



June 25, 2024

Town Board of the Town of Moreau
351 Reynolds Road
Moreau, NY 12828

Bakers Falls Solar, LLC
101 Summer Street, Floor 2
Boston, MA 02110

Regarding: Bakers Falls Solar, LLC – Application for Moratorium Waiver to Town Board of Moreau

Dear Honorable Members of the Town Board:

Bakers Falls Solar, LLC and Nexamp (collectively, "Petitioner") have received approval from the Town of Moreau Planning Board to construct and operate a 2.5 MWAC community solar energy system ("Project") at 11-15 Electric Drive Rear, SBLs 50.-4-26, 50.-4-27, and 50.-4-28 in the Town ("Property"). In May of 2022, the Planning Board issued a negative declaration pursuant to the State Environmental Quality Review Act ("SEQRA") and approved the Project's Site Plan.

Following this approval, the Petitioner completed post-approval work with state agencies, finalized the interconnection process with National Grid, and carried out preliminary site work. The Petitioner was positioned to obtain its building permit and commence construction; however, the Town adopted Local Law No. 3 of 2024 – a nine (9) month moratorium on the issuance of permits and approvals for uses involving disposal of waste or waste materials not originating within the Town Boundaries, and uses that include disposal or processing of waste or waste materials that may release contaminants into the environment ("Moratorium"). The Moratorium also affects "operations in Moreau's Industrial/Manufacturing Zones." Moratorium Section 1(a). Although, the Project has no relation to waste or waste processing, it is located in the M-1 district and is therefore subject to the Moratorium.

The Petitioner will suffer unnecessary hardship as a result of the Moratorium and respectfully requests a waiver pursuant to Section 4 thereof. The Petitioner agrees to pay all reasonable expenses of the Town Board to evaluate and consider the merits of this petition for a waiver.

Enclosed, please find the following exhibits:

1. Town of Moreau Waiver Application Form
2. NYSEDA NY-SUN Award Letter
3. Owner Authorization

Moratorium Waiver Analysis

Pursuant to Section 4 of the Moratorium, the Town Board, in its sole discretion, may waive the Moratorium if Petitioner suffers an unnecessary hardship. Section 4.b provides that no relief shall be granted unless the Town Board finds and determines that:

- 1. Failure to grant a waiver to the petitioner will cause the petitioner substantial, irrevocable and unnecessary hardship, which hardship is substantially greater than any harm to the general public welfare resulting from the granting of the waiver; and**

2. **The grant of the waiver will clearly have no adverse effects upon any of the Town's goals or objectives in adopting this moratorium; and**
3. **The project or activity for which the petitioner seeks a waiver is in harmony and consistent with any interim data or recommendations or conclusions that may be drawn from the Town Board's review and planning effort then in progress**

As set forth more fully below, the Petitioner will suffer an unnecessary hardship absent waiver of the Moratorium.

1. **Failure to grant a waiver will cause the Petitioner substantial, irrevocable, and unnecessary hardship, and the hardship is substantially greater than any harm to the general public welfare resulting from the granting of the waiver.**

The Moratorium, though temporary, imposes significant hardship on the Petitioner by forcing it to bear development costs, miss the 2024 construction season, and potentially forfeit the NYSERDA NY-Sun award due to expiration.

The nine-month Moratorium, ending in December 2024, would cause a six-month construction delay for the Company. After a year-long review and site plan approval in May 2022, the Project worked extensively on license and recognition agreements with National Grid for the necessary transmission corridor crossing. The Project was set to begin mobilizing in July 2024; however, the Moratorium now delays the construction start date to January 2025 at the earliest.

This six-month delay would financially impact the Project accounting for increased costs due to winter construction conditions, an extended construction timeline, and delayed revenues. With a reasonable degree of certainty given their experience in the solar and construction industries, Petitioner estimates a 50% productivity loss for winter build conditions and a three month extension of construction timeline. Both electrical installation and labor costs increase under an extended timeline, and Petitioner calculates a \$91,872 additional construction cost. Further, delaying the Project's milestones, like permission to operate (PTO) and mechanical completion (MC) by at least nine months (moratorium delay plus extended construction timeline) results in an approximate \$45,936 loss. Combined, the additional construction cost and revenue loss—all stemming from the Moratorium—results in a \$137,808 negative financial impact to the Project,

Furthermore, the Project received incentives under NYSERDA's NY-Sun program in July 2022, following site plan approval. According to the award requirements, the solar facility must be completed within thirty (30) months of the approval date, expiring in January 2025. While NYSERDA allows for one six-month extension, this only extends the deadline to July 2025. If the Project does not achieve PTO by this extended deadline, it risks losing the entire NY-Sun award. This creates an urgent need to proceed without delay to avoid forfeiting these critical incentives.

