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May 7, 2021

Devan Korn  
Adirondack Park Agency  
P.O. Box 99  
Ray Brook, NY 12977  
*(via electronic submission)*

## RE: Oppose 789 Tarbell Hill, LLC Solar Power Generation Facility in the Town of Moriah, P2021-0033

Dear Mr. Korn,

On behalf of the Adirondack Council, I would like to thank you for the opportunity to provide comments on the *789 Tarbell Hill, LLC Solar Power Generation Facility, P2021-0033*. Smartly sited renewable energy projects in the Adirondack Park can and should deliver economic benefits to its residents and communities while protecting the ecological integrity of unfragmented forested landscapes in the Adirondacks and enabling the State to meet its aggressive clean energy goals. The Adirondack Council opposes this 5-megawatt solar power project because it does not balance the development of beneficial solar power generation with the preservation of valuable natural resources and wildlife found on the parcel of land. We encourage the Adirondack Park Agency (APA) to work with the applicant to strengthen the project design to maximize natural resource and wildlife protection.

Importantly, we would like to note that it is difficult to provide thorough and up-to-date comments when project materials are not readily available for stakeholder review, nor are Freedom of Information Law (FOIL) requests fulfilled in a timely manner. The Council submitted a FOIL request for the updated application materials and project documents on April 15, 2021, and have not yet received the requested documents, despite the comment period for the project ending May 6, 2021. As part of a transparent and robust public review process, we respectfully encourage the APA to make necessary project materials available for public review prior to the end of the comment period. As a result, our comments have been formulated based off early application materials that were on file while the project was listed as a new application in the APA's March 2021 High Profile Report, and the Regulatory Programs mailing materials made available after the comment period deadline.

### Site Selection Matters

The project is located less than a mile outside of the center of Moriah, and approximately 1.5 miles away from the center of Port Henry. The Council supports developing solar power generation sites located in or near communities, and closely located to electrical transmission infrastructure.



It is important to note that the project site is located in a listed agricultural district with the New York State Department of Agriculture and Markets, which is intended to protect and promote the availability of land for farming. The APA must strike a balance between developing critical renewable energy infrastructure and the preservation of productive and viable agricultural lands.

#### Trees Should Remain in the Ground

Protected, undisturbed forestlands serve a vital role in mitigating climate change by sequestering human-generated greenhouse gases. Forests within the Adirondack region play a significant role in carbon sequestration at a globally significant scale. The APA must consider the impact of the removal and development of critical carbon storage on an individual and cumulative scale. There are 14.87 acres of forested land that are proposed to be cut for the development of the solar array. Projects should not erode the essential value the Park's public and private forested lands.

In addition, the APA should be particularly sensitive to this as the project site is within 5 miles of the winter hibernaculum of Indiana bat (*Myotis sodalis*), NY endangered species, and northern long-eared bat (*Myotis septentrionalis*), NY threatened species. Both species of bats "summer roost sites are typically found within proximity to the winter hibernaculum" (Bat Roost Tree Survey Results – Moriah Solar Project Tarbell Hill Road). Potential roosting trees for the bats have been identified within the limits of clearing and are intended to be removed. While waiting to cut trees during the bats hibernation period in the winter will prevent harm to individual organisms, it still permanently removes valuable habitat for roosting during the bats' active months. Projects should not erode the essential value the Park's public and private forests play in mitigating climate change and providing wildlife habitat and migratory corridors.

#### Maintain 100' Wetland Buffers

Deciduous swamps, one of the types of wetlands found on the property, provide essential ecosystem services by filtering water and maintaining high water quality, as well as harboring biodiverse flora and fauna. Emergent marshes identified on the project site are considered one of the most valuable covertype, with the highest levels of productivity and habitat diversity. Building fencing within the 100' buffer zone of a delineated wetland will negatively impact the movement of wildlife to and from these vital wetland areas. The APA must work with the applicant to maintain the regulated 100' buffer distance of adjacent areas of the between wetlands and development, as defined by part 9CRR-NY 578.3, not the 35' buffer as is proposed in the application.

