NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 17-F-0599 - Application of East Point Energy Center, LLC, for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of a Solar Electric Generating Facility in the Town of Sharon, Schoharie County.

ORDER GRANTING CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED, WITH CONDITIONS

Issued and Effective: January 7, 2021

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NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

At a session of the New York State Board on Electric Generation Siting and the Environment held in the City of Albany on January 7, 2021

BOARD MEMBERS PRESENT:

John B. Rhodes, Chair
New York State Public Service Commission

Vincent Ravaschiere, Alternate for
Eric Gertler, Acting Commissioner, New York State Department of Economic Development and President and Chief Executive Officer Designate, Empire State Development

Louis Alexander, Alternate for
Basil Seggos, Commissioner
New York State Department of Environmental Conservation

John Williams, Alternate for
Richard L. Kauffman, Chair
New York State Energy Research and Development Authority

Dr. Elizabeth Lewis-Michl, Alternate for
Howard A. Zucker, M.D., J.D., Commissioner

CASE 17-F-0599 - Application of East Point Energy Center, LLC, for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of a Solar Electric Generating Facility in the Town of Sharon, Schoharie County.

ORDER GRANTING CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED, WITH CONDITIONS

(Issued and Effective January 7, 2021)

BY THE BOARD:

I. INTRODUCTION

By this order, we grant to East Point Energy Center, LLC (the Applicant or East Point), a Certificate of Environmental Compatibility and Public Need to construct and operate a solar energy generating facility in the Town of Sharon, Schoharie County, New York (the Town). With the extensive conditions attached to and made part of this order, we determine the solar electric generating facility will meet all the statutory requirements for certification under Article 10 of the Public Service Law (PSL). Our decision is supported by the extensive evidentiary record compiled before the Presiding Examiners appointed by the Department of Public Service (DPS) and the Associate Examiner appointed by the Department of Environmental Conservation (DEC), as well as the extensive settlement proposal developed by the parties. We base our decision on the evidentiary record, initial and reply briefs of the parties, public comments, and all applicable law and policy.

II. BACKGROUND

A. Facility Description

As agreed upon by the parties, the East Point Solar Electric Generating Facility (the Facility or Project) will consist of approximately 350 acres of photovoltaic (PV) solar electric generating panels located on about 1,300 acres of private land, either leased or purchased from the landowners, located in the Town.[1] The PV panels will generate 50 megawatts (MW) of electricity and will deliver electricity to the bulk electric transmission system owned by Niagara Mohawk Power

[1] Hearing Exhibit 13, Settlement Proposal Appendix C [Layout Memo].

Corporation, doing business as National Grid, with a point of interconnection at the existing Sharon-Marshville 69-kilovolt (kV) transmission line. In addition, the Project will entail the construction of internal infrastructure including, among other things, collection and transmission lines, access roads, inverters, transformers, fencing, and an operations and maintenance building.

B. Procedural History

On September 25, 2017, the Applicant submitted a Public Involvement Program (PIP) Plan, pursuant to §1000.4 of Part 16 of the New York Codes, Rules and Regulations (NYCRR). After amendment and revision pursuant to DPS review, the Applicant filed its final PIP Plan on November 24, 2017.

On September 28, 2018, the Applicant submitted its Preliminary Scoping Statement (PSS). The PSS is part of the pre-application procedures prescribed by the Board in 16 NYCRR §1000.5. During the pre-application scoping phase, the Applicant, DPS, other statutory parties, and interested participants determine the nature and scope of the studies that the applicant must conduct to support its Article 10 application. The scope of the studies, documented in written stipulations, determine what information the project applicant must include in its formal application. In general, an applicant's studies should evaluate the potential impacts of the project on the environment, public health, and other public interest factors. When the application is submitted, stipulations, if any, are used in conjunction with 16 NYCRR Part 1001, which states the required content of an Article 10 application, to determine whether the application complies with PSL §164.

Stakeholders provided comments on the Applicant's PSS

and, on November 15, 2018, the Applicant responded to the stakeholder comments. In addition, a pre-application intervenor fund of $17,500 was established by the Applicant when the PSS was filed. The Town was the only party requesting such funding and, as such, the full amount of the fund was awarded to the Town to pay for eligible legal and engineering services.

After conducting several meetings to negotiate stipulations concerning the studies necessary to complete its application, the Applicant filed draft stipulations on August 23, 2019. After receiving comments on the draft stipulations, the Applicant filed final, executed stipulations, which were signed by all the agreeing parties between September and October 2019.

On September 26, 2019, the Applicant filed the first iteration of its formal application for the Project. On October 7, 2019, the Secretary issued Notices regarding party status requests and indicating the availability of the intervenor funds for the application phase of the proceeding in the amount of $50,000. As with the pre-application phase intervenor funding, the Town was the only party to request funding and, as such, the full amount of the fund was awarded to it by the Examiners in November 2019.

An application deficiency letter was issued on November 22, 2019. The Applicant filed an application supplement on December 23, 2019. By letter dated January 30, 2020, the Chair of the Siting Board sent formal notice to the Applicant that its application was deemed compliant with the requirements of PSL §164.

On February 20, 2020, the Examiners conducted a procedural conference to discuss applicable procedural rules and requirements, identify issues for adjudication, and establish a schedule for the filing of testimony and exhibits and an

evidentiary hearing. The Examiners issued a ruling identifying issues for litigation on March 23, 2020. By a motion for clarification of that ruling, the Applicant subsequently requested that the Examiners remove the issue of local property value impacts, citing the order of the Chair of the Siting Board issued in Case 17-F-0597, which determined that such issue is outside the scope of an Article 10 proceeding.[2] Thereafter, the Examiners modified the issues ruling to exclude potential impacts to property values.

On February 20, 2020, the Applicant filed a Notice of Impending Settlement Negotiations, which was served on all stakeholders on the Project's stakeholder list, as well as the parties listed on DMM. On June 4, 2020, the Applicant filed a settlement proposal, which included proposed Certificate Conditions, a proposed Noise Complaint Resolution Protocol (Noise Protocol), and proposed guidance for the development of a Siting Engineering and Environmental Plan (SEEP Guide). Thereafter, the Applicant, staff of DPS, DEC, and the New York State Department of Agriculture and Markets (AGM), and the Town (collectively Signatory Parties)[3] executed signatures pages to the Settlement Proposal, with the Town taking exceptions to: proposed Certificate Conditions 12, 28, and 31; Sections 7(a)(iii) and 7(b)(vi) of the proposed Noise Protocol; and Item 13 of Section A and Item 14 of Section B of the proposed SEEP Guide.[4]

Between June 4 and 5, 2020, the Signatory Parties,

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[2] Case 17-F-0597, High River Energy Center, LLC, Order Granting Interlocutory Relief (issued April 3, 2020), p. 6, and Confirming Order (issued June 30, 2020), p. 2.

[3] Staff of the New York State Department of Health did not file an executed signature page, but it also has not opposed the Settlement Proposal.

[4] Hearing Exhibit 60.

other than the Applicant, filed direct testimony and exhibits and, on June 25, 2020, the Applicant and the Town filed rebuttal testimony and exhibits. The evidentiary hearing was canceled by a notice issued by the Secretary on June 25, 2020, and the Examiners thereafter requested additional information from any party that proposed to further litigate an issue of material fact. By ruling issued July 27, 2020, the Examiners determined that an evidentiary hearing was not required because the limited remaining disputed issues in the case were policy-based rather than founded on disputed facts, and established a briefing schedule, indicating that they would entertain motions to admit pre-filed direct and rebuttal testimonies, including all exhibits presented in conjunction with said testimonies, and directed the parties to submit a stipulated Index to the Record.

Thereafter, because of the parties' efforts to resolve the remaining disputes, the Applicant filed revisions to certain proposed Certificate Conditions, the SEEP Guide, and the Noise Protocol.[5] These revisions were agreed to by the Signatory Parties.

On August 7, 2020, the parties submitted motions to admit their pre-filed testimony and exhibits. On August 10, 2020, the Applicant submitted the Stipulated Exhibit List. A final proposed SEEP Guide was also submitted dated August 31, 2020.[6] The Examiners issued a ruling on September 3, 2020, granting the motions and admitting evidence into the record.

Initial briefs were timely submitted by the Applicant, DPS Staff, DEC Staff, AGM Staff, and the Town. The Applicant,

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[5] Hearing Exhibits 68 (redline) and 69 (clean). The Applicant agrees with DPS Staff that, in the introduction to Certificate Condition 91, the first line should be renumbered to "91-97", and in the sixth line it should be renumbered to "91-95." East Point Initial Brief, p. 5.

[6] Hearing Exhibit 78.

DPS Staff, and the Town thereafter submitted reply briefs.

C. Public Involvement and Comment

The Article 10 process requires applicants to create a PIP plan in consultation with State agencies and other stakeholders. The PIP plan is designed to encourage local participation from affected local, State, and federal agencies to learn concerns about proposed projects.

Throughout the pre-application, scoping, and application phases, the Applicant implemented its public involvement program as described in the PIP plan. The Applicant held meetings with the Towns and County officials to provide Project updates and addressed questions from the officials and the public. The Applicant provided information about the Project to community members through mailings, open house meetings, newspaper postings, the local Project office, the toll-free number, and the Project website. The Applicant provided notification regarding the Project's milestones to residents in the Project area, people listed on the stakeholder list, and landowners. The Applicant solicited feedback from visual stakeholders as well.

In addition, the Examiners conducted a public statement hearing in October 2020,[7] and public comments have been continually accepted and posted on DPS's DMM website. Fourteen individuals have submitted comments about the Project via DMM, and ten local community members spoke at the public statement hearing. The comments received reflect that there is both opposition to and support of the Project among the local community. The comments in support of the Project note that it

[7] The public statement hearing originally was to be held on March 19, 2020, but, due to the pandemic related to COVID-19, that hearing was postponed, and a rescheduled public statement hearing was held on October 15, 2020.

will provide economic benefits to the community, such as good-paying jobs, and electricity to the State's wholesale energy market, and were complementary of the Applicant's efforts to address environmental concerns about the Project. Commenters in opposition to the Project raised various concerns, including but not limited to, concerns about how the Project will affect property taxes and property values, the potential use of herbicides, potential impacts to existing agricultural and small businesses, potential impacts to wildlife habitats, impacts to cultural, historic and visual resources, and restoration of the land at the end of the useful life of the Project.

D. Proposed Settlement

The Settlement Proposal, filed on June 4, 2020, and updated on August 6, 2020, includes largely agreed-upon Certificate Conditions, a SEEP Guide, and the Noise Protocol.[8] In addition, the Settlement Proposal includes discovery and other documentary evidence that the parties agreed to enter into the evidentiary record and used in testimony in support of the Settlement Proposal. Staff of DPS, AGM and the Applicant executed the settlement documents without exception. The Town executed the settlement documents but excepted agreement to several provisions of the proposed Certificate Conditions – specifically paragraphs 12, 28, and 31 -- the Noise Protocol, and the SEEP Guide.

III. REQUIRED STATUTORY FINDINGS UNDER PSL §168

Pursuant to PSL §168(2), the Siting Board must make express findings regarding the nature of probable environmental impacts, including cumulative impacts, resulting from the

[8] Hearing Exhibits 13-31, 69, 78.

construction and operation of a proposed facility. These include impacts to (a) ecology, air, ground and surface water, wildlife, and habitat; (b) public health and safety; (c) cultural, historic, and recreational resources, including visual, aesthetic and scenic values; and (d) transportation, communication, utilities and other infrastructure.[9]

Pursuant to PSL §168(3), the Siting Board may not grant a certificate unless it determines that the facility will be a beneficial addition to or substitution for the State's electric generation capacity and serve the public interest; that the facility's adverse environmental impacts have been minimized or avoided to the maximum extent practicable, including any significant disproportionate impacts on the community in which it is located; and that the facility is designed to operate in compliance with applicable State and local laws concerning, among other matters, the environment, public health and safety.[10]

In making these determinations, the Siting Board considers several factors, including available technology, reasonable alternatives, environmental impacts, impacts on related facilities, consistency with the State Energy Plan, impacts on community character and whether the community is disproportionately impacted by cumulative levels of pollutants, and any other social, economic, aesthetic, environmental considerations deemed pertinent.[11] In issuing a certificate, the Siting Board may impose any terms and conditions it deems necessary and the Department of Public Service or the Public Service Commission (Commission) "shall monitor, enforce and administer compliance with any terms and conditions" set forth

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9 PSL §168(2)(a)–(d).

10 PSL §168(3)(a)–(e).

11 PSL §168(4)(a)–(g).

in the Siting Board's Certificate and Order.[12]

The applicant in an Article 10 proceeding has the burden to prove that, based on the evidentiary record, all findings and determinations required by PSL §168 can be made by the Siting Board.[13] When factual matters are involved, the applicant must sustain that burden by a preponderance of the evidence, unless a higher standard has been established by statute or regulation.[14]

As a result of settlement negotiations culminating in the parties' Settlement Proposal, most of the issues in dispute have been resolved. As discussed further below, based upon the record and the Certificate Conditions agreed to by the parties, we conclude that the Applicant has met its burden of proof on the settled issues and those issues that were undisputed.

Four areas of disagreement remain for our resolution: the objections of AGM Staff and the Town of Sharon regarding the potential impacts of the Project on agricultural resources, and the Town's issues with respect to the Noise Protocol, the Project's visual impacts, and the Project's compliance with local laws. Our resolution of these issues is discussed in their respective sections of this Order.

A. Electric Generation Capacity - PSL §168(3)(a)

Public Service Law §168(3) requires the Siting Board to make a finding as to whether the Facility will be a beneficial addition to or substitution for the electric generation capacity of the State and will be in the public interest. Among the factors the Board must consider when making

12 PSL §168(5).

13 16 NYCRR §1000.12(b).

14 16 NYCRR §1000.12(c).

this finding are the consistency of the construction and operation of the Facility with the State's energy policies; the State's long-range energy planning objectives; and additional social, economic, and any other factors deemed relevant.

1. Electric Generation Capacity

The Application included the New York Independent System Operator's System Reliability Impact Study, which found that the Facility would cause no significant adverse impacts on New York's electrical system. The Applicant's production cost modeling indicated, and DPS Staff agreed, that the Facility would have only a de minimus impact on the dispatch of must-run zero emissions electric generation in the State.[15] In addition, the Applicant's forecast showed a decline in wholesale energy prices for New York State with the Project in service, which was consistent with the forecast presented by DPS Staff.[16] Finally, the addition of this Facility will improve fuel diversity in the State and increase the State's renewable energy generation capacity, thereby reducing the State's reliance on non-renewable resources, such as natural gas, coal, and oil. No party has disputed the Applicant's showing that the Project will constitute a beneficial addition to the State's electric generation capacity.

2. Consistency with the State Energy Plan

The latest State Energy Plan (SEP), issued in 2015 and updated in 2020, the Clean Energy Standard (CES) adopted by the Commission in Case 15-E-0302, and the Climate Leadership and Community Protection Act (CLCPA)[17] all emphasize the importance

[15] Hearing Exhibit 12, Application Exhibit 8; Tr. 182.

[16] Hearing Exhibit 12, Application Exhibit 8; Tr. 181-182.

[17] L. 2019, ch. 106.

of renewable electric generation.[18] The SEP set a goal of developing renewable energy generation such that by 2030 50% of the State's electricity will be generated by a renewable energy source. The Commission stated in the CES Order that the prime goal of the CES was to install new renewable electricity generation in the State. The CLCPA expanded the SEP goals by increasing renewable energy generation target to 70% by 2030 and specifically including a target of 6 gigawatts of solar generation by 2025.[19] Then, in its recent order modifying certain aspects of the CES, the Commission reiterated its goal of "build[ing] upon the CES in a manner that will benefit New York energy consumers and the overall economy by encouraging new clean energy and related investments in the State, maintaining existing jobs, and attracting capital from outside the State."[20] This proposed project will contribute to the success of these ambitious renewable energy generation goals inasmuch as it will provide about 50 MW of electricity generated by PV panels to the State's electric grid and will be delivered for use by New York customers.

In addition, the Applicant demonstrated that the Facility addresses both State and regional air pollution and greenhouse gas emission reduction goals, including the SEP goal

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[18] 2015 New York State Energy Plan, New York State Energy Planning Board (June 25, 2015), available at https://energyplan.ny.gov/-/media/nysenergyplan/2015-state-energy-plan.pdf; The Energy to Lead: 2015 New York State Energy Plan: Climate Leadership and Community Protection Act Amendment, New York State Energy Planning Board (2020); Climate Leadership and Community Benefit Act, 2019 N.Y. Sess. Laws Ch. 106 (McKinney).

[19] CLCPA §4.

[20] Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020), p. 14.

of reducing greenhouse gas emissions in the State 40% by 2030 and the Regional Greenhouse Gas Initiative's (RGGI) goal of reducing greenhouse gas emissions from the energy generating sector by an additional 30% below 2020 levels by 2030 in RGGI participating states. Notably, both the Applicant's and DPS Staff's simulations showed a decrease in carbon dioxide (CO2) and nitrogen oxides (NOx) emissions because of the Project.[21]

B. Public Interest – PSL §168(3)(b)

The Siting Board's regulations require the Applicant to, among other things, provide estimates of the number of temporary (e.g., construction) and permanent (e.g., operational) jobs (collectively direct jobs) related to the facility, along with secondary employment (indirect) jobs generated by the Facility.[22]

The Applicant's direct construction and operation job impact estimates are reasonable for the scale of the Project as compared to other New York State solar generation projects. The Applicant estimates that 54.6 full-time-equivalent (FTE) jobs will be created during construction and 2.5 FTE jobs during operation. Direct local expenditures during construction are estimated to be $8.8 million.[23] DPS Staff agreed that the Applicant's estimates of direct jobs and expenditures were

[21] Hearing Exhibit 12, Application Exhibit 8.

[22] 16 NYCRR §1001.27.

[23] Hearing Exhibit 12, Application Exhibit 27, pp. 5-7, 13-17.

reasonable.[24]

The Town raises arguments concerning the reasonableness of the Applicant's proposal with respect to Payments in Lieu of Taxes (PILOT).[25] The Town contends that the proposal included in the Application significantly underestimates the amount of a reasonable PILOT agreement. The Town argues that, as a result, the Siting Board is unable to fully evaluate the socioeconomic impacts of the proposed Project. According to the Town, the value of a PILOT agreement informs the Board's determination as to whether the construction and operation of the Facility will serve the public interest.

The applicable regulations require an applicant to provide in its application, "[f]or each jurisdiction, an estimate of the incremental amount of annual taxes (and [PILOTs], benefit charges and user charges) it is projected would be levied against the post-construction facility site, its improvements and appurtenances."[26] Here, as the Applicant points out, agreements for PILOTs have not been finalized between the taxing jurisdictions and the Applicant, so the value of the annual taxes that will be paid are not yet known.

Moreover, New York State Real Property Tax Law (RPTL) §487 permits taxing jurisdictions to exempt properties with certain renewable energy systems sited upon them from taxation

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[24] Tr. 188. Because the job impact numbers are estimates, which may change according to Project timelines, budgets and other factors, proposed Certificate Condition 27 requires the Applicant to file with the Secretary, within 15 months after the Project becomes operational, a tracking report of the actual number of direct jobs created and payments to local jurisdictions made during the construction and operational phases of the Project.

[25] Town Initial Brief, pp. 22-23. Hearing Exhibit 12, Application Exhibit 27.

[26] 16 NYCRR §1000.27(i).

for a period of no more than 15 years.[27] If a taxing jurisdiction applies the real property tax exemption, then the jurisdiction may require the developer or owner of the system to enter into a PILOT agreement, so long as the annual payments agreed upon may not exceed the amounts that would otherwise be paid if the Project was subject to a tax assessment.[28] Here, however, subsequent to the filing of the application, the Town, among other affected taxing jurisdictions, opted out of RPTL §487, which has the effect of subjecting the Project to regular assessments by those jurisdictions.[29] Thus, the issues raised by the Town with respect to the estimated PILOT amount that was included in the application materials is academic.[30]

In any event, the Town's position that it is entitled to a higher value PILOT agreement is irrelevant to the Siting Board's evaluation as to the socioeconomic impact of the proposed Project. Based upon the foregoing, we find that the Facility will be consistent with the energy policies and long-range planning objectives and strategies contained in the most recent SEP, as well as the additional relevant social, economic, and other factors. Accordingly, subject to the Certificate Conditions attached to this Order, which we hereby adopt, we find that the construction and operation of the Facility will be a beneficial addition to or substitution for the electric generation capacity in the State and will be in the public interest.

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[27] RPTL §487(2), (8).

[28] RPTL §487(9)(a).

[29] RPTL §8.

[30] We note that the Siting Board does not approve PILOT agreements. These agreements are solely within the purview of the taxing jurisdictions and the applicant to negotiate and execute.

1. Environmental Justice - PSL 168(2)(d) and (3)(d)

An Article 10 application must include "an evaluation of significant and adverse disproportionate environmental impacts of the proposed facility, if any, resulting from its construction and operation" on environmental justice (EJ) areas, in accordance with 6 NYCRR Part 487.[31] Environmental justice or EJ is defined as the "fair treatment and meaningful involvement of all people regardless of race, color, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."[32] An environmental justice area or EJ area is defined as "a minority or low-income community that may bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies."[33]

In its Application, East Point reviewed three census block groups in Census Tract 7404 in Schoharie County wherein the Project and surrounding impact study area are located. On review of current data from the U.S. Census Bureau's American Community Survey for the three census block groups, the proposed Project will not be located in a potential EJ area, and the closest EJ area is five miles from the Project area.[34] Based on its review of the Application, DPS Staff states that the construction and operation of the Facility is not expected to have any environmental justice impacts.[35] No party disputed this.

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31 PSL §164(1)(f); 16 NYCRR §1001.28.

32 6 NYCRR §487.3(k).

33 6 NYCRR §487.3(l).

34 Hearing Exhibit 12, Application Exhibit 28, pp. 1-2.

35 DPS Staff Initial Brief, p. 37.

We conclude that the Project will not have any significant and adverse disproportionate environmental impacts on environmental justice areas.

C. Nature of Probable Environmental Impacts - PSL 168(2)(a), and 168(3)(c) and (e)

1. Ecology

PSL §168(2)(a) expressly requires the Siting Board to make explicit findings regarding the potential environmental impact of a project on ecology. To grant a Certificate, the Siting Board must determine that the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable, and that the facility is designed to operate in compliance with applicable State environmental law.[36]

Part 1001 requires an applicant to provide information about the terrestrial (16 NYCRR §1001.22) and aquatic ecology (16 NYCRR §1001.23) in the project area, analyze the potential impacts of the construction and operation of the project on the local ecology, and identify and evaluate measures to avoid or minimize and mitigate those impacts. In addition, Part 1001 specifically requires an analysis of the temporary and permanent impacts of the construction and operation of the facility and the interconnections on agricultural resources, including the acres of agricultural land temporarily impacted, the number of acres of agricultural land that will be permanently converted to nonagricultural use, and mitigation measures to minimize the impact to agricultural resources (16 NYCRR §1001.22[q]). East Point provided information regarding the potential environmental impacts of the Project on ecology in its Application Exhibit 22 (Terrestrial Ecology and Wetlands) and Exhibit 23 (Water

[36] PSL §168(3)(c) and (e).

Resources and Aquatic Ecology), and in its Invasive Species Management Control Plan.[37] East Point provided additional information regarding potential impacts to agriculture resources in its Application Exhibit 4 (Land Use).[38]

The Project area consists of 1,313 acres with 312.88 acres used for facility components (Facility) within a fenced area of 352 acres.[39] According to the New York State Office of Real Property Services (NYSORPS) classification codes, approximately 65,653 acres of agricultural land is located within Schoharie County with approximately 133,159 acres of land mapped as agricultural district within the County.[40]

The Project area is largely comprised of agricultural land such as cultivated crops, grassland, pasture and hay.[41] According to Cropland Data Layer (CDL) compiled by the United States Department of Agriculture, cultivated crops and pasture/hay together represent approximately 73% of the Project area, while deciduous forest represents approximately 21% and woody and herbaceous wetlands approximately 1.24%. The Project area also includes approximately 2% of shrub/scrub, 2% of developed land, and less than 0.25% of open water and barren land.[42]

Construction and operation of the Facility will result in impacts to plant communities. Approximately 374 acres of plant communities will be disturbed by construction and operation of the Project or approximately 28.5% of the Project

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37 Hearing Exhibit 12, Application Exhibit 22 and 23, Application Appendix 22-6; Hearing Exhibit 17, Attachment O.

38 Hearing Exhibit 12, Application Exhibit 4.

39 Hearing Exhibit 12, Application Exhibit 4, p. 1.

40 Hearing Exhibit 12, Application Exhibit 4, pp. 1-2.

41 Hearing Exhibit 12, Application Exhibit 22, p. 3.

42 Hearing Exhibit 12, Application Exhibit 22, p. 2-3.

area. These impacts include approximately 8.95 acres of temporary disturbance due to vegetation clearing for construction, and 312.88 acres of disturbance from Facility components.[43]

a. Avoidance and Mitigation of Impacts to Agricultural Resource

Active agricultural land in the form of hay fields, pastureland and cultivated crops comprise approximately 810 acres or 61.7% of the Project area. Construction of the Facility would result in temporary disturbance of up to 7.9 acres of agricultural land. East Point estimates that about 312.5 acres of agricultural land would be used for Facility components, and then restored following decommissioning of the Facility.[44]

A total of 287.94 acres within the Project's limits of disturbance are considered prime farmland.[45] Prime farmland contains soils classified as groups 1-4 under AGM's NYS Agriculture Land Classification system. AGM identified lands with these soil groups as the State's most productive farmland or viable agriculture land, as defined in Agriculture and Markets Law §301.[46]

Temporary impacts to agricultural resources would occur primarily from clearing and grading for solar array and inverter installation, burying underground collection lines, clearing vegetation along the margins of access roads, and establishing staging areas.[47] Once the Project becomes operational, areas beyond the immediate vicinity of the solar

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43 Hearing Exhibit 12, Application Exhibit 22, p. 9.

44 Hearing Exhibit 12, Application Exhibit 22, p. 3.

45 Hearing Exhibit 12, Application Exhibit 4, p. 35.

46 AGM Staff Initial Brief, p. 11; Tr. 244.

47 Hearing Exhibit 12, Application Exhibit 22, pp. 9-10.

arrays that were temporarily impacted would be reseeded and restored to their original condition.[48]

After installation of the solar arrays, approximately 312.5 acres of agricultural land underneath and in the immediate vicinity of the solar panels would be seeded with a suitable grass mix that would require periodic mowing. Agricultural lands previously planted with row crops would be converted from that use for the useful life of the Project due to the installation of the solar arrays.[49]

During the post-construction and decommissioning phases, East Point would restore the area to substantially its pre-construction condition, thereby allowing the resumption of agricultural use if the landowners so choose.[50] East Point estimates that permanent impacts to agricultural soils after decommissioning will occur to only 7.62 acres of this area as a result of the construction of the solar arrays' mounting posts (0.28 acres), access roads (5.87 acres), inverters (0.57 acres), and a substation and collection switchyard (0.90 acres).[51] Of that area, East Point estimates that the Project's permanent impact to prime farmland would total 7.11 acres after decommissioning.[52]

Design measures East Point has proposed and agreed upon to avoid and minimize impacts to agricultural resources include the use of solar array technology that decreases the amount of land required to achieve its proposed 50 MW generating capacity; the use of a tracking system that employs driven posts

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48 Hearing Exhibit 12, Application Exhibit 22, p. 8.

49 Hearing Exhibit 12, Application Exhibit 22, p. 10.

50 Hearing Exhibit 12, Application Exhibit 4, p. 36.

51 Tr. 267; Hearing Exhibit 48, p. 1.

52 Tr. 267; Hearing Exhibit 48, p. 1.

requiring minimal ground disturbance and no concrete foundations; the siting of access roads in areas not actively used by farmers to the maximum extent practicable; the location of electric collection lines underground; and the location of an approximately 165-foot above-ground transmission line necessary for the Project's point of interconnection immediately adjacent to the proposed solar arrays, to minimize additional impacts to adjacent agricultural fields.[53]

Construction measures to avoid and minimize impacts to agricultural resources include the stripping, stock piling, and return of topsoil to disturbed areas, and the seeding of areas under the panels to preserve those areas for future potential agricultural use following decommissioning.[54] Post-construction measures include monitoring and remediation of agricultural lands impacted by the Project for at least two years following completion of initial restoration.[55]

Other avoidance and mitigation measures to be employed by East Point include adherence to the maximum extent practicable to the requirements in AGM's Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/2019) (Solar Guidelines) relating to construction, restoration, monitoring, and decommissioning; employment of an independent, third-party Environmental Monitor trained or qualified in agricultural matters; the development and submission of an Agricultural Area Plan detailing the Applicant's plans for complying with the Solar Guidelines to the

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[53] East Point Initial Brief, p. 18; Hearing Exhibit 12, Application Exhibit 4, pp. 35-36; Hearing Exhibit 69, Certificate Condition 88; Tr. 266-267.

[54] East Point Initial Brief, p. 18; Hearing Exhibit 12, Application Exhibit 4, p. 36; Tr. 266.

[55] Hearing Exhibit 12, Application Exhibit 22, p. 67; Hearing Exhibit 69, Certificate Condition 89.

maximum extent practicable; and the commitment to consult with AGM to find acceptable alternatives when compliance with the Solar Guidelines is not practicable.[56]

When executing the Settlement Proposal, no signatory party, including AGM Staff,[57] took exception to the proposed Certificate Conditions relating to agricultural resources. In pre-filed testimony and briefing, DPS Staff asserts that the final proposed Facility design layouts agreed to by East Point, as well as the design, performance, and mitigation measures included in the proposed Certificate Conditions and SEEP Guide, avoid, minimize, and mitigate to the maximum extent practicable the environmental and other adverse impacts to agricultural resources, including prime farmland.[58] No party other than AGM and the Town, introduced evidence or testimony disputing DPS Staff's conclusions.

Notwithstanding its execution of the Settlement Proposal without taking any exceptions, AGM Staff, joined in part by the Town, raises several objections to the Project in pre-filed testimony and briefing. First, citing what it considers to be inconsistencies in the information that East Point presented in its application, AGM Staff conducted its own rough estimate of impacts to agricultural land and concluded that more than 400 acres would be impacted. AGM Staff claims that prime farmland comprises approximately 45% of the Project area, and that the Project would result in the permanent conversion of approximately 85% of those high-quality farmland soils. AGM asserts that East Point has chosen to develop the

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[56] East Point Initial Brief, pp. 18-19; Hearing Exhibit 12, Application Exhibit 4, pp. 37-38; Hearing Exhibit 69, Certificate Conditions 16(a), 39, 50(f), 81, 88.

[57] Hearing Exhibit 42.

[58] DPS Staff Initial Brief, p. 13; Tr. 191-192.

most productive agricultural lands within the Project area, and that the Applicant has ample opportunity to use other lands in the Project area to minimize impacts to prime farmland.[59]

AGM Staff argues that farmland or lands used for agricultural production, as defined in Agriculture and Markets Law §301, should be avoided to the maximum extent practicable for uses that are not consistent with the development or improvement of agricultural lands for the production of food and other agricultural products or purposes. Citing New York Constitution, Article XIV, §4, and Agriculture and Markets Law §300, AGM Staff argues that it is the policy of the State to conserve, protect and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. AGM Staff raises the concern that many agricultural lands in the State are in jeopardy of being lost and when nonagricultural development extends into farm areas, competition for limited land resources results. AGM Staff asserts that the socio-economic vitality of agriculture in the State is essential to the economic stability of many local communities and the State as a whole.[60]

AGM Staff recognizes the State's initiative with respect to development of utility scale renewable solar energy generation facilities, and states that it is prepared to support that initiative, provided facilities are sited on lands other than the State's most productive farmland. To preserve the State's most productive lands for the production of food and fiber, AGM's goal is for a project to convert no more than 10% of the agricultural lands in the Project area that contain mineral soil groups 1-4. In contrast, AGM indicates it does not

[59] AGM Staff Initial Brief, p. 9.

[60] AGM Staff Initial Brief, p. 10.

object to the siting of solar electric generating facilities on lands with lesser productive soils (soil groups 5-10).[61]

AGM Staff identifies what it refers to as an accumulative effect on agriculture from solar energy development. Noting the trend in agribusiness away from small farms towards large-scale farming, AGM Staff states that due to market forces, farmland with high quality soils will more likely stay in agricultural production. However, citing information from DEC's State Pollutant Discharge Elimination System (SPDES) general permit for construction activities program, AGM identifies what it describes as an alarming consumption of agricultural lands for commercial scale solar energy development. AGM Staff states that during the period from 2016 to 2018, solar energy development impacted an average of 2,603 acres of agricultural land per year, including 441 acres of prime farmland. Since 2019, AGM asserts that an additional 3,606 acres of agricultural land has been converted to solar energy generation, including 1,179 acres of prime farmland. AGM expects that the development of all the Article 10 projects presently before the Siting Board will result in the conversion of more than 33,000 acres of agricultural land to a non-agricultural use.[62]

AGM Staff contends that the use of agricultural land for commercial solar energy generation constitutes the "permanent conversion" of farmland to a non-agricultural use. During the life of a project, the continuation of agricultural operations within a project area is infeasible due to the placement of solar arrays and ancillary facilities. Farming in areas outside a project's security fencing may also be

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61 AGM Staff Initial Brief, p. 11.

62 AGM Initial Brief, pp. 11-13.

significantly impeded, increasing the likelihood that those areas will be abandoned for agricultural use, particularly given the trend towards large-scale farming with its concomitant need to operate efficiently on large tracts of productive farmland. AGM Staff also argues that the placement of solar energy generation facilities on agricultural lands has the indirect impact of eliminating the availability of prime farmland to the agricultural community as solar development outcompetes the agricultural community in the negotiation of leases.[63]

AGM Staff further argues that the permanent conversion of agricultural land to a non-agricultural use would continue after decommissioning and restoration. AGM Staff asserts that the Project here makes no commitment that the site would be returned to agricultural production, and no guarantee that it will not upgrade and tempt the landowners to renew their leases for another 30 years beyond the original useful life of the Project. AGM Staff also argues that the Project makes no guarantees that farmers will be available to farm the land even if decommissioned. Accordingly, AGM Staff asserts that the only way to ensure continued agricultural production is to ensure that the commercial development of such valuable farmlands is not permitted.[64]

Due to the impacts described above, AGM Staff states that it cannot support the Project's siting due to the conversion of active farmland, including the conversion of an estimated 85% of the highly valued agricultural soils in the impacted areas. AGM Staff also objects to the alternative siting provided in Application Exhibit 9 because it would also impact equally valued prime farmland. Instead, AGM Staff

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[63] AGM Initial Brief, pp 14.