Under the current NY-Sun award, the Project secured MW Block 18 (\$0.17/watt) and Community Adder (\$0.05/watt) incentives available at the time. These incentive blocks have been filled and are no longer available. If the Project were to apply for the award program today, it would receive a MW Block of only \$0.05/watt and a Community Adder of \$0.07/watt. The Project under this

award is \$398,517.60^{half} of the \$797,035.20 in incentives the Project secured in July 2022 following site plan approval by the Planning Board. Moreover, the currently available MW Block, MW Block 21, only has approximately 118 MW left to be allocated before filling up and being closed. No additional incentives have been announced. It is impossible to predict what future incentives might be available in July 2025 if the award expires and the Project needs to reapply, but it is likely that the award would be significantly reduced, if available at all.

Without a waiver from the Moratorium, the Project's viability is severely threatened, as construction would potentially be delayed until at least January 2025—the same date the NYSERDA award expires. Even if with a NYSERDA award extension, there is little guarantee construction would be completed and the Project would receive PTO in time. This would jeopardize the entire Project, making the waiver essential for its continuation and success.

As part of the previously issued site plan approval, the Planning Board conducted a coordinated environmental review under the State Environmental Quality Review Act ("SEQRA"). The SEQRA review evaluated numerous considerations including air emissions, waste production, community character, traffic, and other elements of the "environment," which is defined broadly under SEQRA. The Planning Board determined that the Project would have no potentially significant adverse environmental impact and issued a negative declaration of environmental significance. Accordingly, the Project will not have a significant impact on the environment or any relevant negative impacts on the Town as a whole.

In fact, the Project will bring clean and alternative forms of energy to the area, aid in meeting state climate goals, and enhance grid resiliency. Therefore, granting the waiver request—allowing the previously approved project to proceed—will not harm the public. On the contrary, continued strict application of the Moratorium severely undermines the Project's viability and threatens the substantial benefits it can bring to the community. Granting the waiver is essential to ensure these benefits are realized and the Project can continue to support the Town's and state's environmental and energy objectives.

2. The grant of the waiver will clearly have no adverse effects upon any of the Town's goals or objectives in adopting this moratorium.

The Project is a solar array and has no relation to the disposal or processing of waste. It falls under the Moratorium solely due to its location in the Town's Industrial/Manufacturing Zone. The primary goals and objectives of the Moratorium are explicitly focused on addressing waste processing and related environmental impacts, not renewable energy projects. Specifically, Section 2 of the Moratorium details the Town Board's intent to review and potentially revise land use laws concerning permitted manufacturing and industrial uses/operations, the disposal or processing of waste not originating within the boundaries of the Town of Moreau, and the commencement of any business that disposes or processes waste material via incineration, landfilling, pyrolysis, or any other method that may release contaminants into the environment.

Granting a waiver for the Project will not adversely affect the Moratorium's goals. The development and construction of the solar facility do not involve the importation, processing, or disposal of waste material. The Moratorium specifically addresses activities related to waste processing, which are entirely unrelated to the nature of the solar facility. Furthermore, the

Project does not include the importation, processing, or disposal of waste or waste material, nor does it emit harmful air contaminants. As a solar facility, it aligns with sustainable development principles and supports environmental stewardship.

The Project complies with the Solar Energy System Pilot Law of the Town (Local Law No. 4 of 2021). This law was adopted following the Town's previous moratoria on solar development (Local Law No. 1 of 2019 and Local Law No. 1 of 2020), reflecting the Town's proactive approach to renewable energy projects. Additionally, the Project has already received approval, and preliminary site work is complete. This indicates that the Project has already undergone thorough scrutiny and meets the Town's regulatory standards.

Any potential revisions to zoning provisions regarding waste processing will not impact the Project, as it does not involve waste processing activities. Therefore, allowing the Project to proceed will not undermine the goals and objectives of the Moratorium. The Project is entirely separate from the waste processing issues that the Moratorium aims to address and aligns with the Town's commitment to sustainable development and environmental protection.

3. The project or activity for which the petitioner seeks a waiver is in harmony and consistent with any interim data or recommendations or conclusions that may be drawn from the Town Board's review and planning effort then in progress.

The Project is wholly unrelated to waste materials processing and is therefore in harmony with the data, recommendations, or conclusions relevant to the uses targeted by this Moratorium. Given that the primary focus of the Moratorium is on the processing and disposal of waste materials, the development of the Project does not conflict with the Moratorium's objectives. The Petitioner reserves the right to review any data, recommendations, or conclusions, produced by the Town Board's ongoing review and planning efforts and will revise this answer as necessary based on that information.

