

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 18-F-0087 - Application of Flint Mine Solar, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of a Solar Electric Generating Facility Located in the Towns of Coxsackie and Athens, Greene County.

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

Issued and Effective: August 4, 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 August 4, 2021

BOARD MEMBERS PRESENT:

Tammy Mitchell, Alternate for the Chair of the
New York State Public Service Commission

James McClymonds, Alternate for
Basil Seggos, Commissioner
New York State Department of Environmental Conservation

Kevin Malone, Alternate for
Howard A. Zucker, M.D., J.D., Commissioner
New York State Department of Health

Vincent Ravaschiere, Alternate for
Kevin Younis, Executive Deputy Commissioner & COO, Empire
State Development

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

Michael Pirrone, Ad Hoc

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(Issued and Effective August 4, 2021)

BY THE BOARD:

I. INTRODUCTION

By this Order, we grant to Flint Mine Solar, LLC (Flint Mine or Applicant) a Certificate of Environmental Compatibility and Public Need (CECPN) to construct and operate a solar energy generating facility in the Towns of Coxsackie and Athens, Greene County. With the extensive conditions attached to and made a part of this Order, we determine the solar farm 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 Examiner 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.¹ We base our decision on the evidentiary record, the initial and reply briefs of the parties, public comments, and applicable law and policy.

II. BACKGROUND

A. Description of the Project

The proposed Facility, or Project, will be a

¹ The parties to this case include Flint Mine, the Department of Public Service Trial Staff (Staff or DPS Staff), the Department of Environmental Conservation (DEC), the Department of Agriculture and Markets (DAM), the Department of Health, the Town of Coxsackie (Coxsackie), the Village of Coxsackie, the Town of Athens (Athens), the Village of Athens, the Friends of Flint Mine Solar (FOFM or Friends), the Greene Land Trust (GLT), Scenic Hudson, Inc. (Scenic Hudson), and the Sleepy Hollow Lake Association of Property Owners (SHLAPO or Sleepy Hollow).

100 megawatt (MW) solar electric generation facility consisting of up to 454 acres of photovoltaic (PV) panels, together with associated facilities, located within a 1,638 acre Facility Area on lands leased from owners of private property located between the New York State Thruway to the west and the CSX Railroad line to the east (the Facility Area) in the Towns of Coxsackie and Athens, Greene County, New York. Five short 115kV transmission lines, with a total length of approximately 500 feet, will connect a proposed 115/34.5kV Facility substation to a proposed 115kV point of interconnection (POI) switchyard, which will then interconnect to the existing bulk electric transmission system lines owned by Niagara Mohawk Power Corporation, d/b/a National Grid.²

The Facility will connect to the existing LaFarge to Pleasant Valley 115 kV transmission line, and the Feura Bush to North Catskill 115 kV transmission line, both owned and operated by National Grid, allowing power to be delivered from the Facility to the grid.³ The Project will require the construction of internal infrastructure, such as transformers, inverters, voltage cable collection systems, an onsite substation, access roads, a temporary laydown area, and security fencing.⁴

B. Procedural History

The Applicant filed a Public Involvement Program (PIP) Plan on February 9, 2018.⁵ DPS Staff submitted comments on the

² Hearing Exh. 3, Application Exh. 2 at 1.

³ Hearing Exh. 3, Application Exh. 34 at 1-2.

⁴ Application Exh. 2 at 1.

⁵ Hearing Exh. 3, Application Exh. 2.

plan, and the Applicant filed a revised PIP on April 9, 2018. The PIP was provided to local document repositories established in the area and docketed on the Siting Board's Document and Matter Management (DMM) system.⁶ A summary of the PIP was included on a dedicated Project Website maintained by the Applicant.

On November 2, 2018, the Applicant submitted a Preliminary Scoping Statement (PSS) describing the proposed contents of the Application and describing the scope and methodology of the pre-application studies to be performed and the data to be included in the Application. Comments on the PSS were filed by November 30, 2018, and the Applicant filed responses to party comments on January 11, 2019. A pre-application procedural conference was held January 3, 2019, to award intervenor funding and commence the pre-application stipulations process. The Applicant issued notices of its intention to pursue stipulations negotiations beginning on January 29, 2019, and such discussions took place through September 2019. Thereafter, the Proposed pre-application Stipulations were made available for public review and comment, pursuant to the requirements of Article 10.⁷ Final Executed Stipulations were filed on January 23, 2020.⁸

⁶ Hearing Exh. 3, Application Exh. 2. Public document repositories included the Heermance Memorial Library, in Coxsackie, New York; the D.R. Ewart Library, in Athens, New York; the Coxsackie Town Hall; and the Athens Town Hall. Hearing Exh. 3, Application Exh. 2.

⁷ 16 NYCRR §1000.5(j).

⁸ Hearing Exh. 1.

The Application was filed on May 22 and May 27, 2020,⁹ and supplemented on July 24, 2020.¹⁰ The Chair of the Siting Board deemed the Application to be compliant with the Public Service Law as of August 12, 2020.¹¹ Public Statement Hearings were held on October 22, 2020, and a Procedural Conference was held on October 23, 2020.¹²

The parties then entered settlement negotiations to attempt to resolve disputed issues in the case, following Flint Mine Solar's issuance of a notice on November 5, 2020.¹³ As part of those negotiations, Flint Mine proposed a Settlement Layout to avoid or mitigate resource impacts of concern to other Parties to the case.¹⁴ The settlement negotiations resulted in proposed consensus Certificate Conditions and a Site Engineering and Environmental Plan (SEEP) Guide, that were filed on January 12, 2021. These settlement proposals were signed by the Applicant, DPS trial Staff, DEC, DAM, the Towns of Athens and Coxsackie, Scenic Hudson, and the Friends of Flint Mine Solar.¹⁵ Thereafter, the Parties filed their direct testimony and

⁹ Hearing Exh. 3-5. While the bulk of the Application was filed on May 22, 2020, technical issues with the DMM system required the Applicant to make a subsequent filing, on May 27, 2020. The May 27, 2020 filing included both materials previously submitted and documents that were not included in the May 22 filing. See Hearing Exh. 5.