[64] AGM Staff Initial Brief, pp. 14-15.

asserts that the Applicant should explore relocating proposed arrays to three other locations that contain lesser quality soils.[65]

Although AGM Staff prefers avoidance of prime farmland, it states that, in the alternative, it will accept mitigation in the form of a payment into a fund to support the conservation of other local farmland with similarly highly productive farmlands. AGM Staff concedes that it lacks a legislative framework to require mitigation for the conversion of viable agricultural land. Nevertheless, citing a 2020 announcement by the New York State Energy Research and Development Authority (NYSERDA) that it is establishing an agricultural mitigation fund for solar energy projects, AGM Staff urges the Siting Board to similarly establish such a fund.[66]

In its brief, AGM Staff notes the Applicant's rebuttal testimony, in which the Applicant argued that AGM waived its objections to the Project by executing the Settlement Proposal without exceptions. AGM Staff disagrees. AGM Staff asserts that it negotiated the terms of those documents in good faith in the event the Siting Board issues a Certificate to ensure that agricultural lands were properly protected within the designated area. AGM Staff states that its issues statement, later summarized in the March 24, 2020 Issues Ruling, clearly identified the Department's lack of support for the proposed siting.[67]

AGM Staff objects to the Applicant's assertion that its lease payments could assist the current landowners and have

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65 AGM Staff Initial Brief, pp. 15-16.

66 AGM Staff Initial Brief, pp. 16-17.

67 AGM Staff Initial Brief, pp. 16, 18.

a potential to enhance the viability of their existing farm operations. AGM Staff asserts that while this may be true for local landowners James and Sharon Sherman, it is not true for the bulk of the property being developed owned by High Hill, LLC, which resides outside the Mohawk Valley. AGM Staff argues that payments to landowners residing outside the community will not support agriculture within the community.[68]

Finally, AGM Staff asserts that East Point should be required to employ a designated, qualified Environmental Monitor with agricultural knowledge, comply with AGM's Solar Guidelines, and work with the Environmental Monitor and AGM to develop acceptable alternatives if compliance is impracticable.[69]

The Town of Sharon joins AGM Staff in its opposition to the Project due to its impacts to agricultural lands, and particularly to prime farmland. Citing its Comprehensive Plan and Solar Law, the Town states that it is a rural community whose history is deeply rooted in agriculture, and that one of its planning objectives is to maintain and promote agriculture as a foundation of that community. The Town notes that its Solar Law states that "in accordance with the Comprehensive Plan, the Town of Sharon does not support the conversion of productive farmland to support grid-supply facilities."[70]

Referencing AGM Staff's rough estimate of the Project's impacts, the Town states that the Project would impact more than 400 acres of agricultural land, of which 312.88 acres are designated as prime farmland. The Town also notes AGM's estimation that 45% of the Project area contains prime farmland and that the Facility area would permanently convert 85% of

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68 AGM Staff Initial Brief, p. 18.

69 AGM Staff Initial Brief, p. 19.

70 Town Initial Brief, p. 6, quoting Town Solar Law §(E)(3)(g).

those lands. The Town notes that approximately 15% of the Town's soils are designated as prime farmland. Based on AGM's figures, the Project would convert approximately 9% of the Town's "available" prime farmland, reducing the Town's total prime farmland to 13.7%. The Town rejects the Applicant's assertion that the conversion would be insignificant and temporary. Due to these permanent impacts, the Town argues that the proposed Project is inconsistent with its Comprehensive Plan and rural character.[71]

The Town further argues that East Point's mitigation measures are "woefully inadequate" and evince the Applicant's failure to consider the avoidance of agricultural impacts or prime farmland in its proposed siting of the Facility. The Town argues that the Applicant's complete lack of consideration of alternatives to avoid prime farmland is grounds alone for denying the Application.[72]

In response, East Point refutes AGM Staff's assertions that the Project fails to avoid and minimize impacts to agriculture to the maximum extent practicable. As an initial matter, East Point notes that AGM Staff executed the Settlement Proposal without taking exceptions. East Point argues that this, coupled with AGM's statement that it negotiated in good faith to assure that agricultural lands would be properly protected by adoption of the proposed Certificate Condition, demonstrates that the Project avoids or minimizes agricultural impacts to the maximum extent practicable. Furthermore, East Point points out that the proposed Certificate Conditions provide for much of the relief AGM Staff seeks, including the employment of an Environmental Monitor with agricultural

[71] Town Initial Brief, pp. 6-7; Town Reply Brief, p. 4.

[72] Town Initial Brief, pp. 7-8; Town Reply Brief, p. 3.

experience, and adherence to AGM's Solar Guidelines. East Point also notes that AGM Staff did not take exception to any other Certificate Conditions designed to protect agricultural lands.[73]

East Point challenges AGM Staff's 10% of prime farmland limit as an applicable standard under Article 10. East Point argues that AGM's "goal" lacks a statutory or regulatory basis, and the application of the limit would interfere with the right of private landowners to voluntarily decide whether to conduct agricultural activities on their entire property, or to use a portion of their land for renewable energy generation to support their farm operations.[74] East Point further argues that the State's policy to conserve and protect agricultural lands, which AGM references as basis for its proposed 10% limitation, should not be enforced at the expense of competing State policy considerations the Siting Board must balance, including the State's climate change and renewable energy development policies and mandates under the recently enacted CLCPA.[75]

East Point similarly challenges AGM's mitigation payment proposal as lacking a statutory, regulatory, decisional, or evidentiary basis. East Point argues that AGM's reference to the fund announced by NYSERDA as precedent is inapposite. East Point notes that the NYSERDA fund is proposed in regulations pursuant to the newly enacted Accelerated Renewable Energy Growth and Community Benefit Act[76] that have not yet been adopted and a potential requirement for not-yet-awarded NYSERDA contracts and, therefore, is not a precedent for the Siting

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73 East Point Reply Brief, pp. 2-5.

74 East Point Initial Brief, p. 20.

75 East Point Reply Brief, pp. 12-16.

76 L. 2020, ch. 58, part JJJ.

Board to follow.[77]

East Point refutes AGM's claim that its estimate in Application Exhibit 22 -- that approximately 312.5 acres of agricultural will be used for project components -- is contradicted by other Application exhibits and tables. East Point cites it rebuttal testimony, in which it explained that the referenced tables address different subjects, such as limits of disturbance and acreage to be occupied by components. East Point further explains that the different calculations were driven, in part, by separate Stipulations required by the various parties. Accordingly, East Point argues that no inconsistency exists.[78]

With respect to AGM's "rough" calculation of the Project's impacts, upon which the Town also bases its objections, East Point argues that AGM's estimates overstate the Project's impact on prime farmland soils. East Point notes that although AGM executed study stipulations that did not distinguish between "available" and "unavailable" prime farmland soils, AGM's calculations purport to quantify the Projects impacts to "available" prime farmland. East Point argues, however, that AGM does not define the term "available" or explain its basis for determining whether prime farmland is available or not.[79]

East Point further argues that AGM's calculations ignore the circumstance that upon decommissioning, the agricultural lands impacted by the Project would be restored to pre-construction condition, thereby allowing the resumption of agricultural uses if the landowners so choose. East Point

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[77] East Point Initial Brief, p. 22; East Point Reply Brief, pp. 5-6.

[78] East Point Reply Brief, pp. 6-7.

[79] East Point Reply Brief, pp. 8-9.

asserts that based on the post-construction minimization measures and post-decommissioning restoration efforts, the Project will only permanently disturb 7.11 acres of prime farmland, not the more than 350 acres AGM's claims.[80]

With respect to AGM's claims regarding the cumulative impact on the agricultural industry caused by the use of agricultural lands for commercial solar energy production, East Point argues the claim is an improper attempt by AGM to litigate generic Statewide policy making through an Article 10 proceeding. In addition, East Point argues that AGM's claims are speculative or based on material outside the record of this proceeding and should be given no weight. As to AGM's arguments regarding a lack of guarantees that lands impacted by the Project will return to agricultural use post-decommissioning, East Point contends that none of the guarantees are required by Article 10 or its regulations, and should not be the responsibility of private developers.[81]

With respect to arguments by AGM Staff and the Town that East Point failed to consider available alternative sites within the Project area to locate Project components, the Applicant states that AGM and the Town ignore rebuttal testimony with respect to the Project's consideration of the alternative layouts proposed by AGM and the Town. In that testimony, East Point explained that each of the proposed sites was impracticable due to engineering requirements, landowner restrictions, the distance to the point of interconnection, the presence of wetlands or drainage features, or a combination of some or all of these reasons. An additional consideration that limited alternative siting was requests by the Town and

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[80] East Point Initial Brief, pp. 20-21; East Point Reply Brief, pp. 7-8.

[81] East Point Reply Brief, pp. 9-10, 12.

residents that Project arrays be located away from parcels adjacent to Route 20. Accordingly, the Applicant argues that the record demonstrates that the allegations by AGM and the Town that the Applicant failed to explore alternative siting arrangements in an effort to avoid or minimize impacts to prime farmland lack merit.[82]

Discussion

The Siting Board recognizes the importance of conserving highly productive agricultural lands in the State. However, as we have concluded in a recent Article 10 matter,[83] PSL §168(3)(c) and associated regulations provide the Siting Board with the standard of review to apply in evaluating the impacts to agricultural resources that may result from the construction and operation of the Project. Under these provisions, the Applicant must show that impacts to relevant agricultural resources would be "minimized or avoided to the maximum extent practicable," and offer "mitigation measures to minimize the impact to [such] resources."[84]

Applying Article 10's standards here, we conclude that East Point has carried its burden of demonstrating that the Project's impacts to agricultural resources have been avoided or minimized to the maximum extent practicable. We recognize that during the operational life of the Project, agricultural lands used for Project components will be converted to a non-agricultural use. We disagree with AGM Staff, however, that the Project would result in the permanent conversion of all those

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82 East Point Initial Brief, pp. 21-22; East Point Reply Brief, pp. 10-11; Tr. 268-270, 289-290.

83 Case 17-F-0182, Application of Mohawk Solar LLC – Solar Electric Generation Siting, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued November 13, 2020), pp. 38-39.

84 PSL §168(3)(c); 16 NYCRR §1001.22(q).

lands. We agree with East Point that its use of a solar array tracking system that does not require concrete foundations, together with the proposed post-construction mitigation and post-decommissioning restoration measures would result in minimal permanent impacts to agricultural resources. We conclude the record supports that finding that about 7.62 acres will be permanently impacted, 7.11 acres of which constitute prime farmland, and not the 350 acres AGM Staff asserts. We also agree that speculation regarding whether or not landowners will resume agricultural use of restored lands does not warrant the conclusion that the impacted lands would be permanently converted, notwithstanding decommissioning and restoration.

With respect to the temporary impacts to agricultural resources from Project construction and operation, the proposed Certification Conditions require, among other things, the employment of an Environmental Monitor with agricultural qualifications and adherence to AGM's Solar Guidelines for the construction, post-construction, and decommissioning phases of the Project. Based on these Certificate Condition, which we adopt, we conclude that the Project's impacts to agricultural resources have been avoided and minimized to the maximum extent practicable.

b. Impacts to Other Ecological Resources

With respect to impacts to area terrestrial ecology, other than agricultural resources, the Siting Board must determine that any adverse impacts to area terrestrial ecology resulting from the construction and operation of the facility will be minimized or avoided to the maximum extent practicable.[85] Applicant's land mapping identified approximately 384 acres, or

[85] PSL §168(3)(c).

29.3 percent, of forested land covers within the Project area.[86] The Application estimates that 1.69 acres of forested land will be permanently impacted, and 48.55 acres of forest will be converted due to Project construction and post-construction maintenance as successional old-field or shrubland communities for the life of the Project due to clearance constraints.[87] In addition, Project construction would result in temporary disturbances to 0.20 acre of shrubland, 0.10 acre of successional old-field and 0.75 acres of developed land. Once the Project becomes operational, these areas would return to their preexisting condition. The siting of Facility components would permanently disturb approximately 0.14 acres of successional shrubland communities, 0.05 acres of successional old-field communities, and 0.08 acres of developed land communities.[88] No impact to open water vegetation communities is anticipated.[89]

The Application also acknowledges that approximately 136.5 acres of potential grassland habitat is located within the Project area; but asserts the grassland was unlikely to provide suitable habitat for grassland bird species observed due to the condition of the grassland and frequent disturbances from active agricultural activities. The Application also asserts that following the construction disturbances for the Project, revegetation efforts will improve nesting habitat quality by creating increased vegetative structure and reducing frequency of disturbance over the life of the Project.[90]

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86 Hearing Exhibit 12, Application Exhibit 22, pp. 3-4.

87 Hearing Exhibit 12, Application Exhibit 22, pp. 11-12.

88 Hearing Exhibit 12, Application Exhibit 22, pp. 10-12.

89 Hearing Exhibit 12, Application Exhibit 22, pp. 10-11.

90 Hearing Exhibit 12, Application Exhibit 22, pp. 19-20.

According to the Application, measures undertaken by East Point to avoid or minimize plant community impacts include site planning to avoid unnecessary impacts to grasslands, interior forest, wetlands, shrubland, and young successional forests. As a result, impacts to these vegetated communities will be marginal. In addition, Project components were sited to confine disturbances to the smallest area possible and work areas have been adjusted to utilize open fields whenever possible. Access roads and collector lines have been co-located to avoid and minimize impacts to plant communities and solar panels have been proposed in areas already disturbed by agriculture. A Stormwater Pollution Prevention Plan (SWPPP) will be implemented to protect adjacent undisturbed vegetation and other ecological resources. The Application also asserts that avoidance, minimization, and mitigation of impacts to vegetative communities will also occur through compliance with the on-site environmental monitor's guidance, maintenance of work sites, employment of best management practices during construction, operation, and maintenance, and by demarcation of areas highly susceptible to adverse disturbances to prevent access by construction equipment and any other disturbance activity.[91]

No parties dispute the effectiveness of the Application's avoidance and minimization measures. The Town of Sharon, as discussed below, disputes Applicant's request for a waiver of Town law that limits clearing of land to 30% of the woodland on any parcel. The Town asserts that the Applicant's request for a waiver is unsupported and states that East Point needs to reduce tree clearing on two parcels of land to comply with the local law. The Town, however, agreed to all proposed

[91] Hearing Exhibit 12, Application Exhibit 22, p. 13.

Certificate Conditions, the Noise Complaint Resolution Protocol, and the SEEP Guide except for Certificate Conditions 12, 28 and 31, Noise Complaint Protocol Sections 7(a)(iii) and 7(b)(iv), and SEEP Guide Section A, Item 13 and Section B, Item 14, none of which would constitute a dispute relating to the terrestrial ecology impacts discussed herein.

In addition, the agreed-upon proposed Certificate Conditions and SEEP Guide include provisions related to clearing trees and vegetative cover, the SWPPP and environmental monitor. Pursuant to proposed Certificate Condition 87, the Certificate Holder is required to limit tree and vegetation clearing to the minimum necessary for Facility construction.[92]

Based on the record and the agreed-upon proposed Certificate Conditions and SEEP Guide, we conclude that the impacts to terrestrial ecology that are expected to occur are minimal and that the Project's impacts to plant and forest ecology have been minimized or avoided to the maximum extent practicable.

c. Invasive Species

Environmental Conservation Law (ECL) Article 9 requires that projects subject to State review be examined for any risks posed to the State's environment by invasive species, and that wherever practical, invasive species be prohibited and actively eliminated at project sites regulated by the State.[93]

East Point's Application contains field studies documenting the presence and extent of invasive species in the Project Area, and a proposed Invasive Species Management and Control Plan (ISMCP) detailing procedures for handling and

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[92] Hearing Exhibit 69, Certificate Conditions 18, 28, 40, 81, 87; Hearing Exhibit 78, SEEP Guide, Section A, Items 2, 3, 5; Section B, Item 8.

[93] ECL §§9-1701, 9-1709(2)(b)(iv).

preventing the spread of invasive species.[94] The ISMCP was supplemented in December 2019 and submitted as part of the parties' settlement proposal.[95] DEC Staff has noted its acceptance of the ISMCP.[96]

The parties have agreed to proposed Certificate Conditions 72 (final ISMCP to be submitted as an informational filing before construction), 101 (prohibition on use of hay bales), 114 (post-construction invasive species monitoring and reporting) and 119 (construction controls for identification, inspection, treatment, removal, sanitation and restoration) to further manage and control invasive species.[97] No party disputes the effectiveness of these conditions and controls.

Based on the record, proposed Certificate Conditions 72, 101, 114, and 119 and the supplemented ISMCP, we determine that the Project complies with ECL Article 9 and impacts related to invasive species have been minimized or avoided to the maximum extent practicable.

2. Air Quality

a. Mitigation of Construction-Related Emissions

Before granting an Article 10 Certificate, the Siting Board is required by PSL §168(2) to make findings regarding the nature of the probable environmental impacts of construction and operation of a facility on air quality. Pursuant to PSL §168(3)(c) and (e), the Board must determine that the adverse environmental effects of the construction and operation of the facility on air quality will be minimized or avoided to the

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94 Hearing Exhibit 12, Application Appendix 22-6.

95 Hearing Exhibit 17, Appendix O (Attachment A to Appendix 22-6).

96 DEC Staff Initial Brief, p. 10; Tr. at 228 (Direct Testimony of DEC witness Georgette Walters [Walters Direct]).

97 Hearing Exhibit 69, Certificate Conditions 72, 101, 114, 119; Hearing Exhibit 12, Application Appendix 22-6.

maximum extent practicable, and that the facility is designed to operate in compliance with applicable State air pollution control laws and regulations.

During construction, the Facility may result in minor, temporary adverse air impacts associated with vehicle emissions, fugitive dust from earthmoving activities and travel on unpaved roads, and emissions from fossil fuel-fired generators. To minimize localized air impacts, the Applicant would require contractors to adhere to best management practices, including prohibiting unnecessary idling of equipment and controlling fugitive dust emissions.[98]

As part of its Compliance Filings, East Point will submit a Dust Control Plan to minimize dust resulting from construction.[99] In addition, East Point will ensure that functioning mufflers are maintained on all transportation and construction machinery.[100]

As noted by DPS Staff, the Facility does not require any federal, State, or local air emissions permits. DPS Staff urges the Siting Board to find that the impacts associated with air emissions during construction of the Facility will be avoided, minimized, or mitigated to the maximum extent practicable.[101]

b. Expected Emissions Reductions During Operations

After construction, the Facility would generate electricity without combusting fuel or releasing pollutants into

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98 Hearing Exhibit 12, Application Exhibit 17, p. 5; Hearing Exhibit 12, Application Exhibit 2, pp. 16, 20.

99 Hearing Exhibit 78, SEEP Guide, Section B, Item 5(a); East Point Initial Brief, pp. 25-26.

100 Hearing Exhibit 69, Certificate Condition 77(b); East Point Initial Brief, pp. 25-26.

101 DPS Staff Initial Brief, pp. 15-16.

the atmosphere.[102] According to the Applicant, the Facility would have an overall positive impact on air quality and would contribute to meeting New York's climate change and renewable energy goals.[103] The Application provided estimates of the CO_2, NO_x and SO_2 emissions from fossil fuel-fired power plants that the proposed Facility would displace annually from 2023 to 2050.[104]

No party raised concerns related to potential impacts to air quality. Based upon the record and the proposed Certificate Conditions and SEEP Guide negotiated by the parties, we conclude that the Facility's potential impacts to air quality have been minimized or avoided to the maximum extent practicable, and that the Facility will be constructed and operated in compliance with all applicable State air pollution control laws and regulations.

3. Ground and Surface Water Mitigation Measures

Before granting an Article 10 Certificate, PSL §168(2) requires the Siting Board to make findings regarding the nature of the probable environmental impacts of construction and operation of a facility on ground and surface water resources. Pursuant to PSL §168(3)(c) and (e), the Board must determine that the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable, and that the facility is designed to operate in compliance with applicable State freshwater wetland protection, water pollution control, and stream protection laws and regulations, and State water quality standards.

a. Groundwater and Wells

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[102] Hearing Exhibit 12, Application Exhibit 17, pp. 5-6.

[103] Hearing Exhibit 12, Application Exhibit 17, pp. 5-8. East Point Initial Brief, p. 11, 25-26.

[104] Hearing Exhibit 12, Application Exhibit 17, pp. 5-7.

The Project area does not overlay any primary or sole-source aquifers, although it does overlay one principal aquifer. According to the Schoharie County Department of Health, no public drinking water sources are located in the Project area.[105] Residences in the Project area depend on groundwater wells for their water supply and residents report the wells range from approximately 60 to 440 feet deep.[106]

East Point stated that no permanent impacts to groundwater quality or quantity are anticipated to result from the Project, and that any potential minor and temporary adverse impacts to the local water table during the construction phase of the Project can be avoided and mitigated through the use of best management practices, including measures in the proposed SWPPP. East Point also stated that temporary impacts to groundwater could potentially occur through the introduction of pollutants from inadvertent discharges of petroleum or other chemicals used during the construction, operation, or maintenance phases of the Project. Impacts to groundwater, however, are not anticipated due to the implementation of avoidance, minimization, and mitigation measures.[107] No party disputed this.

The parties have agreed to proposed Certificate Condition 90, which provides prohibitions on pier and post driving activities as well as blasting within specified setbacks from any known, existing and active potable water supply well and establishes protocols for pre- and post-construction water potability testing for potentially affected wells on non-participating parcels within specified distances of collection

[105] Hearing Exhibit 12, Application Exhibit 23, pp. 2-3.

[106] Hearing Exhibit 12, Application Exhibit 23, p. 5.

[107] Hearing Exhibit 12, Application Exhibit 23, pp. 3-4.

lines or access roads, pier or post installations, horizontal direction drilling operations, and blasting operations. Pursuant to proposed Certificate Condition 90, the Certificate Holder is required to cause a new well to be constructed if pre- and post-construction water quality tests demonstrate specified impacts to water quality resulting from Project construction activities.[108] Certificate Condition 90 has not been objected to by any party in this proceeding.

Based on the record, and the proposed Certificate Conditions and SEEP Guide negotiated by the parties, we conclude that impacts to groundwater and wells will be minimized or avoided to the maximum extent practicable, and that all State water quality standards for groundwater will be met.

b. Freshwater Wetlands and Streams

i. Freshwater Wetlands

The public policy of the State of New York is to preserve, protect, and conserve freshwater wetlands and the benefits they provide, to prevent the despoliation and destruction of freshwater wetlands, and to regulate use and development of such wetlands to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social, and agricultural development of the State.[109] State approval must be obtained for any proposed project that may impact State-regulated freshwater wetlands, or the associated regulated adjacent area, which generally extends

[108] Hearing Exhibit 69, Certificate Condition 90 (Water Supply Protection); see also Hearing Exhibit 69, Certificate Conditions 17(b) (notice requirements), 40 (SWPPP filing requirement) and 101 (erosion controls); Hearing Exhibit 78, SEEP Guide, Section A, Item 5(b); SEEP Guide, Section B, Items 8(f), 13(a).

[109] Tr. at 219 (Walters Direct).

100 feet from the boundary of a State-regulated wetland.[110] The standards for issuance of a freshwater wetlands permit are outlined at 6 NYCRR §663.5. The Siting Board must determine whether the Facility's construction and operation would otherwise conform with the requirements of ECL Article 24 and 6 NYCRR Part 663 (Freshwater Wetlands Permit Requirements) by complying with the permit issuance standards set forth at 6 NYCRR §663.5.

East Point's Application identified wetland areas that are part of DEC mapped freshwater Wetlands SS-1 and SS-6, State-regulated wetlands within the Project area. These wetlands are Class 3 wetlands.[111] The Application also identifies a permanent impact to 195 square feet and 43 square feet of non-jurisdictional wetlands that may be caused from grading for an access road if an existing road is unusable in its current condition and a permanent impact to 0.34 acre of the 100-ft adjacent area of a potential DEC wetland.[112] No other impacts to jurisdictional wetlands are expected from the construction or operation of the Project.

The permanent impact to 0.34 acres of Wetland SS-6 adjacent area will be caused by grading, solar array placement, infiltration trenching, and an access road. DEC Staff testified that the impacts to the adjacent area are addressed by the SEEP Guide, which provides wetland mitigation and restorations measures and specific measures related to the 0.34 acre of impacted adjacent area.[113] The Certificate Holder will provide a site specific plan for onsite mitigation developed in

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110 See 6 NYCRR §663.2(b).

111 Tr. at 226 (Walters Direct).

112 Hearing Exhibit 12, Application Exhibit 22, pp. 1, 62.

113 Tr. at 227 (Walters Direct); Hearing Exhibit 78, SEEP Guide, Section B, Item 17.

coordination with DEC and DPS Staff.[114]

Several proposed Certificate Conditions also address wetlands protection and the minimization and mitigation of impacts. Certificate Condition 115 sets forth measures to be taken when a wetland or adjacent area is temporarily disturbed during construction, while other conditions provide for minimizing impacts from cable installation, spills, debris removal, as well as prohibitions on certain activities within a wetland or adjacent area.[115]

Based on the agreed-upon proposed Certificate Conditions for the Project and SEEP Guide provisions, DEC staff agrees that East Point has met its statutory and regulatory burdens under ECL Article 24 and Part 633, and avoided and minimized the Project's impacts to State-regulated wetlands and their adjacent areas to the maximum extent practicable. DPS Staff agreed that the Certificate Conditions and SEEP Guide support a finding that wetland impacts have been minimized or avoided to the maximum extent practicable.[116]

Based on the record, and the proposed Certificate Conditions and SEEP Guide negotiated by the parties, we conclude that the Project is designed to operate in compliance with all applicable State freshwater wetland protection laws and regulations, and that the adverse impacts to delineated wetlands and adjacent areas have been minimized or avoided to the maximum extent practicable.

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[114] Hearing Exhibit 78, SEEP Guide, Section B, Item 17.

[115] Hearing Exhibit 69, Certificate Conditions 41, 65, 66, 68, 74, 81, 98, 102-104, 106, 107, 109, 110, 112, 115-118, 120, 125, 130, 132-134.

[116] DEC Staff Initial Brief, pp. 5-6; Tr. at 229 (Walters Direct); Tr. at 179, 181, 192 (DPS Staff Panel Direct Testimony); Tr. at 300 (East Point Rebuttal Panel).

ii. Streams

ECL Article 15 and DEC's regulations at 6 NYCRR Part 608 establish the State's environmental laws regarding the disturbance of protected streams. Pursuant to ECL Article 15, State approval is required for disturbances of streams classified as C(T) or higher in the DEC's stream classification system.[117] In addition, East Point must comply with State water pollution control law by obtaining coverage under DEC's General SPDES Permit for Stormwater Discharges from Construction Activity (GP-0-20-00) (General Permit), which requires, among things, preparation of a SWPPP.[118] The Project also requires a water quality certification (WQC) pursuant to Section 401 of the federal Clean Water Act and, accordingly, East Point must demonstrate compliance with State water quality standards provided at 6 NYCRR §608.9. Finally, the adverse impacts to streams and surface waters from the construction and operation of the Project must be minimized or avoided to the maximum extent practicable.[119]

The Application identifies 28 streams and 8 ponds within the Project area. Three of the streams – Flat Creek, West Creek and Brimstone Creek - are Class C streams. DEC staff testified that the Project will comply with the requirements of ECL Article 15, the State water quality program pursuant to section 401 of the Clean Water Act, and 6 NYCRR Parts 608, 701, 702, 703, 704, and 750 as long as the agreed-upon Certificate

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[117] ECL §15-0501; 6 NYCRR §608.2.

[118] Effective date January 29, 2020; see 6 NYCRR §750-1.21(b)(2). The General Permit is issued pursuant to the DEC's authority under ECL Article 17, Titles 7 and 8, and Article 70. The General Permit was issued pursuant to the federal Clean Water Act, and DEC remains the permit-issuing authority for the General Permit for Article 10 projects. See PSL §172(1).

[119] PSL §168(3)(c).

Conditions and SEEP Guide are included in any Certificate issued by the Siting Board.[120]

DPS Staff notes that because no protected streams are located within the Project area, therefore, no impacts to State-protected streams are anticipated during construction, operation, or decommissioning of the Facility. DPS Staff also states that several agreed-upon proposed Certificate Conditions and SEEP Guide provisions establish requirements for standard practices designed to avoid or otherwise minimize impacts to surface waters during construction.[121]

Based upon the record and the agreed-upon proposed Certificate Conditions and SEEP Guide provisions related to streams and surface waters, which we adopt, we conclude that the Project will comply with all State law and regulations governing streams and surface waters, and that impacts to those waters from Project construction and operation have been minimized or avoided to the maximum extent practicable.

c. Section 401 Water Quality Certification

As noted above, a Section 401 Water Quality Certification (WQC) is required for the Project. The Application acknowledges that East Point will comply with Section 401 of the federal Clean Water Act.[122] DEC Staff testified that the agreed-upon proposed Certificate Conditions and SEEP Guide will ensure that Applicant complies with the State water quality program pursuant to section 401 of the Clean

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[120] Tr. at 228-229 (Walters Direct); DEC Staff Initial Brief, pp. 7-8.

[121] DPS Staff Initial Brief, pp. 23-24; Hearing Exhibit 69, Certificate Conditions 41, 65, 66, 68-70, 74, 98, 102-104, 106, 107, 109-112, 120-131; Hearing Exhibit 78, SEEP Guide, Section A, Items 5, 12; SEEP Guide, Section B, Items 5, 8, 17.

[122] Hearing Exhibit 12, Application Exhibit 32, pp. 1, 3.

Water Act.[123]

Pursuant to proposed Certificate Condition 10, agreed to by the parties, the Certificate Holder is required to file a request for a Clean Water Act Section 401 Water Quality Certification with the Secretary to the Siting Board before the commencement of construction of the Facility.[124] Based on the record and agreed-upon proposed Certificate Condition, we conclude that the Project will comply with State water quality standards. East Point's WQC application will be reviewed pursuant to 16 NYCRR §1000.8.

4. Wildlife and Habitat Mitigation Measures

a. Endangered or Threatened Species

As noted above, PSL §168(2) requires the Siting Board to make explicit findings regarding the probable environmental impacts from the construction and operation of a proposed facility on wildlife. Before granting an Article 10 Certificate, the Board must determine that any adverse environmental effects of the construction and operation of the facility on wildlife will be minimized or avoided to the maximum extent practicable, and that the facility is designed to operate in compliance with applicable State environmental law protecting wildlife.[125] The State environmental law protecting wildlife applicable to the Project is the State Endangered Species Act (ECL §11-0535 [ECL Article 11]) and its implementing regulations at 6 NYCRR Part 182.

Pursuant to ECL Article 11 and Part 182, where an applicant proposes to engage in any activity that is "likely to result in the take or taking of any species listed as endangered

[123] Tr. at 229 (Walters Direct).

[124] Hearing Exhibit 69, Certificate Condition 10.

[125] PSL §168(3)(c), (e).

or threatened," the applicant must satisfy the requirements to obtain an incidental take permit in accordance with 6 NYCRR §182.11. A "take" or "taking" is broadly defined under 6 NYCRR §182.2(x) to include not only the "killing," or "capturing," of any species listed as endangered or threatened, but also "all lesser acts such as disturbing, harrying or worrying." "Lesser acts" are defined to include any "adverse modification of habitat" of any species listed as endangered or threatened.[126] The "adverse modification of habitat" includes any alteration of the "occupied habitat" of any listed species that, as determined by DEC, is likely to negatively affect one or more essential behaviors of such species.[127]

In Article 10 proceedings, incidental take permits are issued in the form of Certificate Conditions and Compliance Filings. An applicant must first avoid all impacts to listed species to the maximum extent practicable. If an applicant can demonstrate, however, that full avoidance of the take of the listed species at issue is impracticable, the applicant must take measures to minimize to the maximum extent practicable any take of the species. The applicant must also prepare a net conservation benefit plan (NCBP) containing mitigation measures that will result in a net conservation benefit to the species.[128]

The parties agree that the Project, as proposed, is not expected to result in an adverse impact to any listed

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[126] 6 NYCRR §182.2(l).

[127] 6 NYCRR §182.2(b), (o). "Essential behaviors" are behaviors exhibited by a threatened or endangered species that are a part of its normal or traditional life cycle and that are essential to its survival and perpetuation. Essential behavior includes behaviors associated with breeding, hibernation, reproduction, feeding, sheltering, migration and overwintering. 6 NYCRR §182.2(f).

[128] 6 NYCRR §182.11.

species.[129] According to DEC, there is no record of listed species occupied habitat within the Project area.[130] Several listed species occupy areas adjacent to the Project area including: short-eared owl (Asio flammeus), northern harrier (Circus hudsonius), upland sandpiper (Bartramia longicauda), Henslow's sparrow (Ammodramus henslowii), sedge wren (Cistothorus stellaris), bald eagle (Haliaeetus leucocephalus), and northern long-eared bat (Myotis septentrionalis) (NLEB). Consequently, there is a potential for an adverse impact to those listed species from construction, operation, restoration or maintenance of the Project if the listed species are utilizing the Project area in some capacity now, and if they engage in nesting or roosting activities, or the Project area otherwise becomes occupied habitat. The parties agree that proposed Certificate Conditions 91-97 are protective of listed species and intended to prevent a take should a listed species enter or make use of the Project area and would avoid or minimize impacts to listed species to the maximum extent practicable.[131]

The agreed-upon Proposed Certificate Conditions require: the Environmental Monitor for the Project to be trained to identify and properly report threatened and endangered species during construction of the Project; the reporting of nests, roosts, roosting or breeding behavior observed during construction and operation as well as area posting and

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[129] DPS Staff Initial Brief, p. 12; Tr. at 193-194 (DPS Panel); DEC Initial Brief, pp. 8-9; Tr. at 235-236 (Direct Testimony of DEC Staff witness Brianna Denoncour [Denoncour Direct]); East Point Initial Brief, p. 35.

[130] Tr. at 233, 235-236 (Denoncour Direct).

