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October 6, 2026

Harrisville Township

ATTENTION TO:

Mr. Matthew J. Wojda, WHITE & WOJDA, Township Counsel
313 N 2nd Ave
Alpena, MI 49707

Mr. Charles Spitznagel, Township Supervisor
Ms. Samantha Schott, Township Clerk
Mr. Tony Atkinson, Zoning Administrator
Township Board
Township Planning Commission
114 S Poor Farm Road
Harrisville, MI 48740

RE: Request That the Consumers Energy Application Not Be Approved as Submitted

Dear Attorney Wojda, Members of the Planning Commission, Members of the Township Board, Mr. Spitznagel, Ms. Schott, and Mr. Atkinson:

I represent Ms. Peggy Kenzie, a resident of Harrisville Township (the “Township”). Please accept this written public comment for the Planning Commission’s (“PC”) upcoming October 7, 2026 meeting. I write to respectfully urge the PC to carefully review the pending Consumers Energy application for the Gustin Solar Energy Center (the “Application”). As explained in more detail below, **the Application as submitted does not yet give the PC the information it needs to make the findings the ZO demands,** and Consumer Energy’s September 25, 2026 letter responding to Ms. Kenzie’s expert – rather than curing any gaps – largely argues that the PC may proceed anyway and resolve open items through conditions of approval later. On the issues that matter most, that is not a sufficient answer.

We respectfully ask the PC to deny the Application as submitted, and to require Consumers Energy to supply all of the missing information before any approval is considered.

Ms. Kenzie's expert and the enclosed report

To assist the PC, Ms. Kenzie retained Dr. Christopher P. Grobbel, Ph.D., of Grobbel Environmental & Planning Associates, an environmental scientist and land use planner with more than 35 years of experience, including service with the State of Michigan's environmental agency and qualification as an expert in hydrogeology, wetland science, and land use/zoning in Michigan and federal courts.

Dr. Grobbel reviewed the Application against the ZO and Michigan law and prepared the enclosed report, dated July 26, 2026 (the "Grobbel Report"), which documents the deficiencies summarized below and recommends that the Township not approve the Application as submitted. On September 25, 2026, Consumers Energy submitted a letter responding to the Grobbel Report. This letter addresses that response where relevant.

The PC's obligations under the ZO

A commercial solar energy system of this scale – approximately 94 megawatts, more than 165,000 panels, and 523 fenced acres across ten parcels – is a special land use permitted in the Agricultural-Residential and Industrial districts only with special land use approval by the PC. *See* ZO Section 3.22. It is not a use the PC may approve as of right.

Two sets of standards govern the PC's review:

First, ZO Section 3.22 sets specific, substantive requirements for commercial solar, including setbacks, height limits, year-round screening that fully screens the facility from view from the time of planting or installation, a nighttime sound limit of 45 dBA at the property line of an adjacent non-participating parcel, groundwater testing before and after installation, and financial security guaranteeing decommissioning.

Second, ZO Section 16.04 requires the PC, before approving any special land use, to make affirmative findings on a defined list of considerations — including safe and adequate water supply, storm water drainage, and fire protection; adequate mitigation of conditions objectionable to nearby properties by reason of traffic, noise, erosion, pollution, or negative effects upon significant environmental features; and assurance that the use will not discourage or hinder appropriate development and use of adjacent premises and the neighborhood.

Those findings are the PC's responsibility, and the PC can make them only on a complete and reliable record. Under the Michigan Zoning Enabling Act, the PC's decision "shall be incorporated in a statement of findings and conclusions ...which specifies the basis for the decision and any conditions imposed." *JS Beck Rd LLC v. Charter Twp. of Northville*, 2024 WL 4819884 (Mich. Ct. App. Nov. 18, 2024)(unpublished); MCL 125.3502(4). It is not enough to recite the ZO's language; the PC must state the factual findings underlying each determination that a standard is satisfied, and those findings must be supported by competent, material, and substantial evidence on the whole record. See

Montrief v. Macon Twp. Bd. of Trustees, 2025 WL 2857867 (Mich. Ct. App. Oct. 6, 2025)(unpublished); *Reenders v. Parker*, 217 Mich. App. 373 (1996).