¹⁰ Hearing Exhs. 6-7.

¹¹ Hearing Exh. 9.

¹² Those events were conducted via remote teleconferencing to protect public health and safety due to the ongoing COVID-19 pandemic.

¹³ Hearing Exh. 13.

¹⁴ Hearing Exhs. 14-20.

¹⁵ Hearing Exh. 2.

exhibits on January 13, 2021, and Rebuttal Testimony and Exhibits were filed on January 29, 2021. After having had an opportunity to review the direct and rebuttal testimony and exhibits, the Parties agreed that formal cross-examination of witnesses at evidentiary hearings would not be necessary. The Parties also proposed consensus exhibit list and an index of testimony. Motions to admit the pre-filed testimony and Exhibits were filed in March of 2021.

On June 16, 2021, the Applicant submitted a notice that on or about June 21, 2021, the Applicant will submit a joint application and request for Water Quality Certification to the U.S. Army Corps of Engineers and the siting Board.¹⁶

C. Public Involvement and Comment

The Applicant's public outreach activities are described in detail in the Application.¹⁷ DPS Staff testified that the Applicant has met its PIP goals and has actively encouraged participation from municipal officials and affected local, state, and federal agencies.¹⁸ Nearly all public comments received at the Public Statement Hearing and on DMM system are supportive of the Project and indicate that community members believe the Project will create economic opportunity and provide environmental benefits. DPS Staff testified that 90% of the comments submitted by the public in this proceeding were in favor of the Project.¹⁹ All nineteen individuals who offered

¹⁶ 16 NYCRR §§1000.8(a)(8) and 1000.7(b)(3).

¹⁷ Hearing Exh. 3, Application Exh. 2 and Appx. 2-C.

¹⁸ DPS SPSS Direct at 72-77; Hearing Exh. 3, Application Appx. 2-B.

¹⁹ DPS SPSS Panel Direct at 83.

remarks at the Public Statement Hearings held on October 22, 2020, spoke in favor of the Project.²⁰ The owners of over 75% of the private lands within the Town of Coxsackie's Residential Agricultural-2 zoning district have signed petitions asking the Town to allow the Project in that district.²¹ The record demonstrates that the Project is largely supported locally and that the Applicant has considered and addressed local concerns in the proposed Facility design and Settlement Layout.²²

D. Settlement Layout

Prior to the filing of direct testimony and exhibits by the agencies and intervenor parties, and in an effort to minimize litigation, on December 7, 2020, Flint Mine filed and circulated a proposed Settlement Layout.²³ The Settlement Layout was based on input received from DEC in response to Flint Mine's information requests, and on feedback received from other Parties who had engaged in settlement discussions. The Settlement Layout was designed to avoid and minimize impacts to sensitive environmental resources and to maximize the Facility's efficiency to the extent possible.

²⁰ Applicant Panel at 38.

²¹ Hearing Exh. 42.

²² Applicant Panel Direct at pp. 17-18 and 37-38.

²³ Hearing Exh. 14. That settlement proposal, dated December 4, 2020, included both a narrative description and supporting figures and tables calculating the environmental impacts of the Settlement Layout and comparing it to the project layout originally proposed in the Application. See Hearing Exh. 14, Flint Mine Settlement Layout Memo and Table 2 Impact Calculations.

The December 7, 2020 filing included a Settlement Layout Memo which quantified how the revised proposal would reduce impacts to federal and state wetlands, occupied habitat of threatened and endangered species, and agricultural lands. The information provided was at a level of detail comparable to the original Application Layout.²⁴

On January 11, 2021, the Applicant submitted additional information on the potential temporary and permanent impacts to wetland resources from the Settlement Layout, as well as further analysis of development on steep slopes in the Town of Athens.²⁵ The Applicant also provided information on the Settlement Layout through the discovery process.

On January 13, 2021, the agencies and intervenor parties filed and served their direct testimony and exhibits. That testimony addresses the Applicant's proposed Settlement Layout and the Certificate Conditions and Guidelines for Developing a Site Engineering and Environmental Plan (SEEP) agreed to among the Parties.²⁶ Nearly all Parties have executed

²⁴ Hearing Exh. 14, Flint Mine Settlement Layout Memo and Table 2 Impact Calculations, Figures 2-3 and 6-8. See also Hearing Exh. 18.

²⁵ Hearing Exh. 18.

²⁶ DPS Staff Panel Direct Testimony in Support of Settlement at 27, 31, and 33; Scenic Hudson-Greene Land Trust Direct Testimony of Lee Harper at 5; DAM Direct Testimony of Jason Mulford at 13.

the Settlement Agreement²⁷ and it represents Flint Mine's proposal for Siting Board certification. Flint Mine asserts the Settlement Agreement is supported by a full and complete record including all information needed by the Siting Board to make the findings and determinations necessary for the issuance of a certificate pursuant to PSL §168.

No Party raised any adjudicable issue of fact in this proceeding, with respect to the Settlement Layout or any other topic. Therefore, an evidentiary hearing was not necessary and this case is presented based on the parties' submissions.

III. REQUIRED STATUTORY FINDINGS UNDER PSL §168

A. Article 10 Standards

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 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.²⁸

²⁷ The signatory parties to the settlement agreement include Flint Mine, DPS Staff, DEC, DAM, DOH, the Town and Village of Coxsackie (with exceptions, as discussed as necessary in this order), Town and Village of Athens (same), Friends, and Scenic Hudson. Greene Land Trust and Sleepy Hollow did not sign the settlement agreement but Flint Mine states that the issues they raised are largely addressed and remaining issues could not be resolved through further modifications to the Project layout or the Settlement Agreement.