[131] DPS Staff Initial Brief, p. 12; Tr. at 192 (DPS Panel); DEC Staff Initial Brief, pp. 8-9; Tr. at 233, 235-236 (Denoncour Direct); East Point Initial Brief, p. 35.

avoidance; the reporting of dead, injured or damaged federal and State listed species discovered during the life of the Project; the maintenance of records and the reporting of all observations of New York State listed species and the restoration of disturbed habitat during the construction, restoration, maintenance and operation of the Project; the reporting, posting and avoidance of NLEB maternity roost trees discovered during the life of the Project; a prohibition on tree cutting of NLEB maternity roost trees and trees in proximity thereto; and post construction avian monitoring. The proposed Certificate Conditions are further supported by the agreed-upon proposed SEEP Guide.[132]

Based upon the record and the agreed-upon Proposed Certificate Conditions and SEEP Guide provisions related to threatened and endangered species, which we adopt, we conclude that the Project will comply with all State law and regulations governing threatened and endangered species, and that impacts to threatened and endangered species from Project construction, restoration, maintenance and operation have been minimized or avoided to the maximum extent practicable.

b. Wildlife Other Than Threatened and Endangered Species and Habitat Other Than Occupied Habitat

PSL §168(2) requires the Siting Board to make explicit findings regarding the probable environmental impacts from the construction and operation of a proposed facility on wildlife and habitat. Before granting an Article 10 Certificate, the Board must determine that any adverse environmental effects of the construction and operation of the facility on wildlife and habitat will be minimized or avoided to the maximum extent

[132] Hearing Exhibit 69, Certificate Conditions 81(a), 91-97; Hearing Exhibit 78, SEEP Guide, Section A, Item 10 and Section B, Items 8, 16.

practicable, and that the facility is designed to operate in compliance with applicable State law protecting wildlife, namely as noted above, the State Endangered Species Act (ECL §11-0535) and its implementing regulations at 6 NYCRR Part 182.[133]

As described in the Application, the Project has been sited to avoid or minimize impacts to terrestrial ecology to the maximum extent practicable. Significant impacts to representative plant communities and wildlife resources within the Project Area are not expected to result from Project construction or operation. Approximately 10.40 acres of wildlife habitat of the 1,313 acre Project area, will be permanently lost due to the placement of Facility components. Of the 10.40 acres lost, 8.44 acres are located in active agricultural areas, which provide limited wildlife habitat due to regular human interference and agricultural practices.[134]

No significant natural communities or habitats of special concern are located in the Project area. Impacts to plant communities from construction and operation of the Facility include vegetation clearing and disturbance from construction, permanent loss of vegetated habitats by conversion to built facilities, and maintenance of vegetation underneath the solar panel arrays. Measures proposed by East Point to avoid or minimize plant community impacts include site planning to avoid unnecessary impacts to grasslands, interior forest, wetlands, shrubland, and young successional forests, siting components to confine disturbances to the smallest area possible and adjusting work areas to utilize open fields whenever possible, co-locating access roads and collector lines to avoid and minimize impacts to plant communities, and siting solar

[133] PSL §168(3)(c), (e).

[134] Hearing Exhibit 12, Application Exhibit 22, pp. 1, 11, 31, 42-43, 47.

panels in areas already disturbed by agriculture. East Point asserts that these measures would ensure that Facility construction and operation does not adversely impact plant communities and habitat.[135]

With respect to impacts to wildlife generally, East Point indicates that construction-related impacts to wildlife will be limited to incidental injury or mortality due to construction activities, habitat disturbance or loss and displacement associated with clearing and earth-moving activities, and displacement of wildlife due to noise and human activities.[136] East Point asserts that construction related impacts will not have significant adverse impacts on local populations of resident or migratory wildlife species. After construction, the perimeter fencing for the proposed Facility will enclose 352 acres of land and may limit movement of some wildlife species and may reduce foraging habitat. Larger mammals, such as white-tailed deer, eastern cottontail, red fox, coyote, gray fox, bobcat, and striped skunk, are highly mobile and will be able to move around the perimeter fencing. The Application also anticipates that wildlife species unable to forage within the perimeter fencing will find new foraging habitat in the vicinity of the Project.[137]

East Point notes that once construction is complete, operation-related impacts, or impacts that can occur to vegetation, wildlife, and wildlife habitat while the solar facility is functioning, include direct habitat loss, habitat degradation through forest fragmentation, disturbances due to solar array operation, and specific mortality as a result of

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[135] Hearing Exhibit 12, Application Exhibit 22, p. 13.

[136] Hearing Exhibit 12, Application Exhibit 22, pp. 40-42.

[137] Hearing Exhibit 12, Application Exhibit 22, pp. 14, 29-30, 40-42, 44.

solar array collisions.[138] East Point asserts that impacts from habitat loss or conversion, fragmentation, and disturbance or displacement are not expected to significantly affect wildlife populations. Furthermore, as discussed above, East Point asserts that the active agriculture practices currently present support a limited wildlife habitat value, and revegetation following construction may improve habitat conditions for grassland species.[139]

No parties dispute East Point's assertions regarding impacts to wildlife and wildlife habitat in general. Accordingly, based upon the record and the agreed-upon Certification Conditions related to wildlife and habitat, which we adopt, we conclude that adverse impacts to wildlife and wildlife habitat have otherwise been minimized or avoided to the maximum extent practicable.

5. Public Health and Safety - PSL §168 (2) (b) and §168 (3) (c)

No party challenges East Point's showing that it will comply with applicable federal, State and local regulatory air emissions requirements. DPS Staff agrees that East Point has made the showing required by 16 NYCRR §1001.17.[140] Although there will be temporary, minor adverse impacts on air quality mainly from dust during construction, over the life of the Project it will displace emissions from fossil-fueled power plants.[141]

DPS Staff also agrees, and no party disagrees, that East Point has demonstrated compliance with applicable cybersecurity, physical security and emergency response plan

[138] Hearing Exhibit 12, Application Exhibit 22, p. 47.

[139] Hearing Exhibit 12, Application Exhibit 22, p. 48.

[140] DPS Staff Brief, pp. 15-16.

[141] Hearing Exhibit 12, Application Exhibit 17.

requirements.[142]

Proposed Certificate Conditions 43-45, 48 and 76-78 include noise limits for construction and operation of the facility during daytime and nighttime hours, including a complaint resolution process. The parties to the settlement recommend adoption of these conditions, no party challenges these conditions, and we find them to be reasonable and appropriate.

The settling parties also propose a Noise Complaint Reduction Protocol. The Town objects to two sections of this Protocol, §§7(a)(iii) and 7(b)(vi), as insufficient or unreasonable.

§7(a)(iii) provides as follows:

> If the Sound Complaint location is less than one (1) mile from active construction activity, the following steps will be taken:
>
> 1. A representative from the construction firm will visit the site of the complaint during construction activity to listen and observe.
>
> 2. Construction personnel will determine whether the Certificate Conditions of the Order on construction have been met and if not, corrections(s) will be taken, or
>
> 3. Construction personnel in consultation with the EM will determine if any equipment is not functioning properly and thus creating unusual sound. If so, this equipment will be repaired or replaced as soon as practical.

The Town's objection to §7(a)(iii) is that if noise complaints occur during construction, the Environmental Monitor should be required to evaluate the noise levels that are occurring and respond in a timely fashion with mitigation

[142] DPS Staff Brief, pp. 16-17; 16 NYCRR §§1001.2, 1001.5 and 1001.40; Hearing Exhibit 12, Application Exhibit 18.

measures.[143] East Point responds that under the explicit terms of the proposed Protocol the Environmental Monitor is required to determine, with construction personnel, whether construction equipment is not functioning properly and will therefore investigate construction noise complaints, and that East Point is required by the Protocol to repair or replace equipment not functioning properly. East Point notes that this provision has been previously adopted by the Siting Board. In addition, East Point represents that its construction personnel will consult with the Environmental Monitor in investigating construction noise complaints.[144] We conclude, based on the Noise Complaint Resolution Plan adopted in the Atlantic Wind case and East Point's representation, that the Noise Complaint Reduction Protocol is sufficient as it stands on this matter.

> Section 7(b)(vi) provides as follows:
>
> (vi) The Certificate Holder shall inform a resident when it intends to conduct any exterior sound monitoring and cooperate with the resident to determine an appropriate location for the monitoring equipment. If the investigation determines that a sound complaint is the same and that the Facility is in compliance with the relevant certificate conditions for two separate instances at the same location during the last 3 years, then any future complaint, beyond the first two, may require the complainant to pay the cost of additional sound testing.

The Town's objection to §7(b)(vi) is that complainants should not be required to pay for sound testing in the event of a third or subsequent complaint at the same location within

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143 Town Initial Brief, p. 5.

144 East Point Reply Brief, pp. 16-17, citing Case 16-F-0267, Atlantic Wind LLC-Electric Generation Siting, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued June 20, 2020), p. 30.

three years under these circumstances.[145] East Point responds that this provision was negotiated to exclude good faith complaints and is designed to address complaints in bad faith that could require East Point to undertake endless sound monitoring investigations from neighbors inclined to harass the Project.[146] We agree with East Point on this matter. A resident may be required to pay for sound testing for a third or subsequent complaint under this provision only if three complaints within three years consist of the same complaint at the same location, and only if the investigation of the first two complaints has found the Facility to be in compliance with the relevant certificate conditions. If the sound complaint is not the same as the previous two complaints, or if the location is different, or if the three complaints are not within three years of each other, this provision does not apply. As examples, East Point is on notice that a complaint about a loud buzzing noise is not the same as a complaint about a steady, tonal humming noise, that a complaint about a discrete tone from a transformer or inverter is not the same as a complaint about noise from HVAC equipment or an emergency generator, and that a complaint by a new resident is not the same as a complaint by a prior resident at the same location.[147] We conclude that this provision is reasonably tailored to address complaints that are likely to be in bad faith.

In conclusion, we agree with the recommendation of DPS Staff that any adverse environmental impacts on public health and safety will be minimized or avoided to the maximum extent

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[145] Town Initial Brief, p. 5.

[146] East Point Reply Brief, p. 17.

[147] See proposed Certificate Condition 76 with respect to types of noise.

practicable.[148]

6. Decommissioning and Restoration – 16 NYCRR §1001.29

To ensure the avoidance or minimization of environmental impacts to the maximum extent practicable, the Article 10 regulations require an applicant to plan for a facility's decommissioning and site restoration and to provide a financial guarantee that the area in which a facility is located will be returned to its pre-construction state. The goal is to restore the Facility site to conditions as close to pre-construction characteristics as possible, including restoration of native vegetation, habitat, and land use.

The Application provided a detailed decommissioning plan and assessment of estimated costs of decommissioning, as well as a methodology for periodically revising the decommissioning estimate to ensure costs are reflective of inflation and market changes over the course of the Project's life.[149] The decommissioning plan describes steps for removal and recycling of underground Facility components, as well as restoration of the Facility Site, including regrading, top soil and re-seeding.[150] The plan calls for the removal and recycling of collection cables and the abandonment-in-place of underground cables below three feet in non-agricultural areas and below four feet in agricultural areas, so as to mitigate environmental impacts.[151]

Proposed Certificate Condition 50 requires the Applicant to make a compliance filing that includes a final

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148 DPS Staff Initial Brief, pp. 15-18.

149 Hearing Exhibit 12, Application Appendix 29-l.

150 Hearing Exhibit 12, Application Appendix 29-l.

151 It remains possible that these underground cables may be removed after consultation with the landowner and in accordance with any requirements imposed by DPS Staff.

Decommissioning Plan, including a final cost estimate based upon the final Project design, and a financial assurance in the form of a letter of credit to be held by and for the benefit of the Town.[152] The Certificate Condition specifically precludes the inclusion of salvage value of Project components as decommissioning cost offsets in the cost estimate. The estimate will be updated by a qualified independent New York State licensed engineer to reflect any inflation or other changes after one year of Project operations and then every fifth year thereafter.

Finally, the final Decommissioning Plan also will include a description of procedures and timeframes for providing written notice to the Town, DEC, and landowners of planned decommissioning and site restoration activities prior to commencement of those activities. In addition, where appropriate, the Applicant will restore agricultural lands according to AGM's Solar Guidelines.[153]

While the Town indicates that it had initial concerns about the Applicant's decommissioning plan, it now indicates that the Applicant has addressed those concerns in the negotiation of Certificate Condition 50 by, among other things, ensuring that the Town will be named as the financial security holder.[154] In addition, various requirements in proposed Certificate Condition 50 specifically require the Applicant to seek the Town's input regarding details of the final decommissioning estimate prior to Plan's submission as a

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[152] Hearing Exhibit 69.

[153] Hearing Exhibit 69. The Applicant agreed to consult with AGM if these guidelines have been updated prior to decommissioning.

[154] Town Initial Brief, p. 13.

Compliance Filing.[155] Accordingly, the Town's concerns appear to have been satisfactorily resolved.

Based upon the foregoing, we find that the agreed-upon requirements of proposed Certificate Condition 50 are generally consistent with the decommissioning and site restoration certificate conditions included orders in prior proceedings pursuant to PSL Article 10. Based upon the Application materials, as well as Certificate Condition 50, which we hereby adopt, we find that the probable environmental impacts resulting from decommissioning and site restoration have been satisfied.

7. Cultural, Historic and Recreational Resources – PSL §168 (2)(c) and §168 (3) (c)

a. Visual Assessment

The Town analyzed the visual impact of the Project in terms of Section E(3)(i) of the Town's solar law, which requires a solar project "to avoid or minimize visual impacts" from various stated locations. The Town asserts that this section of local law is substantive and applicable to the Project, while East Point asserts that it is procedural and preempted by PSL §172(1). As discussed more fully below in the section on compliance with local laws, we find this section of local law to be procedural and preempted. However, we also find it to be essentially duplicative of the requirement in PSL §168(2)(c) and §168(3)(c) that to approve a Project, the Siting Board must find that its adverse environmental effects, including impacts on aesthetics and scenic values, "will be minimized or avoided to the maximum extent practicable." We therefore analyze the visual impacts of the Project using the standard in PSL §168.

At the outset, it should be noted that East Point, at the request of the Town and some residents, modified the Project prior to filing the Application to relocate solar panels from

[155] Hearing Exhibit 69.

parcels close to scenic Route 20 to a more remote parcel with limited visibility from nearby residences and Route 20.[156] In order to further minimize potential views of the Project from Route 20, East Point's proposed design includes setbacks and offsets of panels to reduce visibility, antireflective panels to reduce glare, vegetative screening, undergrounding collection lines and minimizing vegetation clearing outside of the arrays.[157] Proposed Certificate Conditions 60 and 61 require East Point to submit a final Visual Mitigation Planting Plan, including a five-year program of annual inspections and, if needed, remediation of visual mitigation plantings after construction. The Town disputes the sufficiency of the proposed screening measures, asserting that additional extensive screening is necessary to prevent views of the Project from local roads, nearby open agricultural fields, and Route 20.

We do not find the Town's arguments to be persuasive. The Town's position, as argued in its brief, is that the Project should be invisible not only from Route 20 but also from local roadways[158] and from nearby open agricultural fields.[159] The Town's argument regarding additional screening to protect the viewshed from Route 20 does not assert that the Project as proposed will definitely be visible from Route 20 or that additional screening will definitely prevent visibility. The Town only asserts that additional screening is necessary to "significantly reduce the likelihood that the Project will be visible from Route 20 and by the property owners of the

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156 Hearing Exhibit 12, Application Exhibit 24, p. 34 and Application Appendix 24-1a, p. 24; Tr. 281.

157 Hearing Exhibit 12, Application Exhibit 24, pp. 19-20.

158 Town Initial Brief, p. 10.

159 Town Initial Brief, p. 11.

agricultural fields that exist on the north side of Route 20."[160] East Point's visual analysis is that the Project as proposed would have only limited, partial and distant views from Route 20. Only short roadway segments of 1,600 feet or less would have partial visibility of the Project from a distance of 1.9 miles.[161]

We find the Town's positions to be unnecessary for the minimization or avoidance of adverse environmental impacts, including aesthetics and scenic values. We find that the ability of passing motorists on local roads and farmers working in nearby open fields to see the Project is not an adverse environmental impact. We also find that the Town's proposal of additional robust screening along the entire length of Route 20 facing the Project is unnecessary. We find that East Point's proposal of limited vegetative screening along Route 20 will minimize, if not completely avoid, adverse environmental impacts on the viewshed from Route 20.

In its brief DPS Staff makes a highly detailed new proposal, apparently as a suggested compromise between East Point and the Town, for an additional Certificate Condition that could require East Point to supplement its Visual Mitigation Planting Plan based on a post-installation review of the effectiveness of the plantings along Route 20.[162] East Point objects to this proposal because, among other reasons, it is unsupported by the record and contrary to DPS Staff's testimony and agreement to the Certificate Conditions.[163] We will not adopt DPS Staff's new proposal. It might have been appropriate

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160 Town Initial Brief, p. 11; Tr. 138-139 (emphasis added).

161 East Point Initial Brief, pp. 42-43; Hearing Exhibit 12, Application Exhibit 24, p. 40 and table 24-3.

162 DPS Staff Initial Brief, pp. 21-22.

163 East Point Reply Brief, pp. 38-39.

to make such a proposal in DPS Staff's testimony, but to raise a new proposal for the first time during the briefing stage of the case is untimely and unsupported by the record. Because it was raised so late in the proceeding, East Point did not have an opportunity to address the proposal through testimony and evidence in the record. We also agree that the proposal is inconsistent with DPS Staff's agreement to the proposed Certificate Conditions.

b. Cultural, Historic, and Recreational Resources

Proposed Certificate Condition 75 requires a compliance filing prior to construction of Cultural Resources Protection Measures, including among other provisions the requirement that ground-disturbing activities would be required to cease within 100 feet of the discovery of human remains or archeological resources. Consultation with the New York State Office of Parks, Recreation and Historic Preservation and DPS Staff would be required if complete avoidance of archeological sites is not possible. If required, East Point would file a Cultural Resources Mitigation and Offset Plan. DPS Staff testified that the proposed Facility design accounts for archeological resource constraints in the area, and that archeological and historic resource sites are avoided and impacts are minimized through buffers.[164] No party has objected to these provisions, and we find that proposed Certificate Condition 75 will minimize or avoid any negative impact of the Project on cultural, historic and recreational resources to the maximum extent practicable.

8. Infrastructure – PSL §168(2)(d) and §168 (3)(c)

PSL §168(2)(d) requires the Siting Board to make findings regarding the nature of probable environmental impacts

[164] Tr. 192.

of the construction and operation of a facility including impacts on transportation, communication, utilities, and other infrastructure. PSL §168(3)(c) requires a determination that the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable. There are no disputes among the parties with respect to these issues.

a. Transportation

In Exhibit 25 to the Application, the Applicant provided, among other things, a conceptual site plan of all Facility site access roads and driveways; an analysis of traffic and transportation impacts related to the construction and operation of the Facility; a description of airspace usage, including military operations, in the vicinity of the Facility; and a discussion of potential impacts to air traffic control and air navigation, which required consultation with the Department of Defense.[165] The Applicant reported that the probable impacts to transportation are expected to be minimal and primarily limited to temporary construction disturbances.[166]

The parties have agreed upon several Certificate Conditions to mitigate these potential transportation impacts.[167] Among those are proposed Certificate Condition 33, which requires the Applicant to obtain all necessary permits from the Department of Transportation (DOT) and Schoharie County prior to commencement of construction, and proposed Certificate Condition 29, which requires the Applicant to provide copies of all necessary permits to the Secretary as an Information Filing.[168]

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[165] Hearing Exhibit 12. See also 16 NYCRR §1001.25

[166] Hearing Exhibit 12, Application Exhibit 25.

[167] Hearing Exhibit 69, Certificate Conditions 29, 30, 50, 61.

[168] Hearing Exhibit 69; Hearing Exhibit 12, Application Exhibit 25.

Also prior to construction, the Applicant will provide a Traffic Control Plan in a compliance filing, which will outline the local, county, and state roads to be used as delivery routes by construction vehicles.[169]

The Applicant and the Town are negotiating a Road Use Agreement to address the Town's concerns regarding potential travel routes, road modifications and repairs, financial security, among other issues.[170] The Town and the Applicant both report that they believe that these negotiations will be successful inasmuch as the Applicant has been responsive to the Town's concerns.[171] However, should these negotiations not result in an agreement, the Applicant has committed to take steps to mitigate impacts to transportation by, among other things, commissioning a survey of delivery routes by qualified engineers to assess and document current roadway conditions.[172] This survey would serve as a baseline to assess any extraordinary damage or overrun caused by construction vehicles that the Applicant would then repair, thereby restoring the roadways to a condition that would be equal or better to that observed during the pre-construction survey.[173] In addition, the Applicant will establish a road-use reparation fund or obtain a reparation bond as a financial assurance that the Town's roads will be repaired if damage occurs. We decline the Town's request to make the completion of a Road Use Agreement a

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169 Hearing Exhibit 69, Certificate Condition 56; Hearing Exhibit 78, SEEP Guide Section B, Item 7(c)(i).

170 Town Initial Brief, p. 12; Applicant Initial Brief, p. 52.

171 Town Initial Brief, p. 13; Applicant Initial Brief, pp. 52-53.

172 Hearing Exhibit 12, Application Exhibit 25, p. 21.

173 Hearing Exhibit 12, Application Exhibit 25, p. 21.

condition to the Applicant's construction of the Project.[174]

Finally, proposed Certificate Condition 82 requires the Applicant to hold a pre-construction meeting with agencies, including DOT and the Town's Supervisor and Highway Superintendent, and proposed Certificate Condition 83 requires a similar pre-construction meeting with National Grid.[175] DPS Staff points out that it believes that proposed Certificate Conditions 82 and 83 contain an inadvertent error.[176] Specifically, DPS Staff states that proposed Certificate Condition 83 identifies documentation that must be provided to National Grid that DPS Staff believes was also intended to be provided to the parties identified in proposed Certificate Condition 82. Consequently, DPS Staff proposes that Certificate Conditions 82 and 83 be combined so that subsections *a* through *d* of Condition 83 apply to all parties identified in Certificate Condition 82. As corrected, the Certificate Condition will ensure that all maps showing designated travel routes, construction worker parking and access road locations and a general project schedule will be provided to DOT and the Town Supervisor and Highway Superintendents, as well as National Grid, at the required pre-construction meeting. No party has objected to DPS Staff's proposal in this regard, and we accept the modifications proposed by DPS Staff.

Based on the Application materials and the proposed

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[174] Town Reply Brief, p. 11. See also Hearing Exhibit 59, Town Resolution No. 11-2020, July 6, 2020. This resolution objects to certain sections of the previously agreed-to proposed certificate conditions, SEEP Guidelines, and Noise Resolution Protocol, stating that the Town's continuing agreement is conditioned upon the successful negotiation of, among other things, a road-use agreement.

[175] Hearing Exhibit 69.

[176] DPS Staff Initial Brief, pp. 24-25.

Certificate Conditions, which we hereby adopt, we find that the Project's adverse environmental transportation effects should be minimal, and we determine that any such adverse effects will be minimized or avoided to the maximum extent practicable. In addition, pursuant to PSL §172, we authorize the Town or other appropriate municipality, and delegate to the New York State Department of Transportation authority to issue and approve road or highway work permits or approvals required for the construction or operation of this Project.

b. Communication

The regulations at 16 NYCRR §1001.26 require applications to provide analyses and a discussion of proposed facilities related to potential impacts to communication systems. According to the information provided by the Applicant, the Facility is not expected to have any material impact on any communication systems, such as AM/FM radio, television, telephone, microwave transmission, military or civilian radar, air traffic control, armed forces, global positioning system (GPS), LORAN (a long-range navigation system), amateur radio, or the NYS Mesonet system.[177] No party has disputed or otherwise challenged the information provided in the Application. Nevertheless, in the event that a significant adverse impact to communications systems were to be alleged, the dispute would be handled via the Complaint Resolution Process outlined in the SEEP Guide.[178]

The information provided in the application, along with the Proposed Certificate conditions, which we hereby adopt, is sufficient for us to find that the Project will not have a material impact on communications systems.

[177] Hearing Exhibit 12, Application Exhibit 26.

[178] Hearing Exhibit 69, Appendix A.

c. Related Utilities

16 NYCRR §1001.12 requires, among other things, that applications include discussions of conformance with Commission requirements and plans to avoid interference with existing utility systems. In this case, Spectrum, HughesNet, Frontier Communications Corporation, DIRECTTV, New York State Electric and Gas Corporation, National Fuel, Verizon, and AmeriGas provide utility services within a two-mile radius of the Project Area.[179] There are no underground fiber-optic lines within two miles of the Project Area. No impacts to the above utilities are expected as a result of the construction and operation of the Project.

Nevertheless, several proposed certificate conditions were agreed upon by the parties to ensure that the Project does not interfere with existing utility systems, including Proposed Certificate Conditions 14, 15, 29, 30, 79 and 80. These certificate conditions require the Applicant to communicate with and protect local utilities and their infrastructure during construction, require compliance with the requirements of the regulations of the Commission regarding the protection of underground facilities[180] and, prior to the commencement of operations, require the Applicant to become a member of Dig Safely New York.[181] Finally, the SEEP Guide includes comprehensive guidelines and requirements for the identification of existing utilities and installation of Project facilities as co-located or crossing existing utilities within the Project area, including potential submission of utility owner approved

[179] Hearing Exhibit 12, Application Exhibit 26, p. 8.

[180] Hearing Exhibit 69. See 16 NYCRR Part 753.

[181] Hearing Exhibit 13, Appendix A.

details of such installations and any required impact studies.[182]

The information in the application, along with the proposed SEEP specifications and the proposed Certificate Conditions, provide adequate support in the record for us to find that the Project will not have any significant adverse impacts on related utilities.

D. State and Local Laws and Regulations – PSL §168(3)(e)

PSL §168(3)(e) addresses the applicability of State and local procedural and substantive legal requirements to the construction and operation of a proposed major electric generating facility under Article 10. With certain exceptions, PSL §168(3)(e) preempts State and local procedural requirements that otherwise would be applicable, unless the Siting Board expressly authorizes the enacting local authority to exercise such procedural requirements.[183] With respect to substantive State and local legal requirements, the Siting Board cannot grant a Certificate unless it determines that "the facility is designed to operate in compliance with applicable state and local laws and regulations issued thereunder concerning, among other matters, the environment, public health and safety."[184]

The Siting Board, however, "may elect not to apply, in whole or in part, any local ordinance, law, resolution or other action or any regulation issued thereunder …, which would be otherwise applicable if it finds that, as applied to the proposed facility, such is unreasonably burdensome in view of the technology or the needs of or costs to ratepayers whether

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[182] Hearing Exhibit 69; Hearing Exhibit 78, SEEP Guide Section A, Item 1, Linear Project Components ¶¶(l), (m).

[183] See also, PSL §172(1); 16 NYCRR §1001.31(a).

[184] PSL §168(3)(e); 16 NYCRR §1001.31(d).

located inside or outside of such municipality."[185] An applicant seeking a waiver of a local substantive law has the burden of justifying its waiver request by showing "the degree of burden caused by the requirement, why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the proposed facility, the request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable."[186]

1. Compliance with State Laws

The discussion of issues elsewhere in this Order expresses our view that, subject to appropriate Certificate Conditions, the construction and operation of the Facility will comply with applicable State laws. No party alleges noncompliance with State laws. We find that the proposed Certificate Conditions assure compliance with applicable State laws.

2. Compliance with Local Laws

a. Requests for Waiver of Local Laws

East Point requests the Siting Board to waive two provisions of the Town of Sharon's Land Use Code and Zoning Law, one capping the acreage on a farmland parcel upon which a solar facility may be built to 20% of any farmed parcel and no more than 10 acres, and the other limiting clearing of land to 30% on any parcel.[187] East Point offered calculations showing that the 20%/10 acre limitation would make the project impossible to build on the grounds that application of the 10 acre limitation to each of the four parcels upon which the Project is to be sited would limit development to less than 6 MW of solar energy,

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185 PSL §168(3)(e).

186 16 NYCRR §1001.31(e).

187 Article IV, Sections 24.E.3.f and 24.E.g; Hearing Exhibit 12, Application Exhibit 31, p. 7.

far less than the 50 MW capacity associated with the Project.[188] The Town argues that East Point has failed to meet its burden of proof that the local law is unreasonably burdensome. In this regard, the Town asserts that East Point has failed to present reasonable alternatives that avoid the actively farmed areas of these parcels.[189] East Point replies that it has agreed to many measures designed to avoid and minimize impacts to agricultural land, including minimal ground disturbance, underground collection lines, the siting of many access routes away from areas actively used by farmers, the replacement of disturbed topsoil and agricultural monitoring during and after construction.[190] DPS Staff agreed with East Point that the designed layout avoids or minimizes the use of agricultural resources to the maximum extent practicable.[191]

We find nothing in the record that casts significant doubt on East Point's assertion that the 20%/10 acre restriction would be fatal to the Project, and accept East Point's and DPS Staff's assertions that the design and layout of the Project minimize the use of agricultural resources to the maximum extent practicable. The Town's position that East Point must present alternatives for minimizing agricultural impacts[192] does not account for the mitigation measures to which East Point has agreed. We also do not see a reason for further studies in light of the fact that the local law in question would require the downsizing of the Project to the point that it would produce

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188 East Point Initial Brief, p. 32; Hearing Exhibit 12, Application Exhibit 31.

189 Town Initial Brief, pp. 18-19.

190 East Point Reply Brief, pp. 22-24, citing Hearing Exhibit 12, Application Exhibits 4, 22 and 48 and Tr. 266, 277-278.

191 Tr. 191-192.

192 Town Reply Brief, p. 7.

less than 1/8[193] of the 50 MW of solar capacity associated with the Project.

The second local law requirement subject to East Point's waiver requests limits the clearance of woodlands to 30% of existing woodlands on any parcel. East Point presented evidence showing that, although the overall woodlands to be cleared for development of the Project would be less than 30%, two of the four parcels covered by the Project would exceed the 30% cap. East Point further testified that it needs to clear greater than 30% of woodlands on the two parcels in question to comply with the other local limitations on land use; namely, the avoidance to the greatest extent practicable of using agricultural land and the limitation of views from Scenic Route 20.[194] The Town argues that East Point should have presented alternatives that avoid or minimize impacts to woodlands, as well as those on farmlands and associated views.[195] East Point's unrebutted evidence is that it is impossible to construct the Project while simultaneously avoiding impacts on agricultural land, forested land and views from Scenic Highway 20.

Our examination of the record reveals that there is simply not enough property in the area in question to allow East Point to develop its proposed 50 MW solar facility , while also maintaining the area for farming, meeting the cap on tree clearance and avoiding visual impacts of the facility to those traveling along Route 20. We agree with East Point that it is appropriate to balance the Project's potential impacts on each of these resources. Doing so here, we find that East Point

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193 East Point Initial Brief, p. 32; Hearing Exhibit 12, Application Exhibit 31, pp. 4, 11; Tr. 268, 278-279.

194 Tr. 288-290; Hearing Exhibit 12, Application Exhibit 31, pp. 11-13.

195 Town Initial Brief, p. 20.

reasonably gave greater weight to the community's expression of concern about views from Route 20 and to the minimization of the use of prime farmland than to the clearance of forested land in the two parcels at issue.

We note that DPS Staff testified that using alternative available parcels to reduce forest clearing would increase Project visibility from Route 20.[196] In other words, alternatives to the Project site would require the use of more farmland or increase the visibility of the Project from Route 20. The Town did not propose a specific alternative site, but instead argued that East Point failed to sufficiently analyze the possible alternatives.[197] We disagree with the Town on this point. Accordingly, we find that siting the Project on alternative sites would either increase the project's environmental impact in a manner that would be inconsistent with PSL §168(3)(c), or unreasonably preclude development of the Project altogether through application of the local law limiting tree clearing.

Based on the foregoing, we find that the two local laws related to the 20%/10 acre restriction on development and the 30% tree clearing cap, as found in the Town of Sharon Land Use Code and Zoning Law Article IV, Sections 24.E.3.f and 24.E.g, are unreasonably burdensome because they would preclude

[196] Tr. 204.

[197] Town Reply Brief, pp. 6-7.

development of the Project.[198] For the reasons identified herein, as well as those identified by East Point and DPS Staff in their submissions, the Board waives Article IV, Sections 24.E.3.f and 24.E.g as applied to the proposed Project in view of the technological needs associated with the Project, as well as the costs to ratepayers that would be benefited by development of the Project at full capacity. The Board does not take lightly its decision to waive the provisions of local law at issue here, and hence the reason it assured itself that East Point otherwise properly balanced the Project's potential impacts against the resources to be protected under the local laws.

b. Procedural versus Substantive Local Laws

East Point and the Town of Sharon disagree whether two other provisions of the Town's Solar Law are procedural and therefore preempted by PSL §§168(3)(e) and 172(1), or substantive and therefore applicable to the Project unless waived by the Siting Board.

The first of these two provisions is § E(3)(g) of the Town's Solar Law,[199] which provides that:

> Arrays shall be located on a parcel in such a manner as to avoid, to the maximum extent feasible, soils classified as prime farmland by the USDA, NYS or NRCS.

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[198] The Town also raises an objection to what it characterizes as a blanket request for waiver of all local standards or requirements relating to collection lines in Empie and Beech Roads. Town Initial Brief, p. 21. East Point replies that although it did not identify any provisions of local law to be waived, it is concerned that the Town might attempt to block the Project by refusing to enter into a road use agreement. East Point Reply Brief, pp. 36-37. As the record stands, there is no applicable provision of local law and no specific dispute between the parties on this matter. Under these circumstances, we find that East Point has not made the case for a waiver required by PSL §168(3)(e).

[199] Hearing Exhibit 12, Application Appendix 31-1c.

The second provision is § E(3)(i), which provides that:

> The solar facility, including any proposed off-site infrastructure, shall be located and screened in such a way as to avoid or minimize visual impacts as viewed from: (1) Publicly dedicated roads and highways, including Route 20 and 10; (2) Existing residential dwellings located on contiguous parcels; (3) A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of fully screening the site, shall be provided.

East Point argues that these requirements are procedural rather than substantive because they are both embedded in the requirements for a special use/site plan permit application, and subjective rather than an objective standard for compliance. Nevertheless, East Point argues that it has shown it would be able to fully comply with both provisions.[200] The Town argues that nowhere in Article 10 is there a requirement for a local law to have a numerical standard before it can be treated as "substantive." The Town agrees that pursuant to PSL §168, the determination of compliance is made by the Siting Board, not by the Town. The Town argues that East Point has failed to demonstrate compliance.[201]

We agree with the Town that the first of these provisions is substantive in nature. It sets out requirements for the siting and construction of the Project, which are substantive, as opposed to a permitting process, which is procedural. The standard of "to the maximum extent feasible," while not numerical, is nevertheless substantive. It is similar to a local law requirement applied as substantive by the Siting Board in the Number Three Wind proceeding. The requirement in

[200] East Point Initial Brief, pp. 62-65.

[201] Town Initial Brief, pp. 16-17.

that proceeding was that a project's electric lines must be undergrounded "to the maximum extent possible."[202]

However, we agree with East Point's argument that it has demonstrated compliance with this local law requirement. As shown by East Point and as more fully discussed above with respect to the objections of the Department of Agriculture and Markets, East Point made every attempt to minimize the use of prime farmland. The Project's use of prime farmland during the operational life of the Facility consists of less than 300 acres out of the Project's total area of 1,313 acres. Unlike other developments on farmland such as residential subdivisions and shopping centers, the use of prime farmland by the Project is reversible, and the future costs of decommissioning and site restoration will be fully funded. We therefore find that East Point's proposal is a reasonable balancing of the State's need for renewable energy, local farmers' need for income, and the avoidance of other sensitive areas such as forested or wetland areas and areas close to scenic highways. As a reasonable balancing, the Project's design complies with the local law's requirement to avoid prime farmland to the maximum extent feasible.