In closing, the Council opposes the proposed solar development due to its impact on the forested lands and wetlands on the parcel. We recognize the need for rapid expansion of renewable energy resource projects as part of New York State's overall efforts to combat climate change. The path towards a cleaner future is rooted in natural landscape protection *and* the propagation of renewable energy sources. The APA should ensure that solar projects are carefully sited to minimize ecological, visual and other impacts for the individual project, while also considering the cumulative impacts of renewable energy projects. We encourage the APA to assess how individual projects and the cumulative impact of multiple projects located in the Adirondack Park can and should be a part of New York State's effort to combat climate change, while protecting the ecological integrity, open space, agricultural lands and scenic vistas of the Adirondack Park. Thank you for reviewing our comments.

Sincerely,



Jackie Bowen  
Association Conservation Director



Charlotte Staats  
Conservation Assistant



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Peter Bauer  
**Executive Director**

May 11, 2021

Adirondack Park Agency Board  
PO Box 99  
Ray Brook, Ny 12977

**RE: APA Should Hold Public Discussion About Recent Court of Appeals Decision**

Dear APA Board,

The recent historic decision by the New York Court of Appeals in *Protect the Adirondacks! vs. Department of Environmental Conservation and Adirondack Park Agency* puts an end to Class II Community Connector Snowmobile Trails as approved by the APA and constructed by the DEC. The Court of Appeals stated that Class II trails “may not be built like roads for automobiles or trucks, but neither are they constructed as typical hiking trails.” This confirmed one of our central contentions all along, that Class II trails are a fundamentally different kind of trail in the Forest Preserve. The Court concluded “the door is closed because the planned Class II trails are constitutionally forbidden.” This stark, unmistakable language renders null and void the first 34 miles of Class II trails that are completed or under construction, as well as the hundreds of miles of Class II trails planned or proposed in the state’s Snowmobile Plan and various Unit Management Plans.

This historic decision places the APA squarely on the wrong side of forever wild. The APA eagerly and enthusiastically approved scores of miles of new Class II trails throughout the Forest Preserve, ignoring comments about their negative impacts and constitutionality. Last week’s court decision shows that not only was the APA wrong in how it managed Class II trails, but that the APA failed to uphold its statutory checks-and-balances responsibilities over management of the public Adirondack Forest Preserve.

We call on the APA Board to hold an open discussion about its reactions and thoughts about the recent landmark Court decision at its May meeting. Given that a decision has been made by the Court of Appeals, this discussion should be held in public and not in an executive session. The APA needs to speak publicly, openly, and honestly, about its role in violating the forever wild clause and must explain its plan for how it will get back on the right track.

**Protect the Adirondacks**

PO Box 48, North Creek, NY 12853 518.251-2700  
www.protectadks.org info@protectadks.org  
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The APA has a big job in the coming months to bring its Forest Preserve management into compliance with Article 14, Section 1. Revision of the Adirondack Park State Land Master Plan and the related 2010 DEC/APA Memorandum of Understanding will be essential to enshrining the Court's decision in the APA's Forest Preserve planning process and avoiding future problems like the Class II trails.

The APA also needs to weigh in on DEC's need to revise its tree cutting policy LF-91-2, revise its guidance documents for snowmobile trail construction and maintenance, and the guidance document on snowmobile bridge design, among other policies, in addition to amending a number of individual Unit Management Plans that include illegal Class II trails, to remove these unconstitutional projects.

Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Bauer". The signature is fluid and cursive, with a large initial "P" and "B".

Peter Bauer  
Executive Director

CC: K. O'Leary, Executive  
C. Gallagher, DEC  
B. Seggos, DEC  
K. Petronis, DEC  
T. Berkman, DEC  
S. Mahar, DEC  
R. Davies, DEC  
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J. Gunther, DEC  
M. Breslin, DEC  
John Caffry, Esq.  
Claudia Braymer, Esq.