²⁸ PSL §168(2)(a)-(d).

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.²⁹

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.³⁰ In issuing a certificate, the Siting Board may impose any terms and conditions it deems necessary and the Department of Public Service or the Commission "shall monitor, enforce and administer compliance with any terms and conditions" set forth in the Siting Board's Certificate and Order.³¹

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

²⁹ PSL §168(3)(a)-(e).

³⁰ PSL §168(4)(a)-(g).

³¹ PSL §168(5).

the Siting Board.³² 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.³³

B. Beneficial Addition to Electric Generation Capacity

Before issuing a certificate, the Siting Board must find and determine that a project will be a beneficial addition to the electric generation capacity of the State.³⁴ When deciding this question, we consider, among other things, the facility's consistency "with the energy policies and long-range energy planning objectives and strategies contained in the most recent state energy plan [SEP]."³⁵

Renewable resources are vital to New York's energy future, "providing resilient power, reducing fuel cost volatility, and lowering [greenhouse gas (GHG)] emissions."³⁶ The SEP made renewable energy development a top priority, setting New York on the path to generate 50% of its electricity with renewable sources by 2030.³⁷ Large-scale renewables help power New York's economy and will serve as the backbone to the State's power grid.³⁸ They offer immediate benefits, including

³² 16 NYCRR §1000.12(b).

³³ 16 NYCRR §1000.12(c).

³⁴ PSL §168(3)(a).

³⁵ PSL §168(4)(e).

³⁶ SEP at 69.

³⁷ SEP at 112; Exh. 51 (Application Exhibit 10), p. 1.

³⁸ SEP at 70.

“economic development and jobs for communities across the State, greater stability in customer bills, [and] cleaner air”³⁹

New York established renewable development at the forefront of its energy policy by implementing in the CES Order the renewable target in the SEP.⁴⁰ The chief focus of the CES initiative is on building new renewable resource power generation facilities and reducing total emissions of air pollutants resulting from fossil fuel combustion.⁴¹ The CES Order provides for procurement of environmental attributes from large-scale renewables.⁴²

The State’s efforts to increase renewable generation have only accelerated within the past two years. In early 2019, Governor Cuomo announced that New York would more than double the amount of wind and solar energy generation being developed under the CES.⁴³ The State then enacted one of the nation’s most ambitious climate laws in July 2019: the Climate Leadership and Community Protection Act (CLCPA), which ramps up the State’s renewable energy goals even further, increased “the State’s renewable energy penetration goal to 70% by 2030, with 6 GW of solar generation by 2025” and 100% carbon-free electricity by 2040.⁴⁴

³⁹ Exh. 51 at 1 (quoting SEP at 71).

⁴⁰ CES Order at 93-95.

⁴¹ Exh. 51 at 1 (quoting CES Order at 3, 78).

⁴² Exh. 51 at 1-2 (citing CES Order at 16).

⁴³ Governor Cuomo Announces Green New Deal Included in 2019 Executive Budget, Governor Andrew M. Cuomo (Jan. 17, 2019), <https://www.governor.ny.gov/news/governor-cuomo-announces-green-new-deal-included-2019-executive-budget>.

⁴⁴ Exh. 51 at 2; see CLCPA §4 (amending PSL §66-p(2)); SEP Climate Act Amendment.

The Siting Board has previously determined that the CLCPA applies to the consideration of Article 10 certificate applications. The Siting Board has also recognized that, when considering and issuing permits, licenses, and other administrative decisions, the CLCPA requires all State agencies to consider whether their decisions are consistent with the attainment of the Statewide greenhouse gas emission limits.⁴⁵

The Project will advance New York's emissions goals because it is a renewable energy resource and will reduce GHG emissions and help combat the harmful effects of climate change, consistent with the SEP and CLCPA. Flint Mine has forecasted that the Project will reduce annual CO² emissions by approximately 45,027 tons.⁴⁶ Emissions of Nitrogen Oxides are forecasted to be reduced by eight tons.⁴⁷ DPS Staff did not dispute these estimates.⁴⁸ DPS Staff testified that the Project will provide benefits consistent with State policies on renewable energy generation and will help the State meet its regional greenhouse gas emissions goals.⁴⁹ No party has introduced evidence through an expert witness disputing any of these conclusions.

Flint Mine's production cost modeling demonstrates that operation of the Facility will have only a *de minimis* impact on must-run resources, such as hydroelectric, nuclear,

⁴⁵ Case 16-F-0328, Number Three Wind LLC, Order on Rehearing (issued February 13, 2020), at 14 (citing CLCPA §7(2)) (internal quotation marks omitted).

⁴⁶ Hearing Exh. 4 (App. Exh. 8, Table 8-1).

⁴⁷ Hearing Exh. 4 (App. Exh. 8, Table 8-1).

⁴⁸ Staff SPSS Testimony at 48.

⁴⁹ SPSS Testimony at 44-45.

and other renewable energy facilities, and will not result in any material impacts to existing co-generation facilities.⁵⁰

Overall, the record demonstrates that the GHG emissions reductions from the Project will be considerable. Moreover, the Project will meaningfully contribute to the achievement of the emission reduction goals set forth by the SEP, CES Order, and the CLCPA. Based on these factors, we find that the Project will be a beneficial addition to the electric system.