We find that the other local law provision on the subject of visual impacts is procedural rather than substantive. It requires view screening measures "acceptable to the Town" and is therefore an "approval" or "consent" by a municipality that is preempted by PSL §172(1). In any event, even if substantive, we find that the Project is in compliance with this local law. The standard of "avoid or minimize visual impacts" is

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[202] Case 16-F-0328, Application of Number Three Wind LLC – Wind Electric Generation Siting, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued November 12, 2019), pp. 93-94.

essentially the same as the statutory requirement in PSL §168(3) that the Siting Board must find that "the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable." Impacts on "aesthetics and scenic values" are explicitly included by the statute as "environmental impacts."[203] Therefore, the finding discussed above in the section on visual impacts, that adverse environmental effects have been minimized or avoided to the maximum extent practicable, establishes compliance with the local law in question to the extent deemed substantive.

IV. CONCLUSION

Based on the record before us, the arguments of the parties, and all applicable laws and policies, we grant the Certificate of Environmental Compatibility and Public Need to East Point Energy Center, LLC, subject to the Certificate Conditions, as modified, attached to this Order as Appendix A.

The Board on Electric Generation Siting and the Environment orders:

1. This Order constitutes the decision of this Siting Board in this proceeding.

2. Subject to the conditions set forth in this Order and appended to it, a Certificate of Environmental Compatibility and Public Need is granted, pursuant to Article 10 of the Public Service Law, to East Point Energy Center, LLC (the Certificate Holder), for the construction and operation of a solar generating facility with a capacity of 50 megawatts, consisting of up to 350 acres of photovoltaic (PV) solar generating panels

[203] PSL §168(2)(c).

located on private land, either leased or purchased from the landowners, and associated Facility components to be located in the Town of Sharon, Schoharie County, New York, and interconnecting to National Grid's existing Sharon-Marshville 69-kV transmission line, provided that the Applicant files a written acceptance of the Certificate pursuant to 16 NYCRR §1000.15(a) within 30 days after the date of issuance of this Order or within 30 days after the issuance of the Siting Board's final decision upon a petition for a rehearing, if any.

3. Upon acceptance of the Certificate granted in this Order or at any time thereafter, the Certificate Holder shall serve copies of its compliance filings in accordance with the requirements set forth in 16 NYCRR §1002.2(c) and applicable Certificate Conditions. Pursuant to 16 NYCRR §1002.2(d), interested persons and parties may file comments on any compliance filing within 21 days after its service date.

4. Prior to the commencement of construction, the Certificate Holder shall comply with those requirements of Public Service Law §68 that do not relate to the construction and operation of the Facility by obtaining Public Service Commission permission and approval as an electric corporation.

5. If the Certificate Holder decides not to commence construction of the Project or any portion of the Project, it shall so notify the Secretary in writing within 30 days after making such decision and shall serve a copy of such notice upon all parties and all entities entitled to service of the application or notice of the application.

6. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, include a justification for the extension, and be filed at least three days prior to the affected deadline.

7. This proceeding is continued.

By the New York State Board
on Electric Generation Siting
and The Environment,

(SIGNED) MICHELLE L. PHILLIPS
Secretary

APPENDIX A

CERTIFICATE CONDITIONS

East Point Energy Center
Certificate Conditions

I. Project Authorization

1. The Certificate Holder is authorized to construct and operate the Facility (or the Project), as described in the Application by East Point Energy Center, LLC (the Certificate Holder) for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the New York State Public Service Law (PSL) (the Application) and as clarified by the Certificate Holder's supplemental filings, updates and replies to discovery data requests, additional exhibits, and the Certificate Conditions adopted in the Siting Board's Order Granting Certificate or other permits.

2. The Certificate Holder is responsible for obtaining all necessary permits and any other approvals, land easements, and rights-of-way that may be required for this Facility and which the New York State Board on Electric Generation Siting and the Environment (Siting Board) is not empowered to provide or has not expressly authorized.

3. If the Certificate Holder believes that any action taken, or determination made, by a State or local agency or their respective staff, in furtherance of such agency's review of any applicable regulatory permits or approvals, or actions or the lack thereof, or by a utility subject to the Public Service Commission's jurisdiction, is unreasonable or unreasonably delayed, unreasonably conditioned or unreasonably withheld, the Certificate Holder may petition the Siting Board or the Commission, as the case may be, upon reasonable notice to that agency or utility, to seek a determination of any such unreasonable or unreasonably delayed, unreasonably conditioned or unreasonably withheld, action or determination. The permitting agency, State or local agency staff or utility, as the case may be, may respond to the petition, within ten days, to address the reasonableness of its action or determination.

4. Pursuant to Title 16 of the New York Codes, Rules and Regulations (NYCRR) §1000.15, the Certificate Holder shall, within 30 days after the issuance of the Certificate, file with the Siting Board either a petition for rehearing or a verified statement that it accepts and will comply with the Certificate for the Project. Failure of the Certificate Holder to comply with this condition shall invalidate the Certificate.

5. Decisions on compliance filings will generally be made at the next available session of the Board or the Commission, as the case may be, provided the compliance filing is received sufficiently in advance of such sessions that there is adequate time in the circumstances to receive comments and process the matter. If DPS Staff determine that a compliance filing requires additional information, details or deliberation, such that the filing will not be decided at the next available session of the Board or Commission, DPS Staff will notify the Certificate Holder within 30 days of submission of the filing and inform Certificate Holder within 30 days of submission of the filing and inform the Applicant of the

information needed to place the filing on the next available session.

6. Commencement of commercial operation or commercial operation date (COD) is defined as the date on which the Facility as a whole first commences generating or transmitting electricity for sale, excluding electricity generated or transmitted during the period of on-site test operations and commissioning of the Project.

7. Facility construction is authorized for an approximately 50-megawatt (MW) solar energy center (including commercial-scale solar arrays, access roads, inverters, fencing, buried electric collection lines, and electrical interconnection facilities) in the Town of Sharon, Schoharie County, New York. The Project also includes a proposed collection substation and interconnection facilities to be located on land within the Project Area, in relative proximity to National Grid's existing Sharon – Marshville 69-kilovolt (kV) transmission line, adjacent to the National Grid substation. The proposed interconnection facilities will include a 69-kV switchyard that will be transferred to National Grid.

8. The Certificate Holder has not demonstrated that the feasibility of the Project relies in any way upon the Certificate Holder exercising the power of eminent domain to acquire permanent or temporary real property rights in specific, identified parcels of land for the Facility or for any of the access roads, construction staging areas or interconnections necessary to service the Facility. By granting this Certificate to the Certificate Holder, the Siting Board is not making a finding of public need for any particular parcel of land such that a condemner would be entitled to an exemption from the provisions of Article 2 of the New York State Eminent Domain Procedure Law (EDPL) pursuant to Section 206 of the EDPL. As a condition of this Certificate, the Certificate Holder shall not commence any proceedings or cause any other entity having the power of eminent domain to commence any proceedings under the EDPL to acquire permanent or temporary real property rights for the Facility or for any of the access roads or construction staging areas necessary to service the Facility without an express amendment to this Certificate granted by the Siting Board finding a public need for such acquisition.

9. This Certificate will automatically expire in seven years from the date of issuance of this Certificate (the "Expiration Date") unless the Certificate Holder has completed construction and commenced commercial operation of the Facility prior to said Expiration Date or has obtained an extension of this deadline from the Secretary of the Board or the, Commission as the case may be.

II. General Conditions

10. Prior to the commencement of construction of the Facility the Certificate Holder shall file a request/application for a Clean Water Act Section 401 Water Quality Certification with

the Secretary to the Siting Board (Secretary), which shall be filed and served and noticed pursuant to 16 New York Codes, Rules and Regulations (NYCRR) 1000.8(8). This request shall be filed concurrently with the permit application filed with the United States Army Corps of Engineers pursuant to Section 404 of the Clean Water Act. Upon receipt of any and all permits, the Certificate Holder shall file notice of receipt of the permit(s) with the Secretary as soon as practical. Should any permits be denied, the Certificate Holder shall file with the Secretary documentation demonstrating the reasons for the denial and how it plans to proceed with its Project plans in light of the denial.

a) Upon receipt, copies of any federal permits and/or approvals required to conduct jurisdictional activities under Sections 401 or 404 of the Clean Water Act associated with certain aspects of construction and operation of the Facility shall be filed with the Secretary. If relevant Project plans require modifications due to conditions of federal permits, the final design drawings and all applicable compliance filings shall be revised accordingly and submitted pursuant to 16 NYCRR 1002.

b) Should any federal permits and/or approvals required to conduct jurisdictional activities under Sections 401 or 404 of the Clean Water Act be denied, the Certificate Holder shall file with the Secretary documentation demonstrating the reasons for the denial and how it plans to proceed with its Project plans in light of the denial.

11. The Certificate Holder shall implement the avoidance, minimization and mitigation measures as described in the Application and clarified by the Certificate Holder's supplemental filings, updates and replies to discovery data requests or additional exhibits, and the Certificate Conditions adopted in the Siting Board's Order Granting Certificate.

12. The Certificate Holder shall construct and operate the Facility in accordance with the substantive provisions of the applicable local laws as identified in Exhibit 31 of the Application and as such Application has been further clarified and supplemented in the evidentiary record of this proceeding by the Certificate Holder except for two substantive requirements of the Town of Sharon Land Use Code & Zoning Law: one pertaining to lot coverage (Article IV Section 24.E.3.g) which restricts the maximum size of a utility-scale solar energy system to 10 acres when proposed on an active farm located within a New York State Certified Agricultural District; and, another that limits clearing of land to 30% on any parcels (Article IV Section 24.E.3.f). Those two provisions are determined by the Siting Board to be unreasonably burdensome and shall not apply to the Project. In addition, the Board elects not to apply, in whole or in any part, any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standard or requirement relating to the installation, placement, operation and maintenance of collection lines in Empie and Beech Roads.

13. The Certificate Holder shall construct the collection facilities in accordance with the latest edition of American National Standards Institute (ANSI) for operation. The Certificate Holder shall construct the collector cables in accordance to the latest edition of ANSI (ICEA S-93-639, AEIC CS8).

14. The Certificate Holder shall incorporate and implement as appropriate, in all Compliance Filings and construction activities, the ANSI standards and measures for engineering design, construction, inspection, maintenance and operation of its authorized Facility, including features for Facility security and public safety, utility system protection, plans for quality assurance and control measures for Facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities, vegetation and Facility maintenance standards and practices, emergency response plans for construction and operational phases, and complaint resolution measures.

15. The Certificate Holder shall work with National Grid, and any successor Transmission Owner (as defined in the New York Independent System Operator (NYISO) Agreement)), so that, with the addition of the Facility (as defined in the Interconnection Agreement between the Certificate Holder, NYISO and National Grid), the Facility will have power system relay protection and appropriate communication capabilities so that operation of the National Grid transmission system is adequate under Northeast Power Coordinating Council (NPCC) standards, and meets the protection requirements at all times of the North American Electric Reliability Corporation (NERC), NPCC, New York State Reliability Council (NYSRC), NYISO, and National Grid, and any successor Transmission Owner (as defined in the NYISO Agreement). Certificate Holder shall comply with applicable NPCC criteria and shall be responsible for the costs to verify that the relay protection system is in compliance with applicable NPCC, NYISO, NYSRC and National Grid criteria.

16. The authority granted in the Certificate and any subsequent Order(s) in this proceeding is subject to the following conditions necessary to ensure adherence with such Order(s):

    a) Sixty (60) days prior to commencement of construction, as defined in Condition 17, the Certificate Holder shall provide, pursuant to 16 NYCRR 1002.4, an Information Filing to DPS Staff, with a copy to the Siting Board, that identifies the Certificate Holder's construction organizational structure, contact list, and protocol for communication between parties. The Certificate Holder shall provide to DPS Staff and the Town the names and contact information of individuals responsible for Project oversight. The Certificate Holder may utilize one or more qualified individuals to satisfy the Project oversight responsibilities associated with the Environmental Monitor. The Environmental Monitor shall also have the experience, be trained or have the

qualifications in agricultural matters consistent with the qualifications listed in the New York State Department of Agriculture and Markets (AGM) *Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/2019)* This filing may be provided prior to the issuance of the Certificate by the Siting Board. The contents of this report will be subject to consultation with DPS Staff after the report is filed;

b) The Certificate Holder shall regard the Department of Public Service Staff (Staff or DPS Staff) representatives, authorized pursuant to PSL §66(8), as the Siting Board's representatives in the field and, after the Siting Board's jurisdiction has ceased, as the Commission's representatives in the field. In the event of any emergency resulting from the specific construction or maintenance activities that violate, or may violate, the terms of the Certificate, Compliance Filings, or any other order in this proceeding; such DPS Staff representatives may issue a stop work order for that location or activity;

c) A stop work order shall expire 24 hours after being issued unless confirmed by the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased including by Order issued by the Chair of the Siting Board or by one Commissioner of the Commission. DPS Staff shall give the Certificate Holder notice by electronic mail of any application to the Siting Board or Commissioner to have a stop work order confirmed. If a stop work order is confirmed, Certificate Holder may seek reconsideration from the confirming Commissioner, Siting Board or the whole Commission. If the emergency prompting the issuance of a stop work order is resolved to the satisfaction of the DPS Staff field representative, the stop work order will be lifted. If the emergency has not been satisfactorily resolved, the stop work order will remain in effect;

d) Stop work authority will be exercised sparingly and with due regard to potential environmental impact, economic costs involved, possible impact on construction activities, and whether an applicable statute or regulation is violated. Before exercising such authority, DPS Staff representatives will consult wherever practicable with the Certificate Holder's representative(s) possessing comparable authority. Within reasonable time constraints, all attempts will be made to address any issue and resolve any dispute in the field. In the event the dispute cannot be resolved, the matter will be brought immediately to the attention of the Certificate Holder's Project Managers and the Deputy Director of the DPS Office of Certification and Compliance. In the event that a DPS Staff representative issues a stop work order, neither the Certificate Holder nor the Contractor will be prevented from undertaking any safety-related activities as they deem necessary and appropriate under the circumstances. The issuance of a stop work order or the implementation of measures as described below may be directed at the

sole discretion of the DPS Staff representative during these discussions.

e) If a DPS Staff representative discovers a specific activity that represents a significant environmental threat that is, or immediately may become, a violation of the Certificate, Compliance Filings, or any other Order in this proceeding, the DPS Staff representative may in the absence of responsible Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with the DPS Staff representative, refuse to take appropriate action -- direct the field crews to stop the specific potentially harmful activity immediately. If responsible Certificate Holder personnel are not on site, the DPS Staff representative will immediately thereafter inform the Certificate Holder's Construction Inspector(s) and/or Environmental Monitor(s) of the action taken. The stop work order may be lifted by the DPS Staff Representative if the situation prompting its issuance is resolved;

f) If the DPS Staff representative determines that a significant threat exists such that protection of the public or the environment at a particular location requires the immediate implementation of specific measures, the DPS Staff representative may, in the absence of responsible Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with the DPS Staff representative, refuse to take appropriate action, direct the Certificate Holder or the relevant Contractors to implement the corrective measures identified in the approved Certificate or Compliance Filings. However, all directives must follow the protocol established for communication between parties as required by subpart (a) above. The field crews shall immediately comply with the DPS Staff representative's directive as provided through the communication protocol. The DPS Staff representative will immediately thereafter inform that Certificate Holder's Construction Inspector(s) and/or Environmental Monitor(s) of the action taken. DPS Staff will promptly notify the New York State Department of Environmental Conservation (NYSDEC), Division of Environmental Permits, Chief, of the Energy Project Management Bureau, 625 Broadway, Albany, NY 12233-1750 and the Regional Permit Administrator for Region 4, of any activity that involves a violation of a permit issued by the NYSDEC for the Project pursuant to federally delegated or approved authority, as required by PSL §172.1; and

g) The Certificate Holder shall construct and operate the Facility in a manner that conforms to all substantive State requirements as identified in Exhibit 32 of the Application and in the Certificate Conditions adopted by the Siting Board in the Order Granting Certificate.

III. Notifications

17. At least 14 days prior to the Certificate Holder's commencement of construction date as further defined as the anticipated beginning of unlimited and continuous construction of the Facility, notifications a) through f) below shall be made. These notifications are not required for testing or surveying (such as geotechnical drilling) and similar pre-construction activities to determine the adequacy of the site for construction and the preparation of any required filings. The Certificate Holder shall notify the public prior to the commencement of construction as follows:

    a) Provide notice by mail to host and adjacent landowners within 2,500 feet of a proposed solar collector array or proposed switchyard, or within 500 feet of other Project components, and persons who reside on such property (if different from the landowner);
    b) Notice by mail to owners and operators of water wells within 500 feet of the final layout;
    c) Provide notice to the Town of Sharon, Village of Sharon Springs, and Schoharie County officials and emergency personnel;
    d) Publish notice in the Times-Journal, Schoharie News, and My Shopper-Schoharie Valley Edition for dissemination;
    e) Provide notice for display in public places, which will include, but is not limited to, the communal Town of Sharon Springs and Village of Sharon Springs Town Hall, Sharon Springs Free Library, and post office in the Village of Sharon Springs, the Project website, the Project construction trailers/offices; and
    f) File notice with the Secretary for posting on the Project's DPS Document and Matter Management (DMM) website. Notifications will contain the following information:

        - A map of the Project;
        - A brief description of the Project;
        - The construction schedule and transportation routes;
        - The name, mailing address, local or toll-free number, and email address of the Project Development Manager and Construction Manager;
        - The procedure and contact information for registering a complaint; and
        - Contact information for the Secretary to the Siting Board and NYPSC.

18. The Certificate Holder shall file with the Secretary, at least seven (7) business days prior to commencement of construction, an affirmation that it has provided the notifications required by this Section III and include a copy of the notice(s) under this Section as well as a distribution list.

19. Prior to the end of construction, the Certificate Holder shall notify the entities identified in Condition 17(a) through 17(c) with the contact name, telephone number, and address of

the Operations Manager, and shall file the same with the Secretary.

20. The Certificate Holder shall file a written notice with the Secretary within 14 days of the completion of construction and provide an anticipated date of commencement of commercial operation of the Facility.

21. Consistent with 16 NYCRR Part 1002.2, the Certificate Holder may not commence construction of any portion of the Facility or interconnections for which the Board has required approval of a Compliance Filing as a condition precedent to such construction until the Certificate Holder has submitted the required Compliance Filing for that portion of the Facility and received approval of it by the Board, or by the Commission after the Board's jurisdiction has ceased.

IV. Information Reports & Compliance Filings Requirements

Information Reports

General

22. Documentation demonstrating that all necessary agreements are in place for use of the Facility Site for construction and/or operation (e.g., redacted landowner agreements, easements, or "good neighbor" agreements) shall be filed with the Secretary as an Information Filing.

23. A copy of the Interconnection Agreement between NYISO, National Grid, and the Certificate Holder shall be filed with the Secretary before commercial operation as an Information Filing. Any updates or revisions to the Interconnection Agreement shall be submitted to the Secretary throughout the life of the Project. Additionally, except in the event of an emergency, if any interconnection equipment or control system with materially different characteristics is installed throughout the life of the Project, the Certificate Holder shall, at least three months before any such change is made, provide information regarding the need for, and the nature of, the change to National Grid and file such information with the Secretary.

24. All Facilities Studies issued by National Grid and the NYISO and any updated facilities agreements will be filed with the Secretary throughout the life of the Facility.

25. The following information shall be filed as an Information Filing prior to construction:

    Details and specifications of the selected solar panel modules and inverters (including cut sheets (including length, width, height, and material), including third-party certification documenting that the solar panel modules and inverters meet international design

standards; the technical/safety manual for the panel modules and inverters; foundation drawings for the solar panel modules and inverters (including plan, elevation, and section details); and manufacturer specification sheet and warranty that the selected panel modules and inverters do not exceed the total height of the panel modules and inverters presented in the Application.

26. The Certificate Holder shall file with the Secretary within 60 days of the commercial operation date a certification that the collector lines were constructed to the latest editions of ANSI standards as of the date of this Certificate. The Facility's electrical collection system shall be designed in accordance with applicable standards, codes, and guidelines as specified in Exhibit 5 of the Application.

27. The Certificate Holder shall file with the Secretary, within one year after the Project becomes operational, a tracking report of the actual number of direct jobs created during the construction and operational phases of the Project, as well as the actual tax payments to local jurisdictions made during the Project.

Permits and Approvals

28. Copies of any discretionary local or state permits and/or approvals required for construction and operation of the Facility if such approvals were authorized by the Siting Board and not otherwise included in other filings (e.g., Stormwater Pollution Prevention Plan (SWPPP), 5-acre waiver (if necessary), and NYSDEC's acknowledgment of Notice of Intent for coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity, shall be filed with the Secretary as an Information Filing. As applicable, the Certificate Holder shall submit for review the building plans to an entity qualified by the NYS Department of State, in order to obtain compliance certified with the NYS Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of NYS, and the substantive provisions of any applicable local electrical, plumbing, or building code. Said certification shall be filed as an Informational Filing with the Board.

29. At least 10 days before a distinct construction activity commences, copies of all necessary transportation permits, for that activity, from the affected State, County, and/or Town shall be submitted to the Secretary as an Information Filing. Such permits shall include, but not be limited to: Highway Work Permit to Work Within Right-of-Way (ROW), , Permit to Exceed Posted Weight Limit Roads, Traffic Signal Permit to Work Within ROW, Special Haul Permit for Oversized/Overweight Vehicles, and Divisible Load Overweight Permit. Copies of any road use agreements or crossing agreements with utility companies will be provided as an Information Filing. Detailed drawings, descriptions, details, mapping and safety and protective requirements for any areas co-located and/or crossed by existing utilities will be provided as a supplement to any crossing agreements with utility companies.

30. At least 10 days before construction commences, copies of all necessary agreements with local utility companies for raising or relocating overhead wires where necessary to accommodate the oversized/overweight delivery vehicles shall be submitted to the Secretary as an Information Filing.

31. The Certificate Holder will provide to the Secretary, as an Information Filing, copies of all applicable local code requirements for any applicable building permit or certificate of occupancy for any installation requiring such permits or certificates together with the final plans conforming to such design requirements, at least 10 days before building construction commences.

Health and Safety

32. The Certificate Holder shall, at least 60 days prior to commencement of construction, contact all known pipeline operators within the Project Area on which Project facilities are to be located within the pipeline easement and, if applicable, shall reach an agreement with each operator to provide that the collection system will not damage any identified pipeline's cathodic protection system or produce damage to the pipeline, either with fault current or from a direct strike of lightning to the collection system, or the 69-kV interconnection line, specifically addressing 16 NYCRR §255.467(g) (External corrosion control; electrical isolation), subject to the provisions of Condition 3 herein. A copy of any agreements so entered into shall be provided to the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, by filing with the Secretary as an Information Filing.

33. The Board hereby delegates to the New York State Department of Transportation (NYSDOT) the authority, pursuant to PSL §172, to issue all approvals, consents, licenses and permits, within NYSDOT's jurisdiction, for the construction and operation of the Project. Approvals shall be filed with the Secretary as an Information Filing.

Plans, Profiles, and Detail Drawings

34. As-built drawings in both hard and electronic copies (including final, updated GIS shapefiles) shall be filed with the Secretary within six months following the commercial operation date of the Facility and provided to DPS and NYSDEC. Drawings will include final locations of all Project Components, final grading, elevation plan of switchyard and collection substation, and a profile of the final collection line locations, as well as:

    a) GIS shapefiles

b) Collection circuit map
c) Details, if applicable, for all Project Component crossings of and co-located installations with existing high-pressure pipelines showing cover, separations, any protective measures installed and locations of such crossings and co-located installations.

35. The Certificate Holder shall file an Operation and Maintenance Plan (O&M Plan) for the Facility, including emergency procedures and list of emergency contacts, as an Information Filing within 60 days of the commencement of commercial operation. The plan will address maintenance of built facilities and equipment, including conformance with manufacturer's required maintenance schedules.

36. The Certificate Holder shall file annually with the Secretary an updated copy of its emergency procedures and list of emergency contacts and with documentation of any modifications.

Environmental

37. Prior to the initiation of any horizontal directional drilling operations or the installation of any Project structures such as posts, pads ,foundations or panels, a Final Detailed Geotechnical Engineering Report shall be submitted as an Information Filing verifying subsurface conditions within the Project Area, and any horizontal directional drilling locations. The report shall identify appropriate mitigation measures required in locations of highly corrosive soils, soils with a high frost risk, any soils with high shrink or swell potential, and any locations where subsurface karst conditions are observed. The Report shall identify areas of shallow rock that may require blasting operations.

38. If blasting is required, prior to the initiation of any blasting activities a Blasting Plan shall be prepared and submitted as an Informational Filing that describes procedures and timeframes for blasting operations, emergency and safety protocols, and notifications for host communities and property owners (or those living on the property if different). The Blasting Plan shall demonstrate compliance with the following requirements:

a. Blasting shall be designed and controlled to meet the limits for ground vibration set forth in United States Bureau of Mines Report of Investigation 8507 Figure B-1 and air overpressure shall be under the limits set forth in the Conclusion section in United States Bureau of Mines Report of Investigation 8485 (USBM RI 8507 and USBM RI 8485) to protect structures from damage.
b. Landowners within a one-half mile radius of the proposed blasting location shall be notified via electronic mail, U.S. Mail, or by leaving a hardcopy notice at the residence, at least seven (7) days before the proposed blasting. The Town of Sharon

Supervisor will also be notified within that timeframe. The notification shall include contact information and procedures for filing a blasting operations related complaint.

39. An Agricultural Area Plan shall be submitted as an Information Filing prior to the initiation of construction to identify any programs, policies, and procedures implemented consistent with the New York State Department of Agriculture and Markets (AGM) *Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/2019)* to the maximum extent practicable. Those guidelines that the Project has determined to be not practicable will be identified in the plan, however the Certificate Holder will work with AGM for a reasonable alternative.

40. A NYSDEC-accepted Stormwater Pollution Prevention Plan (SWPPP), 5-acre waiver (if necessary), NYSDEC's acknowledgement of Notice of Intent for coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity in effect at the time shall be filed prior to construction with the Secretary as an Information Filing.

41. A plan for vegetation maintenance shall be included as part of the O&M Plan to be submitted as an Information Filing prior to the commencement of commercial operation and shall address specific standards, protocols, procedures and specifications for the vegetative management of onsite collection systems, access roads and panel locations with the following information addressed:

    a) Vegetation management recommendations based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;
    b) Herbicide use and limitations, specifications and control measures;
    c) Inspection and target treatment schedules and exceptions;
    d) Standards and practices for inspection of facilities easements for erosion hazard, failure of drainage facilities, hazardous conditions after storm events or other incidents;
    e) Review and response procedures to avoid conflicts with future use encroachment or infrastructure development;
    f) Wetland and stream protection areas, principles and practices;
    g) Landowner notification procedures and
    h) Periodically assess effectiveness of plan and adjust accordingly.

42. To maintain environmental compliance and the integrity of the Project, the Certificate Holder will implement an environmental compliance and monitoring program and file it as an Information Filing prior to the commencement of construction.

Complaint Resolution

43. The Certificate Holder shall handle all noise complaints by following the appended Noise Complaint Resolution Protocol (Appendix B, hereto) and the following Certificate Conditions.

44. The Certificate Holder is required to maintain a log of complaints and resolutions during construction and operations of the Project. The log shall include name and contact information of the person that lodges the complaint, name of the property owner(s), address of the residence where the complaint was originated, the date and time of the day underlying the event complained of, and a summary of the complaint. It will also include a description of the complaint resolution, if resolution is feasible. The complaint log which will be maintained by the Certificate Holder will be made available to the DPS Staff and to the Town of Sharon. Upon request the Certificate Holder will send the complaint log via email within seven business days to the DPS Staff and the Town of Sharon.

45. All complaints received shall be reported to the Siting Board, or the Commission after the Board's jurisdiction has ceased, monthly during the first three years of commercial operation and quarterly thereafter, by filing with the Secretary during the first 10 calendar days of each month,(or the first 10 calendar days of each quarter after three years) copies of the complaints and if available, a description of the probable cause; the status of the investigation, summary of findings and whether mitigation measures have been implemented. If no complaints are received, the Certificate Holder shall submit a letter to the Secretary indicating that no complaints were received during the reporting period. A copy of these filings shall be provided simultaneously to the Town of Sharon.

Compliance Filings

The following plans, drawings, and other documents shall be filed for approval by the Siting Board or Public Service Commission in accordance with the rules for submittal, public comment, and decisions set forth in 16 NYCRR §1002.2 and §1002.3, unless otherwise noted. The Certificate Holder shall implement all requirements of the compliance filings, as approved or amended by the Siting Board. Required compliance filings shall be filed with the Secretary prior to the commencement of construction of component facilities related to the filing, unless otherwise noted.

General

46. The Certificate Holder shall submit a Site Engineering and Environmental Plan (SEEP) in accordance with Appendix A "Guidance for the Development of Site Engineering and Environmental Plan for the Construction of the East Point Solar Project" which shall

describe in detail the final Facility design and the environmental protection measures to be implemented during construction of the Facility. Any deviation from the requirements of the SEEP Guide shall be justified in the SEEP and shall be subject to approval by the Siting Board, as applicable. The SEEP will include a table outlining the specific Certificate Conditions informational reports, and compliance filings incorporated into the SEEP with references to the section of the SEEP where those conditions may be found.

47. Upon the filing of the plans and reports listed in Appendix 2 to the SEEP Guide, entitled the Clearing and Grading Filing Framework, as a compliance filing, and following certification of the Project and approval of said plans and reports by the Board, or the Commission after the Board's jurisdiction has ceased, the Chief, Environmental Certification and Compliance of the Department of Public Service is authorized to issue a Limited Notice to Proceed to the Certificate Holder to conduct the Clearing and Grading Activities described in said plans and reports; provided, however, that said plans and reports are consistent with and implement the Certificate Conditions approved by the Board.

48. Final computer noise modeling and tonal evaluation shall be conducted in accordance with the specifications in the SEEP Guide.

49. A final site-specific construction Quality Assurance and Quality Control Plan (QA/QC Plan), to be developed in coordination with the selected Balance of Plant (BOP) contractor shall be submitted to the Secretary as a Compliance Filing.

50. Prior to the installation of solar panels, and based on the final Project layout, a Decommissioning Plan and proof of financial security shall be submitted as a Compliance Filing that contains the requirements of the Decommissioning Plan filed as Exhibit 29-1 of the Application and the information contained in this paragraph. The Certificate Holder agrees to consult with the Towns' representative concerning the total final decommissioning estimate to obtain their input before the Compliance Filing is made and will provide to the Towns the cost basis for said estimate. The Compliance Filing will be redacted to eliminate information proprietary to the Certificate Holder, which information in its unredacted form will be subject to examination by the DPS and the Town pursuant to the applicable Protective Order previously issued in Case 17-F-0599. The Decommissioning Plan shall also include:

    a) the anticipated life of the solar modules (panels);
    b) the estimate of decommissioning and site restoration in current dollars (no offset for projected salvage value is permitted);
    c) the method of ensuring that funds will be available for decommissioning and restoration as provided in the Plan;
    d) the method that the decommissioning estimate will be kept current;

e) the manner in which the Project will be decommissioned and the site restored; and
f) procedures and timeframes for providing written notice to the Town, NYSDPS, NYSDEC and host and adjacent landowners of planned decommissioning and site restoration activities prior to commencement of those activities. Where former agricultural lands will be returned to their former agricultural state, the Certificate Holder will provide written notice to AGM prior to decommissioning activities, as well as follow the restoration of agricultural lands according to the *Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands* to the maximum extent practicable. If at the time of decommissioning the AGM guidelines have been updated, the Certificate Holder will consult with AGM on applicable version changes from Revision 10/18/2019.

Decommissioning will commence if the Project has not generated electricity for a period of 12 continuous months, unless the 12-month period of no energy output is the result of a repair, restoration or improvement to an integral part of the Project that affects the generation of electricity and that repair, restoration or improvement is being diligently pursued by the Developer (East Point Energy Center), or a Force Majeure event. In the event that the Certificate Holder anticipates that corrective options (regarding energy output) will extend beyond that 12-month period, it will file a notice with the Secretary, describing the circumstance, and provide updates regarding the estimated amount of time required for those actions. In response to certain aforementioned requirements herein, the decommissioning and site restoration estimate contained in the Plan shall be updated, based on the final Project layout, by a qualified independent engineer licensed to practice engineering in the State of New York to reflect inflation and shall be updated after one year of Project operation and every fifth year thereafter. No offset for projected salvage value is permitted in the calculation of the estimate. Financial security shall be in the form of a letter of credit in the amount of the decommissioning and site restoration estimate, established by the Certificate Holder, to be solely for the benefit of, and held by the Town of Sharon. The letter of credit shall remain in effect for the life of the Project and shall not be subject to claims or encumbrances of the Certificate Holders' secured or unsecured creditors nor considered to be property of a bankruptcy estate. The Certificate Holder shall work with DPS Staff and the Town of Sharon on an acceptable form of a letter of credit. The Certificate Holder shall also file with the Secretary, with a copy to the Town of Sharon, proof that the letter of credit has been obtained in the decommissioning and site restoration estimate amount, as calculated pursuant to the Siting Board's direction. Proof of financial security adjustments based on updated estimates after one year of operation and every fifth year thereafter shall be submitted to the Secretary and shall include copies of those updated estimates. The Certificate Holder shall execute a decommissioning agreement with the Town establishing a right for them to draw on the letter of credit if the Certificate Holder defaults on its decommissioning obligations. Without relinquishing the authority granted to the Siting Board, and the PSC under PSL 168.7, the Town of Sharon

is hereby delegated the authority, pursuant to PSL 172.1 to enforce the approved Decommissioning Plan subject to the provisions of Condition 3 herein.

Health & Safety

51. An Emergency Response Plan (ERP) that shall be implemented during Facility construction, operation and decommissioning shall be submitted as a Compliance Filing. It shall address, amongst other potential contingencies, provisions for the notification of emergency situations or in the event of damage to Project equipment. Training drills with emergency responders shall occur at least once per year. Copies of the final plan shall be provided to DPS Staff, the NYS Division of Homeland Security and Emergency Services, Schoharie County Emergency Management, the Town Supervisor, the Village Mayor, and local emergency responders that serve the Facility.

52. The Final Site Security Plan for Facility Operations. Copies of the final plan shall be provided to the DPS Staff, NYS Division of Homeland Security and Emergency Services and local emergency responders that serve the Facility shall be submitted as a Compliance Filing.

53. A Final Health and Safety Plan shall be filed with the Secretary as an Compliance Filing and shall be implemented during Facility construction, operation and decommissioning.

