

**SUNX LLC, c/o Distributed Sun LLC**  
1425 K St. NW, Suite 701  
Washington DC 20005

January 12, 2021

**Town of Caroline Town Board**  
c/o Town Clerk  
2670 Slaterville Road  
Slaterville Springs, NY 14881

Members of the Board,

**Re: Petition for Waiver from Under Local Law Providing for a 180-day Moratorium on Land Use Development**

SUNX LLC (“SUNX”) is requesting, as a subsidiary of Distributed Sun LLC (“DSUN”), an exemption waiver from the Town of Caroline (“Town”) in regard to the Local Law Providing for a 180-day Moratorium on Land Use Development approved on December 11, 2020 (the “Moratorium”). This petition is intended to provide the merits of our request and consequential hardships faced by the local property owner, Anthony Tavelli, and SUNX if such waiver is not granted.

**I. Introduction to Project**

SUNX is proposing multiple, parallel solar photovoltaic generators to be located on and around 1037 Seventy Six Road in Caroline, New York. These new distributed generators will each be 5 MW or less, in compliance with New York State Standard Interconnection Requirements (“SIR” or “SIRs”). The projects will connect to the roadside circuits on Seventy Six Road, which eventually lead to the Brooktondale substation on Middaugh Road. These community solar farms will provide locally generated, clean energy to the residents in the Town and surrounding areas. Additionally, the solar arrays will provide supplemental income to the local landowner, Mr. Anthony Tavelli, helping to maintain and protect his agricultural land and land that he farms.

Mr. Tavelli is the owner and lessor of the primary proposed location for the installation of the community solar farms and the current lessee of some of the other project parcels. Mr. Tavelli is a lifelong town resident who was raised on, and currently runs, an active farm. Mr. Tavelli has seen the many farms in the Town succumb to economic instability. Mr. Tavelli has felt this hardship and is actively working to diversify his income in order to maintain his farmland and property. Mr. Tavelli’s vision for the future is to maintain and preserve his farm for agricultural use while supplementing his income through the development of solar. This partnership will allow him to keep his land while adhering to the goals set forth in the Town’s 2020 Comprehensive Plan.

Although the mission of Mr. Tavelli and SUNX is to maintain the vision of the Town, set forth in the 2020 Comprehensive Plan, the temporary Moratorium imposed by this board will hinder and delay the development of the community solar farms, potentially risking its viability.

## II. Hardships and Consequence of Waiver Denial

As the Town of Caroline considers yet another moratorium on land use, the hardships faced by Mr. Tavelli and SUNX have become more dire. The failure to grant a waiver will cause both parties extraordinary hardship, and such hardship could cause the permanent loss of farmland.

### 1. Mr. Anthony Tavelli

As noted in the original Comprehensive Plan, there has been a steady decline in the Town's farms, "both in terms of the number of active farms and in the acreage being farmed."<sup>1</sup> The average annual decline has remained roughly the same since 1995 at around 1 percent per year.<sup>2</sup> This decline is due to several factors which all result in farmers selling their land, compromising the integrity of the Towns rural nature.

Mr. Tavelli grew up on a farm in the Town, is a lifelong resident, and has seen this steady decline firsthand. In the December meeting, in front of the Board, Mr. Tavelli stated that the "he [has seen] the last of the farms in Caroline going." He owns a farm which was converted from a dairy to a beef farm to crop land because of economic hardship. The added stress of COVID-19 has led Mr. Tavelli to find supplemental ways to diversify his income in order to maintain his farmland.

Partnering with SUNX would allow Mr. Tavelli to keep his land, continue his crop farm while incurring contributory revenue. However, in the December meeting, Mr. Tavelli noted that this opportunity would be blocked by the implementation of an additional Moratorium, which was passed on December 11, 2020. Mr. Tavelli seeks a waiver to prevent the deprivation of his property's beneficial use during the 180 days allocated for the moratorium.