C. Public Interest Standard

1. Air Quality and Greenhouse Gas Emissions Reductions

Unlike fossil fuel generation plants, solar facilities generate electricity directly from sunlight and without emitting air pollutants. Therefore, the Project will not generate air emissions and does not require any federal, State or local air emissions permits. The Project is expected to displace air emissions from conventional power plants. The Applicant's analysis shows that, on an annual basis, the Project is expected to displace as much as 45,027 short tons of carbon dioxide (CO₂), 18 short tons of nitrogen oxide (NO_x), and 0.02 short tons of sulfur dioxide (SO₂) from conventional power plants on an annual basis.⁵¹

2. Economic and Local Benefits

The development, construction, and operation of renewable energy facilities brings significant benefits to the host communities, surrounding regions, and the State. Because

⁵⁰ See Hearing Exh. 4 (Application Exhibit 8, Table 8-5)

⁵¹ Hearing Exh. 2 (Exhibit 17).

renewable energy facilities capture their fuel locally, a significant amount of the economic benefit of renewable energy facilities accrues to local participating landowners, who often have strong connections to the land and to the local community. As a result, direct economic benefits accruing to participating landowners are often reinvested locally or regionally, and provide local and regional economic support.

New York State has repeatedly emphasized the positive socioeconomic development opportunities associated with increased private investments in renewable energy development. Over the past decade, a key goal of the State's energy policies has been increasing such private investment in New York's clean energy economy. These policies recognize the direct and indirect economic benefits of increased private investment in clean energy technologies.⁵²

In this case, the record shows that the Project will provide such benefits to the host communities and the State.⁵³ As required by PSL Article 10, Exhibit 27 to the Application includes detailed information about the beneficial socioeconomic impacts of the Project.⁵⁴ By way of both direct and indirect benefits, prior to construction the Applicant will purchase as much as 90% of the land needed for the Project directly from current landowners, resulting in a direct infusion of almost \$15 million into the local economy.⁵⁵ This is a significant direct benefit to the participating landowners in this case. The lands

⁵² Hearing Exh. 3 (Application Exh. 10(g)).

⁵³ Hearing Exhs. 3-5 (Application Exh. 27).

⁵⁴ Hearing Exh. 3 (Application Exh. 27).

⁵⁵ Application Exh. 27 at 1.

in the Project area are ill-suited to agriculture and the infrastructure to support family farms no longer exists in the area.⁵⁶ The Project will allow participating landowners to realize significant value from their land resources and this, in turn, will accrue to the local taxing jurisdictions and local businesses in Coxsackie and Athens. This immediate and significant increase in the value of the Project lands will be grounded upon the energy of the sun, a clean and sustainable resource.

Other significant Project benefits will include the direct and indirect creation of jobs in construction and construction-related services, related supply chain jobs, jobs associated with induced impacts, and annual revenues for local economies during construction.⁵⁷ In addition, local governments will receive significant payments in lieu of taxes (PILOT) over 25 years that will be distributed to the Towns of Athens and Coxsackie, Greene County, the Coxsackie-Athens Central School District, the West Athens-Limestreet Fire Company and Coxsackie Hose Company #3, and the Coxsackie and Athens Libraries.⁵⁸ For example, payments of special district taxes to fire and library districts are estimated to total an additional \$192,257 and \$243,585 annually, respectively.⁵⁹

At the same time, the Facility will impose little, if any, additional operating or infrastructure costs on the local municipalities because solar facilities require limited police,

⁵⁶ Application Appendix 4-a.

⁵⁷ Hearing Exh. 3 (Application Exh. 27).

⁵⁸ Hearing Exhs. 3-5 (Application Exh. 27(h), and Appx. 27-A).

⁵⁹ Applicant Panel at 16.

fire and emergency medical services.⁶⁰ Damage to local roads relating to construction and operation of the Facility will be addressed under Road Use Agreements with the affected towns and county.⁶¹

Although the Town of Coxsackie testified that the Project will not provide any local benefits beyond the proposed PILOT agreement,⁶² this is not supported by the record. The record shows that this Facility will be a major investment in Coxsackie and will provide beneficial economic opportunities for workers and local firms during construction and operation of the Facility.⁶³ Moreover, the Applicant will purchase and conserve the 62.5-acre Flint Mine Hill parcel, and create a nearly 300-acre grassland conservation area improved with a recreational walking trail near Flint Mine Road.⁶⁴ These significant open space conservation benefits are in addition to the direct financial benefits to participating landowners.⁶⁵

Based on this record, we find that the construction and operation of the Project is in the public interest. It is consistent with State policies and law and will provide

⁶⁰ Hearing Exh. 3 (Application Exh. 27(f)-(g), and (k)).

⁶¹ Hearing Exh. 2, Certificate Condition 3(d); Hearing Exhs. 3-5 (Application Exh. 27(g)).

⁶² Coxsackie Panel at 10-11.

⁶³ Applicant Direct at 16-19; Hearing Exh. 3 (Application Exh. 27).

⁶⁴ Applicant Panel at 35-36.

⁶⁵ Applicant Panel at 16-19, and 35. To confirm the economic benefits of the Project, within 15 months of the Project becoming operational, the Applicant will file a tracking report identifying the actual number of jobs created and actual tax payments to local jurisdictions. Hearing Exh. 2, Certificate Condition 34.

significant benefits to the host communities and the surrounding region and the State.

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

1. Ecology, Air, Ground and Surface Water, Wildlife, and Habitat

a. Ecology, Wildlife and Habitat

i. Grassland Birds

PSL §168(2)(a) requires the Siting Board to make explicit findings regarding the potential environmental impacts of construction and operation of a project on wildlife. 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 laws protecting wildlife.⁶⁶ The State Endangered Species Act and its implementing regulations are the environmental law provisions applicable to this Project.⁶⁷

A portion of the Facility area is located in the DEC designated Cossackie Flats Winter Raptor Concentration Area (WRCA).⁶⁸ The Cossackie Flats WRCA includes predominantly open field communities that serve as habitat for grassland bird species.⁶⁹ One State listed endangered grassland bird species, the Short-eared Owl, and one State listed threatened species,

⁶⁶ PSL §168(3)(c) and (e).