54. A detailed Facility Exterior Lighting Plan shall be filed in the Compliance Filing. The Lighting Plan will be included on the final design drawings and shall address:

    a) Security lighting needs at the collection substation and switchyard;
    b) Plan and profile figures to demonstrate the lighting area needs and proposed lighting arrangement at the substation or any other areas to be lighted;
    c) Lighting should be designed to provide a 3.4 foot-candle average to eliminate unnecessary light trespass beyond the collection substation and switchyard and to provide safe working conditions at appropriate locations; and
    d) Exterior lighting design shall be specified to prevent any off-site lighting effects by:
        i. Use of task lighting as appropriate to perform specific tasks; task lighting shall be designed to be capable of manual or auto-shut off switch activation rather than motion detection;
        ii. Full cutoff fixtures, with no drop- down optical elements (that can spread illumination and create glare), shall be required for permanent exterior lighting to minimize potential impacts to the surrounding public; and
        iii. Manufacturer's cut sheets of all proposed lighting fixtures shall be provided.

Transportation

55. The Certificate Holder will develop a final Route Evaluation Study in consultation with the Town that includes mapping for final transportation routes for Project Component deliveries.

56. A Traffic Control Plan will be provided for any municipality where it is determined likely to experience traffic delays during construction of the Project. The Traffic Control Plan(s) will include a host community or road use agreements where the local roads will be utilized for delivery or construction vehicle transportation.

Plans, Profiles, and Detail Drawings

57. Maps, site plans and profile figures, and construction details for the Facility to be constructed shall be submitted as a Compliance Filing. Shapefile data shall be provided to DPS and NYSDEC Staff and the Town for the locations of solar panels, inverters, collection substation, grading, collection lines, interconnection facilities, associated mounting features (concrete pads, foundations, etc.), designated construction and laydown areas, access ways, and other Project Components. Final design drawings, site plans, and construction details will generally conform to the SEEP Guide documents and will conform to the following setback dimensions that adhere to the requirements for Project Component locations:

    a) 100-foot minimum front yard setback;

    b) 100-foot minimum side yard setback;

    c) 100-foot minimum rear yard setback;

    d) 8-foot, 6-inch minimum fence height;

58. The following height dimension shall apply:
    a) 15-foot maximum average height of the solar array;

59. Maps showing the locations for construction trailers/offices and location of access to public roads.

60. Prior to commencement of construction, the Certificate Holder shall submit a final Visual Mitigation Planting Plan, (VMPP) which shall be appropriate for the scale of the Facility and visual character of the surrounding area and use only native species or orchard crop species, at any time during the implementation of the VMPP.

61. The VMPP shall include:

a) Details showing the location and specific vegetation types to be planted at each designated visual mitigation area in accordance with specifications and planting layout depicted in the VMPP as prepared by the Applicant's Landscape Architect. A distinct, site specific module will be developed and implemented at each designated visual mitigation buffer.

b) A construction timeline and schedule including installation guidelines and field assessment. The timeline shall specify that final VMPP will be implemented (i.e. planting will occur) prior to or in conjunction with the installation of the solar panel arrays, to the extent practicable. All plantings should occur during the spring or fall planting season.

c) A maintenance and replacement program which shall specify that:

i. The Certificate Holder will inspect the visual mitigation plantings at one year following installation to identify any plant material that did not survive, appears unhealthy, and/or otherwise needs to be replaced. The Certificate Holder will remove and replace plantings that fail in materials, workmanship or growth within one-year following the completion of installing the plantings.

ii. Following the first-year inspection, the Certificate Holder will review landscape plantings on an annual basis for the next 4 years (i.e., on annual basis for the first 5 years of project operation) to confirm that the landscape plantings are functioning to provide visual screening per the Visual Mitigation Planting Plan. Results of this review will be filed with the Secretary. The landscape architect will recommend remedial measures identified, along with a schedule for implementation, if necessary.

iii. The Certificate Holder will review the visual mitigation plantings as part of routine maintenance following the five-year monitoring period to evaluate the health condition of the plantings.

iv. In the case of localized die-back of the mitigation plantings after the first five years, planting condition will be evaluated by a representative of the Certificate Holder to evaluate and determine if the mitigation plantings are accomplishing the mitigation/screening goals set forth in the Visual Mitigation Planting Plan. If the remaining vegetation does accomplish these goals, then no further action is necessary. If deemed insufficient, new plantings or other means of screening will be recommended for installation.

v. In the circumstance that the Certificate Holder will need to remove and replace plantings that fail, equipment operation required to remove and replace plantings will be consistent with the New York State Department of Agriculture

and Markets *Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/2019)*.

62. Final plan for the collection substation and collection line circuits' configuration and location map, indicating locations of overhead and underground installations and the number of required circuits per circuit-run shall be submitted as part of design plans in the Compliance Filing. A breakdown of the number of feet per installation shall be included as a legend (including installation distances for single, double, triple, etc.).

63. Final details of any potential overhead collection lines, and any single and multiple-circuit overhead 69 kV electric line layouts shall be submitted in the Compliance Filing, as applicable. Each Project circuit layout (single, double, triple, etc.) shall include, if applicable, the following drawings:

    a) "Right-of-Way Clearing Diagram";
    b) "Riser Dead-End Structure Diagram";
    c) "Tangent Structure Diagram";
    d) "Angle Structure Detail";
    e) "Clearing Diagram-Adjacent to Roadway Detail";
    f) Final layout details of any required guy support systems.

64. For the final design and details of single and multiple electric circuit underground collection lines to be submitted in the Compliance Filing, each Project circuit layout (single, double, triple, etc.) shall include a cross-section figure indicating clearing and widths needed for accommodating circuit installations.

65. Maps showing anticipated installation methods (i.e., trenching or HDD) to be utilized during construction of underground collection lines. To the extent the contractor determines, during construction activities, that installation methods should differ from that which is depicted on the maps, such change in upland areas shall be permitted following on-site consultation with, and verbal approval by, the DPS Staff representative and the Environmental Monitor, following any necessary consultation with other state agencies. Changes involving the crossing of State-regulated wetlands and streams shall be permitted following consultation with the DPS Staff representative, Environmental Monitor, and NYSDEC, which authorization shall not be unreasonably delayed, unreasonably withheld or unreasonably conditioned. Such changes must be consistent with federal and State regulations and will be subject to filing a notification of change with the Secretary within 48 hours from the agreement to make the change in installation method.

66. Final wetland and stream impact drawings, site plans, and construction details shall be

submitted in the Compliance Filing and incorporate and accurately depict methods for minimization of impacts to each wetland and stream. The plan shall include a table that identifies all wetlands and streams within the Project area and provides the following information for each individual resource:

a) Wetland delineation types and NYSDEC stream and wetland IDs and classifications;
b) Identification and assessment of methods to minimize impacts, including crossing methods and identification of any time of year restrictions, as applicable; and
c) References to the location of each resource where shown in the final design drawings, site plans, and construction details.

Environmental

67. A Timber Salvage Plan shall be filed in the Compliance Filing.

68. Prior to installation of any permanent road/stream crossings, a site specific "Stream Crossing Plan" shall be submitted in the Compliance Filing. The "Stream Crossing Plan" must include detailed site-specific plan, profile and cross-sectional view plans that reference the State stream and wetland IDs and the delineated wetland ID and describe and illustrate the layout and alignment of each crossing, and the proposed crossing method. At a minimum, the plan must include:

a) The alignment of roads, bridges, and culverts;
b) The location, quantity, and type of any fill associated with construction;
c) The location and installation details of any dewatering measures;
d) drainage area and flow calculations; and
e) A description of the dry crossing methods that will be used to install the crossing.

69. If trenchless methods are not constructible or not feasible for proposed stream crossings, the Certificate Holder shall file in the Compliance Filing a "Site-Specific Constructability Assessment." The "Site-Specific Constructability Assessment" shall be conducted by an experienced and qualified, professional engineer licensed in New York State and shall include a detailed analysis of the site-specific conditions that lead to the conclusion that all trenchless crossing methods are not constructible or not feasible at the particular stream crossing.

70. Plans for the creation, modification or improvement of any permanent road/stream crossing shall be included in a Compliance Filing and must meet the following requirements:

a) Culvert pipes shall be designed to safely pass the 1% annual chance storm event;
b) Culvert pipes must be embedded a minimum of 20% of the diameter of the culvert

beneath the existing grade of the stream channel;

c) Width of the structure must be a minimum of 1.25 times (1.25X) width of the mean high-water channel; and
d) The culvert slope shall remain consistent with the slope of the adjacent stream channel.

71. If, after five years, post-construction, all invasive species control requirements have not been achieved, the Certificate Holder must evaluate the likely reasons for these results in consultation with NYSDEC, AGM, and DPS and submit an "Invasive Species Remedial Plan" to the Secretary for approval. The "Invasive Species Remedial Plan" must describe the likely reasons for not achieving NYSDEC requirements, describe the actions necessary to correct the situation, and the schedule for conducting the remedial work. Once approved, the "Invasive Species Remedial Plan" will be implemented according to the approved schedule.

72. An Invasive Species Management and Control Plan (ISMCP) shall be submitted prior to commencement of construction as an Informational Filing. The Final ISMCP shall include pre-construction invasive species control if necessary, construction materials inspection and sanitation, invasive species treatment and removal, and site restoration in accordance with the Facility's final approved Storm Water Pollution Prevention Plan (SWPPP). A post-construction monitoring program (MP) shall be conducted in year 1, year 3, and year 5, following completion of construction and restoration. The MP shall collect information to facilitate evaluation of ISMCP effectiveness. At the conclusion of the MP, a report shall be submitted to DPS Staff, NYSDEC, the Town, and AGM, and filed with the Secretary, that assesses how well the goal of no net increase of invasive species per the recommendation of the Invasive Plant Species Survey Baseline Report (Baseline Species Report), due to construction of the Facility, is achieved. In the event that the report concludes that ISMCP goals are not met, and there is an increase of invasive species due to Facility construction, the Certificate Holder, DPS, NYSDEC and AGM will meet to consider why initial control measures were ineffective and determine if remedial control measures would be feasible and effective without the need for perpetual treatments.

73. A Spill Prevention, Containment and Counter Measures (SPCC) Plan to minimize the potential for unintended releases of petroleum and other hazardous chemicals during Facility construction and operation shall be filed in the Compliance Filing. The SPCC Plan shall be applied to all construction activities and contain procedures for loading and unloading of oil, discharge or drainage controls, procedures in the event of discharge discovery, a discharge response procedure, a list of spill response equipment to be maintained on-site (including a fire extinguisher, shovel, tank patch kit, and oil-absorbent materials), methods of disposal of contaminated materials in the event of a discharge, and spill reporting information. Any spills shall be reported in accordance with State and/or federal regulations.

74. Prior to the initiation of any HDD operations, an Inadvertent Return Plan for any HDD operations shall be submitted as a Compliance Filing. Biodegradable drilling solutions shall be described therein and shall be used for HDD to minimize harm to aquatic species in the event of a drilling frac-out. The Certificate Holder agrees to consult with NYSDEC concerning the type of biodegradable solutions. Exit and entry points shall be located a minimum of 50 feet from the edge of the stream or wetland, when and where practical. At a minimum, the plan shall include procedures to address inadvertent surface returns (frac-out), a response procedure, and a list of spill response equipment to be maintained on-site. All equipment and provisions of the plan shall be readily accessible at the locations where HDD technology is used during construction.

75. Cultural Resources Protection Measures shall be submitted as a Compliance Filing prior to the commencement of construction and contain the following:

a) Plans to avoid or minimize impacts to archaeological and historic resources to the extent practicable. Construction, including site preparation, clearing or other disturbance, shall not be allowed in any areas that have not been evaluated or inventoried and assessed by the Certificate Holder and OPRHP for the presence of historic and archaeological properties. The Certificate Holder shall indicate on final Site Engineering and Environmental Plans measures for avoidance of archaeological sites identified within the Facility site. The mapped locations of all identified archaeological sites within 100 feet (31 meters) of proposed Facility-related impacts shall be identified as "Environmentally Sensitive Areas" or similar on the final Facility construction drawings and marked in the field by construction fencing with signs that restrict access at the distance(s) prescribed in an OPRHP-approved Avoidance Plan.

b) Final Unanticipated Discovery Plan, establishing procedures in the event that resources of cultural, historical, or archaeological importance are encountered during Facility construction. The plan will include a provision for immediate work stoppage of all ground-disturbing construction-related activities within 100 feet (31 meters) of the discovery of possible archaeological or human remains. Evaluation of such discoveries, if warranted, shall be conducted by a Registered Professional Archaeologist, qualified according to New York Archaeological Council Standards. Work shall not resume in the area of the discovery of such remains until written permission is received from the NYSOPRHP.

c) If complete avoidance of archaeological sites is not possible, the Certificate Holder shall consult with the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) and DPS Staff to determine if Phase II investigations or

mitigation is warranted. The results of any Phase II investigations and/or identification of mitigation measures will be included in the plans.

d) No cemetery or burial ground shall be disturbed by the construction or operation of the Project.

e) If required, a Cultural Resources Mitigation and Offset Plan, either as adopted by a federal permitting agency in a subsequent National Historic Preservation Act (NHPA) §106 review, or as proposed in the Application and as revised in further consultation with SHPO in the event that the NHPA §106 review does not require that the mitigation plan be implemented, or as further supplemented pending any negotiations among parties. Proof of mitigation funding awards for offset project implementation to be provided within two years of the start of construction of the Facility shall be included.

Noise and Vibration

76. The Certificate Holder shall present to the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, by filing with the Secretary at a minimum of 60 days prior to the start of construction as Compliance Filings:

a) Final drawings for the Solar Generating Facility, incorporating any changes to the design, including:

i. Location of all noise sources and receptors identified with Geographic Information Systems (GIS) coordinates and GIS files;

ii. Proposed grading and noise source heights and ground elevations;

iii. Site plan and elevation details of substation components as related to the location of all relevant noise sources (e.g. transformers, emergency generator, HVAC equipment, if any).

iv. Any identified mitigations, specifications, and appropriate clearances (e.g. for sound walls, barriers, and enclosures, if any).

v. Sound information from the manufacturers for all noise sources (e.g. Transformers, inverters, HVAC equipment, emergency generators, if any).

b) Revised sound modeling with the final specifications of equipment selected for

construction to demonstrate that the Project is modeled to meet Local Laws on noise (if any) and the following sound goals for residences and boundary lines existing as of the date of the order as noted:

i. 35 dBA Leq-1-hour maximum equivalent continuous average sound level from the Substation transformer(s) outside any permanent or seasonal non-participating residence within the 35 dBA noise contour from any substation transformer(s), on the presumption that a 5 dBA prominent tone penalty applies to a basic design goal of 40 dBA.

ii. 45 dBA Leq-1-hour maximum equivalent continuous average sound level from the Facility outside at any permanent or seasonal non-participating residences from other daytime-only operational sound sources associated with the Facility, such as inverters and medium voltage transformers. If the sound emissions from these sources are found to contain a prominent discrete tone at any non-participating residence whether through modeling, calculation, or pre-construction field testing, then the sound levels at the receptors shall be subject to a 5 dBA penalty; i.e. a reduction in the permissible sound level to 40 dBA Leq-1-hour.

iii. 55 dBA Leq-1-hour maximum equivalent continuous average sound level from the Facility across any portion of non-participating property, except for portions delineated as wetlands and utility rights of way. This shall be demonstrated with modeled sound contours and discrete sound levels at worst-case locations. No penalties for prominent tones will be added in this assessment.

iv. 50 dBA Leq-1-h, maximum equivalent continuous average sound level from the Facility outside any participating residence. No penalties for prominent tones will be added in this assessment.

c) Final computer noise modeling and tonal evaluation shall be conducted in accordance with the specifications in the SEEP Guide.

77. The Certificate Holder shall comply with the following conditions regarding construction noise:

a) Comply with the substantive provisions of all applicable local laws regulating construction noise;

b) Maintain functioning mufflers on alltransportation and construction machinery;

c) Respond to noise and vibration complaints according to the Noise Complaint Resolution Protocol (Appendix B).

78. The Certificate Holder must design and build the Facility to comply with all Certificate Conditions on Noise and Vibration. No post-construction noise testing will be required.

V. Facility Construction and Maintenance

General

79. At least 60 days prior to the start of construction, the Certificate Holder shall become a member of Dig Safely New York (DSNY). The Certificate Holder shall require all contractors, excavators, and operators associated with its facilities to comply with the requirements of the Commission's regulations regarding the protection of underground facilities (16 NYCRR Part 753) to assure public safety and to prevent damage to public and private property.

80. The Certificate Holder shall require all contractors, excavators, and operators associated with its facilities to comply with all requirements of the Commission's regulations regarding identification and numbering of above ground utility poles (16 NYCRR Part 217). The Certificate Holder shall be responsible for contractually enforcing such compliance.

81. The Certificate Holder will provide funding for an independent, third-party Environmental Monitor to oversee compliance with these Certificate Conditions. The Certificate Holder's environmental compliance construction team will actively monitor all construction activities. All Certificate Conditions will be tracked to ensure compliance and oversight of the construction effort. The Certificate Holder's corporate environmental auditing team will conduct periodic environmental audits during operations. The environmental audits will be conducted approximately once every three years at the site by a trained team of environmental auditors assessing permit condition compliance and general operating standards and procedures. Audit findings shall be provided in confidential reports to management and corrective actions and good management practices shall be reported as well. The environmental compliance and monitoring program will be implemented in five phases:

    a) Preparation Phase: Established Environmental Monitors will review the Certificate Conditions and any environmental permits and prepare an environmental management program that will be used for the duration of the construction and operation of the Project. This program will identify all environmental requirements for construction and restoration included in all Project-related certificates, permits and approvals and will be used as a resource for the management of environmental issues that may occur. The Environmental Monitor shall perform daily inspections of construction work sites and, in consultation with, DPS Staff. Compliance audit shall be conducted with DPS Staff as necessary. When soliciting input from the DPS Staff and the Town, the Certificate Holder shall identify one or more candidates

and provide qualifications and contact information for the Environmental Monitor. The Environmental Monitor shall have the qualifications of an agricultural and Environmental Monitor consistent with the AGM guidelines, entitled *Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/2019)*, and the Environmental Monitor must be trained to identify and properly report on threatened and endangered (TE) species during construction of the Project.

b) Training Phase: The Environmental Monitor will conduct mandatory environmental training sessions for all contractors and subcontractors before they begin working at the Project Area. The purpose of this training will be to explain the environmental compliance program in detail, prior to the start of construction, and to assure that all personnel on site are aware of the environmental requirements for construction of the Project. Likewise, the corporate environmental compliance team will provide construction staff training concerning Certificate and permit conditions and compliance requirements;

c) Coordination Phase: Prior to construction, the Environmental Monitor along with associated construction contractors will conduct an on-site walk down of areas to be impacted by construction. Work area limits will be defined by flagging, staking, or fencing prior to construction. This walk down will also aid in the identification of any landowner preferences and concerns. This walk down will locate sensitive resources, clearing limits, and proposed wetland and waterbody crossings and impacts. The placement of sediment and erosion control features will also be identified. The walk down will serve as a critical means of identifying any required changes in the Project design in a timely manner in order to avoid future delays to construction timeframes.

d) Construction Phase: The Environmental Monitor will conduct daily inspection of work areas. The Environmental Monitor will conduct inspections of all areas requiring environmental compliance during construction activities, with an emphasis on those activities that are occurring within or close proximity to jurisdictional/sensitive areas. The Environmental Monitor will conduct daily operation meetings with contractors to coordinate scheduling, establish daily monitoring priorities, and address compliance issues.

e) Restoration Phase: When the construction phase of the Project is nearing completion in select areas, the monitor will work with the contractors to locate areas that require restoration. The Environmental Monitor will provide guidance in accordance with the Project environmental restoration plans when needed, coordinate the proper restoration efforts of the specific area, and incorporate the

monitoring of these restoration areas in their daily task list. As these areas approach final restoration, the Environmental Monitor will document the results and determine if further restoration effort is needed or if the restoration area can be removed from the daily inspection list.

82. Intentionally omitted.

83. At least 14 days before the commencement of construction, the Certificate Holder shall hold a pre-construction meeting with DPS Staff, AGM, New York State Department of Transporation (DOT), Town Supervisor and Highway Superintendent, and NYSDEC; National Grid, the BOP construction contractor and the environmental compliance monitor shall be required to attend such meeting:

    a) An agenda, the location, and an attendee list shall be agreed upon between DPS Staff and the Certificate Holder prior to the meeting;

    b) Maps showing designated travel routes, construction worker parking and access road locations and a general project schedule will be available at the meeting for the attendees;

    c) The Certificate Holder shall supply draft minutes from this meeting to a representative of DPS Staff, AGM, DOT, Town and the NYSDEC for corrections or comments, and thereafter the Certificate Holder shall issue the finalized meeting minutes to all attendees;

    d) If, for any reason, the Certificate Holder's contractor cannot finish the construction of the Project, and one or more new Certificate Holder's contractors are needed, there shall be another preconstruction meeting with the same format as outlined above; and

84. Construction work hours shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Saturday. Post installation and HDD will be limited to daytime hours. Construction work hour limits apply to facility construction, all construction- related activities including the delivery and unloading of materials, and maintenance and repairs of construction equipment at outdoor locations. Since these activities can result in extensive noise, large vehicles idling for extended periods at roadside locations, and related disturbances are not allowed. Crews will be allowed to assemble in Project Area laydown yards and conduct pre

and/or post work day meetings (i.e. morning plan of the day and/or safety brief, evening progress meeting) outside of the 7:00 a.m. to 7:00 p.m. window as these activities do not create a level of noise that is considered disturbing.

85. The Certificate Holder shall alert the Town and the Environmental Monitor when solar panel construction activities will be required to occur past 7:00 p.m. DPS Staff shall be notified if such extensions are being considered prior to extending construction work hours; and

    a) As provided herein, notice of planned extra-hours construction shall be provided to residents of areas that may be affected by the noise, traffic or other aspects of construction, and appropriate measures taken to avoid, minimize and mitigate such impacts. Thirty days prior to the commencement of construction, the Certificate Holder shall compile a list of cellphone numbers/electronic mail addresses/home phone numbers and addresses, to the extent reasonably available, of residents within 500 feet of the Project boundary lines ("Resident List") and will contact the Town's representative, and Resident List, assuming the aforementioned contact information has been provided to the Certificate Holder, as soon as practicable before the extended hour construction activity is to take place. This list shall not be filed with the Secretary nor in the Compliance Filing nor publicized in any manner except for the use of the Certificate Holder, its employees, its contractors and their respective employees, to implement the requirements of this Condition.

86. In the event that petroleum-impacted soil is encountered during construction activities (i.e., identified through staining, discoloration, odor, etc.) at the site, the following procedures will be implemented:

    a) The Certificate Holder's contractor will immediately suspend ground intrusive work in the vicinity of the impacted material and notify the Certificate Holder Project Supervisor;

    b) The Certificate Holder, will notify the property owner as soon as practicable;

    c) The Certificate Holder will notify the NYSDEC Region 4 Regional Engineer and DPS of the impacted material should the property owner not be located within 2 hours of the discovery or if conditions exist at the site which are determined to be immediately dangerous to public safety, health or the environment. In an emergency situation, the Certificate Holder will work (to the extent practicable) to contain the impacted material until appropriate emergency spill response services arrive;

d) In non-emergency situations and under the direction of the EPC Contractor Project Supervisor, the excavated impacted material will be segregated and temporarily stored on the site until the material can be delivered to the disposal facility. Stockpiles will be placed on 20-mil polyethylene sheeting and will be covered with heavy-duty tarps specifically manufactured for this purpose and secured with heavy sandbags. All impacted material will be managed and transported in accordance with applicable laws and regulations, including but not limited to, 6 NYCRR Part 360 and Part 364;

e) Construction equipment which comes in contact with the impacted material will be washed with potable water and a detergent and rinsed with potable water (as necessary) to remove impacted material adhered to the tires, tracks, undercarriage, and other parts of vehicle exteriors. The wash water and solids from the decontamination activities will be collected, contained, tested, removed from the site, and ultimately properly disposed of at a licensed and approved facility. Decontamination will be performed on a decontamination pad specifically set up for that purpose. The pad will be curbed and lined with an impermeable membrane to contain the used cleaning solution, including any overspray, and any impacted debris removed during the cleaning process;

f) Cleaning solution and impacted materials will be collected and transported by a waste hauler with a valid 6 NYCRR Part 364 Waste Transporter Permit;

g) To the extent practicable, the Certificate Holder and Project engineer will adjust ground intrusive construction activities at the site to avoid working within the limits of impacted material discovered during construction. If the limits of impacted material cannot be avoided, the project owner, in consultation with the property owner, will evaluate options for planning and implementing remediation activities, which may be required, including identification or adequate staging areas where impacted soils would be temporarily stockpiled. If the Project owner elects to undertake the remediation activities, the work will be performed under a plan prepared by the Certificate Holder and approved by the NYSDEC Region 4 Regional Engineer;

h) The Certificate Holder and its contractors shall have a decontamination pad in the event that oil or gas infrastructure is encountered;

i) The Certificate Holder shall consult with the DPS Gas Safety Staff if abandoned gas lines are identified as soon as practicable, considering cell coverage and internet service availability in the field.; and

j) Performance of any site clean-up, including containment or remediation of any existing contamination, to cap, plug, remove or otherwise contain any existing wells or pipelines that it might discover is subject to all applicable laws. EPC Contractor Project Supervisor agrees to notify the affected landowner, the NYSDEC Chief of the Energy Project Management Bureau and NYSDEC Region 4 Regional Engineer of the discovery of any unplugged oil or gas well as soon as practicable considering cell coverage and internet service in the field. GPS coordinates for, and access to the newly discovered well location, will be provided by the EPC Contractor Project Supervisor, to the NYSDEC Region 4 Regional Engineer, and NYSDEC Division of Environmental Permits, Chief of the Energy Project Management Bureau subject to the requirements of this Certificate.

Environmental

87. Tree and vegetation clearing shall be limited to the minimum necessary for Facility construction.

88. The Certificate Holder shall plan, construct and mitigate the Facility consistent with the AGM Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/2019), to the maximum extent practicable. This condition also requires the Certificate Holder to locate electric interconnect cables and transmission lines underground in agricultural land and interconnect cables and transmission lines installed above ground should be located outside agricultural field boundaries, where practicable. The Certificate Holder and/or Environmental Monitor will consult with AGM and DPS Staff during construction when deviation from the Guidelines is necessary. Mitigation measures shall include full restoration of temporarily disturbed agricultural land.

89. Post-construction monitoring and remediation of agricultural land impacted by the Facility will be conducted for a period of no less than two years following completion of initial restoration. The monitoring and remediation phase shall be used to identify lingering agricultural impacts associated with construction requiring mitigation and/or follow-up restoration. The Environmental Monitor will identify any issues through on-site monitoring of all agricultural areas impacted by construction and will keep open correspondence between contacts with respective farmland operators and AGM in order to properly mitigate issues.

90. Water Supply Protection:

a) Pier and post driving activities shall be prohibited within 100 feet of any existing, active potable water supply well;

b) If required, blasting shall be prohibited within 500 feet of any known existing, active water supply well or water supply intake on a non-participating property.

c) The Certificate Holder shall engage a qualified third party to perform pre- and post-construction testing of the potability of water wells within the below specified distances of construction disturbance before commencement of civil construction and after completion of construction to ensure the wells are not impacted provided Certificate Holder is granted access by the property owner:

   i. collection lines or access roads within 100 feet of an existing, active potable water supply well on a non-participating parcel;

   ii. pier or post installations within 200 feet of an existing, active potable water supply well on a non-participating parcel;

   iii. HDD operations within 500 feet of an existing, active potable water supply well on a non-participating parcel; and

   iv. Blasting within 1,000 feet of an existing, active water supply well on a non-participating parcel.

d) Should the third-party testing conclude that the water supplied by an existing, active water supply well met federal and New York State standards for potable water prior to construction, but failed to meet such standards post construction as a result of Project activities, the Certificate Holder shall cause a new water well to be constructed, in consultation with the property owner, at least 100 feet from collection lines and access roads, and at least 200 feet from all other Facility components.

Threatened and Endangered Species

For the purposes of Conditions 91-97 of this Certificate, Project Area shall be defined as those areas that are owned or controlled by the Certificate Holder as indicated in the SEEP, including areas that would be disturbed or occupied by Project Facilities, including access roads, laydown areas, and trees that are immediately adjacent to the limits of disturbance or fence line. In addition, the Certificate Holder may request and NYSDEC will supply the Certificate Holder the identity of the DEC office(s) for notifications required by conditions 91-95 where notification must be made within 24 hours of the discovery of a threatened or endangered species. The office(s) identified may be revised as necessary. The Certificate Holder may file the information with the Secretary as an Informational Filing.

91. If at any time during construction of the Project (including site restoration measures upon

commissioning of the Facility), a nest or roost of any federally or State-listed TE bird species is discovered and confirmed by the onsite Environmental Monitor or if any federally or State-listed TE bird species is observed by the onsite Environmental Monitor displaying roosting or breeding behavior for that species within 500 feet of the Project Area, the following actions will be taken: NYSDEC and DPS Compliance Staff will be notified within 24 hours of discovery and prior to any further disturbance around the nest, roost, or area where the species were seen exhibiting any breeding or roosting behavior; an area at least 500 feet in radius around the nest or roost of the TE species will be posted and avoided (for eagles, the avoided area shall be at least one-quarter (1/4) mile in radius if there is no visual buffer, or an area of at least six hundred and sixty (660) feet in radius if there is a visual buffer), and will remain in place until notice to continue construction, ground clearing, grading, or restoration activities at that site is granted by NYSDEC. The nest or roost will not be approached under any circumstances unless authorized by NYSDEC. The Environmental Monitor's observation may also include a recommendation pertaining to: 1) if the discovered TE species nest or roost has the potential to be impacted by construction or restoration activities; 2) if the avoided area radius can be reduced according to the species identified and the associated construction, disturbance, or restoration activities; and, 3) what measures are necessary to protect the nest or roost and to provide a timeline for the implementation of such measures. All authorizations required by NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

92. If at any time during operation of the Project, a nest or roost of any federally or State-listed TE bird species is discovered and confirmed by the Certificate Holder or if any federally or State-listed TE bird species is observed displaying roosting or breeding behavior for that species within 500 feet of the Project Area (or one quarter mile for eagles), the following actions will be taken: NYSDEC and DPS Compliance Staff will be notified within 24 hours of discovery and prior to any further disturbance around the nest, roost, or area where the species were seen exhibiting any breeding or roosting behavior, an area of at least 500 feet in radius around the nest or roost of the TE species will be posted (for eagles, the avoided area shall be at least one-quarter (1/4) mile in radius if there is no visual buffer, or an area of at least six hundred and sixty (660) feet in radius if there is a visual buffer) and maintenance activities will cease until approval to continue such maintenance activities is granted by NYSDEC except if necessary for the protection of human life and property. The nest(s), nest tree(s), or roost(s) will not be approached under any circumstances unless authorized by the NYSDEC. The Certificate Holder's observation may also include a recommendation pertaining to: 1) if the discovered TE species nest or roost has the potential to be impacted by operation and maintenance activities; 2) if the avoided area radius can be reduced according to the species identified and the associated operation and maintenance activities and, 3) what measures are necessary to protect the nest or roost and to provide a timeline for the implementation of such measures. Notwithstanding the above, consistent with the aforementioned recommendations described in the preceding

sentence ,nothing prohibits the Certificate Holder from repairing the Project in order to permit the continued generation and delivery of electricity from the Project so that it can continue to deliver renewable energy to meet its contractual obligations and/or contribute to satisfying New York State's renewable energy targets or goals. All authorizations required by NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

93. If any dead, injured, or damaged federally or State-listed TE species, or their eggs or nests thereof are discovered at any time during the life of the Project within the Project Area by the Certificate Holder, the Certificate Holder will contact NYSDEC and USFWS to arrange for recovery and transfer of the specimen(s) within 24 hours. The following information pertaining to the find shall be recorded:

    a) Species;
    b) age and sex of the individual(s), if known;
    c) date of discovery of the animal or nest;
    d) condition of the carcass, or state of the nest or live animal;
    e) GPS coordinates of the location(s) of the discovery (if reporting individual does not have GPS available the report must include the nearest Project Component and cross roads location);
    f) name(s) and contact information of the person(s) involved with the incident(s) and find(s);
    g) weather conditions at the site for the previous 48 hours;
    h) photographs, including scale and of sufficient quality to allow for later identification of the animal or nest; and
    i) an explanation of how the mortality/injury/damage occurred, if known.

    Electronic copies of each record, including photographs, will be provided to NYSDEC and USFWS within 24 hours of discovery. All discovered portions of the specimen(s) will be covered in place until NYSDEC or USFWS retrieves the specimen(s) or provides direction otherwise. If the discovery is followed by a non-business day, the Certificate Holder will ensure all the information listed above is properly documented for transfer. Once authorized by NYSDEC or USFWS, after all information has been collected in the field, the specimen(s) will be placed in a freezer, or in a cooler on ice until transported to a freezer, until it can be retrieved by the proper authorities, unless directed otherwise.

94. During construction, restoration, maintenance, and operation of the Facility, the Certificate Holder shall maintain a record of all observations of New York State TE species as follows:

    a) Construction: During construction the onsite Environmental Monitor shall be responsible for recording all occurrences of TE species. All occurrences shall be

reported in the bi-weekly monitoring report submitted to the DPS and NYSDEC and shall include the information described below. If a TE avian species is demonstrating breeding or roosting behavior for that species it will be reported to NYSDEC within 24 hours.

b) Operation and Maintenance: During regular operation and maintenance, the Certificate Holder will be responsible for training O&M staff to focus on identifying the following TE bird species: short-eared owl (*Asio flammeus*), northern harrier (*Circus hudsonius*), upland sandpiper (*Bartramia longicauda*), Henslow's sparrow (*Ammodramus henslowii*), and sedge wren (*Cistothorus stellaris*). The Certificate Holder will keep a record of observations of these species and report all observations to NYSDEC within one week of the event.

c) Reporting Requirements: All reports of TE species shall include the following information: species; number of individuals; age and sex of individuals (if known); observation date(s) and time(s); GPS coordinates of each individual observed (if reporting individual does not have GPS available the report must include the nearest Project Component and cross roads location); behavior(s) observed; identification and contact information of the observer(s); and the nature of and distance to any Project construction, maintenance, or restoration activity;

d) In consultation with the landowner, all temporary disturbance or modification of grassland habitat that occurs as a result of construction, restoration, or maintenance activities will be restored to pre-existing grassland habitat conditions by re-grading and re-seeding with an appropriate native seed mix after disturbance and construction activities are completed unless returning to agricultural production or otherwise agreed to by NYSDEC and AGM. These areas shall include, but are not limited to temporary roads, material and equipment staging and lay-down areas, areas between and beneath the solar panels, and collection line ROWs.

