SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

TOWN OF COPAKE, AMERICAN BIRD CONSERVANCY, SAVE ONTARIO SHORES, INC., CAMBRIA OPPOSITION TO INDUSTRIAL SOLAR, INC., CLEAR SKIES ABOVE BARRE, INC., DELAWARE-OTSEGO AUDUBON SOCIETY, INC., GENESEE VALLEY AUDUBON SOCIETY, INC., ROCHESTER BIRDING ASSOCIATION, INC., TOWN OF CAMBRIA, TOWN OF FARMERSVILLE, TOWN OF MALONE, TOWN OF SOMERSET, AND TOWN OF YATES

Petitioners-Plaintiffs,

- against -

NEW YORK STATE OFFICE OF RENEWABLE ENERGY SITING, HOUTAN MOAVENI AS ACTING DIRECTOR OF THE OFFICE OF RENEWABLE ENERGY SITING, NEW YORK STATE, NEW YORK STATE DEPARTMENT OF STATE, AND JOHN DOES 1-20,

Respondents-Defendants

and

ALLIANCE FOR CLEAN ENERGY NEW YORK, INC.,

Intervenor-Respondent

INDEX NO. 905502-21

~~[PROPOSED]~~ AMICUS BRIEF OF FRIENDS OF FLINT MINE SOLAR ET AL. IN SUPPORT OF RESPONDENTS-DEFENDANTS

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STATEMENT OF INTEREST OF AMICUS CURIAE

Proposed *amici curiae* are clients of the Renewable Energy Legal Defense Initiative, a project of Columbia Law School's Sabin Center for Climate Change Law, and Arnold & Porter Kaye Scholer. The Initiative, working with various law firms, provides pro bono legal representation to grassroots groups and individuals who support wind and solar energy facilities in their communities that are facing opposition. The Renewable Energy Legal Defense Initiative has represented many of the *amici* in state court and in a variety of state siting proceedings concerning specific projects. In seeking to welcome wind or solar energy projects into their communities, *amici* have faced roadblocks in the form of neighborhood opponents, protracted siting processes, and their own local governments. For this reason, *amici* believe that a streamlined process for siting renewable energy facilities in New York State is essential, and *amici* support the new regulations promulgated by the Office of Renewable Energy Siting ("ORES") pursuant to Section 94-c of the Executive Law.

As detailed in ORES's memorandum of law in opposition to the Article 78 petition, before ORES was created, the siting of wind and solar energy facilities in New York State was governed by Article 10 of the Public Service Law. Under Article 10 developers of major electric generation facilities must obtain a Certificate of Environmental Compatibility and Public Need from the New York State Board on Electricity Siting and the Environment ("Siting Board"). NY PUB. SERV. LAW §§ 160, 162. Like the ORES process, Article 10 provides for a pre-application consultation process, a public comment hearing, and an adjudicatory hearing; allows local governments and affected local residents to actively participate; and permits the state to override local laws that are unreasonably burdensome. *See id*. §§ 163, 165(1), 166(1) 167, 168(e); 19 NYCRR §§ 900-1.3, 900-2.25(c), 900-8.3, 900-8.4, 900-8.7. The Article 10 process proved to be

cumbersome and it took years for projects to work through it. Section 94-c was enacted to provide "coordinated and timely review" for wind and solar energy facilities by mandating that ORES rule on certificate applications within a year, and by requiring ORES to issue uniform standards and conditions that obviate the need to reinvent the wheel every time a new application is filed. NY EXEC. LAW § 94-c(1), (3). However, ORES may impose more stringent standards or conditions on a particular facility where appropriate. *Id*. § 94-c(3)(d).