⁶⁷ ECL §11-0530; 6 NYCRR Part 182.

⁶⁸ DEC Staff Initial Brief at 6.

⁶⁹ DEC Staff Initial Brief at 6.

the Northern Harrier, have been documented within the Project area.⁷⁰

The Application details the two types of facility related impacts that may affect threatened and endangered grassland bird species: construction related impacts that could result in incidental mortality, and operational impacts related to adverse modification of habitat.⁷¹ To address construction related impacts, the Applicant has proposed a settlement layout that reduces the Facility's impacts to occupied habit by 34% and created a much larger, centralized and continuous core habitat area located north and south of Flint Mine Road.⁷² In addition, the Applicant will implement various measures, including seasonal work windows, on-site environmental monitor surveys as well as the reporting and recording of species observations during construction, in order to avoid and minimize risk to these species.⁷³

Post-construction, the Applicant has agreed to restoration requirements for occupied habitat areas that are temporarily disturbed during construction, avoidance and minimization measures to be outlined in the Net Conservation Benefit Plan (NCBP) and a post-construction avian monitoring plan for the Facility site.⁷⁴

To address potential operational impacts, the Applicant has removed and relocated some Project components in

⁷⁰ Applicant Initial Brief at 26-27.

⁷¹ Applicant Initial Brief at 27.

⁷² Applicant Initial Brief at 27-28.

⁷³ Applicant Initial Brief at 27-28.

⁷⁴ Applicant Initial Brief at 28.

the Settlement Layout as well as proposed Certificate Conditions, all in an effort to minimize impacts to identified habitat.⁷⁵

DEC Staff and Scenic Hudson have indicated that taken together, the Settlement Layout, NCBP, Certificate Conditions and SEEP Guide ensure compliance with 6 NYCRR Part 182.⁷⁶ We note that while DEC Staff disagrees with the Applicant regarding the methodologies utilized in this matter to develop the mitigation plan for threatened and endangered grassland birds, DEC Staff concludes that the settlement proposal satisfies the requirements of Part 182.⁷⁷ Ultimately, the settlement proposal requires the Applicant to conserve and manage 297 acres of winter raptor habitat, which is in excess of the minimum customarily required by DEC.⁷⁸ Accordingly, we take no position on the methodology utilized by the Applicant in the development of mitigation in this matter.

No party sought to adjudicate any issues relating to threatened or endangered grassland bird species. Based upon our review of the record, we conclude that any adverse environmental effects to threatened or endangered grassland bird species from 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 laws and regulations.

⁷⁵ Applicant Initial Brief at 28-29.

⁷⁶ DEC Staff Initial Brief at 10.

⁷⁷ DEC Staff Reply Brief at 1-2.

⁷⁸ Applicant Initial Brief at 30.

ii. Vegetation and Wildlife Other Than Grassland Birds

Impacts to plant communities from construction of the Facility relate to vegetation clearing and disturbance from construction as well as permanent loss of vegetated habitats as a result of Facility fabrication.⁷⁹

The Applicant indicates that the Project has been sited to avoid, minimize and mitigate impacts to vegetation.⁸⁰ The Applicant has selected previously disturbed successional field, avoided wetlands, sited access roads on existing roads and farm lanes when possible and confined areas of disturbance to the smallest feasible area.⁸¹ Wherever practical, the Applicant has avoided areas identified as containing threatened or endangered plant species. Design measures include use of overhead collection lines, messenger-supported collection wiring, and horizontal directional drilling in areas with wetland communities.⁸² A stormwater pollution prevention plan would be implemented, as well as long term vegetation management in accordance with the Facility's Operation and Maintenance (O&M) Plan.⁸³

Construction related impacts to wildlife will be limited to incidental injury and mortality due to construction activity, habitat disturbance and displacement, however, these impacts are not anticipated to significantly affect wildlife

⁷⁹ Applicant Initial Brief at 32.

⁸⁰ Applicant Initial Brief at 33.

⁸¹ Applicant Initial Brief at 33.

⁸² Applicant Initial Brief at 33.

⁸³ Hearing Exhibit 3, Application Exhibit 22(c), Application Appendix 23-A, Application Appendix 5-A.

populations.⁸⁴ The Applicant indicates that the Project has been sited to avoid, minimize and mitigate impacts to wildlife.⁸⁵ In addition to siting the Facility to avoid sensitive habitats and minimize disturbance, the Applicant has proposed Certificate Conditions to further avoid, minimize and mitigate potential impacts to ecological resources.⁸⁶

DEC Staff notes that with respect to the threatened Northern Long-eared Bat (*Myotis septentrionalis*) (NLEB), Project construction, including tree-clearing during certain times of the year in NLEB occupied habitat, can result in adverse impacts to NLEB, including direct mortality. DEC Staff also notes, however, that pursuant to proposed Certificate Conditions and SEEP Guide provisions, the Applicant will adhere to all tree-clearing limitations in NLEB occupied habitat, and thereby avoid any potential take of NLEB. Accordingly, DEC Staff states that based upon the agreed-upon Certificate Conditions and SEEP Guide provisions related to NLEB, Project construction and operation will comply with ECL Article 11 and 6 NYCRR Part 182.⁸⁷

No party sought to adjudicate issues relating to vegetation, wildlife and habitat. Based upon our review of the record, we conclude that any adverse environmental effects of the construction and operation of the Facility related to vegetation, wildlife and habitat will be minimized or avoided to the maximum extent practicable, and that the Facility is designed to operate in compliance with applicable State laws and

⁸⁴ Applicant Initial Brief at 32; Hearing Exh. 3.

⁸⁵ Applicant Initial Brief at 34.

⁸⁶ Hearing Exhibit 2.