95. If at any time during the life of the Project any northern long-eared bat (*Myotis septentrionalis*) (NLEB) maternity roost trees are discovered within 500 feet of the Project Area), NYSDEC will be notified within 24 hours of discovery.

a) During the construction and restoration phase, an area at least 500 feet in radius around the roost tree will be posted and avoided and will remain in place until notice to continue construction, ground clearing, grading, maintenance, or restoration activities at that site is granted by NYSDEC. The Certificate Holder's observation may also include a recommendation pertaining to: 1) if the NLEB maternity roost tree has the potential to be impacted by construction, maintenance, or restoration activities; 2) if the avoided area radius can be reduced according to site-specific conditions and the associated construction, maintenance, or restoration activities; and, 3) what measures are necessary to protect the

species and to provide a timeline for the implementation of such measures. All authorizations required by NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

b) During the operation phase, an area at least 500 feet in radius around the roost tree will be posted and maintenance activities will cease until notice to continue such non-essential maintenance activities is granted by NYSDEC. The Certificate Holder's observation may also include a recommendation pertaining to: 1) if the NLEB maternity roost tree has the potential to be impacted by maintenance activities; 2) if the avoided area radius can be reduced according to site-specific conditions and the associated operation or maintenance activities; and, 3) what measures are necessary to protect the species and to provide a timeline for the implementation of such measures. Notwithstanding the above, consistent with the aforementioned recommendations described in the preceding sentence ,nothing prohibits the Certificate Holder from repairing the Project in order to permit the continued generation and delivery of electricity from the Project so that it can continue to deliver renewable energy to meet its contractual obligations and/or contribute to satisfying New York State's renewable energy targets or goals. All authorizations required by NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

96. The Certificate Holder shall leave uncut all known and documented NLEB roost trees and any trees within a 150-foot radius of a documented summer occurrence and 0.25 miles of documented winter occurrence. If any bats are observed flying from a tree, or from a tree that has been cut, tree clearing activities within 150 feet of the tree shall be suspended and NYSDEC shall be notified as soon as possible, and in that event, the Certificate Holder shall have an Environmental Monitor present on site during the aforementioned tree clearing activities. If any bat activity is noted, a stop work order for tree clearing shall immediately be issued and shall remain in place until such time as NYSDEC and DPS staff have been consulted and both agencies authorize resumption of work. All authorizations required by NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

97. A Post-Construction Avian Monitoring (Monitoring Plan) shall be developed in consultation with NYSDEC and a final, NYSDEC-accepted Monitoring Plan filed prior to the start of Project operation. The Monitoring Plan shall include breeding and wintering bird surveys, and include details of the studies (i.e. start and end dates; transect and point count locations; frequency, duration and scope of monitoring; methods for observation surveys; reporting requirements, etc.). The Monitoring Plan will be used to gather data regarding use of the Project Area by breeding and wintering birds, including State-listed species, after

construction, and will include at least one multi-season survey during the first three years of Project operation. Findings from the survey conducted will not trigger additional surveys or additional mitigation and will not result in changes to operations of the Project. Results of monitoring will be submitted in a report to NYSDEC under appropriate confidentiality protections.

Wetlands and Streams, Vegetation, and Invasive Species

98. If any federal wetland/stream permits are required for the construction, operation and/or maintenance of the Facility, the Certificate holder shall meet all federal standards and conditions of the permit as well as any conditions and regulatory requirements issued under the Section 401 Water Quality Certification and 6 NYCRR Part 608 in consultation with DEC. All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the Project.

99. The Certificate Holder shall submit a Notice of Intent to Commence Construction to the Region 4 Regional Permit Administrator, NYSDEC Region 4 Headquarters, 1130 North Westcott Road, Schenectady, NY 12206, the NYSDEC Chief of the Energy Project Management Bureau, Division of Environmental Permits, 625 Broadway, Albany, and DPS at least 72 hours in advance of the commencement of construction and shall also notify them in writing within 10 business days of the completion of work.

100. All construction activity, including operation of machinery, excavation, filling, grading, clearing of vegetation, disposal of waste, street paving, and stockpiling of material, is to occur within the Project site as depicted on Project plans. No construction activity is authorized to occur within areas to be left in a natural condition or areas not specifically designated by this certificate. Staking and/or flagging construction limits (i.e., ROW, off-ROW access roads, and extra work areas) shall occur prior to any ground disturbance.

101. During construction, erosion control devices including but not limited to straw bales or silt fences shall be installed to prevent erosion of excavated material or disturbed soil along with other measures as described in the SWPPP. All erosion control devices, shall be installed in accordance with construction techniques described in 2016 New York State Standards and Specifications for Erosion and Sediment Control (Blue Book), including placing the straw bales and silt fence in a shallow trench, backfilling the toe of the silt fence and securing the straw bales with stakes. All erosion and sediment control practices shall be installed prior to any grading or filling operations, or other ground disturbance. They shall remain in place until construction is completed and the area is completely restored to

pre-existing conditions. Use of hay bales is strictly prohibited to minimize the risk of introduction of invasive species. All disturbed soils within regulated freshwater wetlands and the associated adjacent areas must be seeded with a native seed mix.

102. All equipment and machinery shall be stored and staged at least 100 feet from any stream, waterbody or wetland overnight at the end of each workday.

103. Fuel or other chemical storage tanks shall be contained and located at all times in an area more than 300 feet landward of any regulated wetland, stream or waterbody. If the above requirement cannot be met by the Certificate Holder, then the storage areas must be designed to completely contain any and all potential leakage.

104. All mobile equipment, excluding dewatering pumps, must be fueled in locations that are a minimum of 100 feet from the top of stream bank, wetland, or other waterbody. Dewatering pumps operated closer than 100 feet from the stream bank, wetland, or waterbody, must be on an impervious surface with absorbents capable of containing any leakage of petroleum products.

105. Construction vehicles and equipment will be equipped with a spill kit that is appropriate for the volume of fuel carried by the vehicle or equipment. Any leaks must be stopped and cleaned up immediately. Spillage of fuels, waste oils, other petroleum products or hazardous materials shall be reported to the DPS and NYSDEC's Spill Hotline (1-800-457-7362) within two hours according to the NYSDEC Spill Reporting and Initial Notification Requirements Technical Field Guidance. In an emergency situation, the contractor will work (to the extent practicable) to contain the impacted material until appropriate emergency spill response services arrive.

106. If inadvertent drilling fluid surface returns occur in wetlands or streams, the NYSDEC's Chief of the Energy Project Management Bureau, Division of Environmental Permits, and DPS Staff shall be notified within 2 hours or as soon practicable, considering internet and cell phone coverage in the area. A written monitoring report describing the location, estimated volume, and cleanup efforts shall be submitted to NYSDEC and DPS Staff within 24 hours of the occurrence.

107. All equipment used within bed or banks of streams or in regulated wetlands and 100-foot adjacent areas must be inspected daily for leaks of petroleum, other fluids, or contaminants; equipment may only enter a stream channel if found to be free of any leakage. A spill kit must be on hand at the immediate work site and any equipment observed to be leaking must be removed from the work site, and leaks must be contained, stopped and cleaned up immediately.

108. All fill material shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, fly ash, broken concrete, demolition debris, garbage, household refuse, tires, woody materials including tree or landscape debris, metal objects, and all invasive species. The introduction of materials toxic to aquatic life is expressly prohibited.

109. Trenchless methods for installing buried cables through wetlands will be considered where practicable. Final details of collector trench installations and designated areas for staging, construction machinery arrangements, and bore pits will be provided on the final design drawings. Where trenchless methods are not practicable, trench construction through unprotected streams and wetlands will include excavating for installation purposes and backfilling in one continuous operation. Detailed trenching operations are outlined below:

    a) Before trenching occurs, upland sections of the trench shall be backfilled or plugged to prevent drainage of possible turbid trench water from entering the stream or wetland;

    b) Trench breakers/plugs shall be used at the edges of wetlands as needed to prevent wetland draining during construction;

    c) If there is an inadvertent puncturing of a hydrologic control for a wetland, then the puncture shall be immediately sealed, and no further activity shall take place until DPS and NYSDEC are notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved by the agency staffs, which approval shall not be unreasonably delayed, unreasonably withheld or unreasonably conditioned;

    d) Only the excavated wetland topsoil and subsoil shall be utilized as backfill;

    e) When backfilling occurs, the subsoil shall be replaced as needed, and then covered with the topsoil, such that the restored topsoil is the same depth as prior to disturbance.

110. Turbid water resulting from dewatering operations, including water that has infiltrated the construction site, shall not be discharged directly to or allowed to enter any wetland, stream or water body within the Project area. Turbid water resulting from dewatering operations shall be baffled or otherwise discharged directly to settling basins, filter bags, or other New York State Standards and Specifications for Erosion and Sediment Control (2016) approved practices, or to an upland vegetated area prior to discharge to any wetland, stream or other water body within the Project area. All other necessary measures shall be implemented to prevent erosion and any visible increase in turbidity or sedimentation downstream of the work site.

111. Visibly turbid discharges from blasting, land clearing, grading or excavation and construction activities or dredging operations shall not enter any surface water body. All necessary measures shall be implemented to prevent any visible increase in turbidity or sedimentation downstream of the work site as identified in the SWPPP.

112. Markers used to delineate/define the boundary of regulated freshwater wetlands and streams, and also the demarcated limits of disturbance for the Project shall be left in place and remain undisturbed until completion of construction activities and restoration of the impacted area.

113. Vegetative cover across all disturbed soil areas shall conform with SWPPP requirements and must be established by the end of the first full growing season following construction.

114. Post-construction invasive species monitoring shall be conducted for a period of no less than five years following completion of Project related activities on site. Post-construction invasive species monitoring shall be conducted in year one, year three, and year five following completion of construction and restoration. Monitoring will be conducted per the ISMCP with intention to achieve the goals outlined in the ISMCP, such as the goal to achieve no net increase in the number of invasive species present and their distribution in the Project Area due to construction. A final report will be prepared detailing the success of the ISMCP. Failure to meet the goals of the ISMCP will result in revision of the control plan and extension of the post construction monitoring phase for a period of two years from implementation of the revised plan.

115. All regulated freshwater wetlands, and associated NYSDEC regulated 100-foot adjacent areas, as applicable, temporarily disturbed due to construction activities shall be restored to pre-existing conditions and documented cover type to the extent practicable and in accordance with the following requirements:

    a) Restoration to pre-construction contours must be completed within 48 hours of final backfilling of the trench within regulated freshwater wetland boundaries and any NYSDEC regulated 100-foot adjacent area boundaries, as applicable. Within 14 days of the completion of grading, the area shall be seeded with native vegetation at densities as existed prior to construction. Seeding shall be completed to help stabilize the soils with an appropriate native wetland species mix such as an Ernst Wetland Mix (OBL-FACW Perennial Wetland Mix, OBL Wetland Mix, Specialized Wetland Mix for Shaded OBL-FACW, or equivalent), unless returning to agricultural production or otherwise agreed to by NYSDEC, as applicable, in regulated 100 foot adjacent areas;

b) Restored areas shall be monitored for 5 years or until an 80% cover of native species has been reestablished over all portions of the replanted area, unless the invasive species baseline survey indicates a smaller percentage of native species existed prior to construction;

c) In areas dominated by trees and shrubs, monitoring for woody vegetation establishment will take place during the growing season and over a 5-year period. If at the end of the fifth year the 80% cover requirement has not been established or the proportion of invasive species described in the baseline survey has increased, then the Certificate Holder shall consult with NYSDEC;

d) These replanted areas shall also be monitored for invasive species to attain, to the greatest extent practicable, no net increase (or other "reasonable definition" as agreed upon following the baseline survey) in areal coverage of invasive species compared with pre-construction conditions. If at any time during the monitoring the invasive species criteria above are not met, the Certificate Holder shall take immediate action to control the invasive species. Such actions shall be part of an invasive species control plan approved by PSC after consultation and approval by the NYSDEC; and

e) If at the end of five years the restored areas do not meet the above criteria for success, then monitoring and corrective action shall continue until the criteria are met.

116. All construction debris (e.g., building materials, excess sediment, refuse from the work site) from the Project shall be completely removed prior to completion of restoration from the regulated freshwater wetland and NYSDEC regulated 100-foot adjacent area (upland), as applicable, and disposed of at a permitted waste disposal facility authorized to receive such material.

117. Cleared vegetation and slash from regulated freshwater wetlands and NYS-regulated 100-foot adjacent areas will not be burned or buried within the regulated freshwater wetland and any applicable regulated 100-foot adjacent areas. Logs and large branches cannot be deposited into any regulated freshwater wetland and any applicable NYS- regulated 100-foot adjacent areas from outside of the regulated 100-foot adjacent area, however, small branches (slash) that are cut in a drop and lop method or piled within wetland and adjacent areas may be left in place, in a manner that does not alter the hydrology of the wetland.

118. Permanent alteration of wetland hydrology is prohibited.

119. To control the spread of invasive species during Facility site clearing and timber removal, the Certificate Holder will:

a) Make sure crews are trained to identify the Asian Longhorned Beetle and the Emerald Ash Borer and any other insects that the NYSDEC identifies as a potential problem in accordance with 6 NYCRR Part 575, Prohibited and Regulated Invasive Species. If these insects are found, they must be reported to the NYSDEC regional forester;

b) Material Inspection: Includes the use of products such as seed, mulch, topsoil, fill, sand, and stone that are free of invasive species. Movement of these materials both into and out of the Project Area should be limited to minimize the possibility of spreading invasive species. Importation by these materials should be limited by reusing excavated products to the maximum extent practicable. Imported construction materials should be obtained from reputable sources and thoroughly inspected for the presence of invasive species prior to transportation or use on the site. Materials should be used as soon as practicable to limit the amount of times they are stockpiled;

c) Targeted Species Treatment and Removal: Targeted removal is used in instances where invasive species are encountered during construction and cannot be avoided. Removal in that instance would prevent spread of the species to other areas of the Project Area. Targeted removal includes options such as hand-pulling, burning, cutting, burying, excavating, or herbicide application shall be carried out in accordance with Part 325 of 6 NYCRR, Application of Pesticides. Removal methods will be determined based on the species and density of the encountered invasive. Invasive species that are removed should be either, left in the infested area, or placed in a secure container for proper disposal offsite.;

d) Sanitation: As it relates to invasive species control, sanitation includes the cleaning of clothing and equipment prior to movement or use within the Project Area. Seeds and viable plant parts can easily be transported to different locations on clothing and equipment. Cleaning should be conducted both prior to equipment arriving on site and prior to it leaving, too prevent the spread of invasive species into and off of work site within the Project Area.; and

e) Restoration: Invasive species spread most readily in disturbed soil and stabilizing the site quickly will limit the amount of time that invasive species have to get established in a particular area. Therefore, once construction is complete, disturbed areas should be regraded and stabilized (with seed and mulch) as quickly as practicable. Once the site is regraded, native seed mixes should be applied along

with seed free mulch to reestablish vegetative cover. BMPs should also be implemented in accordance with the Stormwater Pollution Prevention Plan to prevent erosion and limit the potential for spread of invasive species bearing soil offsite.

120. On-site waste concrete containment from concrete truck clean out activity and/or any wash water from trucks, equipment or tools, must be contained in a manner that will prevent it from escaping into waterbodies, water channels, streams, and wetlands. If a discharge occurs, NYSDEC Region 4 Regional Permit Administrator and DPS shall be contacted within 2 hours. Disposal of waste concrete or wash water is prohibited within 100 feet from any waterbody or wetland or to any area that drains to a waterbody or wetland.

121. In-stream work shall only occur in dry conditions or by trenchless methods or dewatering measures (e.g., dam and pump or flume) must be used. If approved measures fail to divert all flow around the work area, in-stream work must immediately stop until dewatering measures are in place and properly functioning again.

122. The restored stream channel shall be equal in width, depth, gradient, length and character as the pre-existing stream channel and tie in smoothly to profile of the stream channel upstream and downstream of the project area. The planform of any stream shall not be changed.

123. If any shrubs growing within 50 feet of streams need to be cut in the process of constructing overhead power line crossings, they shall be cut to ground level with root systems left in place. Except for stumps and root systems in an overhead power line right of way, stumps and root systems shall not be damaged to facilitate stump sprouting. Trees shall not be felled into any stream or onto the immediate stream bank. All trees and shrubs cut within the 50 feet of the stream shall be left on the ground.

124. Clearing of natural vegetation shall be limited to that material which poses a hazard or hindrance to the construction activity. Snags which provide shelter in streams for fish shall not be disturbed unless they cause serious obstructions, scouring or erosion. Trees shall not be felled into any stream or onto the immediate stream bank.

125. HDD will be used under streams to avoid impacts on water quality, habitat, and stream bed stability If trenchless methods are not constructible or not feasible, a "Site-Specific Constructability Assessment" will be filed in the Compliance Filing. If, based on results of the "Site-Specific Constructability Assessment," the Board approves stream crossings using trenched methods, all stream crossings shall be done in the dry. Trenches shall be opened for the installation and backfilled in one continuous operation. Before trenching through stream banks occurs, upland sections of the trench shall be backfilled or plugged to prevent

drainage of possible turbid trench water from entering the stream. Intermittent and ephemeral streams must be crossed during times of no flow, while perennial streams must be crossed using a temporary water control device such as a dam and pump or cofferdam to isolate the work area and redirect the water around the work site. Temporary water control devices/cofferdams for perennial streams must adhere to the following:

a) Specifications: Any temporary cofferdam shall be constructed of clean materials such as sheet piling, jersey barriers, inflatable dams, or sandbags that will not contribute to turbidity or siltation of the waterbody or wetland, and non- erodible materials, so that failure will not occur at Q2 or higher flow conditions. Where practicable, an upstream or interior membrane shall be installed to control percolation and erosion. Sandbags shall be of the filter fabric type, double bagged and individually tied to prevent sand leakage and only clean sand (e.g. free of debris, silt, fine particles or other foreign substance) shall be used as fill. They shall be placed and removed manually to prevent spillage. Straw bale sediment control basins are prohibited;

b) Fill materials must not come from the waterbody or wetland;

c) The water control structure/cofferdam shall not impair downstream water flow in the waterbody or water flow into and/or out of a wetland;

d) If exposed for an extended period of time, excavated or temporarily stockpiled soils or other materials should be covered and protected to reduce runoff of fines which may cause a turbidity problem and to prevent rainwater from soaking the materials and rendering them unsuitable for backfill;

e) The work area shall remain isolated from the rest of the stream or wetland until all work in the streambed or bank, or wetland is completed, concrete is thoroughly set and the water clarity in the coffered area matches that of the open water;

f) If a dam and pump diversion is used as part of a dry open-cut crossing, the pump and diversion must be monitored continuously from time of installation until crossing is completed, streambed restored, and diversion is removed;

g) Dewatered sections of stream cannot exceed 50 linear feet (measured from the inside edges of the cofferdams) for each stream crossing unless the Certificate Holder has prior written approval from the NYSDEC Region 4 Regional Permit Administrator, which approval shall not be unreasonably delayed, unreasonably conditioned or unreasonably withheld and shall be subject to the terms of the

dispute resolution procedures contained in Condition 3 herein;

h) All temporary water control structures shall be removed in their entirety upon completion;

i) All fish trapped within the cofferdam shall be netted and returned, alive and unharmed, to the water outside the confines of the cofferdam, in the same stream, before the dewatering process;

j) Dewatering within the coffer(s) shall be performed so as to minimize siltation and turbidity. Water taken from the coffered area will be passed through settling basins, filter bag, or well-vegetated upland areas more than 100 feet from the stream bank to prevent the discharge of turbid water into any wetland, stream or river. The pump discharge must be directed against a solid object (concrete slab, stone or steel container), or other effective method to prevent erosion by dissipating energy;

k) Depth of buried cables must be sufficient to prevent exposure during future high flow events.;

l) Erosion and sediment control will be used at the point of HDD, so that drilling fluid shall not escape the drill site and enter streams or wetlands. The disturbed area will be restored to original grade and reseeded upon completion of directional drilling;

m) Drilling fluid circulation for HDD installations shall be maintained to the extent practical. If inadvertent surface returns occur in upland areas, the fluids shall be immediately contained and collected. If the amount is not enough to allow practical collection, the affected area will be diluted with freshwater and allowed to dry and dissipate naturally. If the amount of surface return exceeds that which can be collected using small pumps, drilling operations shall be suspended until surface volumes can be brought under control. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area (i.e. wetlands and water bodies) the returns shall be monitored and documented as described in the Inadvertent Return Plan. Drilling operations must be suspended if the surface returns pose a threat to the resource or to public health and safety. Removal of released fluids from environmentally sensitive areas will take place only if the removal does not cause additional adverse impacts to the resource. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area the NYSDEC Region 4 Regional Permit Administrator shall be notified immediately and a monitoring report summarizing the location of surface returns, estimated quantity of fluid and

summary of cleanup efforts shall be submitted within 48 hours of the occurrence; and

n) While conducting HDD operations under wetlands, 100-foot adjacent areas, and streams, the Certificate Holder will maintain close monitoring for possible "frac-outs" that would result in the release of drilling fluids to sensitive areas as described in the Inadvertent Return Plan. The Certificate Holder will maintain a HDD spill response plan and the necessary response equipment will be kept on-site for the duration of the drilling. All releases of drilling fluids to sensitive areas (e.g., wetlands, NYSDEC regulated 100-foot adjacent areas, streams) shall be reported to the NYSDEC Region 4 Regional Permit Administrator and DPS Staff within 2 hours or as soon as practicable considering internet and cell phone coverage in the area.

126. To reduce thermal impacts to exposed streams, if applicable, native woody plants will be planted at stream crossings disturbed by construction activities. Plant cover will be restored to its pre-construction condition. For stream crossings that are disturbed by construction activities that have, pre-construction, a 50% woody plant cover, a minimum of 50% woody plant cover will be established on such stream banks disturbed by Project construction by the end of the two full growing seasons following construction. Planting may be done at top of bank and/or among rocks along toe of slope. Restoration of these select riparian areas will be monitored along the same time frames as the ISMCP, per the provisions of Condition 71 herein, by the appointed Environmental Monitor to document the proper establishment of cover, survivorship of species, and mitigate any unforeseen issues with the revegetation effort. Copies of the stream restoration assessments produced by the Environmental Monitor will be provided to DPS and NYSDEC.

127. Stream beds shall be restored to original elevation, width, and gradient. All other areas of soil disturbance above the ordinary high-water elevation, shall be stabilized with natural fiber matting, seeded with an appropriate perennial native conservation seed mix, and mulched with straw within two days of final grading. Mulch shall be maintained until suitable vegetation cover is established. Destroyed bank vegetation shall be replaced with shrub willow or silky dogwood planting, native trees, or other suitable species.

128. Construction in streams protected under Environmental Conservation Law (ECL) Article 15 shall comply with work period restrictions established in consultations with NYSDEC that are protective of fish spawning and migration.

129. Except where crossed by permitted access roads or through use of temporary matting, streams shall be designated "No Equipment Access" or similar on the final Project construction drawings, and the use of motorized equipment shall be prohibited in these areas.

130. A buffer zone of 100 feet, referred to as "Restricted Activities Area" or similar on the final Facility construction drawings, shall be established where Facility construction traverses streams, wetlands and other bodies of water. Restricted Activities Areas shall be marked in the field. Restrictions will include: no deposition of slash within or adjacent to a waterbody; no accumulation of construction debris within the area; herbicide restrictions within 100 feet of a State-regulated stream or wetland (or as required per manufacturer's instructions); no degradation of stream banks; no equipment washing or refueling within the area; no storage of any petroleum or chemical material; and no disposal of excess concrete or concrete wash water.

131. State-regulated in-stream work or restoration authorized by the Certificate, including the installation of structures and bed materials, shall not result in an impediment to passage of native aquatic organisms, including fish, or cause a significant hydraulic restriction. Any State-regulated in-stream work (excluding dewatering practices associated with dry trench crossings) and restoration shall be constructed in a manner which maintains low flow conditions and preserves water depths and velocities similar to undisturbed upstream and downstream reaches necessary to sustain the movement of native aquatic organisms.

132. Legible "protected area" signs, exclusionary fencing, colored flagging, and/or erosion controls pursuant to the approved SWPPP shall be installed along the approved work area to protect and clearly identify the boundaries of non-work areas associated with wetlands, waterbodies, and wetland/waterbody setbacks (e.g., Additional Temporary Work Space setbacks, refueling restrictions, etc.). This shall be done prior to any disturbance or vehicular traffic through such areas. Signs, fencing, and silt fence must be removed following completion of the Project and after all disturbed areas are appropriately stabilized and planted as described in the SWPPP and in Certificate Conditions.

133. Should trenching for underground collection lines be determined necessary, the Certificate Holder will adhere to the following conditions: Where underground collection lines may be installed in wetlands by open trenching, all wetland topsoil up to a maximum of 12 inches deep shall be removed first and temporarily stockpiled onto a geo-textile blanket running parallel to the trench, if necessary. Wide-track or amphibious excavators shall be used for wetland installations. Subsoil dug from the trench shall be sidecast on the opposite side of the trench on another geo-textile blanket running parallel to the trench, if necessary. The length of the trench to be opened shall not exceed the length that can be completed in one day. Trench shall be backfilled with the wetland subsoil and the wetland topsoil shall be placed back on top. All excess materials shall be completely removed to upland areas more than 100 feet from the wetland and suitably stabilized. The duration of work in wetlands should be minimized to the extent practicable.

134. Where any temporary or permanent access roads are to be constructed through wetlands, a layer of geotextile fabric shall be placed across the wetland after removal of vegetation and before any backfilling occurs. The final road surface shall be covered with a minimum 1-inch depth of gravel in the area of the wetland crossing. Where installation of access roads is to be constructed through wetland:

    a) Temporary access roads shall use construction matting or similar;
    b) Permanent access roads shall use a layer of geotextile fabric and at least six inches of gravel or crushed stone placed in the location of the wetland crossing after vegetation and topsoil is removed. Permanent access roads may require equalization culverts to maintain hydraulic connectivity

VI. Facility Operation

135. The Certificate Holder shall operate the Facility in accordance with the Interconnection Agreement, approved tariffs and applicable rules and protocols of National Grid, NYISO, NYSRC, NPCC, NERC and successor organizations.

136. The Certificate Holder shall operate the Facility in full compliance with the applicable reliability criteria of National Grid, NYISO, NPCC, NYSRC, NERC and successors. If it fails to meet the reliability criteria at any time, the Certificate Holder shall notify the NYISO immediately, in accordance with NYISO requirements, and shall simultaneously provide the Board, or the Commission after the Board's jurisdiction has ceased, by filing with the Secretary and National Grid with a copy of the NYISO notice.

137. The Certificate Holder shall obey unit commitment and dispatch instructions issued by NYISO, or its successor, in order to maintain the reliability of the transmission system. In the event that the NYISO System Operator encounters communication difficulties, the Certificate Holder shall obey dispatch instructions issued by National Grid, or its successor, in order to maintain the reliability of the transmission system.

138. For purposes of this condition, Good Utility Practice shall mean any of the applicable acts, practices or methods engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which the Company is located. Good Utility Practice shall include, but not be limited to, NERC criteria, rules, guidelines and standards, NPCC criteria, rules, guidelines

and standards, NYSRC criteria, rules, guidelines and standards, and NYISO criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time (including the rules, guidelines and criteria of any successor organization to the foregoing entities). When applied to the Certificate Holder, the term Good Utility Practice shall also include standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility. Except for periods during which the authorized facilities are unable to safely and reliably convey electrical energy to the New York transmission system (e.g., because of problems with the authorized facilities themselves or upstream electrical equipment) the Facility shall be exclusively connected to the New York transmission system via the facilities identified and authorized in these conditions.

139. The Certificate Holder shall work with National Grid engineers and safety personnel on testing and energizing equipment in the authorized collection substation and interconnection switchyard. A testing protocol shall be developed and provided to National Grid for review and acceptance subject to the provisions of Condition 3 herein. The Certificate Holder shall file with the Secretary a copy of the final testing design protocol within 30 days of National Grid acceptance.

140. If National Grid or the NYISO bring concerns to the Commission, the Certificate Holder shall be obligated to address those concerns and shall make any necessary modifications to its Interconnection Facility if the Certificate Holder, NYISO and National Grid agree that such facilities are causing, or have caused, reliability problems to the New York State Transmission System subject to the provisions of Condition 3 herein.

141. If, subsequent to the completion of construction and testing of the Facility, no electric power is generated and transferred out of such plant for a period of more than a year, the Commission may consider advising the Siting Board that the amendment, revocation or suspension of the Certificate may be appropriate.

142. In the event that a malfunction of the Facility causes a significant reduction in the capability of such Facility to deliver power, the Certificate Holder shall promptly file with the Secretary and provide to National Grid copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs. The Certificate Holder shall provide monthly reports to the Secretary and National Grid on the progress of any repairs. If such equipment failure is not completely repaired within nine months of its occurrence, the Certificate Holder shall provide a detailed report to the Secretary, within nine months and two weeks after the equipment failure, setting forth the progress on the repairs and indicating whether the repairs will be completed within three months; if the repairs will not

be completed within three months, the Certificate Holder shall explain the circumstances contributing to the delay and demonstrate why the repairs should continue to be pursued.

143. In the event of a fire or other catastrophic event involving the solar panels and its associated equipment, the DPS' Compliance Inspector will be notified within 12 hours following such an event; the Town's designated representative, and local emergency agencies/responders shall be notified as soon as practicable following such an event.

APPENDIX B

GUIDANCE FOR THE DEVELOPMENT OF SITE ENGINEERING AND ENVIRONMENTAL PLAN FOR THE CONSTRUCTION OF THE EAST POINT ENERGY CENTER PROJECT

East Point Energy Center
SEEP Guide

GUIDANCE FOR THE DEVELOPMENT OF SITE ENGINEERING AND ENVIRONMENTAL PLAN FOR THE CONSTRUCTION OF THE EAST POINT ENERGY CENTER PROJECT

The East Point Energy Center Certificate Conditions require the submission of a Site Engineering and Environmental Plan (SEEP). The SEEP is intended to meet the requirements of New York State Code of Rules and Regulations (NYCRR) 16 NYCRR Section 1002.3 and 1002.4 and describe in detail the final Facility design and the environmental protection measures to be implemented during construction of the East Point Energy Center (Facility). The SEEP shall include a description of existing and proposed conditions at the Facility, plan and profile drawings illustrating the linear and non-linear components of the Facility, construction access and clearing requirements, protective measures for streams, wetlands, and protected habitats, identification of sensitive receptors, agricultural lands, and protocols to protect previously unknown cultural resource sites during construction.

The SEEP is not intended to be a reiteration of the materials contained in the Application, but instead is intended to demonstrate compliance with the construction avoidance, minimization, and mitigation measures, as described in the Application, and as clarified by the Certificate Holder's supplemental filings, the Order Granting Certificate and, the Certificate Conditions.

For reference, the SEEP will include a table outlining the specific Certificate Conditions incorporated into the SEEP with references to the section of the SEEP where those conditions may be found.

This SEEP guide includes the minimum requirements for the specific Certificate Conditions incorporated into the SEEP. The Certificate Holder's adherence to this guide will be achieved to the maximum extent practicable. Any deviation from the relevant and applicable requirements of the SEEP Guide attached to this order shall be justified in the SEEP and shall be subject to approval by the Siting Board as applicable.

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Definitions

Adjacent or Contiguous: located on the same parcel of real property or on separate parcels of real property separated by no more than 500 feet.

Linear Project Components: electric collection lines and temporary and permanent access roads.

Non-Linear Project Components: collection substation, commercial-scale solar arrays, inverters, fencing, electrical interconnection facilities, and temporary laydown yard/staging area(s).

Facility or Project Area: The parcels hosting Project Components.

Project Components: Linear Project Components and Non-Linear Project Components.

Section A – Plans, Profiles and Detail Drawings

Section A of the following Site Engineering and Environmental Plan (SEEP) addresses the requirements for development of final facility engineering details; site plans for construction, restoration, and environmental control measures; plan and profile drawings of the development site and Project Components; and maps of the Project Area and the overall Facility setting as appropriate to demonstrate compliance with the Certificate of Environmental Compatibility and Public Need for the East Point Energy Center.

Plan sheets will be submitted showing the location and design details for all Project Components, including: linear facilities such as electric collection lines, buried electric collection lines, and temporary and permanent access roads. Plans shall also indicate the location and size of all major structures, features, commercial-scale solar arrays, inverters, collection substation, switchyard and point-of-interconnection location, including associated access roads, storage and laydown areas, fencing and the limits of disturbance for work area associated with any Component of the Facility. Plans shall include plan-view drawings or photo-strip maps, and illustrations including but not limited to all of the following information:

1. <u>Plan and Profile Details</u>

Solar Arrays and Related Non-Linear Components:

For all proposed solar array locations and other Non-Linear Project Components, the Certificate Holder shall provide site plans, profiles, and detail drawings (scale minimum 1 inch = 200 feet)[1] showing:

a. A copy of the American Land Title Association (ALTA) survey showing locations of existing utility infrastructure.

b. Details and specifications of the selected commercial-scale solar array and inverter model(s) (including a specification sheet).

c. Foundation drawings including plan, elevation, and section details for each foundation type proposed; the foundation type at the collection substation and switchyard location shall be specified on site plans; and applicable criteria regarding foundation design shall be listed and described in the drawings and details.

d. Details showing limits of clearing, temporary and permanent grading, and laydown space required for solar panel installation; SWPPP details should be indicated.

e. Details showing the location and specific vegetation type to be planted at each designated visual mitigation area in accordance with the specifications and planting layout depicted in the Final Landscape Screening Plan will be developed and implemented at each designated visual impact area.

f. The location and boundaries of any areas proposed to be used for fabrication, designated equipment parking, staging, access, lay-down, conductor pulling; yards and equipment

[1] Contour lines at appropriate scale are desirable on the plan view or photo-strip map if they can be added without obscuring the required information.

storage areas. Indicate any planned fencing, surface improvements or screening of storage and staging areas. Demonstrate setback distances appropriate to Facility design; and conformance with applicable requirements of the Certificate.

g. The locations or descriptions of locations for concrete chute washout and any other cleaning activities (e.g., equipment cleaning for control of invasive species).

h. General concrete testing procedures including a plan outlining the Certificate Holder's monitoring and testing of concrete procedures in conformance with the American Concrete Institute (ACI)and International Building Code (IBC) specifications.

