenheim Town Board**

**Dated: April 25, 2017**

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Town of Oppenheim Town Board (the "Town Board"), as lead agency, has reviewed the applications on behalf of Oppenheim Solar North, LLC (the "North Project") and Oppenheim Solar South, LLC, (the "South Project") respectively, both submitted by PV Engineers, PC (c/o Borrego Solar Systems, Inc.) ("Borrego") pursuant to Local Law No. 1 of 2017 entitled "Local Law Establishing Regulations for Solar Farm Permits within the Town of Oppenheim" ("Local Law"), and has determined that the proposed Actions will not have a significant adverse environmental impact and that a Draft Environmental Impact Statement will not be prepared.

**Name of Action:** 519 Route 151 Solar Project – North System

519 Route 151 Solar Project – South System

**Location of Action:** 519 County Route 151, Oppenheim, NY (Tax Map ID 125-1-19.1)

**SEQR Status:** Unlisted Action.

**Description of Action:** The North Project consists of the construction, operation and maintenance of a ±1.366 MW (AC) ground mounted solar energy facility to be connected to the local electrical grid along Route 151. The project will use 11,025 solar panels mounted on a system of steel posts and racks. An equipment pad will be located near the panels (within the fenced area) with inverters, transformers, data systems and switch gears. The site will be enclosed by a seven (7') foot tall chain link fence. The solar system will be located on a subdivided parcel of ± 11.86 acres.

The South Project consists of the construction, operation and maintenance of a ±2.00 MW (AC) ground mounted solar energy facility to be connected to the local electrical grid along Route 151. The project will use 8,010 solar panels mounted on a system of steel posts and racks. An equipment pad will be located near the panels (within the fenced area) with inverters, transformers, data systems and switch gears. The site will be enclosed by a seven (7') foot tall chain link fence. The solar system will be located on a subdivided parcel of ± 12.48 acres.

Due to the side-by-side development of the North project and the South Project, the Town Board considered the individual impacts of each respective project as well as the cumulative impacts of the projects together in making its determination of non-significance.



**Reasons Supporting this Determination:** Potential environmental impacts associated with the North Project and the South Project individually and together, are identified in the Full Environmental Assessment Form (“FEAF”) submitted by Borrego for each project. There are no significant adverse impacts as the North Project and the South Project meet the standards set forth in the Local Law except in minor instances where waivers/variance from certain standard have been requested. The Town Board compared the applications and FEAF for each project to the criteria for determining significance identified in 6 NYCRR § 617.7(c)(1) and in accordance with 6 NYCRR § 617.7(c)(2) and (3). As indicated below in the discussion of each criterion specified in 6 NYCRR § 617.7(c)(1), the North Project and the South Project will not have a significant adverse impact on the environment, individually or together.

**(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;**

Consultation has occurred with the New York State Department of Environmental Conservation (NYSDEC). The project area contains federal wetlands. The installation will be made to avoid any impacts to wetland resources. There are no water or sewer services required for the proposal. The North Project and the South Project do not require a storm water pollution prevention plan to be prepared. The solar projects have no air emissions, except for some fugitive dust emissions and emissions from construction vehicles which are short-term, temporary and reversible. No traffic and related noise impacts will occur as, after construction, the site will be remotely monitored and limited, regular maintenance visits by a single pick-up truck or utility vehicle will occur. There will not be a substantial increase in solid waste production, or a substantial increase in potential for erosion, flooding, leaching, or drainage.

The construction phase for both projects, excluding electrical work to be performed by National Grid, will be approximately three to six months. During this time, construction and installation of the arrays will primarily occur Monday through Friday, during normal working hours and occasionally on Saturdays. During construction normal site traffic will consist of approximately 20-30 people, some heavy equipment and delivery trucks. The maximum number of deliveries per day is expected to be minimal with most deliveries occurring Monday-Friday, between 8:00 am and 1:00 pm.