Proposed *amici* Friends of Columbia Solar, Incorporated ("Friends of Columbia Solar") is a 501(c)(4) organization that was formed in 2021. Its mission is to support clean, renewable and reasonable solar projects in Columbia County, New York, including but not limited to the proposed 60-megawatt Shepherd's Run Solar Farm in Copake. The organization is comprised of over fifty residents of Copake and nearby towns, including landowners who plan to lease land for the Shepherd's Run Solar Farm and others who support the project because of their concerns about climate change. In advocating for the project, group members have met with their state Senator and Assembly member, published editorials and letters to the editor, met with the head of the Columbia Economic Development Corporation, and met with project opponents to advocate for broader discussion between concerned parties. The Shepherd's Run Solar Farm was initially under review by the Siting Board under Article 10. On May 4, 2021, the Shepherd's Run Solar Farm developer informed the Siting Board that it would instead opt into the new siting process before ORES. If the developer does file a permit application under Section 94-c, Friends of Columbia Solar plans to seek intervention in that proceeding in order to support the project.[1]

Proposed *amici* Friends of Flint Mine Solar is a group of approximately thirty property owners, residents, and other stakeholders living and working in the vicinity of the proposed Flint

[1] Gerrard Aff. ¶¶ 5-6.

Mine Solar Project, a 100-megawatt solar facility that will be located in the towns of Coxsackie and Athens in Greene County. The group's mission is to promote the Flint Mine Solar Project and educate the public about the project's benefits, including the benefits that it will provide to the local community, local lands, and the environment. Some group members are farmers who face increased difficulty making a living through agriculture, and see solar energy as a way to revitalized their distressed farming community. They plan to participate in the project by selling or leasing their land to the project developer. As Friends of Flint Mine Solar President Giuseppina Agovino explained in her affidavit:

> We are farmers, and we have an opportunity to harvest the sun. I think that the Flint Mine Project will breathe new life into the farming community. . . . The supplemental income that the solar lease will provide will make it easier for us to stay on our land. Throughout the town, the Project will give struggling farmers income to continue farming, or to be able to finally take a day off and retire with some financial security.

In addition to this financial stake, Friends of Flint Mine Solar is also supportive of solar energy in general because the group's members are concerned about climate change.[2]

Friends of Flint Mine Solar has advocated for the Flint Mine Solar Project since 2018, when the group began to organize booths and tables at fairs to show support and provide information to the public. However, in November 2018 the Coxsackie Town Board passed an ordinance to prohibit utility-scale solar development in the Residential Agricultural-2 District (RA-2), which if enforced would preclude the Flint Mine Solar Project from proceeding. *See Friends of Flint Mine Solar v. Town Board of Coxsackie*, No. 19-0216 (N.Y. Sup. Ct. Sept. 13, 2019) at 3, 12.[3] After Friends of Flint Mine Solar sued the Coxsackie Town Board in March

[2] Agovino Aff. ¶¶ 2-5, 7.
[3] *See also* Agovino Aff. ¶ 5.

2019 to challenge the ordinance, the Town Board addressed certain procedural deficiencies and enacted a new ordinance to prohibit utility-scale solar development in RA-2. *Id*. at 4-5. [4]

Friends of Flint Mine Solar subsequently participated in litigation before the Siting Board regarding Flint Mine Solar's application for a Certificate of Environmental Compatibility and Public Need under Article 10 of the Public Service Law. On August 4, 2021, the Siting Board issued the certificate and waived Coxsackie's restrictive solar law, allowing the project to proceed.[5]

Proposed *amici* Win With South Fork Wind, Inc. ("Win With Wind") is an independent, nonpartisan group of residents of East Hampton and other towns on the South Fork of Long Island. Win With Wind aims to produce fact-based information regarding the benefits of offshore wind energy. The group has spent years advocating for the South Fork Wind Farm, which will be New York State's first offshore wind farm. Win With Wind participated in litigation before the Public Service Commission to support the issuance of a Certificate of Environmental Compatibility and Public Need under Article VII of the Public Service Law for a transmission line that will connect the South Fork Wind Farm to the electric grid in East Hampton. The certificate application was opposed by several local intervenors, resulting in nearly three years of litigation. On March 18, 2021, Win With Wind celebrated when the Public Service Commission granted the certificate. A local opponent group has also filed an Article 78 petition to challenge the Town of East Hampton's decision to grant an easement allowing the transmission cable to be constructed on Town property. Win With Wind filed an amicus brief to support the Town in that proceeding.[6]

[4] *See also* Agovino Aff. ¶ 5.
[5] Agovino Aff. ¶ 6.
[6] Gerrard Aff. ¶¶ 8-9.