As a commercial property, Mr. Tavelli is entitled to receive a "reasonable return" on his land, and this extended moratorium imposes a substantial harm that will be relieved by the granting of a waiver. The granting of such waiver would promote and protect the good the moratorium seeks to do.<sup>3</sup> The 2020 Comprehensive Plan recognizes that many farms depend on "value-added" projects that aid their income, and a solar installation is no different.<sup>4</sup>

Mr. Tavelli's locally owned, small business helps the Town's economy flourish and complements the peaceful rural nature of the Town. It is businesses like Mr. Tavelli's that help the Town maintain a modest level of economic self-sufficiency.<sup>5</sup> The impact and harm to Mr. Tavelli in denying a Waiver will not be outweighed by the benefit to the community as the denial of waiver might force the sale of his farm to commercial and residential builders who would disrupt the rural nature of the land by erecting permanent and impervious structures.<sup>6</sup> The 2020 Comprehensive plan places a great emphasis on preserving farmland, which aligns with Mr. Tavelli's goal of preserving his agricultural land.

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<sup>1</sup> Page 3 of the *2020 Compressive Plan*.

<sup>2</sup> Page 3 *Id.*

<sup>3</sup> Page 6 of *A Local Law Providing for A Temporary Moratorium on Land Use*.

<sup>4</sup> Page iv *Id.*

<sup>5</sup> Page iv *Id.*

<sup>6</sup> Page 6 *Id.*

## 2. SUNX

The moratorium imposes a significant economic burden on SUNX and its investors. Under the moratorium, the Town may not accept an application for, or grant any special use permits for solar energy systems, issue any building permits, or issue any permits to construct facilities. The time delay imposed by the moratorium has considerable impact on the time-sensitive incentives available to make such a project viable. The two main incentives impacted by this delay are the New York State Energy Research and Development Authority (“NYSERDA”) NY-Sun Block intensive and the ITC, both in notable decline.

The NY-Sun incentive is available for a limited number of megawatts (“MW”) for qualifying solar energy projects, with incentive rates declining (in “blocks”) over time. The incentive remains available until all blocks within a region/sector are fully subscribed on a first-come, first-serve basis. This means those who achieve project viability early will receive higher incentives and greater savings. The MW Block program requires significant progress, including permits in the local jurisdiction, in development of the solar arrays in order to obtain the financial benefit.

The Renewable Energy Investment Tax Credit (“ITC”) is a federal incentive that has been in a planned decline for several years. Currently, the ITC is a 26% tax credit for solar systems on commercial properties, and it reduces yearly. The incentive is only available in the tax year in which a project is placed in service. Based on DSUN’s experience, a project must be permitted by the end of September in 2021 in order to build and commission by the end of 2022, allowing for utility timelines and building windows. Given the open discussion on December 9, 2020 introduced the moratorium extension, the Town may not be open for commercial special use applications in time to commence permitting.

SUNX will experience grave uncertainty in raising cost-effective capital for the projects causing irreparable harm to SUNX. Said differently, without clear financing, the Project may be rendered unviable. Furthermore, any delay could have a detrimental impact on the viability of this project, and SUNX will be forced to find another location outside the Town. Relocation would cause the Town to lose any anticipated tax payments and could potentially impact Mr. Tavelli’s ability to maintain and enjoy his land.

### III. Vision Aligns with Comprehensive Plan

Throughout the Town’s 2020 Comprehensive Plan, an emphasis is placed on environmental awareness and preservation while supporting the Town’s local economy and agricultural roots. The plan calls for green space to “enable sustainable agriculture” and “reduce pollution” while “preserving biodiversity” and “rural” areas.<sup>7</sup> Further, the Town has set a goal of “increased energy conservation and use of renewable energy sources.”<sup>8</sup> SUNX’s proposed installation aligns with the Town’s vision and will help protect agricultural land, preserve the Town’s rural nature and enable residents to choose renewable, solar energy. The solar arrays will create local jobs, foster local businesses, and generate additional tax revenue, bringing an overall vibrancy to the Town of Caroline and Tompkins County.

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<sup>7</sup> Page iv of the 2020 *Compressive Plan*.

<sup>8</sup> Page 21 *Id.*

The 2020 Comprehensive Plan describes the Town’s environmentally “aware and informed citizens that take pride in preserving agricultural land for future generations.”<sup>9</sup> The installation of the proposed community solar will help aid in this effort and allow Mr. Tavelli to preserve his own farmland. The installation of the proposed solar arrays would preserve and protect the land for the next 25 to 35 years. DSUN has adopted best-management practices such as incorporating pollinator-friendly grasses in order to encourage local biodiversity. Accumulation of biodiversity and altered or reduced agricultural practices can help the accumulation or stabilization of micronutrients in the local soils. At the hypothetical end of life of the facility, Mr. Tavelli’s land can be reverted back to full agricultural use after the removal of the solar arrays, unlike many other commercial projects. In addition, with a near-full coverage in grassy undergrowth, the land will continue and, perhaps, improve the stormwater management in the local area.