Operations of the site will consist of visits for maintenance purposes three to five times per year, on average. No staff will report to the site on a daily basis. Typical site visits for maintenance may occur Monday through Friday, during normal business hours. Other visits may occur should any emergencies arise. The typical maintenance vehicle is a pick-up truck, but may be a larger vehicle depending on the maintenance being performed. The North Project and the South Project, individually and together, will not result in significant adverse impacts to transportation.

**(ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;**

The North Project and the South Project will not result in the removal or destruction of large quantities of vegetation or fauna, interfere with the movement of any resident or migratory fish or wildlife species, adversely impact any significant habitat area, substantially adversely impact a threatened or endangered species of animal or plant, or the habitat of such a species, or create any other adverse impacts to natural resources.

**(iii) the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part;**

Neither the North Project nor the South Project are located within or adjacent to a *Critical Environmental Area* as designated under 6 NYCRR § 617.14(g).

**(iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;**

The North Project and South Project comply with standards set forth in the Local law except as identified in variance requests for reduced setbacks between the projects and on the north and south boundaries, the use of a 7' tall fence instead of an 8' tall fence as required, to allow for the panels for the North project to exceed the height limitation in the Local Law and the use of a fence with solid slats to screen views along Route 151 and the southeastern portion of the fence. In each instance, Borrego demonstrated that the proposed project design is equally protective of the environment due to the topography of the land, the distance between the projects and adjoining residences, the import of maximizing the use of the remaining lands by the landowner, and existing vegetation.

**(v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;**

Borrego submitted elevation drawings demonstrating the minimization of visual impacts due the panel height and topography of the parcel. These elevations demonstrate that the North Project and South Project will preserve the character of the of the Town, and will not impair the character or quality of important historical, archeological, architectural, or aesthetic resources, or of existing community or neighborhood character, and provides increased opportunity to preserve those areas.

The North Project will include the installation of approximately 11,025 solar panels which face south and have an anti-glare coating designed to absorb the sun. The Town Board considered potential glare and determined based on the orientation of the panels and the nearest receptors and determined the projects, individual and together present no material glare risk to the community, neighboring view sheds or roadway.

The South Project will include the installation of approximately 8,010 solar panels which face south and have an anti-glare coating designed to absorb the sun. The Town Board similarly considered potential glare and determined based on the orientation of the panels and the nearest receptors and determined the projects, individual and together present no material glare risk to the community, neighboring view sheds or roadway.

The project area is not in an archaeologically sensitive area and there are no historic resources in the project area. The State Historic Preservation Office has determined the neither project will have an adverse impact on archaeological or historic resources.

**(vi) a major change in the use of either the quantity or type of energy;**

The project will result in the generation of renewable, solar energy produced from the solar array. This energy will feed into the National Grid electrical grid and will be utilized to offset the utility bill of National Grid customers under a Community Distributed generation project and/or an off-taker pursuant to a Power Purchase Agreement. The operation of the projects should not result in adverse impacts to energy.

**(vii) the creation of a hazard to human health;**

The solar panels contain no hazardous substances. The projects will not create a hazard to human health.

**(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;**

The project area is largely rural area, consisting of some farmland, open fields and woodlands. The area is not part of an adopted open space plan.

**(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;**

The projects, individually and together, will not attract a large number of people to either Project site.

**(x) the creation of a material demand for other actions that would result in one of the above consequences;**

The projects will not create a material demand for other actions that would result in one of the above consequences.

**(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or**

The projects, individually or taken together, will not result in changes in two or more elements of the environment which, when considered together, would result in a substantial adverse impact on the environment.

**(xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.**

The Town Board has evaluated each project individually and cumulatively under the Local Law and determined that neither project will result in a cumulative impact that meets the criteria set forth in the SEQRA regulations.

**For Further Information:**

Contact Person: Cynthia M. Breh

Town of Oppenheim Town Supervisor

Address: Town of Oppenheim  
Town Hall  
110 State Route 331  
Saint Johnsville, New York 13452

Telephone Number: (518) 568-2837

With no further business on a motion by Councilwoman Haberek and seconded by Councilwoman Gray, the meeting was adjourned at 7:15 pm

Respectfully submitted,  
Gloria J. Brys, Town Clerk