Proposed *amici* Carrie and William McCausland are grape farmers in Portland, New York. In 2018 they signed a lease to host wind turbines on their land for a proposed community-scale wind project developed by a company called EWT. Grape farming has become increasingly difficult in Portland due to changes in weather patterns, and the lease payments would provide much-needed stability by insulating the McCauslands financially in frost years when their harvest is greatly reduced, and by helping to offset their increasing property taxes. Additionally, Ms. McCausland is a high school social studies teacher and anticipated that the EWT project would provide revenue to the school district as well as educational opportunities for her students such as internships. In 2020, however, Portland adopted an ordinance that effectively bars the project from proceeding. In February 2021 the McCauslands and EWT filed a lawsuit against Portland to challenge the ordinance; following the denial of a preliminary injunction, the project's fate is unclear.[7]

Proposed *amici* Scott Griffin, Donna Griffin, Kenneth Roberts, and Karol Toole are property owners in Fenner, New York, who plan to participate in the proposed 140-megawatt Oxbow Hill Solar Project by leasing some of their land to the project developer. Mr. Roberts and the Griffins are farmers who see the Oxbow Hill Solar Project as a way to receive some income from the part of their land that is not agriculturally productive. Ms. Toole and her late husband used to have a large dairy farm, but had to sell it when it became unprofitable—farming has become increasingly difficult in Fenner, and Ms. Toole has seen the number of dairy farms drop to only a handful today. Ms. Toole supports the project because she believes it will economically benefit her community and because she is deeply concerned about climate change. However, on

[7] Gerrard Aff. ¶ 10-11.

August 11, 2021 the Fenner Town Board adopted a law that prohibits large-scale solar facilities, such as the Oxbow Hill Solar Project.[8]

Proposed *amicus* John Ohol is a dairy farmer in Cambria, New York, who is transitioning to grain farming because it has become increasingly difficult to make a living in the dairy industry. He plans to lease a parcel of his land to the developer of the Bear Ridge Solar Farm. Mr. Ohol sees the Bear Ridge Solar Farm as an opportunity to receive supplemental income without harming his farming operations because he can farm around the solar panels and return the land to agricultural use when the project is decommissioned. In Mr. Ohol's view, participating in a solar farm is also a way to slow down the urbanization he sees around his community because solar energy provides tax revenue and lease payments but requires relatively little development.[9]

Amici curiae have an interest in this proceeding as New Yorkers who wish to see renewable energy projects in their communities. As discussed, for some *amici,* leasing or selling land to a renewable energy developer can bring in much-needed income when making a sustainable living through agriculture alone has become untenable.[10] Some *amici* are motivated simply by their concerns about climate change and their desire to see their communities at the forefront of the transition to a renewable energy economy.[11] However, renewable energy project supporters can be stymied by their local governments when zoning restrictions are a barrier to renewable energy development, even where proposed facilities enjoy broad favorability. For example, the Town of Coxsackie has sought to block the Flint Mine Project despite widespread

[8] Gerrard Aff. ¶ 12-14.
[9] Gerrard Aff. ¶ 15.
[10] *See* Agovino Aff. ¶ 3-4; Gerrard Aff. ¶¶ 7, 10, 12-13.
[11] Gerrard Aff ¶ 8.

community support for the project.[12] Similarly, the McCauslands and the Fenner *amici* have been expecting to receive lease payments by participating in projects that are now threatened by local ordinances.[13] Renewable energy project supporters have also seen their efforts frustrated by protracted siting processes that take years to complete. For example, Win With Wind has spent nearly three years in litigation to support the South Fork Wind Farm, slowed in part by local project opponents.[14] Friends of Flint Mine Solar similarly dedicated almost three years to an Article 10 proceeding.[15]

For these reasons, a streamlined process for siting renewable energy facilities at the state level is critical to advancing New York's targets. *Amici* submit this brief to provide additional information to the court regarding the need for such a process, and to share the perspectives of host community members other than the views represented by petitioners.