⁸⁷ DEC Staff Initial Brief at 13-14.

regulations.

iii. Invasive Species

Article 9 of the ECL requires that projects subject to State review be examined for any risks posed to the State's environment by invasive species, and that where practicable, invasive species be prohibited and actively eliminated at project sites.⁸⁸

Flint Mine Solar's application materials include field studies conducted during portions of the 2017, 2018, and 2019 growing season documenting the presence and extent of invasive species in the Project area.⁸⁹ The field studies uncovered nineteen invasive plant species. No invasive insects were observed.⁹⁰

To address invasive plant species, the Applicant prepared an Invasive Species Prevention and Management Plan (ISPMP) and has committed to conduct a pre-construction baseline survey to establish the distribution and cover of invasive species located in areas that will be impacted by construction of the Facility.⁹¹ The ISPMP sets forth the Applicant's proposed invasive species control measures and monitoring, which are intended to prevent the introduction or spread of invasive species within the Project area.⁹² As set forth under proposed Certificate Condition 55, the Applicant will submit the final

⁸⁸ ECL §§9-1701, 9-1709(2)(b)(iv).

⁸⁹ Applicant Initial Brief at 36.

⁹⁰ Hearing Exhibit 3, Application Exhibit 22 at 11-12 and Appendix 22-D (Invasive Species Prevention and Management Plan [ISPMP]).

⁹¹ Applicant Initial Brief at 36.

⁹² Hearing Exhibit 3, Application Appendix 22-D.

ISPMP by commencement of construction.

No party sought to adjudicate issues relating to invasive species, nor did any party raise such issues in their respective closing briefs. Based upon our review of the record, we conclude that the proposed Project will comply with ECL Article 9 and will avoid or mitigate impacts related to invasive species to the maximum extent practicable.

iv. Agricultural Resources

In support of the Application, the Applicant performed a detailed study that investigated the quality and viability of the agricultural resource base in the Facility area and determined that the Facility area has been undergoing a transition from agricultural use.⁹³ Only approximately 232 acres of lands within the 1,638 acre Facility area were utilized for agriculture in the past 5 years.⁹⁴

The Applicant's proposed settlement layout will impact approximately 79 acres of active agricultural lands.⁹⁵ However, none of these impacts are to prime agricultural soils, defined as lands within the New York Agricultural Land Classification of mineral soil groups 1-4.⁹⁶ As a result of this, AGM Staff has indicated that construction of the Facility at this location

⁹³ Hearing Exhibit 3; Application Appendix 4-B.

⁹⁴ Applicant Initial Brief at 38.

⁹⁵ Applicant Initial Brief at 38.

⁹⁶ AGM Initial Brief at 11.

does not propose a significant loss of agricultural resources.⁹⁷

In addition, the Applicant and the parties have agreed to Certificate Conditions and SEEP Guide provisions to further avoid and minimize impacts to the small areas of active agricultural lands that might occur during construction.⁹⁸

No party sought to adjudicate issues relating to agricultural resources, nor did any party raise such issues in their respective closing briefs. Based upon our review of the record, we conclude that the construction and operation of the proposed Project will avoid or minimize impacts to agricultural resources to the maximum extent practicable.

b. Air Impacts

In accordance with 16 NYCRR §1001.17, an applicant must demonstrate that the proposed facility will comply with applicable federal, State, and local regulatory requirements regarding air emissions. Application Exhibit 17 discusses air quality and potential air emissions related to the Project.⁹⁹

Because solar facilities generate electricity without releasing pollutants into the atmosphere, the Applicant states

⁹⁷ In its brief, AGM Staff requests for the first time in this proceeding that the NCBP be revised to exclude active hayfields proposed for use as grassland habitat mitigation areas from the mowing restrictions required by DEC for grassland mitigation lands. As we have noted in prior proceedings, objections regarding the draft NCBP are not ripe for review, and may be raised and addressed when the final NCBP is submitted during the Compliance Filing phase of this proceeding (Case No. 17-F-0182, Application of Mohawk Solar LLC - Solar Electric Generation Siting, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued Nov. 19, 2020) at 39).

⁹⁸ Applicant Initial Brief at 42.

⁹⁹ Hearing Exhibit 3, Application Exhibit 17.

that the proposed Facility will not require an air permit. Several air emission sources used on-site during construction, such as one or more fossil fuel-fired generators, also will not require an air permit or registration.¹⁰⁰

The Applicant states that, during construction, air quality impacts will be typical of such impacts from a construction project, and will include emissions from construction equipment and vehicles, as well as dust from site preparation and construction traffic. These emissions would be temporary and minor. To minimize or avoid adverse impacts, fossil fuel-fired generators will not be left idling when not in active use, and the generators will be maintained in accordance with manufacturer instructions or best management practices.¹⁰¹

Once constructed, the Facility will not generate air emissions during normal operations. The Applicant states that the Facility would instead displace air emissions from conventional power plants.¹⁰²

DPS Staff notes that the Facility does not require any federal, State or local air emissions permits. DPS Staff also notes the Applicant's analysis that the Facility would annually displace approximately 45,027 short tons of carbon dioxide (CO₂).¹⁰³

No party sought to adjudicate issues relating to air quality impacts, nor did any party raise such issues in their respective closing briefs. Based on the record, we conclude

¹⁰⁰ Hearing Exhibit 3, Application Exhibit 17 at 1.

¹⁰¹ Hearing Exhibit 3, Application Exhibit 17 at 2.

¹⁰² Hearing Exhibit 3, Application Exhibit 17 at 2-3.