Linear Project Components:

For all Linear Project Components including: electric collection lines, and temporary and permanent access roads, site plan and profile figures shall include profile drawings of the Project centerline; for electric lines (whether above ground or underground) plans shall include a cross section for underground collection lines and plan drawings (scale minimum 1 inch = 200 feet)[1] showing:

a. *Collection System Circuits Map* for the collection substation and collection line circuits' configuration and location, indicating locations of all overhead and underground installations and the number of required circuits per circuit-run.

b. Final design and details of single and multiple electric circuit underground collection lines. Each typical Project circuit layout (single, double, triple, etc.) shall include a cross-section and clearing and ROW widths needed for accommodating circuit installations.

c. Final details of single and multiple-circuit overhead 69 kV electric collection line layouts, if proposed. Each Project circuit layout (single, double, triple, etc.) shall include typicals for all overhead structures, proposed guying, and associated clearing.

d. The boundaries of any new, existing, and/or expanded utility right-of-way or road boundaries, and where linear Facility lines or cables are to be constructed overhead or underground; plus, any areas contiguous to the Facility or street within which the Certificate Holder will obtain additional rights.

e. The location of each Facility structure (showing its height, material, finish and color, and type), structural foundation type (e.g., concrete, direct bury) and dimensions, fence, gate, down-guy anchor, and any counterpoise required for the Facility (typical counterpoise drawings will suffice recognizing that before field testing of installed structures the Certificate Holder may be unable to determine the specific location of all required counterpoise), conductors, insulators, splices, and static wires and other components attached to Facility structures.

f. Each Facility access road will be identified by a unique name designation. Each access road will be shown on a scaled drawing indicating the width used during construction and the proposed width post- construction on the restoration plan. Temporary and permanent cut and fill contours for each road shall also be shown at two-foot contours. Access controls such as gates shall be indicated, with typical or specific design indicated as applicable to individual sites and identifying construction and material details of gates and berms.

g. Discuss the types of access roads or paths that will be used including consideration of:

   i. Temporary installations (e.g., corduroy, mat, fill, earthen road, geotextile underlayment, gravel surface, etc.);
   ii. Permanent installations (e.g., cut and fill earthen road, geotextile underlayment, gravel surface, paved surface, etc.); and
   iii. Use of existing roads, driveways, farm lanes, etc.

h. For each temporary and permanent access type, provide a typical installation plan view, cross section with appropriate distances and dimension and identification of material. Where existing access ways will be used, indicate provisions for upgrading for Facility construction. Demonstrate accommodation of planned or proposed future access to sites and lands within or adjacent to the facilities locations (and landowner requested improvements (e.g., access roads across linear facilities such as wires, pipes, or conduits.).

i. Indicate the associated drainage and erosion control features to be used for access road construction and maintenance. Provide re-vegetation materials specifications. Provide diagrams and specifications (include plan and side views with appropriate typical dimensions) for each erosion control feature to be used, such as:

   i. Check dam (for ditches or stabilization of topsoil);
   ii. Water bar (for water diversion across the access road);
   iii. Roadside ditch without turnout and seeding trap;
   iv. French drain;
   v. Diversion ditch;
   vi. Culvert (including headwalls, aprons, etc.);
   vii. Sediment retention basin (for diverting out-fall of culvert or side ditch); and,
   viii. Silt fencing.

j. Indicate the type(s) of stream and/or wetland crossing method to be used, as applicable, in conjunction with temporary and permanent access road construction. Provide diagrams and specifications (include plan and side view with appropriate dimensions, alignment, extent of clearing) for each crossing device and rationale for their use. Stream crossing methods and design may include but not be limited to:

   i. timber mat or other measures to prevent soil compaction;
   ii. culverts including headwalls;
   iii. bridges (either temporary or permanent); and,
   iv. fords.

k. All diagrams and specifications should include material type and size to be placed in streams and/or wetland and on stream or on wetland approaches.

l. Existing utility and non-utility structures on or adjacent to the Facility, indicating those to be removed or relocated, if necessary (include circuit arrangements where new structures will accommodate existing circuits, indicate methods of removal of existing facilities, and show the new locations, types and configurations of relocated facilities). Depict each

Facility conductor's clearance from the nearest adjacent overhead electric transmission or distribution lines and communications lines.

m. Existing underground utility or non-utility structures, including, but not limited to, gas, water, telecommunication or electric cable or pipeline. The relationship of the Facility to adjacent fence lines; roads; railways; airfields; property lines; hedgerows; fresh surface waters; wetlands; other water bodies; significant habitats; associated facilities; water springs; adjacent buildings; water wells; or structures; major antennas; oil or gas wells, pipeline facilities, and compressor and pressure-limiting and regulating stations. Regarding co- location and crossing of existing utilities by Project components, the following additional information shall be provided:
   i. Results of any cathodic protection impact studies;
   ii. Any approval documentation (including a statement that Facility installations meet existing utility owner technical and safety requirements and copies of all relevant technical and safety manuals) from each existing utility that will be co-located with or that will be crossed by Project Components (including construction equipment crossings of existing utilities);
   iii. Details of existing utility owner approved crossing plans (crossed by Project Components) showing methods, separation of existing utility and Project Components, cover, installation of protection measures, and workspace, including any bore pits or similar features;
   iv. Details of existing utility owner approved co-location installations (with Project components) showing separation distances of existing utilities and Project components and any required or recommended protection measures; and
   v. Details and descriptions of existing utility owner approved methods regarding Project construction equipment crossing of existing utilities approved by each existing utility owner.

n. The location, design details, and site plan of any proposed Project Components, generator sites, collection station, control building, new or expanded switching station, substation, or other terminal or associated utility or non-utility structure (attach plan[2] - plot, grading, drainage, and electrical – and elevation views with architectural details at appropriate scales). Indicate the type of outdoor lighting, including design features to avoid off- site illumination and minimize glare; the color and finish of all structures; the locations of temporary or permanent access roads, parking areas, construction contract limit lines, property lines, designated floodways and flood-hazard area limits, relocated structures, and details of any plans for waste disposal.

2. <u>Stormwater Pollution Prevention</u>

The plan drawings will include the acknowledged Storm Water Pollution Prevention Plan (SWPPP) plans and drawings, and indicate the locations and details of soil erosion and sediment control measures and any proposed permanent stormwater management controls developed in accordance with the New York Standards and Specifications for Erosion and Sediment Control (e.g., stabilized construction entrances, drainage ditches, silt fences, check dams, and sediment

[2] Preferably 1" = 50' scale with 2-foot contour lines.

traps) in effect at the time the Certificate is issued. Such plan and drawings shall include contingencies for construction during extreme weather events (e.g., a 100-year storm) to avoid and minimize the cumulative impacts of multiple proximate disturbed areas. A construction sequencing plan that identifies the order of operations for installation of appropriate erosion and sediment controls best management practices prior to conducting ground-disturbing activities (including vegetation clearing) will be included in the SWPPP and denoted on appropriate drawings and plans. The construction sequencing plan will include processes related to stream crossings, installation of riprap and culverts, and trenching.

3. Vegetation Clearing and Disposal Methods

Identify on the plan and profile drawings:

a. the locations of sites requiring trimming or clearing of vegetation including both above and below ground (i.e., stumps) and the geographic limits of such trimming or clearing;

b. the specific type and manner of cutting, disposition or disposal method for vegetation (e.g., chip; cut and pile; salvage merchantable timber, etc.);

c. the disposal locations of all vegetation (including stumps) to be cut or removed from each site;

d. any geographical area bounded by distinctly different cover types requiring different cut-vegetation management methods;

e. any geographical area bounded at each end by areas requiring distinctly different cut-vegetation methods due to site conditions such as land use differences, population density, habitat or site protection, soil or terrain conditions, fire hazards, or other factors;

f. site specific vegetation treatment or disposal methods, including any property-owner required details such as log storage or wood chip piling areas, or “no-herbicide” zones;

g. areas requiring danger tree removal (i.e., trees with cracks or decay in proximity of a utility right-of-way);

h. the location and details of any areas where specific vegetation protection measures will be employed, including those measures to avoid damage to specimen tree stands of desirable species, important screening trees, hedgerows etc.; and

i. identification of invasive species within/adjacent to the area of clearing, and specific disposal methods required for invasive species pursuant to the Invasive Species Management and Control Plan.

4. Building and Structure Removal

a. Indicate the locations of any structures to be acquired, demolished, moved, or removed. Provide plans for site access; and plans and standards for control of dust, runoff and

containment of any debris or other waste materials related to removals.

5. Streams and Other Waterbodies

a. Indicate the name, NYSDEC ID, water quality classification and location of all rivers and streams, (whether perennial and intermittent) and drainages within the construction area or crossed by any proposed Linear Facility Component or access road constructed improved or maintained for the Facility. On the plan and profile drawings, indicate:

   i. Stream crossing method and delineate any designated streamside "protective or buffer zone" in which construction activities will be restricted to the extent necessary to minimize impacts on rivers and streams;
   ii. the activities to be restricted in such zones; and,
   iii. identify any designated floodways or flood hazard areas within the Facility, or otherwise used for Facility construction or the site of associated facilities. Provide topographic and flood hazard area elevations (if determined by engineering study); and specifications for facilities to be located within designated flood hazard or floodway zones; and design engineering and construction measures to demonstrate conformance with local ordinances, avoid damage to facilities, or avoid increasing flood elevation at any other location due to Facility installation and operation.

b. Show the location of any known potable water sources, including springs and wells on or within 100 feet of the Facility components and 500 feet of HDD locations, indicating on a site-by-site basis, precautionary measures to be taken to protect each water source.

6. Wetlands

a. All Federal and State regulated wetlands and state regulated 100-foot adjacent areas ("adjacent areas") located within the Facility or crossed by or adjacent to any access road to be constructed, improved, used or maintained for the Facility shall be depicted on plan drawings. Each wetland will be identified by a project identification number and by the New York State Department of Environmental Conservation (DEC) designation as appropriate (i.e., for state jurisdictional wetlands).

b. Indicate the community type (e.g., emergent, scrub-shrub, forested), location, and identification code(s) of any federal or state regulated wetland within or adjoining the Facility and its components, as determined by site investigation and delineation.

c. Identify crossing methods and buffer/impact limits for all wetlands on plan drawings.

d. Prior to initiating construction activities, the perimeter of wetlands and associated buffers shall be flagged in the field to clearing identify clearance/disturbance limits and other wetland areas to be avoided during construction.

e. A flagging plan indicating colors and schematics identifying different wetland impact types shall be included.

7. Land Uses

a. Agricultural Areas:

i. Indicate the locations of sites under cultivation or in active agricultural use including rotational pasture, pasture, hayland, and cropland. Designations and descriptions will be those in current use by the NYS Department of Agriculture and Markets (DAM)

ii. Indicate the location of any known unique agricultural lands including maple sugarbush sites, organic muckland, and permanent irrigation systems, as well as areas used to produce specialty crops such as vegetables, berries, apples, or grapes.

iii. Indicate the location of vulnerable soils in agricultural areas that are more sensitive than other agricultural soils to construction disturbance due to factors such as slope, soil wetness, or shallow depth to bedrock.

iv. Indicate the location of all known land and water management features including subsurface drainage, surface drainage, diversion terraces, buried water lines, and water supplies.

v. Designate the site-specific techniques (in accordance with DAM Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands [Revision 10/18/2019] to be implemented to minimize or avoid construction-related impacts to agricultural resources.

b. Sensitive Land Uses and Resources:

i. Identify and indicate the location of known sensitive land uses and resources that may be affected by construction or maintenance of the Facility or by construction-related traffic (e.g., hospitals, emergency services, sanctuaries, schools, and residential areas).

c. Geologic, Historic, and Scenic or Park Resources:

i. Indicate the locations of geologic, historic, and existing or planned scenic or park resources and specify measures to minimize impacts to these resources (e.g., specified setback distances, vegetation protection, fencing, signs).

d. Recreational Areas:

i. Indicate the locations where existing recreational use areas, designated trails, trailhead parking areas or associated access driveways would affect or be affected by the Facility location, site clearing, construction, operation or management of the Facility.

8. Access Roads, Lay-down Areas and Workpads

a. Indicate the locations of temporary and permanent access roads, laydown areas and workpads.

b. Provide construction type, material, and dimensions and their associated limits of disturbances.

c. Indicate provisions for upgrading any existing access roads.

d. Where access is required for continued agricultural activities, ensure sufficient access for farm operators (crossings or turn-offs) for the site-specific agricultural equipment and/or livestock.

9. Noise Sensitive Sites

a. Show the locations of existing participating and non-participating residences and boundary lines as of the date of the Order. Identify locations and specifications of measures to mitigate construction noise as required by the Certificate.

10. Ecologically and Environmentally Sensitive Areas

a. Indicate the general locations of any known ecologically and environmentally sensitive sites (e.g., archaeological sites; rare, threatened, and endangered species or habitats; agricultural districts; and special flood hazard areas.) that are adjacent to the Facility and/or within 100 feet of any facility component to be constructed, improved or maintained for the Facility. Specify the measures that will be taken to protect these resources (e.g., fencing, flagging, signs stating "Sensitive Environmental Areas, No Access" or "Avoidance Area").

b. Measures for avoidance of archaeological sites identified within the Facility shall be indicated on the final site plans. The mapped locations of all identified archaeological sites within 100 feet of proposed Facility-related impacts shall be identified as "Avoidance Areas" or similar on the final Facility construction drawings and marked in the field by construction fencing with signs that restrict access.

11. Invasive Species

a. Identify the location(s) of prohibited invasive plant species pursuant to 6 NYCRR Part 575 and identified in the Invasive Species Management and Control Plan and the results of pre-construction invasive species surveys as required by the Certificate, and the prescribed method(s) to control the spread of the identified species on the site during construction. The need for an "Invasive Species Remedial Plan" as described in the Certificate Conditions will be determined in consultation with DEC.

12. Vegetation Controls and Herbicides

a. Areas where no herbicide is allowed (wetlands, streams, adjacent areas to wetlands and streams, organic farms, etc. will be labeled on the site plans and construction drawings. In areas where herbicides are allowed, such use will be conducted by DEC certified pesticide applicators in accordance with all label restrictions and notification requirements.

13. Visual Mitigation Landscaping and Buffers

a. The location of visual mitigation planting areas and specific planting modules proposed will be shown on the site plans. The Landscape Screening Plan will include the species composition, planting plans and specification for each of the mitigation modules.

Section B – Description and Statement of Objectives, Techniques, Procedures, and Requirements

The narrative portion of the SEEP and referenced Compliance filings for the Facility shall include, but need not be limited to, all of the following information, and shall address the requirements of 16 NYCRR §1002.3. Chapters or sections of the document shall identify whether it is addressing a specific certificate condition.

1. Facility Location and Description

This section of the SEEP should contain:

a. A brief description of the final Facility location;

b. A description of the construction hours and schedule as presented in the Certificate Conditions;

c. A description of the photovoltaic (PV) panels and associated infrastructure selected for the Facility including any manufacturer provided information regarding the design, safety and testing information for the panels, collection substation, inverters, and electric interconnection facilities to be installed during construction;

2. Environmental Compliance and Monitoring Plan.

The SEEP shall include copies of the final *Environmental Compliance and Monitoring Program* including a project communications plan. The *Environmental Compliance and Monitoring Program* shall include the names, titles, qualifications and contact information of all individuals responsible for ensuring minimization of environmental impact by the Project and for enforcing compliance with environmental protection provisions of the Certificate and the compliance filings, including but not limited to:

a. Full-time (when appropriate)[3] environmental monitor;

b. Full-time construction supervisor;

c. Part-time or full-time agricultural environmental monitor, if separate from environmental monitor; and

d. Part-time health and safety inspector.

The Certificate Holder may utilize one or more qualified individuals to satisfy the Project oversight responsibilities associated with the environmental monitor and the agricultural inspector.

The *Environmental Compliance and Monitoring Plan* shall also include:

a. Protocols for supervising demolition, vegetation clearing, use of herbicides, construction, and site restoration activities to ensure minimization of environmental impact and compliance with the

[3] The Plan will identify any times when a part-time monitor may be used.

environmental protection provisions specified by the Certificate.

b. Specify responsibilities for personnel monitoring all construction activities, such as clearing, sensitive resource protection, site compliance, change notices, etc.

c. Include a statement that the Certificate Holder has made compliance with the SEEP an obligation of its contractors and has provided a copy to those employees and contractors engaged in demolition, clearing, construction and restoration.

d. Describe the procedures to "stop work" in the event of a Certificate violation.

e. The company's designated contact including 24/7 emergency phone number, for assuring overall compliance with Certificate conditions.

f. Ensure that required safety procedures and worksite hazards are communicated to site inspectors in a documented tailboard meeting prior to entry onto the site of work on such Certificate Holder's Project Components.

g. Include a procedure for providing DPS Staff, DAM, DEC, and the Town with construction schedules indicating construction activities and location schedules, including a procedure for providing scheduling updates.

3. Facility Communication and Complaint Resolution Plan

The SEEP shall include a copy of the final *Complaint Resolution Plan*, which shall include protocols for:

a. Communication between parties, including a flowchart of proper communications;

b. The Certificate Holder shall provide at least a two week notice to the associated farm operator (landowner or leased operator) prior to project staking/flagging for construction activity to provide an opportunity for the producer to harvest crops.

c. Notifying the Town and the public of the complaint procedures;

d. Registering a complaint;

e. Identifying and including procedures that may be unique to each phase of the project (e.g., tree clearing, construction, operation, decommissioning) or type of complaint.

f. Responding to complaints in a consistent and respectful manner;

g. Logging and tracking of all complaints received, and resolutions achieved;

h. Actions the Certificate Holder will take if a complaint remains unresolved, including reporting to the Town and DPS Staff any complaints not resolved within 60 days of receipt;

i. Mediating complaints not resolved within 60 days, assuming the complainant and nature of the complaint are amenable to resolution; and

j. Providing annual reports of complaint resolution tracking to DPS Staff that shall also be filed with the Secretary.

4. Health and Safety Plans

The SEEP shall include copies of the following final plans for construction:

a. The *Final Emergency Response Plan* that shall be implemented during Facility construction. Copies of the final plan also shall be provided to DPS Staff, the NYS Division of Homeland Security and Emergency Services, the Town, and local emergency responders that serve the Facility. The plan will also address follow-up inspections for panels and substation facilities following emergency events for high winds, tornadoes, and hurricanes.

b. Copies of the *Final Site Security Plan* also shall be provided to DPS Staff, NYS Division of Homeland Security and Emergency Services, the Town, and local emergency responders that serve the Facility. The plan shall include, but not be limited to, the following:

i. posting signs at the edges of the ROW in those locations where the collection lines intersect public roads; and
ii. working with the County Sheriff, and local law enforcement officials in an effort to prevent trespassing.

b. The *Final Health and Safety Plan* that shall be implemented during Facility construction.

c. A final site-specific construction *Quality Assurance and Quality Control Plan* (QA/QC Plan), to be developed in coordination with the selected Balance of Plant (BOP) contractor.

5. General Construction

a. Provide a copy of the SWPPP which will include a Dust Control Plan that will be used to minimize fugitive dust and airborne debris from construction activity as outlined in the *New York State Standards and Specifications for Erosion and Sediment Controls* (DEC, 2016a). The Erosion and Sediment Control Plan will also contain trenching details including:

i. In locations where electric collection lines and transmission lines will be installed by open trenching, particularly along or across areas of steep slopes, the Erosion and Sediment Control Plan will describe measures to address temporary erosion contingencies (e.g., stormwater events with open trench) and erosional risks that will extend the life of the Facility (e.g., "piping" erosion after backfilling of the trench). Related subsurface drainage to relieve hydraulic pressure behind trench plugs or breakers for the life of the facility will also be addressed.

ii. The following measures to address in-trench erosion will be implemented, as necessary:

1. Trench Plugs:

Temporary trench plugs will be placed in the excavated trench to impede the flow of water down the trench. Hard plugs (unexcavated earth segments of the ditch line) will

be maintained adjacent to streams and wetlands to protect those resources until cable installation activities occur. Soft plugs (replaced trench spoil, fill, sandbags) will be spaced in the trench in sloping areas to reduce erosion and trench slumping. Hay or straw bales will not be used as material for temporary trench plugs.

After cable installation, permanent sandbag or alternative trench breakers will be installed and spaced according to Appendix 1 "Trench Breaker Spacing" before backfilling. At the request of landowners or at the discretion of the environmental inspector or construction supervisor, un-disturbed areas ("hard plugs") will be left in place until cable installation commences, to accommodate equipment crossings. Hard plugs should be a minimum of 50 feet in length for areas where cable splices will occur. For animal and vehicle crossings of the trenchline area, a plug 25 to 30 feet in length should suffice.

2. Trench Breakers:

Trench breakers may be constructed of sandbags or alternative materials. Impervious materials may be used to retain water in the wetlands. Trench breakers should be installed at all wetland edges. The location of these impervious trench breakers will be determined in the field based on locations identified in the construction plan documents. Trench breakers should also be installed at the top of bank of each waterbody crossing.

3. Backfill:

Backfill operations will commence immediately after cable installation operations and will continue until completed. When backfilling the trench, the following will apply:

a) Only on-site, native material should be used in backfill operations unless the native material does not meet specifications, or ledge rock is encountered in the trench. Imported material may be brought in to protect the cables and achieve depth-of-cover requirements. Imported backfill must be free of invasive species pursuant to Invasive Species Management and Control Plan.

b) Where topsoil has been segregated from trench spoil, backfill will be done in reverse order with trench spoil returned first.

c) Excess spoil will be spread throughout areas adjacent to or in close proximity to the trench. Under no circumstances will excess spoil be spread along the ROW or stockpiled in a manner that permanently changes the soil profile.

d) Trench breakers made of foam, sandbags, or other impervious materials shall be installed at the edge of all wetlands. For those areas where conditions and topography warrant, and the Certificate Holder identifies prior to the start of construction, the installation of trench breakers at the upland/wetland boundaries is appropriate to minimize changes to hydrologic regime in the wetlands such as drainage from the wetland.

b. The SEEP shall attach a Spill Prevention, Containment and Counter Measures (SPCC) Plan for construction to minimize the potential for unintended releases of fuels, waste oils, petroleum products, or hazardous materials during Facility construction and operation. The SPCC Plan shall be applied to all relevant construction activities and address the following:

   i. General Information about water bodies, procedures for loading and unloading of oil, discharge or drainage controls, procedures in the event of discharge discovery, a discharge response procedure, a list of spill response equipment to be maintained on-site (including a fire extinguisher, shovel, tank patch kit, and oil-absorbent materials), a statement that methods of disposal of contaminated materials in the event of a discharge will follow the appropriate requirements, and spill reporting information. A statement that any spills shall be reported in accordance with State and/or federal regulations.

   ii. Storage, handling, transportation, and disposal of petroleum, fuels, oils, or hazardous materials which may be used during, or in connection with, the construction, operation, or maintenance of the Facility.

   iii. Avoiding spills and improper storage or application.

   iv. Reporting, responding to and remediating the effects of any spill of petroleum, fuels, and oil in accordance with applicable State and Federal laws, regulations, and guidance, and include proposed methods of handling spills of petroleum, fuels, —— oils, or hazardous materials which may be stored or utilized during the construction and site restoration, operation, and maintenance of the Facility.

   v. Providing of SPCC Plan to the Town and local emergency responders; notifying the Town and local emergency responders of locations of hazardous substance storage.

6. <u>Clean up and Restoration</u>

Describe the Certificate Holder's program for clean-up and restoration following construction will be described in the Site Restoration Plan, and will include at a minimum:

a. The removal and restoration of any temporary roads or staging areas; the finish grading of any scarified or rutted areas; the removal of waste (e.g., excess concrete), scrap metals, surplus or extraneous materials or equipment used; and

b. Plans, standards and a schedule for the restoration of vegetative cover, including but not limited to, specifications indicating:

   i. design standards for ground cover, including:

      1. species mixes and application rates by site;

      2. site preparation requirements (soil amendments, stone removal, subsoil treatment, or drainage measures); and

      3. acceptable final cover % by cover type.

ii. planting installation specifications and follow-up responsibilities, if needed;

iii. a schedule or projected dates of any seeding and/or planting if needed.

c. To address temporary impacts to wetlands, the Certificate Holder will restore wetland and adjacent area using native seed mixes.

d. If subject to continued agricultural use, restoration seeding will be consistent with pre-existing crop species or as requested by landowner.

7. Transportation

a. The SEEP shall include copies of the Road Use Agreements with any County and local municipalities. The SEEP will include copies of any crossing agreements with utility companies.

b. The SEEP shall attach a *Route Evaluation Study* that demonstrates that the Town has been contacted or when they will be contacted. The plan shall identify weight limited bridges in the area to be avoided. The plan shall include constraints on use of heavy equipment and vehicles used for construction.

c. The SEEP shall attach a Traffic Control Plan that identifies:

i. The delivery route(s) in the Town of Sharon, (all transportation routes from where they exit Route 20 to where they end at the delivery site) for oversize or over length equipment or materials and the route(s) for delivery of earthen materials and concrete.

ii. The plan shall describe the delivery of materials to the facilities site and shall indicate mitigation measures to manage traffic during construction and operation.

iii. Copies of all permits associated with the delivery of such equipment and materials shall be provided prior to using a route to haul equipment or materials requiring a permit.

iv. The Certificate Holder shall not permit construction vehicles or construction equipment to park or idle at public roadside locations for extended periods of time.

8. Construction Vegetation Clearing and Disposal Methods

For vegetation clearing during construction, the SEEP shall:

a. Describe the specific methods for the type and manner of cutting and disposition or disposal methods for cut vegetation.

b. Indicate specifications and standards applicable to salvage, stockpiling or removal of material.

c. Identify ownership of cleared vegetation based on landowner agreements (as applicable).

d. The SEEP shall describe clearing measures to be implemented during construction (e.g. time of year restrictions, distance buffers, etc.) to avoid and minimize impacts to Threatened and Endangered species and habitats as outlined in the Certificate Conditions.

e. Specify the locations where herbicides are to be applied. Provide a general discussion of the site conditions (e.g., land use, target and non-target vegetation species composition, height and density) and the choice of herbicide, formulation, application method and timing. Provide lists of desirable and undesirable vegetation species.

f. Describe the procedures that will be followed during chemical application to protect non- target vegetation, streams, wetlands, sources of potable water supply (i.e. wells and reservoirs) and other water bodies, and residential areas and recreational users on or within 100 feet of the ROW.

9. Plans, Profiles, and Detail Drawings

See Section A of the SEEP for the details to be provided on the Plans, Profiles and Detail Drawings.

10. Land Uses

a. The SEEP shall attach the New York State Department of Agricultural and Markets Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/2019) which shall describe the programs, policies, and procedures to mitigate agricultural impacts. If required by the issued Certificate, a description of avoidance, minimization or mitigation for impacts to any other sensitive land uses not covered by other sections of the SEEP.

11. Final Geotechnical Engineering Report

a. The SEEP shall attach a final Geotechnical Engineering Report.

12. Inadvertent Return Plan

a. The SEEP shall attach an *Inadvertent Return Plan* showing all locations where horizontal directional drilling (HDD) or other trenchless method(s) are proposed. The plan shall assess potential impacts from frac- outs, establish measures for minimizing the risk of adverse impacts to nearby environmental resources, and require the following:

i. Prior to conducting HDD or other trenchless method typical material safety data sheets will be provided to DPS and DEC staff, and the Town.

ii. Drilling fluid circulation shall be maintained to the extent practical.

iii. If inadvertent returns occur in upland areas, the fluids shall be immediately contained and collected.

iv. If the amount of drilling fluids released is not enough to allow practical collection, the affected area will be diluted with freshwater and allowed to dry and dissipate naturally.

v. If the amount of surface return exceeds that which can be collected using small pumps, drilling operations shall be suspended until surface volumes can be brought under control.

vi. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area (i.e. wetlands and water bodies) the returns shall be monitored and documented.

vii. Drilling operations must be suspended if the surface returns may result in a violation of water quality standards or Certificate Conditions.

viii. Removal of released fluids from environmentally sensitive areas will take place only if the removal does not cause additional adverse impacts to the resource. Prior to the removal of fluids from environmentally sensitive areas DPS and DEC staff will be notified and consulted.

ix. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area DPS and DEC Staff shall be notified immediately and a monitoring report summarizing the location of surface returns, estimated quantity of fluid and summary of cleanup efforts shall be submitted within 48 hours of the occurrence.

x. The plan shall establish protocols for recovery of inadvertent releases, handing and disposal.

xi. Any drilling fluid inadvertently discharged must be removed from agricultural areas.

13. Final Blasting Plan

a. The SEEP shall attach a site-specific final Blasting Plan (if blasting is required) designed to protect surrounding structures, including groundwater wells. If detailed design determines that blasting is required, the Blasting Plan shall include:

i. Setbacks;

ii. Blasting safety protocols;

iii. Notification procedures for the public and emergency responders;

iv. Water well survey protocols; and

v. Seismic monitoring protocols.

14. Visual Mitigation

a. The SEEP shall attach a final Landscape Screening Plan, based on the mitigation section presented in the VIA that meets or exceeds the certificate conditions, and shall include:

i. Details showing the location and specific vegetation type to be planted at each designated landscape screening area in accordance with the specifications and planting layout depicted in the Final Landscape Screening Plan as prepared by the Applicant's Landscape Architect. A distinct, site-specific module will be developed and implemented at each designated visual impact area.

ii. A construction timeline and schedule including:

a) Installation guidelines, and

b) Field assessment.

iii. Maintenance/replacement program.

The final Landscape Screening Plan will be implemented (i.e. planting will occur) in conjunction with the installation of the solar panel arrays, to the extent practicable. All plantings should occur during the spring or fall planting season.

15. Cultural Resources

a. The SEEP shall attach a *Final Unanticipated Discovery Plan*, establishing procedures to be implemented in the event that resources of cultural, historical, or archaeological importance are encountered during Facility construction.

b. If complete avoidance of archaeological sites is not possible, the Certificate Holder shall consult with the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) and DPS Staff to determine if mitigation is warranted. The identification of mitigation measures will be discussed with the Town and included in the plans.

16. Threatened and Endangered Species

a. The SEEP shall identify those areas that are owned or controlled by the Certificate Holder which constitute the "Project Area" for the purposes of the Threatened and Endangered Species Certificate Conditions (numbers 91-97), including: areas that would be disturbed or occupied by Project Facilities, access roads, laydown areas, and trees that are immediately adjacent to the limits of disturbance or fence line.

17. Wetlands and Waterbodies

a. The SEEP shall include a table listing all delineated federal and state jurisdictional wetlands, streams, vernal pools and other waterbodies located within or adjacent to Project Area, along with the following information for each resource: Town name, centroid coordinates of the resource, location within/relative to the Project Area (i.e., associated site plan and profile drawing sheet number and reference location); stream name (as applicable), delineated feature identification code, community type, DEC Stream Classification (as applicable), DEC Freshwater Wetland designation (as applicable) DEC Water Index Number (for streams), specific construction activities or crossing method affecting the resource, specify the crossing distance across the resource or to the associated Project construction area).

b. A description of construction activities within delineated federal and State jurisdictional wetlands, streams[4], and other waterbodies outlining the following requirements, where applicable:

i. Where any access roads in wetlands are to be constructed through wetlands

[4] Delineated streams refer to the 28 stream features identified and delineated by TRC.

a. Temporary access roads shall use construction matting or similar material; and

b. Permanent access roads shall use a layer of geotextile fabric and at least six inches of gravel shall be placed in the location or the wetland crossing after vegetation and topsoil is removed.

c. Permanent access roads in wetlands shall be designed to maintain hydrological connectivity of the wetland and be designed to the minimum size needed for operational and maintenance activities, including emergency access requirements.

ii. The Certificate Holder shall utilize free span temporary equipment bridges or culverts designed to DEC and/or US Army Corps of Engineers standards where applicable to cross all delineated streams with flow at the time of the proposed crossing. This will outline how:

a) Bridges or culverts may not be dragged through the stream and must be suitably anchored to prevent downstream transport during a flood.

b) Fill may not be placed within the stream channel below bankfull elevation and placement of abutments or fill is authorized only above and outside bankfull boundaries.

c) Geotextile fabric must be placed below and extending onto the bank and suitable side rails built into the bridges to prevent sediment from entering the stream.

iii. If there is an inadvertent puncturing of a hydrologic control for a wetland, then the puncture shall be immediately sealed, and no further activity shall take place until DPS and DEC staff are notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved by DPS and DEC;

iv. Low weight to surface area equipment shall be used and/or equipment shall be placed on temporary matting as needed to minimize soil compaction and erosion;

v. Work areas shall be isolated from flowing streams by use of sandbags, cofferdam, piping or pumping around the work area. Waters accumulated in the isolated work area shall be discharged to an upland settling basin, field or wooded area to provide for settling and filtering of solids and sediments before water is returned to the stream. Return waters shall be as clear as the flowing water upstream from the work area. Temporary dewatering structures (i.e., cofferdams, diversion pipes, etc.) and associated fill shall be completely removed, and the disturbed area shall be regraded and restored immediately following the completion of work;

vi. All fish trapped within cofferdams shall be netted and returned, alive and unharmed, to the water outside the confines of the cofferdam, in the same stream; and

vii. All excess materials shall be completely removed to upland areas more than 100 feet from

state-regulated wetlands and streams and shall be suitably stabilized.

viii. Logs and large branches will not be deposited into any regulated freshwater wetland or 100-foot adjacent, however, small branches that are cut in a drop and lop method or piled within wetland and adjacent areas may be left in place, in a manner that does not alter the hydrology of the wetland.

c. Description of construction activities to facility utility crossings that will temporarily impact delineated federal and state jurisdictional wetlands, streams, and other waterbodies, including a site-specific assessment of constructability for all utility crossings that cannot use trenchless methods; specific plans with the alignment for each wetland crossing; the extent of clearing and ground disturbance; description of methods used to minimize soil disturbance and compaction; and adherence to the following requirements:

i. Excavation, installation, and backfilling must be done in one continuous operation;

ii. Work within wetlands should be conducted during dry conditions without standing water or when the ground is frozen, where practicable;

iii. Before trenching occurs, upland sections of the trench shall be backfilled or plugged to prevent drainage of turbid trench water from entering wetlands or waterbodies;

iv. Trench breakers/plugs shall be used at the edges of wetlands as needed to prevent wetland draining during construction as described in Section B(5);

v. Only excavated wetland topsoil, hydric soils, and subsoil shall be utilized as backfill at wetland restoration areas;

vi. Wetland topsoil shall be removed and stored separately from wetland subsoil and temporarily placed onto a geo-textile blanket;

vii. The length of the trench to be opened shall not exceed the length that can be completed in one day. This length of trench generally should not exceed 1,500 feet in a wetland; and

viii. When backfilling occurs in wetlands, the subsoil shall be replaced as needed, and then covered with the topsoil, such that the restored topsoil is the same depth as prior to disturbance.

d. Description of wetland restoration measures, including:

i. Contours shall be restored to pre-construction conditions within 48 hours of final backfilling of the trench within wetlands and state-regulated adjacent areas;

ii. Immediately upon completion of grading, wetland and adjacent areas shall be seeded and/or replanted with native shrubs and herbaceous plants at pre- construction densities. Seeding with an appropriate native wetland species mix (e.g. Ernst Wetland Mix (OBL-FACW Perennial Wetland Mix, OBL Wetland Mix, Specialized Wetland Mix for Shaded

OBL-FACW), or equivalent), or seeding with crop species mix consistent with existing, continued agricultural use, shall be completed to help stabilize the soils;

iii. Wetland restoration areas shall be monitored for a minimum of 5 years or until an 80% cover of plants with the appropriate wetland indicator status has been reestablished over all portions of the restored area. At the end of the first year of monitoring, the Certificate Holder shall replace lost wetland and/or wetland adjacent area plantings if the survival rate of the initial plantings is less than 80%; and

iv. If at the end of the second year of monitoring, the criteria for restoration plantings (80% cover, 80% survival of plantings) are not met, then the Certificate Holder must evaluate the reasons for these results and submit an approvable Wetland Planting Remedial Plan (WPRP) for DEC and DPS approval. The WPRP must including the following:

a) Analysis of poor survival;

b) Corrective actions to ensure a successful restoration; and

c) Schedule for conducting the remedial work. Once approved, the WPRP will be implemented according to the approved schedule.