PRELIMINARY STATEMENT

Amici file this amicus brief to support respondents' opposition to the Article 78 petition and the motion for a preliminary injunction. Consistent with *amici*'s interests, and without conceding any other points, this brief addresses why petitioners' claims under the State Environmental Quality Review Act (SEQRA) must fail; and the deleterious effects a preliminary injunction would have on New York public policy goals and the general public.

POINT I

PETITIONERS HAVE NOT SHOWN THAT ORES TOOK A TYPE I ACTION

[12] For example, every Coxsackie resident who participated in a public statement hearing held on the Flint Mine Solar Facility pursuant to Article 10 voiced support for the project. *See* R.5547.
[13] Gerrard Aff ¶ 10-14.
[14] Gerrard Aff ¶ 8.
[15] Gerrard Aff ¶ 7.

Petitioners erroneously argue that ORES's promulgation of its regulations constitutes a Type I action under 6 NYCRR § 617.4(b). Section 617.4(b) provides a list of actions that are Type I "if they are to be directly undertaken, funded or approved by an agency." The list includes: 1) "a project or action that involves the physical alteration of 10 acres;" 2) "any structure exceeding 100 feet above original ground level in a locality without any zoning regulation pertaining to height;" and 3) "a nonagricultural use occurring wholly or partially within an agricultural district" that exceeds 2.5 acres. 6 NYCRR § 617.4(b)(2), (7), (8). Petitioners aver that the ORES regulations they challenge fall into all three categories because a new renewable energy facility could 1) involve the physical alteration of 10 acres; 2) exceed 100 feet; or 3) result in a nonagricultural use of greater than 2.5 acres in an agricultural district. Comp. ¶ 135. Petitioners' argument founders on the requirement that such actions "be *directly* undertaken, funded or approved by an agency," to be considered Type I. 6 NYCRR § 617.4(b)(7) (emphasis added). While ORES set forth the standards and conditions that future renewable energy projects must meet, ORES did not "directly" approve any facility in issuing those standards and conditions. *See Black's Law Dictionary* (11th ed. 2019) (defining "directly" as "[i]n a straightforward manner," "[i]n a straight line or course," or "[i]mmediately"); *see also* Comp. Exh. Y at 7 ("The proposed action of promulgating regulations does not include any direct approval of applications for the siting of major renewable energy facilities."). The issuance of the ORES regulations did not give automatic approval to any project; all projects will need to successfully navigate several processes.

Petitioners further assert that the regulations fall into a fourth category of actions that qualify as Type I: "the adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district." 6 NYCRR § 617.4(b)(7). Petitioners reason that the

ORES regulations meet this description by changing the allowable use in more than 25 acres of zoning districts throughout the state, or, in the alternative, by providing a means for waiver of local laws. Comp. ¶ 135. This argument also fails because ORES's regulations do not alter what is considered an allowable use under local zoning laws. Rather, like the Article 10 regulations, they empower the state to decline to apply local zoning laws in certain well-defined circumstances. *Compare* 19 NYCRR § 900-2.25(c) (recognizing ORES's statutory authority to waive a local substantive requirement that is unreasonably burdensome in light of the Climate Leadership and Community Protection Act targets and the environmental benefits of the proposed facility) *with* 16 NYCRR § 1001.31(e) (allowing the Siting Board under Article 10 to waive a local substantive requirement on the grounds that compliance is technically impossible, impractical or otherwise unreasonable; the costs to consumers of applying the requirement would outweigh the benefits of applying the requirement; or the needs of consumers for the facility outweigh the waiver's impacts on the community).[16] If ORES were to consider an application to waive local requirements for a particular project, it would hold proceedings with ample opportunity for public input.

