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Dennis E. A. Lynch, Esq.
PO Box 600
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Via email dennislynchesq@gmail.com

Re: Downey Energy
SEQR Review by Town of Wappinger Planning Board

Dear Attorney Lynch:

I am in receipt of your letter of March 31, 2022 and write in response thereto. The Town of Wappinger Planning Board is serving as lead agency under SEQRA for the review of the project which includes the Zoning Text Amendment, Site Plan Approval and Special Permit Approval. The Town of Wappinger Planning Board desires to move forward with a review of the project and to that end, is considering the adoption of a positive declaration for the project at its meeting this evening. The Planning Board previously denied a resolution to adopt a negative declaration for the project, so the only other alternative to move forward is the adoption of a positive declaration which would require the preparation of an Environmental Impact Statement for this Type 1 action. SEQRA regulation 6 NYCRR §617.4(a) provides that Type 1 actions are more likely to require the preparation of an environmental impact statement than Unlisted Actions.

Zoning Text Amendment

I shall restate again, that the Local Law filed with the New York Secretary of State on February 3, 2020 was filed by the Town Clerk in error. The Town Board never adopted the Local Law; the public hearing on the Local Law was never closed; no SEQRA review was ever completed and the Planning Board issued no recommendations to the Town Board pursuant to §240-112 of the Town of Wappinger Code. The Local Law filed with the Secretary of State is a nullity and is *void ab initio* having no force or effect as it was never validly adopted pursuant to Municipal Home Rule Law §20 and no environmental review was completed as required by 6 NYCRR §617.3(a).

On December 9, 2019, the Town Board adopted Resolution 2019-213 (copy attached) which introduced the Local Law, determined that the action was a Type 1 action, referred the action to the Planning Board to serve as lead agency, and scheduled a public hearing before the Town Board on January 13, 2020. On January 13, 2020, the Town Board opened the public hearing, had a discussion

about SEQRA review by the Planning Board and then adjourned the public hearing until March 23, 2020. (A copy to the minutes of the meeting are attached and a video of the meeting can be viewed at <http://wappingertownny.igm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1515&Format=Minutes>)

As the minutes of the January 13, 2020 minutes show, Resolution 2020-37 to adopt the proposed Local Law was tabled. As the Town Board never adopted the Local Law, the filing with the Secretary of State on February 3, 2020 was in error and is a nullity.

You allege that the Local Law filed in the office of the Secretary of State is enforceable since no challenge to the Local Law was brought within four months of the filing, however, the cases that you cite all indicate that a Local Law was adopted and enacted by a legislative body. Here, the Town Board never approved a resolution adopting the Local Law pursuant to Municipal Home Rule §20. Municipal Home Rule §27(1) provides that the local law shall be filed “[w]ithin twenty days after a local law *shall finally have been adopted*.” A local law cannot be effective without adoption by the legislative body of the Town as the legislative body is solely granted the authority to adopt local laws by Article 9, §1(a) of the New York State Constitution. It would be unconstitutional for a Court or the Executive Branch of the State to hold otherwise.

As the elected Town Board has not adopted a local law with respect to propane storage facilities and no environmental review of the local law has been completed, the Town Board cannot confirm that the local law filed with the New York Secretary of State is in effect. The Town Board cannot do that because that would be an abdication of its constitutional duty to enact local laws. Your repeated insistence on the applicability of a local law that was never adopted by the constitutionally established and duly elected legislative body of the Town of Wappinger has delayed the project. Obviously, the Town cannot prevent you from taking any legal action that you deem appropriate but that would obviously delay the review of the project further.

Environmental Review

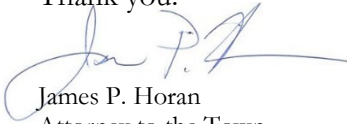
The proposed action is a Type 1 action under SEQRA. Type 1 actions are likely to require the preparation of an environmental impact statement. 6 NYCRR §617.4(a). In order to issue a positive declaration and require the preparation of an environmental impact statement for the proposed action the Planning Board as lead agency must find the potential for at least one significant adverse environmental impact. 6 NYCRR §617.7(a)(1).

In the draft FEAF Part 2, at least five potential significant adverse environmental impacts are identified. In particular, Section 4 item f, requires the lead agency to take a hard look where the proposed action may require the bulk storage of petroleum or chemical products over ground water, which is the case here. This potential environmental impact is enhanced by the burial of the storage tanks and should be further investigated. Other potential impacts have been identified to plants and animals, transportation, human health and community character.

At this point in time, the Planning Board has not made a determination of significance for the proposed action. At the last Planning Board meeting, you had requested an opportunity to review the draft positive declaration and EAF parts and to provide additional environmental information to guide the planning board in making its determination of significance. As of this time, you have not provided and additional environmental information and the Planning Board will make its determination on the information submitted to date.

In its role as lead agency, the Planning Board wishes to undertake its obligation to create an environmental record to assist itself and the other involved agencies in making an informed decision on the various approvals required for the project. It is my hope that you and your client will assist the Planning Board in discharging its obligations moving forward.

Thank you.



James P. Horan
Attorney to the Town

cc: Bruce Flower, Planning Board Chairman
Planning Board
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Director of Strategic Planning and Municipal Codes Esq.
B. Ogunti Planning Board Secretary
Malcolm Simpson
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