In short, the conditions-of-approval mechanism Consumers Energy invokes is a tool for managing details around a decision the record already supports — not a substitute for the environmental and site information the PC needs to make its findings in the first place.

The Township’s NREPA Part 17 obligation – and why Consumers Energy’s contrary position is incorrect

Consumers Energy asserts that Part 17 of the Natural Resources and Environmental Protection Act (“NREPA”) — which is otherwise known as the Michigan Environmental Protection Act (“MEPA”) — “has no bearing” on the PC’s review and merely “authorizes citizen suits.” (See Consumers Energy Response, dated September 25, 2026, at pp. 2, 4) That is not what the statute says, and that position is contrary to recent Michigan Supreme Court authority.

As the Michigan Supreme Court recognized earlier this summer, NREPA Part 17 directs that “[i]n administrative, licensing, or other proceedings ...the alleged pollution, impairment, or destruction of the air, water, or other natural resources ...shall be determined, and conduct shall not be authorized or approved that has or is likely to have such an effect if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.” *In re Enbridge Energy to Replace & Relocate Line 5*, No. 168335, 2026 WL 2212865 (Mich. July 31, 2026); MCL 324.1705(2).

The *In re Enbridge* decision confirmed that Section 1705(2) “directs administrative agencies to apply MEPA in their own proceedings,” and that the governing framework “is the same” whether MEPA is applied “by a court in a citizen suit or by an agency in permitting proceedings.” *In re Enbridge Energy*, 2026 WL 2212865 (Mich. July 31, 2026). That framework has two steps: the decision-maker must first determine the project’s pollution, impairment, or destruction of natural resources, and may approve the conduct only if there is no feasible and prudent alternative.

The practical consequence is straightforward. Before approving a project that sits amid on-site wetlands and agricultural drains that flow south toward Van Etten Creek, the PC should make an affirmative, documented determination that the project will pollute, impair, or destroy those resources, and should consider feasible and prudent alternatives. These could include relocating the project, performing additional environmental studies, and/or providing alternative design plans addressing environmental concerns.

The PC cannot make a NREPA Part 17 determination on the current record, which lacks the environmental information described below.

The environmental baselines the PC needs is not in the current record

- **Wetland delineation and surface-water evaluation.** Wetlands and agricultural drains exist on the project site and drain south toward Van Etten Creek. A wetland delineation and surface-water drainage evaluation have not been performed or submitted, and any filling, grading, or construction in regulated wetlands would require a permit from the Michigan Department of Environment, Great Lakes and Energy (“EGLE”) under Part 303 of NREPA. Consumers Energy responds that the ZO does not, in so many words, make a standalone wetland-delineation report a checklist item for administrative completeness, and that it will obtain any required EGLE permit before regulated work begins. That misses the point. ZO Section 16.04 requires the PC to find adequate storm-water drainage and adequate mitigation of negative effects upon significant environmental features, and ZO Section 3.22.A.1 requires conformance with all applicable State regulations. The PC cannot responsibly make those required findings — including its NREPA Part 17 determination — without a delineation and surface-water evaluation in the record. Consumers Energy’s offer to submit its EGLE permits later, as a condition of approval, merely confirms that the information is not before the PC now.
- **Groundwater testing (ZO Section 3.22.C.1.a).** ZO Section 3.22.C.1.a requires groundwater testing in connection with a commercial solar system. Consumers Energy contends this requirement is “preempted by ...Parts 31 and 201 of ...NREPA.” That position is not well founded. The Township retains authority to consider environmental and natural resources issues that affect land use so long as it is not doing so in a way that conflicts with state authority. *See Frericks v Highland Twp*, 228 Mich App 575, 585-91, 592-93 (1998); *Divergilio v Charter Twp of West Bloomfield*, 2006 WL 3103012 (No. 261866, Nov 2, 2006)(unpublished). The requirements in Section 3.22.C.1.a are a valid exercise of the Township’s zoning authority, and the PC should treat those requirements as binding and require compliance.