May 11, 2021

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Terry Martino  
Executive Director  
NYS Adirondack Park Agency  
P.O. Box 99  
Ray Brook, NY 12977  
*(Via electronic submission)*

**RE: Support for VUM Management Guidance; Concern for Tarbell Hill Solar Project**

Dear Ms. Martino,

In reviewing the agenda for the upcoming May Adirondack Park Agency meeting, the Adirondack Council offers the following comments and suggestions:

1. Visitor Use Management and Wildlands Monitoring (VUMWM), For Information: (Support Release of Document) The Council is excited to see the release of the long-awaited draft VUMWM management guidance from APA and DEC. We are hopeful that it will help fulfill a critical wildlands monitoring and visitor use management need across Forest Preserve lands in the Park. We applaud the agencies for taking this momentous step, and we congratulate the authors for their work on putting forth a very detailed document.
  - Think System-wide - The federal Visitor Use Management Framework is a 14-step process that starts with clarifying goals and clearly defining desired conditions. This allows the framework to be proactively applied, identifying and preventing unacceptable impacts before they occur. The VUMWM guidance, however, is driven by identifying a problem(s), eliminating this opportunity to use the framework to prevent impacts before they become a problem. We would like to see the desired conditions, both physical and recreational, of a unit and overarching Forest Preserve lands inform and guide the identification, response, and monitoring process to allow for the more holistic management of our public Park lands.
  - Transparent Process - The federal VUMF strongly values the role of stakeholder engagement. While the VUMWM guidance outlines



- for stakeholder input, the overall role of external input is limited. It is also important to recognize that the 2021 High Peaks Advisory Group's (HPAG) Final Report put forth the following guiding principle, "a commitment to an open, transparent, and ongoing process that involves a broad range of stakeholders and the public" (page 11). We recommend APA and DEC include similarly clear language to allow for robust, transparent and open engagement.
- Outside facilitation - How do DEC and APA plan to engage a third party outside expert facilitator, as recommended by the HPAG Final Report, to guide and participate in utilizing this framework to develop the plan, through a public-private partnership or otherwise? Outside facilitation is a best practice not only because it provides capacity when agency staff is already stretched thin, but also to bring in expertise and best practices and relevant research from other public lands across the country facing similar ideas, and to provide neutrality in difficult and controversial problems.
- Standards - The indicators included are strong. However, we question if having pre-prescribed standards is the best approach, or if the unit's characteristics, stakeholder engagement, and other elements should inform what the standards should be. Process-wise, can new standards/thresholds be proposed to strengthen the document or are they set in stone?

We look forward to the opportunity to provide substantive comments as a part of a robust public review process.

2. Tarbell Hill Solar Project P2021-0033, To Be Determined: (Concerns) The Council submitted a comment letter expressing concerns over the development of the 5MW solar project in the Town of Moriah. While the Council supports solar development in the Park to help the state meet its climate goals, such projects should not result in a loss of forests. New projects should be sited on already disturbed or cleared land, per the Council's renewable energy policy. For this project, we were concerned about the need to remove 14+ acres of trees, allowing for fencing within the 100-foot wetland setback and other wetland impacts. We encouraged APA to work with the applicant to strengthen the project design to maximize natural resource and wildlife protection.
3. Solar Presentations, For Information: (Support) The Council supports the two solar presentations given recent requests by APA Board members to gain a deeper understanding of solar development in the Park. Understanding the cumulative context of solar development, both existing and anticipated, will be important to determining how, where and under what conditions such projects should be approved in the Park.
4. Fish Creek Campground UMP Amendment, Board Approval to Proceed to Public Comment: (Support) The Council supports the UMP Amendment proceeding to public comment for SLMP conformance review. In addition, we appreciate that the 30-50 acre re-classification of Wild Forest to Intensive Use lands will be addressed in future plans. We look forward to submitting comments.

In closing, the Adirondack Council appreciates the complexity and wide variety of issues that regularly come before the Park Agency. Thank you for reviewing our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jackie Bowen". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jackie Bowen  
Associate Conservation Director

Good morning,

I am very supportive of the VUM and Wildlands Monitoring guidance under discussion. The focus on stakeholder input, process, and data are excellent. I would like to offer a few comments to help clarify and strengthen the overall guidance:

1. Where are front country access and infrastructure issues addressed?
2. The interface of front country & backcountry is currently a major cause of problems in the High Peaks. How is the connection between front country and backcountry management issues/actions being addressed?
3. A number of sections refer to shortcuts in data collection to compensate for lack of resources or staff. Do the APA & DEC have the staff and resources to carry out these much needed management steps thoroughly and consistently?

Again, I am very supportive of this draft guidance and appreciate the opportunity to offer comments.

Sincerely,

Joe Pete Wilson  
Supervisor  
Town of Keene, NY