¹⁰³ DPS Staff Initial Brief at 18-19.

that the Facility's potential impacts to air quality will be avoided, minimized or mitigated to the maximum extent practicable, and that the construction and operation of the Facility will comply with all applicable State air pollution control laws.

c. Water Resources

i. 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 their use and development consistent with the general welfare and beneficial economic, social and agricultural development of the state.¹⁰⁴

The Applicant states that it sought to avoid and minimize impacts to freshwater wetlands wherever practicable. The Applicant delineated 303.8 acres of wetlands within the Facility area.¹⁰⁵ The Applicant developed a settlement layout that reduced impacts to wetlands over which DEC has jurisdiction to 0.1 acres of temporary impacts and 0.1 acres of permanent impacts, attributable to access roads, collection lines and other linear facility components which require crossing these areas.¹⁰⁶ Under the settlement layout agreed to by the parties,

¹⁰⁴ ECL §24-0103; 6 NYCRR §663.1.

¹⁰⁵ Generally, the Applicant and DEC were not in agreement regarding the classification of NYS jurisdictional wetlands in the Facility site. However, in the interests of settlement, the Applicant revised its layout and removed PV arrays from all wetlands over which DEC claimed jurisdiction. Applicant Initial Brief at 43-44.

¹⁰⁶ Applicant Initial Brief at 44.

impacts to wetland adjacent areas was reduced to 12.7 acres of temporary impacts and 2.2 acres of permanent impacts.¹⁰⁷

To address unavoidable wetland impacts, the Applicant and parties have agreed to Certificate Conditions and a SEEP Guide that include provisions related to wetland resources, including federally regulated wetlands.¹⁰⁸ In addition, the Applicant, in consultation with DEC and DPS, will prepare a wetland mitigation plan.¹⁰⁹

The Applicant states that it generally avoided wetland and stream impacts by selecting narrow wetland swales or marginal quality agricultural wetlands as locations for crossings of collection lines or access driveways and using horizontal directional drilling or overhead collection lines in locations where wetland or stream crossings are necessary.¹¹⁰

DEC Staff also concluded that the Applicant's adherence to proposed Certificate Conditions 64, 71, 74, and 75 will assure compliance with the requirements of the ECL and its implementing regulations.¹¹¹

Upon our review of the record, we conclude that any adverse environmental effects on freshwater wetlands from 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 laws and regulations.¹¹²

¹⁰⁷ Applicant Initial Brief at 44.

¹⁰⁸ Applicant Initial Brief at 45.

¹⁰⁹ Applicant Initial Brief at 45.

¹¹⁰ Applicant Initial Brief at 44-45.

¹¹¹ DEC Staff Initial Brief at 21.

¹¹² ECL Article 24; 6 NYCRR Part 663.

ii. Sleepy Hollow Lake

Sleepy Hollow Lake is a large man-made lake in the Towns of Athens and Cossackie and the Village of Athens, separated from the Facility by numerous man-made barriers including State Route 9, the CSX railroad line, Flats Road, and Farm to Market Road.¹¹³

The Sleepy Hollow Lake Association of Property Owners (SHLAPO) raised issues regarding the Facility's potential impacts to the Lake from potential stormwater runoff, the siting of facility components in non-DEC jurisdictional wetlands and the potential use of pesticides, herbicides, fertilizers or release of petroleum or other contaminants during construction.¹¹⁴

To address SHLAPO concerns, the Applicant prepared a robust preliminary Stormwater Pollution Prevention Plan, committed to best management practices, and Certificate Conditions designed to minimize and mitigate potential impacts to Sleepy Hollow Lake.¹¹⁵ Moreover, given the proposed Settlement Layout, the record in this matter supports a determination that the Applicant has avoided and minimized impacts to Sleepy Hollow Lake to the maximum extent practicable.

Based on this record, we conclude that any adverse environmental effects on Sleepy Hollow Lake from 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 laws

¹¹³ Applicant Initial Brief at 46.

¹¹⁴ Applicant Initial Brief at 46-47.

¹¹⁵ Applicant Initial Brief at 49-50.

and regulations

iii. Streams and Other Waterbodies

ECL Article 15 and the implementing regulations at 6 NYCRR Part 608 govern the disturbance of protected streams. Pursuant to Article 15, State approval is required for the disturbance of a stream with a classification of C(T) or higher.

The Applicant delineated streams and waterbodies, and characterized projected impacts to these resources within the Facility area.¹¹⁶ The Facility area contains three streams designated as Class C by DEC, including Cocksackie Creek, Murderers Creek and their respective tributaries.¹¹⁷ However, construction and operation of the Facility would not result in any impacts to DEC jurisdictional streams.¹¹⁸

Project construction will result in approximately 967 linear feet of temporary impacts and 291 linear feet of permanent impacts to non-DEC jurisdictional streams.¹¹⁹ Crossing of these streams will be conducted in accordance with best management practices. Moreover, the Applicant and settlement parties have agreed to Certificate Conditions and SEEP Guide provisions that address stream and waterbody resources.¹²⁰

No party sought to adjudicate issues relating to streams, nor did any party raise such issues in their respective closing briefs. Based upon our review of the record, we conclude that any adverse environmental effects on streams and waterbodies from the construction and operation of the Facility

¹¹⁶ Applicant Initial Brief at 52.

¹¹⁷ Applicant Initial Brief at 52.

¹¹⁸ Applicant Initial Brief at 52.

¹¹⁹ Applicant Initial Brief at 52.

¹²⁰ Applicant Initial Brief at 52-53.

will be minimized or avoided to the maximum extent practicable and that the Facility is designed to operate in compliance with ECL Article 15 and 6 NYCRR Part 608.

iv. Groundwater

The Applicant has indicated that as a result of the Facility design, impacts to groundwater resources, including drinking water resources, have been avoided, minimized, and mitigated to the maximum extent practicable.¹²¹ The Applicant has agreed to Certificate Conditions prohibiting the installation of certain Facility components and certain construction activities within specified distances of drinking water wells.