Moreover, for any certificate application, the ORES regulations require the following procedures, among others:

1. At least sixty days before filing an application with ORES, the project developer must meet with the chief executive office of any municipality in which the proposed facility

[16] Indeed, the Siting Board recently exercised this authority in issuing a certificate for the Flint Mine Solar Project, granting all requested waivers of local laws. *See In re Application of Flint Mine Solar LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10*, Case No. 18-F-0087 (N.Y.P.S.C. Aug. 4, 2021) at 70.

will be located and any local agencies of such municipalities identified by the chief executive officer. 19 NYCRR § 900.1-3(a).

2. At least sixty days before filing an application with ORES, the developer must meet with community members who may be adversely impacted by the siting of the proposed facility. *Id*. § 900.1-3(b).
3. After the application is filed, local governments and interested community members may seek intervenor funding to finance their participation in the adjudicatory proceeding, including to pay for attorneys' and experts' fees. *Id*. § 900.5-1.
4. After publishing a draft permit, ORES must hold a public comment hearing and accept written public comments in order to receive statements from interested parties and non-parties to the proceeding. *Id*. §§ 900.8-1, 900.8-2, 900.8-3(a).
5. ORES must then hold an adjudicatory hearing to resolve any substantive and significant issue raised during the public comment process. Parties have the right to present evidence and cross-examine witnesses, and to present arguments on issues of law and fact. *Amici* may participate by filing briefs. *Id*. §§ 900.8-3, 900.8-4.

The ORES regulations do not result in the approval of any one facility—far from it. ORES accordingly did not err in classifying the regulations as unlisted under SEQRA.

Even if ORES did err by designating its action as unlisted rather than Type I, the error is harmless because ORES properly found that no significant environmental impact will result. *Matter of Bd. of Mgrs. of the Plaza Condo. v. NYT Dep't of Transp.*, 14 N.Y.S.3d 375 (1st Dep't 2015); *see also Friends of Port Chester Parks v. Logan*, 760 N.Y.S.2d 214, 215 (2d Dep't 2003) ("the mere circumstance that" the project should have been designated "a Type I action does not render the negative declaration improper"); *Ahearn v. Zoning Bd. of Appeals*, 551 N.Y.S.2 392,

395 (3d Dep't 1990) (where respondent took requisite "hard look" at relevant areas of environmental concern and made a "reasoned elaboration" of their determinations, any misclassification was harmless error). "A negative declaration is properly issued when the agency has made a thorough investigation of the problems involved and reasonably its discretion." *Spitzer v. Farrell*, 761 N.Y.S.2d 137, 140 (2003) (citations and alterations omitted).

As discussed *infra*, ORES took the requisite hard look and provided a reasoned elaboration for its determination that no significant impact would occur. *See* Comp. Exh. Y. The regulations should therefore not be invalidated even if the court determines that the action was misclassified.

POINT II

ORES TOOK THE REQUISITE HARD LOOK AT THE POTENTIAL IMPACTS OF ITS REGULATIONS

Petitioners' argument that ORES failed to take "a hard look" at the potential impacts of the new regulations is equally unavailing. Petitioners contend that the regulations could result in impacts such as the removal of large quantities of vegetation and health effects caused by shadow flicker and noise. Comp. ¶¶ 144-149. However, the challenged ORES regulations are many steps removed from ORES action on any particular application, and it is speculative to assume the ORES would approve an application that poses the ills that petitioners imagine. "[I]t is not arbitrary and capricious or a violation of existing law for [an] agency, when it takes its 'hard look' and makes its 'reasoned determination' under SEQRA, to ignore speculative environmental consequences which might arise under [a] new or amended regulation." *Matter of Industrial Liaison Comm. of Niagara Falls Area Chamber of Commerce v. Williams*, 72 N.Y.2d 137, 143 (1988); *see also Schulz v. New York State Dep't of Envtl. Conservation*, 606 N.Y.S.2d

459, 462 (3d Dep't 1994), *appeal dismissed* 83 N.Y.2d 758 (1994) ("speculative consequences need not be evaluated prior to issuance of a negative declaration").