The 2020 Comprehensive Plan emphasizes the community’s priority of preserving farms and maintaining a rural, agricultural environment in the Town. However, the Town still recognizes the need to allow small, local business to flourish in order to maintain a healthy economy. The proposed installations allow Mr. Tavelli to continue to operate his business in place of residential development. SUNX intends to preserve open spaces and viewsheds, recognizing the importance of maintaining the rural character of the Town. SUNX intends to minimize and mitigate the visual impacts of the solar arrays, taking advantage of the natural topographic and vegetative screening surrounding the proposed location. It will also plant vegetative screening, as needed, at the fence lines to minimize visibility, creating a buffer around the “commercial development in service to the vision of preserving a rural residential living experience.”<sup>10</sup>

Another goal of the 2020 Comprehensive Plan is to allow the Town to develop in a way that “maintains and improves the environmental factors that influence the quality” of its residents’ lives.<sup>11</sup> That being said, even limited commercial growth can have a “significant impact on the environment and character of the town...in the form of buildings, parking lots, traffic, noise and light.”<sup>12</sup> Mr. Tavelli and SUNX understands that it is imperative for the Town to choose commercial projects that “support the Town’s goals in regard to sustainability, greenhouse gas emissions, and environmental protection.”<sup>13</sup> The proposed project would have little impact on the Towns traffic patterns and produce no noise or light pollution.. The project would produce “renewable energy to lessen the impact of development and promote a cleaner local environment.”<sup>14</sup> The benefits of solar energy are numerous and will help the Town reduce its collective dependence on fossil fuel.<sup>15</sup>

#### **IV. Mitigating Factors**

The 2020 Comprehensive Plan stresses the importance of maintaining the rural nature of the Town, while balancing a vibrant local economy that encourages harmonious commercial development. This Comprehensive Plan is in support of Town leadership continuing to recognize the value of

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<sup>9</sup> Page iv of the *2020 Compressive Plan*.

<sup>10</sup> Page 3 of *A Local Law Providing for A Temporary Moratorium on Land Use*.

<sup>11</sup> Page 14 of the *2020 Compressive Plan*.

<sup>12</sup> Page 14 *Id.*

<sup>13</sup> Page 16 *Id.*

<sup>14</sup> Page 12 *Id.*

<sup>15</sup> Page 16 *Id.*

these agricultural protection tools and actively working to explore possible impacts of implementation of renewable energy.<sup>16</sup>

As described above, the proposed installation would not be contrary to the policy and Mr. Tavelli should have the right to develop his property in order to maintain his farm. The extraordinary hardship that both parties will face would contradict the good intended by the moratorium.<sup>17</sup> The granting of this waiver will protect and preserve the essential rural character of the Town by preserving Mr. Tavelli's agricultural land.<sup>18</sup> The recently passed moratorium has extended the delay in development since June 2020. Mr. Tavelli and SUNX has been waiting for clear and concise guidance from the Town for nearly six months. Without decisive action, SUNX will be forced to reevaluate the chosen location. This would be detrimental to Mr. Tavelli and the supplemental income he requires to maintain his agricultural land.

However, if the waiver is granted, the Town will be able to realize the increased tax revenues that are above and beyond that of the current agricultural land. With the federal and state incentives in decline, the hardship caused by this moratorium will be realized by lack of tax revenue for the Town and potentially lost agricultural land. The waiver for the Community solar farms would not adversely impact the health, safety, and general welfare of the Town, and would not substantially undermine the land-use plan and revision process presently under review. Approval of the waiver will allow the Town to separately review the application for a special use permit while continuing to review the currently prohibited actions and their impact on the Town's Comprehensive Plans. We respectfully request the Town to consider the waiver approval and allow Mr. Tavelli and SUNX to commence development.

Respectfully submitted,

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Distributed Sun LLC on behalf of SUNX, LLC

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<sup>16</sup> Page 14-16 of the 2020 *Compressive Plan*.

<sup>17</sup> Page 6 *Id.*

<sup>18</sup> Page 7 *Id.*