Conclusion

The Petitioner respectfully requests the Town Board grant a waiver from the Moratorium, allowing the Project to proceed without further delay. The Project is aligned with the Town's commitment to sustainable development, supports state climate goals, and brings significant environmental and economic benefits to the community. Granting the waiver will not undermine the Moratorium's objectives, as the Project is unrelated to waste processing and disposal activities. The substantial hardship imposed on the Petitioner by the Moratorium outweighs any potential harm to the public welfare, making the waiver essential for the Project's success.

Thank you for your consideration of this request.



Chris Clark, SVP
Bakers Falls Solar, LLC

**APPLICATION FOR MORATORIUM WAIVER
TO TOWN BOARD OF MOREAU**

Name of Applicant: Bakers Falls Solar, LLC and Nexamp

Address of Applicant: 101 Summer Street, Floor 2
Boston, MA 02110

I. Description of Project: 2.5MWac Community Solar Solar Energy System

Project Tax Map No.: SBLs 50.-4-26, 50.-4-27, and 50.-4-28

II. Describe hardship caused by moratorium: Please refer to the enclosed letter.

III. Will a waiver of the moratorium create any adverse effects upon the goals or objectives of the Town as defined in section 2 of the moratorium?

Explain: No. Please refer to the enclosed letter.

IV. Do any aspects of the project operations include the importation, processing or disposal of waste material:


Answer: No If yes, explain: Please refer to the enclosed letter.

Do any aspects of the project operations release air emissions or contaminants into the environment?

Answer: No If yes, explain: Please refer to the enclosed letter.

The undersigned agrees to provide an undertaking in an amount determined by the Town Board to pay all expenses necessary to evaluate and consider the merits of the above application.

DATE: 6/25/2024


Chris Clark, SVP
Signature of Authorized Project Representative



NYSERDA

KATHY HOCHUL
Governor

RICHARD L. KAUFFMAN
Chair

DOREEN M. HARRIS
President and CEO

July 14, 2022

Bakers Falls Solar, LLC
101 Summer St
Boston, MA, 02110

Customer/Payee: Bakers Falls Solar, LLC
Contractor: Nexamp, Inc.

NYSERDA is pleased to inform you that we have approved project application 471196, contract 189334 for incentives under the NY-Sun Program.

Your award in the amount of \$797,035.20 is contingent upon the installation and grid interconnection of a 3,320.98 kW solar electric system for: Bakers Falls Solar, LLC at 11-15 Electric Dr Rear, Moreau, NY 12803 as outlined in the project application.

Your award is inclusive of the Community Adder in the amount of \$232,468.60. The Community Adder is only awarded to Community Distributed Generation projects that are ineligible for the Market Transition Credit or Community Credit. In the Event NYSERDA confirms that your project qualified for the Community Credit at the time of this award or anytime thereafter, NYSERDA shall rescind \$232,468.60 in the Community Adder funding and revert your project to the base incentive in the amount of \$564,566.60. While NYSERDA shall notify the contractor, customer, and payee prior to removing the Community Adder funding, the contractor remains responsible for ensuring the customer and payee have received NYSERDA email notification. NYSERDA's portal shall be updated to reflect the base incentive award.

Your solar electric system must be completed within 30 months of the Program approval date. NYSERDA will require a satisfactory field inspection of the completed project. Contractor and or builders are required to take construction photos for each project.

Refer to the Program Manual for all Program rules and requirements.

Thank you for your participation in the NY-Sun Initiative, and for your commitment to the promotion of renewable energy in New York State.

Signature: **Cheryl Glanton**
NYSERDA Authorized Signatory

Digitally signed by Cheryl
Glanton
Date: 2022.07.13 15:30:25
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New York State Energy Research and Development Authority

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17 Columbia Circle, Albany, NY 12203-6399
(P) 1-866-NYSERDA | (F) 518-862-1091
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10018-7842
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**West Valley Site
Management Program**
9030-B Route 219
West Valley, NY
14171-9500
(P) 716-942-9960
(F) 716-942-9961

AUTHORIZATION

Moreau Industrial Park, LLC, record property owner of 11-15 Electric Drive, SBL 50.-4-26, 50.-4-27, and 50.-4-28, in the Town of Moreau, hereby authorizes Bakers Falls Solar, LLC and Nexamp, Inc., and its affiliates/consultants, including but not limited to Barclay Damon LLP and the Environmental Design Partnership LLP, to file any and all applications and supporting documentation, with the Town in connection with approvals sought for the above referenced property.

DocuSigned by:

Alan Oppenheim

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By: Moreau Industrial Park, LLC
Alan Oppenheim
Date: 6/25/2024