The impacts about which petitioners profess concern could only result from the construction or operation of an actual renewable energy facility, and could only be assessed in the context of a specific project at a specific site.

And they will be. Before issuing any permit, ORES must consider site-specific potential impacts and determine whether the uniform standards and conditions will address those impacts. NY EXEC. LAW § 94-c(d); Comp. Exh. Y at 7 ("Each application for a siting permit would undergo an individual, site-specific review by ORES."). The regulations recognize that in issuing a final permit, ORES may "impos[e] significant permit conditions in addition to those proposed in the draft permit, including uniform standards and conditions." 19 NYCRR § 900-8.3(c)(3). Moreover, the ORES regulations provide for an extensive public comment process, and any significant or substantive issue regarding a permit condition raised in a public comment is subject to adjudication before a final permit is granted. *Id*. § 900-8.3(a), (c)(1)(i). Any specific project permitted through the ORES process will therefore undergo significant individualized review. ORES was not required to—and indeed, could not—assess the potential for the impacts that petitioners fear before issuing a negative declaration for the regulations. *See Schulz*, 606 N.Y.S.2d at 462.

Additionally, petitioners ignore that in completing its SEQRA review of the regulations, ORES incorporated multiple existing SEQRA reviews of the state's efforts to expand renewable energy. *See* Comp. Exh. Y at 17-18, 23. As detailed in the submission of Sierra Club et al., ORES's creation followed years of policymaking aimed at promoting large-scale renewable energy facilities in New York. In February 2015 the Public Service Commission ("PSC")

completed a generic environmental impact statement ("EIS") for two key policy initiatives: Reforming the Energy Vision and the Clean Energy Fund. *Id*. at 17. In February 2016 the PSC built on that analysis by issuing a draft supplemental EIS to assess the impacts of implementing two additional policy initiatives: the Large-Scale Renewable Program and the Clean Energy Standard. *Id*. at 18. The PSC issued a final supplemental EIS in May 2016 that included a response to comments and revisions to the draft. *Id*.

The PSC augmented its analysis once again following the 2019 enactment of the Climate Leadership and Community Protection Act ("CLCPA"). *Id*. The CLCPA provides that 70% of statewide electric generation must be supplied by renewable energy by 2030 and that 100% must be derived from zero-emission sources by 2040, and further, the state dramatically scale up its renewable energy capacity. NY PUB. SERV. LAW § 66-p(2)(a), (b), (5). ORES was created specifically to meet these new renewable energy mandates by streamlining the renewable energy siting process. *See* NY EXEC. § 94-c(a). Last year the PSC analyzed the potential impacts of those mandates, issuing a draft supplemental generic EIS in June 2020, and a final generic EIS September 2020 that incorporated and responded to comments. Comp. Exh. Y at 18-19. These environmental reviews address precisely the types of alleged impacts that petitioners raise, such as vegetation removal, noise pollution, avian impacts, effects on agricultural land and community character, visual impacts, and cumulative impacts.[17] Thus, to the extent that petitioners argue that ORES should have developed a generic EIS to assess the potential impacts of the plan to expand large-scale renewable energy siting, *see* Comp. ¶ 142, the state has already done just that.

[17] *See, e.g.*, R.0960-0961, R.0990-0991, R.1006, R.1013.

