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December 29, 2023

VIA ELECTRONIC AND REGULAR MAIL

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Re: Wilson Solar LLC - Conditional Use Application

Dear Sir or Madam:

Please accept this correspondence in response to the November 7, 2023 letter from the Venango Township Planning Committee regarding the Conditional Use Application (the "Application") submitted by Wilson Solar LLC (the "Applicant").

Zoning Ordinance, Sections 104, Purpose and Provisions and Section 105, Community Development Objectives

The Planning Commission raises concerns about the Project with respect to Sections 104 and 105 of the Zoning Ordinance. Section 105 concerns the Community Development Objectives. The Planning Commission feels that the Project cannot meet the objectives in Sections 105(A), 105(C), 105(D), 105(F), and 105(I). The Applicant disagrees with the Planning Commission's position. The Applicant previously addressed these concerns in its Application and through testimony at the public hearings.

Turning to Section 105(A), Wilson Solar will evaluate the natural and cultural resources to ensure that the Project will not have an adverse impact on such resources. Wilson Solar will perform a wetlands delineation and an endangered species review for the entire Project Site.

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The Applicant also believes it meets the objectives set forth in Sections 105(C) and 105(D). Construction of the Project will create up to 400 paid positions during the peak 4-month period of construction. Upon completion of construction, the Applicant anticipates that there will be up to two full time employees to manage the day to day operations. The Applicant, per testimony at the September 20, 2023 hearing, also intends to hire local contractors and subcontractors for vegetation management and landscaping at the Project Site.

Additionally, the Project Site is largely farmland, or vacant land, with some industrial, and the surrounding area is largely rural farmland. The Project has a low-impact on the land, which will not restrict its future use for agricultural or other purposes, and the Project has been carefully designed to reduce any negative aesthetic impact or other negative impact on neighboring properties. Following the construction, there will be little traffic or noise associated with the Project and the large setbacks and vegetative buffers are designed to be aesthetically pleasing. The Project is temporary, with a lifespan of approximately 35 years, at which time the equipment and infrastructure will be removed and the land returned to its previous state.

With respect to Section 105(F), the Project does not preclude future residential development of the properties that comprise the Project Site. Additionally, the majority of the Project Site is largely farmland, or vacant land, with some industrial, and undeveloped wooded areas. Only a small portion of the Project Site is zoned for residential use and those parcels are currently vacant agricultural land. The Applicant does not feel that this Project will hinder any current or future housing needs for residents of the community.

Finally, the Applicant also believes that it meets the objective set forth in Section 105(I). The proposed Project is consistent with the uses authorized by the Board of Supervisors and is compatible with the other uses permitted in the A-1 and I-1 Districts.

Zoning Ordinance, Section 304, Uses Not Specifically Regulated

The Applicant does not believe Section 304 is applicable to the Re-Zoning and Conditional Use Application before the Board of Supervisors. Section 304 provides that "[i]f a use clearly is not permitted by right, conditional use or as a special exception use by this Ordinance within any zoning district, the use is prohibited, except that the Zoning Hearing Board may permit such use as a special exception use..."

The proposed use, Principal Solar Energy System ("PSES"), is a permitted conditional use within the Township. Pursuant to Ordinance 2023-01, the Township Board of Supervisors established a Principal Solar Energy System as a permitted conditional use in the A-1 and I-1 Districts. The Conditional Use Application seeks permission to construct a PSES in the Township.

As part of the Application, the Applicant has requested that 2 parcels be rezoned from R-1 to A-1. The Planning Commission, in their November 7th letter, retracted their earlier

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recommendation in favor of rezoning the parcels. Applicant disagrees with the Planning Commission's analysis in its November 7th letter as the conditions set forth in Section 304 are not applicable to this case. The conditions of Section 304 only apply in circumstances where a use is clearly not permitted in any zoning district within the Township. That is not the situation at bar as PSES are permitted as conditional uses within the A-1 and I-1 Districts in the Township.

Zoning Ordinance, Section 309.01, Filing for Conditional Use

The Planning Commission, citing to Section 309.01, states that the "Conditional Use must demonstrate compliance with all applicable provisions of the Zoning Ordinance including the general requirements of Section 1001-02 of this Ordinance." The letter further states that "Section 1001 states that the Board of Supervisors or the Zoning Hearing Board may attach reasonable conditions and safeguards, in addition to those expressed in this Ordinance." The Planning Commission goes on to state that they do not believe the Zoning Hearing Board has yet to review and reply with such conditions and safeguards.