v. Notwithstanding the requirements of the preceding subsections iii and iv, the following parcels do not require mitigation but shall be restored and maintained as follows:

Permanent impact (0.34 acres) to the adjacent area of FWW SS-6 (W-AJF-15) is expected from proposed grading, as well as installation of an access road, solar array, fencing, and an infiltration trench as indicated on the site plan drawings included in the Application (see drawing C-038 annotated and attached with this Response). This adjacent area is currently actively farmed and is regularly disturbed by agricultural practices. Grading is proposed in this area so that existing drainage patterns to the wetland are maintained. Following construction-related disturbance, it will be restored by seeding with a solar farm grass seed mix comprised of grasses that are native and/or indigenous to the area. During operation, the nearest Project Component (the perimeter fence) to the wetland will be setback approximately 50 feet. The Applicant will minimize adjacent area impacts during operation by limiting mowing outside the Project perimeter fencing to a 10-foot wide strip along the fence. Any vegetation with greater than a 3-inch diameter at breast height growing within the adjacent area will be hand cut. All other vegetation within 40 feet of the wetland will remain uncut and will be allowed to revert to a natural condition. Based upon the proposed restoration efforts described above, the conversion of the agricultural land cover of this adjacent area to a maintained grass land cover as part of the solar facility will result in an improvement and will not negatively impact the NYSDEC-regulated wetland. In addition to the permanent impacts addressed above, based on NYSDEC's Article 24 Wetland Determination Report (dated 06/04/2020), there are 0.07 acres of temporary impact expected to the regulated 100-foot adjacent area of FWW SS-6. These temporary impacts are associated with HDD bore pits based upon the Project's preliminary design as indicated on the site plan drawings included in the Application (see drawing C-054 annotated and attached with this IR). These temporary impacts are proposed to the adjacent area of wetlands W-AJF-8 and W-CL-1/W-CL-2, both of which are extensions of NYSDEC Wetland ID SS-6. For the Project's final design, the Applicant will relocate the proposed HDD bore pits outside of the adjacent area to eliminate these temporary impacts.

e. A site-specific Stream Crossing Plan shall be developed for each permanent stream crossing and shall include detailed plan, and cross-sectional view plans; drainage area and flow calculations; and location, quantity and type of fill. Bridges that span the stream bed and banks should be utilized where practicable. If a bridge is not practicable, culverts can be utilized and shall be designed as follows:

   i. Sized per DEC and/or U.S. Army Corps of Engineers culvert sizing criteria

   ii. To safely pass the 1% annual (100-year return) chance storm event;

   iii. To contain native streambed substrate or equivalent using an open bottom arch, three-sided box culvert, or round/elliptical culvert with at least 20% of the culvert height embedded beneath the existing grade of the stream channel at the downstream invert;

   iv. Shall be a minimum width of 1.25 times (1.25X) the bankfull width of stream channel;

   v. The slope shall remain consistent with the slope of the adjacent stream channel. For slopes greater than 3%, an open bottom culvert, where practicable;

   vi. Shall facilitate downstream and upstream passage of aquatic organisms; and

   vii. Water handling plan describing the measures to direct stream flow around the work area and measures to dewater the isolated work area.

f. A description of stream restoration demonstrating adherence with the following:

   i. The restored stream channel shall be equal in width, depth, gradient, length and character as the pre-existing stream channel and tie in smoothly to profile of the stream channel upstream and downstream of the project area. The planform of any stream shall not be changed;

ii. Any instream work or restoration shall not result in an impediment to passage of aquatic organisms;

iii. Any in-stream work (excluding dewatering practices associated with dry trench crossings) and restoration shall be constructed in a manner which maintains low flow conditions and preserves water depths and velocities similar to undisturbed upstream and downstream reaches necessary to sustain the movement of native aquatic organisms. Any in-stream habitat structures shall not create a drop height greater than 6-inches;

iv. All disturbed stream beds must be restored to original elevation, width, and gradient, and adequately stabilized;

v. All other areas of soil disturbance above the ordinary high-water elevation, or elsewhere, shall be stabilized with natural fiber matting, seeded with an appropriate perennial native conservation seed mix, and mulched with straw within two (2) days of final grading. Mulch shall be maintained until suitable vegetation cover is established; and

vi. Destroyed bank vegetation shall be replaced with appropriate native shrubs, live stakes, and/or tree plantings as site conditions, as appropriate.

g. If on-site wetland mitigation is required, the SEEP shall attach a copy of the final Wetland Mitigation Plan, developed in coordination with DEC, DPS Staff, addressing permanent impacts to state-regulated wetlands. The Wetlands Mitigation Plan shall:

i. Describe all activities that will occur within State and federal wetlands.

ii. For each State-regulated wetland or associated adjacent areas, indicate the type of activity (e.g., construction, filling, grading, vegetation clearing, and excavation) and summarize how the activity is consistent with the weighing standards set forth in 6 NYCRR 663.5(e) and (f).

iii. Describe how impacts to wetlands, adjacent areas, associated drainage patterns and wetland functions will be avoided, and how impacts will be minimized.

iv. Describe the precautions or measures to be taken to protect all other wetlands (e.g., town or federal wetlands) associated drainage patterns, and wetland functions, including describing the measures to be taken to protect stream bank stability, stream habitat, and water quality including, but not limited to: crossing technique; crossing structure type; timing restrictions for in-stream work; stream bed and bank restoration measures; vegetation restoration measures; and other site-specific measures to minimize impacts, protect resources, and manage Facility construction.

v. Include the creation of compensatory wetlands at a ratio that is consistent with state and federal regulations;

vi. Provide a project construction timeline;

vii. Describe construction details for meeting all requirements contained in these proposed certificate conditions;

viii. Describe performance standards that meet state and federal requirements for determining wetland mitigation success;

ix. Include specifications for post construction monitoring for at least 5 years after completion of the wetland mitigation. After each monitoring period at years 1, 3, and 5 after construction, the Certificate Holder shall take corrective action for any areas that do not meet the above referenced performance standards to increase the likelihood of meeting the performance standards after 5 years. If, after 5 years, monitoring demonstrates that the wetland mitigation is still not meeting the established performance standards, the Certificate Holder must submit a Wetland Mitigation Remedial Plan (WMRP). The WMRP must include the following:

a) Evaluation for why performance standards are not being achieved;

b) Corrective actions to ensure a successful mitigation; and

c) Schedule for conducting the remedial work. Once approved, the WMRP will be implemented according to the approved schedule.

18. Invasive Species Control Plan

a. The SEEP shall attach a Final Invasive Species Management and Control Plan (ISMCP), based on the pre- construction invasive species survey of invasive species conducted within the Project Area during the previous growing season. The ISMCP shall include:

i. Measures that will be implemented to minimize the introduction of Prohibited invasive species pursuant to 6 NYCRR Part 575 and control the spread of existing invasive species during construction (i.e., as a result of soil disturbance, vegetation clearing, transportation of materials and equipment, and/or landscaping/re-vegetation). Control measures may include construction materials inspection and sanitation, mechanical/chemical treatment, and site restoration, among others.

ii. A post-construction monitoring program (MP) shall be conducted in year 1, year 3, and year 5 following completion of construction and restoration. The MP shall collect information to facilitate evaluation of ISMCP effectiveness and inform potential remedial action.

19. Sound

a. Certificate Holder will identify locations and specifications of measures to mitigate construction

noise (e.g., blasting, piling, HDD), if necessary.

b. Specify procedures to be followed to minimize noise impacts related to Project Area clearing and construction of the Facility. Indicate the types of major equipment to be used in construction and Facility operation; sound levels at which that equipment operates; days of the week and hours of the day during which that equipment will normally be operated; any exceptions to these schedules; and any measures to be taken to reduce audible noise levels caused by either construction equipment or Facility operation.

c. Final computer noise modeling shall be conducted by using:

   i. The ISO-9613-2 Sound Propagation Standard with no meteorological correction (Cmet);

   ii. All noise sources operating at maximum sound power levels, as applicable to the daytime and nighttime periods;

   iii. A maximum ground factor of G=0.5;

   iv. A factor of G=0 for waterbodies, if any;

   v. A height evaluation of 1.5 meters for all receptors;

   vi. A temperature of 10 degrees Celsius and 70% Relative Humidity; and

   vii. vii. At a minimum, the sound results (Broadband, dBA, and at the full-octave frequency bands from 31.5 Hz up to 8,000 Hz (dB)) will be reported.

d. Sound modeling results shall and conform to the following:

   i. Results shall be included in a report that shall include among others, sound results in tabular and graphical format.

   ii. Sound contours shall be legible and rendered above a map that shall include all sensitive sound receptors and boundary lines (differentiating participating and non-participating parcels); noise sources within the Sound Study Area (including transformer(s), inverters, and other noise sources, if any); collection lines and solar arrays

   iii. Sound contours shall be rendered at a minimum, until the 30 dBA noise contour is reached, in 1 dBA steps.

   iv. Full-size, hard copy maps (22" x34") in 1:12,000 scale shall be submitted to DPS Staff.

   v. Only properties that have a signed contract with the Certificate Holder prior to the date of filing shall be identified as "participating."

   vi. GIS files used for the final computer noise modeling, including noise source and receptor locations and heights, topography, final grading, boundary line, and participating status shall be forwarded to DPS Staff in digital media.

   vii. Final computer noise modeling files shall be delivered to DPS Staff by digital means.

e. For noise sources, other than the substation transformer(s) (e.g., inverters, Medium to Low Voltage transformers) and for non-participating receptors exceeding a sound level of 40 dBA Leq as modeled above, a prominent tone analysis will be presented subject to the following requirements:

i. The "prominent discrete tone" constant level differences (Kt) in ANSI S12.9-2013/Part 3 Annex B, section B.1, will be used as follows; 15 dB in low-frequency one-third-octave bands (from 25 up to 125 Hz); 8 dB in middle-frequency one-third-octave bands (from 160 up to 400 Hz); and, 5 dB in high-frequency one-third-octave bands (from 500 up to 10,000 Hz).

ii. The analysis will use one-third octave band information from the manufacturers (from 20 Hz up to 10,000 Hz, if available). If no manufacturers information is available, sound information can be based on field test(s). The field test(s) will report at a minimum sound pressure and sound power levels and clear explanations about how the test was conducted and Sound Power Levels were obtained. The analysis will be performed for a single noise source (e.g., central inverter) or a group of noise sources (inverters/transformer package), depending on available sound power level information.

iii. For the purposes of tonality assessment, calculations will include the following Attenuations as specified in ANSI/ASA S12.62/ISO 9613-2: 1996 (MOD). Acoustics – Attenuation of Sound During Propagation Outdoors-Part 2: General Method of Calculation:

a) Attenuation due to geometrical divergence (Adiv)[5],

b) Atmospheric absorption for a temperature of 10 degrees Celsius and 70% Relative Humidity (Aatm)[6]

c) Attenuation to the ground effect (Agr[7,8]),

d) Attenuation due to a barrier (Abar) if any[9],

e) No miscellaneous attenuations (Amisc) will be included.

iv. If no manufacturers information or pre-construction field tests are available, sounds will be assumed to be tonal and the broadband overall (dBA) noise level at the evaluated position as determined with computer noise modeling shall be increased by 5 dBA for evaluation of compliance with sub-condition 75b)(ii).

20. Operations Schedule and Timing

[5] Adiv can be assumed to be the same at all 1/3 octave bands and/or be omitted from analysis.
[6] The same full-octave band atmospheric attenuation coefficients indicated in Table 2 of ANSI S12.62, can be used for the three adjacent one-third octave bands corresponding to each full-octave band.
[7] The same full-octave band attenuations as indicated in Table 3 of ANSI S12.62, can be used for the three adjacent one-third octave bands corresponding to each full-octave band.
[8] Calculations will use the maximum height of the equipment as the height of the noise source.
[9] Should the analysis show that a barrier will be needed, the barrier will be implemented before the start date of operations.

a. This section of the SEEP should include a discussion of Pre-Operational and Post- Operational Filings and Expected Timing of Submissions.

b. The Facility Operations & Maintenance Plan (O&M) will include, at a minimum, a flowchart of proper communications and proper protocol for communications among parties, as relevant to the operations and maintenance of the Facility.

c. A long-range Facility and Corridors Management Plan shall be filed within one year after the commencement of operation. The plan shall address specific standards, protocols, procedures and specifications including:

   i. Vegetation management recommendations based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;

   ii. All proposed chemical and mechanical techniques for managing undesirable vegetation;

   iii. Where feasible, to limit the introduction and spread of invasive species, the New York Utility Company Best Management Practices for Invasive Species Transportation Prevention (Environmental Energy Alliance of New York [Jan 2015]) will be employed;

   iv. Herbicide use, limitations, specifications, and notification requirements will be included. In areas where herbicides are allowed, such use will be conducted by DEC certified pesticide applicators in accordance with all label restrictions and notification requirements;

   v. Substation Fence-line Clearances, and Overhead Wire Security Clearance Zone specifications, indicating applicable safety, reliability and operational criteria;

   vi. Review and response procedures to avoid conflicts with future use encroachment or infrastructure development;

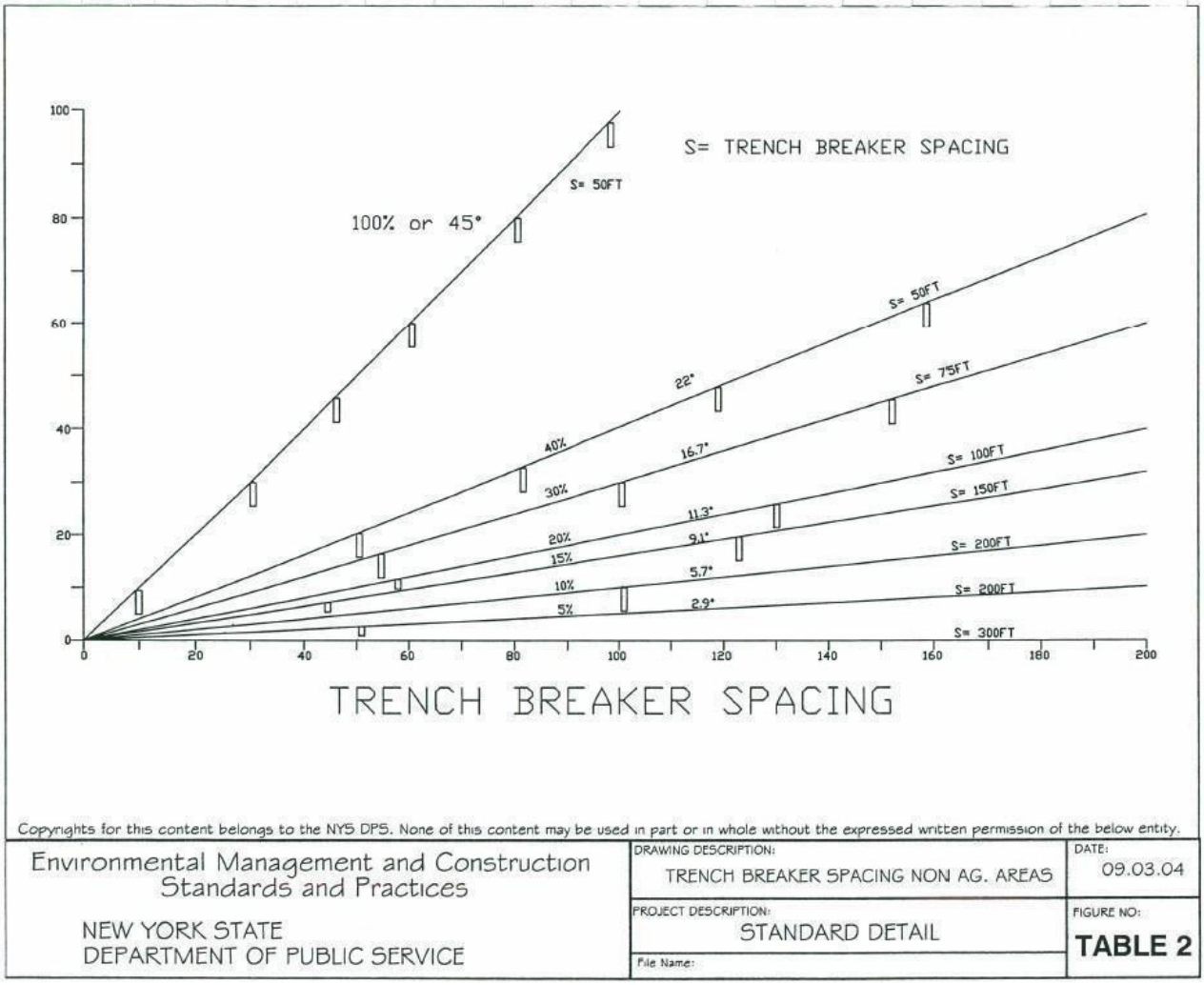
   vii. Host landowner notification procedures;

   viii. Inspection and target treatment schedules and exceptions;

   ix. Standards and practices for inspection of facilities easements for erosion hazard, failure of drainage facilities, hazardous conditions after storm events or other incidents; and

   x. Wetland and stream protection areas, principles and practices.

Appendix 1 - Trench Breaker Spacing



Environmental Management and Construction Standards and Practices NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE	DRAWING DESCRIPTION: TRENCH BREAKER SPACING NON AG. AREAS	DATE: 09.03.04
	PROJECT DESCRIPTION: STANDARD DETAIL File Name:	FIGURE NO: **TABLE 2**

Appendix 2 – Clearing and Grading Filing Framework

1. **Site Plans:** Consistent with Certificate Conditions 56, 58, 99, 101, 102, 103, 111, 128, 129 and 131. Contents:

    a. Site plans showing laydown and staging areas for Project components. Prepared with GIS or CAD, with aerial background. 11x17 sheets or larger.

    b. Access Road Plans: plan and profile drawings created with CAD. Typical cross section. Plans will show final road widths and expected grading limits during construction.

    c. Temporary Facility Plans: unless previously approved, site plans for the construction laydown yard showing grading limits, exterior lighting, driveways, and applicable local setbacks. Construction laydown yard plan shall also show planned areas for trailers, parking, and storage.

    All site plans will be drawn at a scale of 1" =200' or smaller. All site plans will show:

    d. Pre-construction topographic contours, if Certificate Holder determines that these can be shown without obscuring other required information,

    e. Locations of known archaeological sites within 100 feet of the planned limits of disturbance,

    f. Locations of buried utilities based on ALTA surveys,

    g. Crossing methods for any areas where Project access roads or electric lines cross a stream or wetland (additional detail in Wetlands and Stream Package),

    h. Planned locations where new fences or gates will be installed,

    i. Agricultural classification and protection measures, or cross-reference to a map in the Agricultural Package.

    j. Location of staking and/or flagging of construction limits (Certificate Condition 99) and regulated freshwater wetlands and streams (Certificate Conditions 111, 128, 129 and 131).

    k. Notes indicating appropriate minimum setbacks from wetlands, streams and waterbodies for construction and storage equipment (Certificate Conditions 101, 102 and 103).

2. **Collection Substation Filing:** Contents:

    a. One-line drawing,

b. General arrangement (site plan),

c. Plan and profile drawings,

d. Site plan showing fences and driveways,

e. Substation Lighting Plan.

3. **Land Rights Filing:** Items a and b(i) to be filed before starting any clearing activities in the Project Area, and item b(ii) to be filed before the commercial operation date consistent with Certificate Conditions 2, 22 and 55. Contents:

   a. Map of survey of Project Area properties with property lines based on meets and bounds survey,

   b. Lease, host, and other agreements, or notarized memos or similar proof of an agreement for every:

      (i) Project Area property,

      (ii) any other property whose owner has signed a participation agreement or other type of agreement, and

      (iii) Host community or road use agreements where local roads will be utilized for delivery or construction vehicle transportation (Certificate Condition 55).

4. **Stormwater Filing:** Consistent with Certificate Conditions 10, 28, 40, and 110. Contents:

   a. Final stormwater pollution prevention plan (SWPPP),

   b. Grading and erosion control drawings showing final topographic lines, boundaries of delineated wetlands, areas of cut and fill, locations of temporary erosion and sedimentation (E&S) control measures, locations of permanent E&S control measures, sizes and locations of drainage structures and stormwater management features.

   c. Typical details for E&S measures, including trench breakers for construction of underground facilities perpendicular to steep slopes and specification on selection locations for concrete washouts, if applicable.

   d. Typical details for drainage structures and stormwater management features.

   e. Clean Water Act Section 401 Water Quality Certification.

5. **Wetlands and Stream Filing:** Consistent with Certificate Conditions 65, 67 and 69. Contents:

    a. Wetland and stream drawings, showing areas where roads, electric collection lines, or transmission lines cross wetlands and/or streams, shall indicate topographic contours, delineated wetlands and streams, with Wetland and Stream ID, specifying access and construction measures, crossing method (e.g., culvert or bridge; trenchless or trenched installation, timber matting or geotextile/gravel, etc.); and any designated streamside "protective or buffer zones" in which construction activities will be restricted. 1" =50' scale.

    b. Tables listing wetland and stream impacts, with the following for each impact: area, type of wetland or stream classification, type of impact, jurisdiction.

    c. A Wetland Mitigation Plan, if necessary, for Project activities that cannot avoid and/or minimize significant adverse impacts to regulated wetlands. The Wetland Mitigation Plan shall be consistent with all Federal and State laws and regulations, specifically under §404 of the Clean Water Act and Article 24 of NYS Environmental Conservation Law.

    d. Map(s) showing where horizontal directional drilling (HDD) is planned for installation of buried cables under wetlands or streams.

6. **Agricultural Filing:** Before any grading in any field in active agricultural use consistent with Certificate Conditions 39 and 87. Contents:

    a. Mapping of agricultural uses in the Project Area, including shading or other codes to indicate:

        (i) fields known to be in active agricultural use,

        (ii) areas of special agricultural operations, as applicable (sugar bush, grapes, orchards, etc.),

        (iii) fields known to contain drain tiles, buried water lines, or other special agricultural facilities, and

        (iv) Demonstration of consistency with the New York State Department of Agriculture and Markets (AGM) Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/2019) to the maximum extent practicable. Those guidelines that the Project has determined to be not practicable will be identified in the plan, however the Certificate Holder will work with AGM for a reasonable alternative.

7. **Setbacks and GIS Filing:** Consistent with Certificate Condition 56(a)-(c). GIS files shall be submitted as confidential information for use by state agencies and the Town. Contents:

    a. Setback map, generated with GIS, and showing parcel boundaries, setback distances, parcel identification numbers, parcel participation/non-participation status, property owner or lessor names and addresses, and setbacks from Project components.

    b. GIS shape files for solar array components, overhead collection lines (if any), access road centerlines, limits of disturbance, forest areas to be cleared (if any), Collection Substation location, concrete batch plant (if applicable), and construction laydown yard.

8. **Clearing Filing:** Consistent with Certificate Conditions 16(a), 29, 42, 50, 52, 66, 71, 72, 74, 76(c), 78, 80(a), 104, 106 and 118. Contents:

    a. Maps or site plans showing the limits of disturbance (LOD), forested areas to eb cleared, forested wetlands inside the LOD, unforested wetlands inside the LOD, roost trees or other trees to be protected from clearing activities, clearing methods, planned access routes, including matting for heavy equipment where applicable, and agricultural classification and protection measures, or cross reference to map in Agricultural package. The maps or site plans will be drawn at a scale of 1" =200' and will depict the planned locations of Project infrastructure associated with the clearing for reference.

    b. A Timber Salvage Plan (Certificate Condition 66) including descriptions of clearing and stump treatment methods to be used in forested areas and forested wetlands.

    c. Description of planned method for vegetation disposal.

    d. Description of methods to protect select trees, if any.

    e. Complaint Resolution Plan, with procedures applicable to overall Project construction including responding to noise and vibration complaints (Certificate Condition 76(c).

    f. Invasive Species Management Plan (ISMP), describing methods to be used to minimize the introduction and spread of invasive species (Certificate Condition 71 and 118).

    g. Pre-construction mapping of invasive species, as required by ISMP section 4.

    h. If temporary construction entrances are proposed, entrance details and grading, proof of filing of NOI for coverage under General Stormwater Permit, a copy of the submitted SWPPP (part of the Stormwater Package), and traffic control plans.

i. Plans for notification(s), preconstruction meeting(s), environmental compliance and monitoring program (Certificate Conditions 42 and 80(a)), spill prevention methods to be employed by clearing contractors (Certificate Conditions 72, 104 and 106), including bulk storage if proposed, construction organizational structure, contact list, and protocol for communication between parties (Certificate Condition 16(a)) to be implemented during the scope of work authorized by this package. These may be more limited than the full plans required as part of other packages that must be approved prior to full construction activities.

j. If necessary, transportation permits for any oversized/overweight vehicles required for grading and/or tree clearing purposes (Certificate Condition 29).

k. An Emergency Response Plan for Facility Construction (Certificate Condition 50).

l. A Final Health and Safety Plan for Facility Construction (Certificate Condition 52).

m. Cultural Resources Protection Measures including an avoidance plan and Final Unanticipated Discovery Plan (Certificate Condition 74).

n. Confirmation that the Certificate Holder has become a member of Dig Safely New York (Certificate Condition 78).

APPENDIX C

NOISE COMPLAINT RESOLUTION PROTOCOL

EAST POINT ENERGY CENTER

Noise Complaint Resolution Protocol

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1. COMPLAINT RESOLUTION PROTOCOL FOR CONSTRUCTION AND OPERATIONAL NOISE FROM SOLAR FACILITIES

This Noise Complaint Resolution Protocol has been prepared to establish the procedures by which the Certificate Holder will address public complaints during the construction and the operation of the Project. All activities will adhere to the requirements of appropriate governing authorities, and will be in accordance with all applicable federal, state and local rules, regulations, Orders and agreements.

2. PROCEDURE FOR FILING COMPLAINTS

a. Complaints can be made by following any of the following procedures.

   i. Call the Certificate Holder at its headquarters (800-379-3841), or its representatives (e.g. Construction Manager during construction, or the Site Manager once the Project is operational),

   ii. Meet with Certificate Holder employees in person at the temporary construction office or at a location near the Project once the Project is operational,

   iii. Submit a complaint in writing by mailing a detailed complaint, or

   iv. Submit a complaint in writing by emailing a detailed complaint to the Certificate Holder or its representatives (info@eastpointenergycenter.com) (e.g. Construction Manager during construction or the Site Manager once the Project is operational),

   v. Refer to Appendix D for contact information.

b. The complaint should be as detailed as possible and include the information (available online at both the Project website and the Town website) indicated in Appendix C, entitled “Complaint Form”. The form can be used to submit a complaint by mail. These forms will also be available at the temporary construction office during construction.

c. The Certificate Holder encourages complainants to submit complaints directly in order to be able to address such complaints in a timely manner according to this protocol. Complaints submitted to other third parties may not be communicated to the Certificate Holder and therefore may not get addressed in a timely manner.

d. In circumstances whereby a third party receives a complaint about the Project, the Certificate Holder requests that the third party refers the complainant to the Complaint Resolution Protocol on the Certificate Holder’s website and, if possible, forward the complaint to the Certificate Holder within seven (7) business days of receipt. The Certificate Holder will communicate the receipt of complaints to the Town Supervisor (local governmental agencies), emergency service providers, NY State agencies and other third parties that should be notified of complaints about the Project.

3. RESOLUTION OF COMPLAINTS

a. The Certificate Holder will work in good faith to address and/or resolve reasonable complaints as soon as is practicable, however, some complaints may take more time than others in order to evaluate and determine proper resolution, and some complaints may not reasonably be resolved. Please also refer to Certificate Conditions of the Order for other specific requirements.

b. The Certificate Holder will contact the complainant as quickly as possible and in all cases within 3 days to confirm that the complaint was received and within 7 days of receipt to gather additional information and/or discuss a resolution plan.

c. The Certificate Holder will resolve complaints within the time frames specified in the Certificate Order, if any. Otherwise the Certificate Holder will work in good faith to address and/or resolve complaints as soon as is reasonably practicable and commits to resolving complaints within 60 days, unless circumstances dictate that more time is necessary for evaluation or resolution and the Applicant is working toward a resolution. In instances where resolution will take longer than 60 days, the Applicant will contact the complainant to explain why resolution will take, or is taking, longer and will provide a timeframe for resolution that is as soon as is practicable.

4. DISPUTE RESOLUTION AND UNRESOLVED COMPLAINTS

a. In some instances, the Certificate Holder and a complainant (the parties) may not agree on a resolution to a complaint. In such instances, the Certificate Holder will consult New York State Department of Public Service (DPS). If necessary, the complaint will be referred as specified by applicable regulations.

b. In other instances, the Certificate Holder may determine that a complaint does not have a reasonable resolution. For such complaints (for example a complaint about the value of solar energy), the Certificate Holder will add the complaint to the complaint log and notify the complainant that no resolution is feasible unless a different procedure is required by the Certificate Order or applicable regulations.

5. DOCUMENTATION OF COMPLAINTS

a. During construction and operation of the Project, the Certificate Holder will keep a complaint log, recording complaints that it receives. The complaint log will include at a minimum the information required by the Certificate Order. A sample complaint log form is included as Appendix E.

b. At a minimum, the log will contain the name(s) and contact information of the person(s) that lodges the complaint, name of the property owner(s), address of the residence where the complaint was originated, the date and time of the day underlying the event complained of, and a summary of the complaint, if available..

c. The complaint log will be maintained by the Certificate Holder and will be made available to DPS and to the Town of Sharon Town Supervisor.

6. PUBLIC NOTIFICATION OF COMPLAINT PROCESS

a. No less than two (2) weeks prior to the commencement of construction, the Certificate Holder will publish a summary of the Complaint Resolution Protocol in such newspapers, including local community and general circulation newspapers, as will serve substantially to inform the public of such Complaint Resolution Protocol. The summary will include contact information of the Certificate Holder including phone numbers, email and physical addresses.

b. The Protocol will be provided to the Town Supervisor and Town Boards where the Project is sited.

c. The Protocol will also be posted on the Certificate Holder's website and will be available to the public at the Certificate Holder's temporary construction offices.

7. NOISE COMPLAINT AND RESOLUTION PROTOCOL

This Protocol is in effect upon commencement of construction and will be in effect for the life of the project.

a. Complaint Response – Construction

i. At a minimum, complaints from construction will be addressed as specified in the Certificate Order.

ii. If the Sound Complaint location is more than one (1) mile[1] from active construction activity, the complaint will be logged but no action will be taken.

iii. If the Sound Complaint location is less than one (1) mile[1] from active construction activity, the following steps will be taken:

1. A representative from the construction firm will visit the site of the complaint during construction activity to listen and observe.

2. Construction personnel will determine whether the Certificate Conditions of the Order on construction noise are met and if not, correction(s) will be taken, or

3. Construction personnel in consultation with the EM will determine if any equipment is not functioning properly and thus creating unusual sound. If so, this equipment will be repaired or replaced as soon as practical.

b. Complaint Response - Operation

If the Sound Complaint is originated in a residence within half mile of the facility, and based on final computer noise modeling or any preliminary monitoring, there appears to be a reasonable possibility that the sound levels induced by the Project exceed or are within 5 dBA of any applicable noise limit or design criteria specified in a Certificate Condition of the Order, then the Certificate Holder will investigate the incident as follows:

i. The Applicant is not required to conduct sound testing if:

1. the modeled sound levels are lower than 5 dBA below any applicable noise limit.

2. the complaint has occurred as a result of abnormal operation. In this case, the Certificate Holder shall make necessary repairs.

ii. The Certificate Holder shall conduct sound monitoring if:

1. The complaint location is further than 0.5 miles from any previously evaluated monitoring locations, or

2. The location is closer than 0.5 miles of a previously evaluated monitoring location but the final computer noise modeled levels or the results of any preliminary measurements of sound levels are higher or expected to be higher than the positions previously evaluated, or

3. There is a reasonable possibility that mechanical or operational conditions have changed that affect Inverter/Medium to Low Voltage Transformer or substation equipment sound levels, or,

4. The issue is different than the one previously evaluated, or

5. The last monitoring was conducted more than three years ago.

iii. The Certificate Holder will not, as a result of additional complaints, repeat sound monitoring in a previously evaluated location during any three-year period following the first monitoring for that receptor, unless changes in system operation or maintenance can be reasonably assumed to have resulted in higher sound levels.

iv. The Certificate Holder may request that a Complainant maintain a written log of potentially offending sound events over some reasonable period of time, in order to assist in identifying influences that may affect the sound from the Facility.

v. If Certificate Conditions of the Order or any preliminary investigation suggests that sound monitoring is warranted, the Certificate Holder shall conduct such sound monitoring.

vi. The Certificate Holder shall inform a resident when it intends to conduct any exterior sound monitoring and cooperate with the resident to determine an appropriate location for the monitoring equipment. If the investigation determines that a sound complaint is

[1] Two(2)miles for complaints from blasting noise.

the same and that the Facility is in compliance with the relevant certificate conditions for two separate instances at the same location during the last 3 years, then any future complaint, beyond the first two, may require the complainant to pay the cost of additional sound testing.

vii. If, as the result of an investigation of a complaint, it is determined that the sound level at any residence, attributable to the Project, does not comply with any Certificate Condition or design goal of the Order, the Certificate Holder will evaluate and implement practical measures to reduce sound levels at the receptor and/or mitigate the issue by other measures.

8. REPORTING

a. For any complaint-based monitoring conducted by the Certificate Holder, the results of the testing shall be submitted in a report as specified in the Certificate Order and in this Complaint Resolution Protocol.

b. Copies of the report will be delivered to the complainant, NYS DPS, and to the Town where the complaint was originated.

c. The report shall include at a minimum the following information collected during the monitoring period:

i. Ground-level wind speed and direction during monitoring (1.5 meters above the ground),

ii. Operational status of the noise sources or substation components, as applicable,

iii. Summary of sound levels,

iv. Raw sound level data as logged by the sound level meter during the program

v. Conclusions.

APPENDIX C: COMPLAINT FILING FORM (for public)

Date of filing:_____

Name of Property Owner:_____

Name of the Complainant:_____

Address:_____

Phone #:_____

Email Address: _____

Date and time of the day underlying the event: _____

_____

Location(s) of the property where the issue is/was noticed: _____

_____

Duration of the issue: _____

_____

Description of Complaint:* _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

*If possible, include weather conditions and any other details that can help identifying the issue.

APPENDIX D: CERTIFICATE HOLDER'S CONTACT INFORMATION

(Include the information here)

APPENDIX E: COMPLAINT LOGGING FORM (for Operator)