Requiring ORES to go back and prepare a new environmental review for its regulations would involve rehashing material and arguments that have already been thoroughly analyzed and subjected to public comment, and would accomplish little beyond killing more trees. For these reasons, petitioners have not shown that ORES failed to take a "hard look" at the potential impacts of its regulations.

POINT III

PETITIONERS ARE NOT ENTITLED TO A PRELIMINARY INJUNCTION

For reasons discussed above and in respondents' memoranda of law, petitioners have not shown a likelihood of success on the merits as required to justify a preliminary injunction. Nor have petitioners demonstrated irreparable harm; as discussed, the alleged impacts that they fear are purely speculative at this stage. Finally, the balance of the equities tips squarely in respondents' favor. *See Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860, 862 (1990).

In balancing the equities, the court may consider whether as a result of a preliminary injunction "damage will be done [to] . . . the public policy of this State." *Seitzman v. Hudson Riv. Assoc.*, 126 A.D.2d 211, 215 (1st Dep't 1987). Whereas petitioners would not suffer any irreparable harm in the absence of a preliminary injunction, an order granting a preliminary injunction could delay the permitting process for renewable energy facilities that New York State urgently needs in order to meet its climate policy goals under the CLCPA. As discussed, ORES was created specifically to meet the state's new renewable energy mandates. *See* NY EXEC. § 94-c(a).

Moreover, "[i]n ruling on a motion for a preliminary injunction, the courts must weigh the interests of the general public as well as the interests of the parties to the litigation." *Destiny USA Holdings, LLC v. Citigroup Glob. Mkts. Realty Corp.*, 69 A.D.3d 212, 223 (4th Dep't

2009); *see also* 9 N.Y.Prac., Env. Law and Reg. in New York § 4.45 (2d ed. Sep. 2020) ("In balancing the equities, the court may also include such matters as the public interest . . . and the effect of the preliminary injunction on non-parties."). The submission of Sierra Club et al. discusses the significant public interest in the growth of renewable energy as an essential part of the fight against climate change, the state's struggle to scale up renewable energy capacity under Article 10, and the critical role of ORES's new regulations in achieving New York's climate change goals. A preliminary injunction would only slow a process that the state is trying to—and needs to—speed up.

In addition, the general public includes New York farmers and other landowners who wish to host wind turbines or solar panels on their property, both because they are concerned about the effects of climate change, and because leasing or selling land to a renewable energy developer can bring in supplemental income.[18] As discussed, however, project supporters are sometimes stymied by their neighbors or local governments. For this reason, a streamlined process for siting renewable energy facilities at the state level is critical to advancing New York's targets. A preliminary injunction hamstringing that process would harm the state's environment, public policy goals, and the individual landowners who hope to participate in the state's transition to a renewable energy economy.

[18] *See, e.g.*, R.5547 ("Like many of our neighbors, we have been looking for another source of income, because we are no longer able to scrape a living from farming this poor soil" and noting that solar energy will reduce emissions from the use of fossil fuels) (quoting Comments of Linda and Frank Drewello on Application of Flint Mine Solar LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10, 18-F-0087 (N.Y.P.S.C.)); *id*. ("This clean, renewable energy will add diversity of income much needed by farmers.") (quoting Comments of Suzanne Stokoe on Application of Horseshoe Solar LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10, 18-F-0633 (N.Y.P.S.C.)).

CONCLUSION

For these reasons and the reasons discussed by respondents and Sierra Club et al., *amici* respectfully urge the Court to deny the preliminary injunction and to deny the Article 78 petition in its entirety.

Respectfully submitted,

Dated: September 3, 2021
Chappaqua, New York

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CERTIFICATION OF WORD COUNT

Pursuant to 22 NYCRR § 202.8-b(c), I hereby certify that the word count of this memorandum of law complies with the word limits of 22 NYCRR § 202.8-b(a). The total word count for all printed text exclusive of the material omitted under 22 NYCRR § 202.8-b(b) is **4896 words.**

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