Decommissioning and financial security

Additionally, ZO Section 3.22.C.10 requires that an approved commercial solar system be secured by a performance (surety) bond of not less than 150% of the estimated cost of removal, posted with the Township within fifteen days after approval or before a construction permit issues. In its September 25 letter, Consumers Energy states that it “committed to providing financial security equal to 150 percent of the approved estimated removal cost, in a form approved by the Township, within the timing required by Section 3.22.C(10).” That commitment is welcome. To give it effect, any approval should be expressly conditioned on posting the full 150% bond within the time Section 3.22.C.10 requires, with the permit void if the bond is not timely posted.

We note, too, that Consumers Energy’s letter did not address the decommissioning plan’s assumption that a panel-recycling facility will be available within 100 miles of the site; the PC may wish to require support for that assumption.

Protection of farmland and surrounding agricultural uses

The project parcels are zoned Agricultural. Consumers Energy argues that, by adopting Section 3.22, the Township “necessarily determined” that commercial solar is compatible with the Agricultural district. That is not correct as stated. Section 3.22 establishes the conditions under which commercial solar *may* be permitted; it does not relieve the PC of making the project-specific findings ZO Section 16.04 requires — that this project will not conflict with the primary permitted uses in the district and will not discourage or hinder appropriate development and use of adjacent premises and the neighborhood. Converting 523 fenced acres to an industrial-scale solar facility for a 30-year term is a significant change in this agricultural area, and those findings must be particularized to this project and documented on the record, not assumed from the ZO’s existence.

We also urge caution on the related request that the Township adopt a resolution of support for the early release of the Buurma parcel (Parcel No. 060-018-400-015-01, approximately 137 acres) from its PA 116 Farmland Development Rights Agreement under Part 361 of NREPA (MCL 324.36101 *et seq.*). An early, partial termination requires that a statutory ground be met – such as death or disability of a person essential to the farm, economically inviable farmland, surrounding uses that restrict farming, an irreversible natural change, a court order, or a demonstrated public interest in the release – and none appears satisfied here, where the Buurma family is actively farming, the surrounding land remains agricultural use, no court order exists, and the public interest in this community favors preserving prime farmland. Because the Township’s resolution of support is a necessary predicate to MDARD’s release, and because that release would enable the very conversion of productive farmland that ZO’s Agricultural district standards are meant to guard against, we respectfully ask the PC and Township Board to decline to adopt the requested resolution – or at least defer it until the PC completes its review of the Application.

The glare and sound studies

We ask that Consumers Energy’s updated glare analysis in the September 25 letter be placed in the record and reviewed by the PC before it relies on glare compliance, and that the PC also consider, under ZO Section 16.04, the qualitative noise impacts of continuous inverter operation and construction traffic on this rural, agricultural setting.

Traffic and site access

ZO Section 16.04 requires the PC to find safe and adequate ingress and egress and adequate protection of adjacent properties. Construction-phase heavy-truck traffic and potential road damage remain appropriate subjects for information and for conditions coordinated with the Alcona County Road Commission.

Request

For these reasons, Ms. Kenzie respectfully requests that the PC:

1. Require that the record contain the environmental baseline information — a wetland delineation and surface-water evaluation, and the groundwater testing required by ZO Section 3.22.C.1.a — needed to support the findings that the ZO and Michigan law require before it can proceed;
2. Determine – based on competent, material, and substantial evidence in the record, or the lack thereof – that the Application does not currently meet the requirements of ZO Section 16.04 and Part 17 of NREPA (as the project will pollute, impair, or destroy the Township’s natural resources, and feasible and prudent alternatives to the project exist, including but not limited to relocating the project, or providing alternative designs and supportive studies that address all related environmental issues); and
3. If the PC nonetheless proceeds toward approval, condition any approval on full compliance with ZO Section 3.22.C.10’s decommissioning-security requirement (with the permit void if the bond is not posted before construction begins), as well as any other needed studies or environmental protections, and inclusion in the record of Consumers Energy’s updated glare analysis found in the September 25 letter.
4. Lastly, we ask that you exercise caution on the related request that the Township adopt a resolution of support for the early release of the Buurma parcel from its PA 116 Farmland Development Rights Agreement.

Thank you for your service to the Harrisville Township community and for your careful attention to this Application. I would welcome the opportunity to provide any additional information that would assist the PC.

Respectfully submitted,



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Enclosure: Grobbel Report

cc: Ms. Peggy Kenzie