Respectfully, the Planning Commission misreads Section 1001 as the Zoning Hearing Board does not have jurisdiction to weigh in on Conditional Use Applications. Pursuant to the Municipalities Planning Code and the Township's Zoning Ordinance, only the Board of Supervisors have jurisdiction to decide Conditional Use Applications. The Zoning Hearing Board only has jurisdiction to hear Special Exception Applications. Therefore, it is not necessary for the Venango Township Zoning Hearing Board to review the Applicant's Conditional Use Application.

In regards to the concerns of the Planning Commission that the Project does not meet the requirements of Section 1001, the Applicant respectfully disagrees. The Applicant believes that the Project is compatible with the Township's Comprehensive Plan. The Planning Commission and Supervisors, by passing the Solar Ordinance which permits solar projects on a conditional use basis in A-1 and I-1 zoning districts, has already legislatively determined that use to be appropriate in those zoning districts, provided the conditions set forth in the Solar Ordinance are met. By adopting the Solar Ordinance, the Board has determined that a PSES is a compatible non-residential use in the Agricultural District and a compatible non-residential use for Agricultural/Rural Resources as defined in the Comprehensive Plan.

As discussed in the Application and at the public hearings, the Project will have a low-impact on the land, which will not restrict its future use for agricultural or other purposes, and the Project has been carefully designed to reduce any negative aesthetic impact or other negative impact on neighboring properties. Large setbacks and vegetative buffers will minimize any perceived negative aesthetic or noise impact on adjoining properties. Neighbors will primarily see evergreen trees and similar vegetation along the Project Site. After the initial construction period, traffic in and out of the Project Site will be nominal. Maintenance needs for the Project Site are low, with a small local maintenance crew that will tend to the Project Site on an approximate monthly basis. Low growing vegetation will be planted under the panels that will not require

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mowing. The panels are high enough off the ground to not require snow removal. Additionally, the project is temporary, with a lifespan of approximately 35 years, at which time the equipment and infrastructure will be removed and the land returned to its previous state.

Zoning Ordinance Section 1002.03, Agricultural Related Business

The Planning Commission cites to Section 1002.03(C) for the proposition that sufficient screening and/or landscaping measures must be provided for Agricultural Related Businesses that adjoin residential uses or Zoning.

Respectfully, Section 1002.03 is not applicable to Applicant's Conditional Use Application as the proposed use is not an Agricultural Related Business. Per Section 202 of the Zoning Ordinance "Agricultural Related Business" is defined as "[b]usinesses selling goods or services to a substantially agricultural clientele, including feed mills, seed sales, feed grinding services, and farm machinery sales and services." The Applicant, as detailed in the Application for Conditional Use and from testimony at the hearings will provide the required screening and vegetative buffers.

Zoning Ordinance Section 1002.35, Public Utility Buildings

The Planning Commission cites to Section 1002.35(F) for the proposition that the use shall not emit obnoxious noise, glare, dust, odor, vibration, electrical, or microwave disturbance, or other objectionable impact, nuisance or safety hazard beyond the subject property. The Planning Commission also suggests that 35 years of research are needed to establish that the use will not disturb adjoining parcels.

Respectfully, Section 1002.35 is not applicable to Applicant's Conditional Use Application as the proposed use the structures on the site are not Public Utility Buildings. Per Section 202 of the Zoning Ordinance "Public Utility Buildings" is defined as "[a]ny building or structure which belongs to a public utility for uses such as electrical, telephone, gas, water, and sewer which are regulated by the PUC or any other governmental agency." Section 202 further defines a "Public Utility" as "a closely regulated enterprise with a franchise for providing to the public a utility service deemed necessary for the public health, safety, and welfare." The Applicant is not a regulated entity and the Applicant will not be selling or providing a utility service directly to the public.

To the extent the Board feels that the Applicant qualifies as a public utility, as set forth in Section 11 of the Application and based on testimony at the hearings, the aggregate audible sound from the proposed solar energy systems is anticipated to be at or below 45 dB(A). Furthermore, there will be no noise beyond the subject Project Site due to the required setback and screening requirements, as well as the natural buffer surrounding the Project Site.

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Zoning Ordinance, Section 504.01 A-1 Agricultural District

As discussed at the various hearings, the Planning Commission and Supervisors, by passing the Solar Ordinance that permits solar projects as a conditional use in A-1 and I-1 zoning districts, the Board of Supervisors has already legislatively determined that PSES are an appropriate use in those zoning districts, provided the conditions of the Ordinance are met. Otherwise, it would not have permitted the use in those zoning districts even on a conditional use basis. Therefore, a PSES is a non-residential use that the Board of Supervisors has determined is a compatible use in the A-1 District under the Zoning Ordinance and the Comprehensive Plan.

As outlined in the Application, the Project Site is largely vacant agricultural land, with some industrial land, and the surrounding area is largely rural farmland. The Project has a low-impact on the land, which does not restrict its future use for agricultural or other purposes, and the Project has been carefully designed to reduce any negative aesthetic impact or other negative impact on neighboring properties. Following the construction, there will be little traffic or noise associated with the Project and large setbacks and vegetative buffers to be aesthetically pleasing. The project is temporary, with a lifespan of approximately 35 years, at which time the equipment and infrastructure will be removed and the land returned to its previous state.

Zoning Ordinance, Section 504.02 R-1 Residential

The Applicant is disappointed that the Planning Commission reconsidered their prior recommendation regarding rezoning the 2 parcels from R-1 to A-1.

With respect to Tax Parcel 44-010-023.0-009.00, this lot is currently split zoned - with the majority of the property zoned as A-1 and the northern portion zoned R-1. Rezoning the northern portion of the parcel to A-1 would eliminate the split zoning on the parcel and allow for additional use of the currently vacant property. Rezoning the property to A-1 would still allow for residential development of the northern parcel because the A-1 District permits Single-Family Detached, Dwellings and Two-Family Dwellings. See Zoning Ordinance, Sections 504.01 and 504.02. This would still allow for low density residential growth in the future.

Extending the A-1 zoning designation to Tax Parcel 44-010-023.0-010.00 is a natural extension of the A-1 District. Tax Parcel 44-010-023.0-010.00 is surrounded on two of its three sides by property that is zoned A-1. As discussed above, rezoning the property to A-1 would still allow for residential development of the northern parcel because the A-1 District permits Single-Family Detached, Dwellings and Two-Family Dwellings. See Zoning Ordinance, Sections 504.01 and 504.02. This would still allow for low density residential growth in the future.

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Zoning Ordinance, Section 702, Buffer and Screening Requirements

Per Section 702.01(A) of the Zoning Ordinance, "any commercial, industrial and institution land development that commences after the effective date of this Ordinance and that abuts a residential zoning district, pre-existing residential development or platted residential lots shall comply with the buffer and screening requirements of this Section." Based on the plain language of Section 702.01(A), the Applicant is only required to provide screening if the development abuts a residential zoning district, a pre-existing residential development or platted residential lots. Section 702.01(A) does not require a development to provide screening simply because there may be residential development in the future, except to the extent residential lots are platted. Applicant is not aware of any platted residential lots within the development area that would require screening. The Application and Site Plan currently provide for screening along a public right-of-way and existing residences that abut the Project Site, in accordance with the requirements of the Solar Ordinance. Additionally, portions of the Project Site that abut residential districts are currently wooded and the Applicant believes the wooded areas will provide sufficient screening for residential zoning districts. To the extent the Board does not grant the rezoning requests for the 2 parcels zoned R-1, the Applicant intends to provide screening along those parcels.

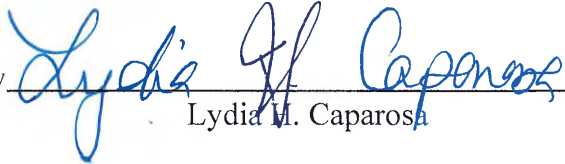
As was discussed in Atty. Bickford's September 15, 2023 letter to the Township, the Applicant respectfully disagrees with the Planning Commission's stated interpretation of the plain language of the Solar Ordinance that describes two screening and vegetation requirements. Section 2(e)(i) sets forth "Street screening" requirements for "property abutting a public right-of-way." Section 2(e)(ii) sets forth "Residential buffer screening" with slat fencing or vegetation spaced to achieve a continuous visual barrier reaching 6-8' in height within two years. Nowhere in the Solar Ordinance does it state that the screening and vegetative buffer must be a "continuous barrier" nor is there any definition or use of the term "continuous barrier" in the Solar Ordinance. In accordance with the plain language of the Solar Ordinance, the Site Plan placed screening and vegetative buffers along all property abutting a public-right-of-way and adjacent to residences. In addition, it is important to note that much of the Project Site currently has either mature trees and/or other vegetation that will naturally act as a vegetative buffer on the outside perimeter of the Project Site, or the panels and perimeter fencing will be located a far enough distance from any public road or adjacent parcel that it will not be easily visible. Accordingly, the absence of a vegetative buffer on the Site Plan does not indicate that the panels or even the perimeter fencing will necessarily be visible outside of the Project Site. That said, if there are particular areas in the Site Plan where the Township believes additional visual barriers should be located, the Applicant requests that the Township make such additional visual barriers a condition of the conditional use permit.

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Should you have any questions, please do not hesitate to contact me.

Very truly yours,

MacDONALD, ILLIG, JONES & BRITTON LLP

By  _____
Lydia M. Caparosa

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