In addition, the Facility is not expected to have significant adverse environmental impacts on drinking water resources including public or private wells. No known public water supply wells or intakes occur within five miles of the Facility. No blasting for construction of this Facility is anticipated.¹²²

Finally, Certificate Conditions agreed to by the parties will ensure that construction of the Facility will not have a significant adverse impact on residential water wells, or groundwater quality or quantity.¹²³

No party sought to adjudicate issues relating to groundwater or water wells, nor did any party raise such issues in their respective closing briefs. Based upon our review of the record, we conclude that any adverse environmental effects

¹²¹ Applicant Initial Brief at 53-54.

¹²² Applicant Initial Brief at 55.

¹²³ Hearing Exhibit 2, Certificate Condition 72.

on groundwater or existing water wells from 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 laws and regulations.

v. Section 401 Water Quality Certification

The Project will require a water quality certification (WQC) pursuant to Section 401 of the federal Clean Water Act (Section 401). The Applicant indicates that it intends to file a joint permit application with the United States Army Corps of Engineers (ACOE) under Clean Water Act Section 404 and a request for a WQC from the Siting Board. Notices and service of the WQC application would be made in accordance with 16 NYCRR §1000.8.¹²⁴

To obtain a WQC, the Applicant must demonstrate that the Project will comply with State water quality standards under 6 NYCRR §608.9. The Applicant states that it has agreed with the parties to Certificate Conditions that require the provision of additional information to the Siting Board and parties relating to the ACOE and WQC submissions.¹²⁵ DEC Staff has indicated that the Applicant's proposed Certificate Conditions and SEEP Guide capture all of DEC's recommendations to ensure the Project complies with the State water quality program pursuant to Section 401.¹²⁶

2. Public Health, Safety and Security

a. Noise and Vibration

The Applicant has fully evaluated the potential noise and vibration impacts associated with the construction and

¹²⁴ Applicant Initial Brief at 76.

¹²⁵ Applicant Initial Brief at 76.

¹²⁶ DEC Staff Initial Brief at 21-22.

operation of the Facility.¹²⁷ Flint Mine has proposed noise limits that appropriately avoid and minimize potential noise impacts from the Facility, are attainable and protective of human health and the environment, and are consistent with recent Siting Board cases.¹²⁸ Potential noise impacts resulting from the Settlement Layout, and compliance with the recommended noise mitigation design goals, were evaluated by the Applicant based on the revised inverter locations.¹²⁹ Flint Mine's analysis confirmed that the Facility, as designed in the Settlement Layout, will meet the noise limits agreed upon by the parties to the Settlement.¹³⁰

The settling parties have stipulated to the Certificate Conditions and SEEP Guide provisions related to noise limits, design goals, and handling of noise-related complaints.¹³¹ In addition, the Applicant and DPS Staff agreed upon a Facility Communications and Complaint Resolution Plan containing provisions for addressing noise-related complaints.¹³² No other party raised issues related to noise and vibration.

We conclude that sound impacts of the construction and operation of the Facility will be avoided or minimized to the maximum extent practicable.¹³³

¹²⁷ Hearing Exh. 7 (Application Exh. 19 and Appendix 19-A, Pre-Construction Noise Impact Assessment; Hearing Exh. 16 (Settlement Layout Sound Modeling Addendum).

¹²⁸ Hearing Exh. 2; Certificate Condition 58.

¹²⁹ Hearing Exh. 16.

¹³⁰ Flint Mine Panel Testimony at 6-7.

¹³¹ Hearing Exh. 2.

¹³² Hearing Exh. 20; DPS SPSS Panel Testimony at 61-62.

¹³³ PSL §168(2)(c) and (3)(c).

b. Construction and Operation

The information in the record supports a finding that impacts during construction have been avoided, minimized and/or mitigated to the maximum extent practicable.¹³⁴ To ensure the safety of construction and operations personnel and the security of the Facility, the Applicant has developed and will implement plans for site security, worker safety, and emergencies.¹³⁵ The Applicant submitted the Site Security Plan to the New York State Department of Homeland Security, pursuant to 16 NYCRR §1001.18(d), and to Greene County and local emergency responders.¹³⁶

Further, the Applicant has consulted with local emergency responders and will coordinate with these officials during construction and operation.¹³⁷ The settling parties have agreed to specific commitments in Certificate Conditions 21 and 41-43 related to coordination with, and notification of, local emergency departments during construction and operations.¹³⁸ No party raised issues with respect to this topic in their testimony.

In accordance with the Article 10 regulations,¹³⁹ Flint Mine developed a preliminary Quality Assurance and Control Plan

¹³⁴ Hearing Exh. 3 (Application Exhs. 12, 18, 25, and Appx 25-A).

¹³⁵ Hearing Exh. 3, Appx 5-A (Preliminary Operations and Maintenance Plan); Appx 18-A (Preliminary Site Security Plan); Appx 18-B (Preliminary Emergency and Fire Response Plan); and Appx 18-C (Preliminary Health and Safety Plan).

¹³⁶ Hearing Exh. 3 (Application Exh. 18(d) & (h)).

¹³⁷ Hearing Exh. 3 (Application Exh. 18(h)); and Hearing Exhs. 28 and 41.

¹³⁸ Hearing Exh. 2.

¹³⁹ 16 NYCRR §1001.12.

(QA/QC Plan) for monitoring and assuring that the Facility will comply with all applicable design, engineering, and installation standards and criteria.¹⁴⁰ The Record includes an overview of the Facility construction process and measures to be taken to avoid, minimize and mitigate impacts during construction.¹⁴¹ For example, the Settlement Parties have agreed to a Certificate Condition specific to avoiding, minimizing and mitigating construction noise.¹⁴² The Applicant will provide construction notices to the Town and County, emergency responders, and the public at large¹⁴³ and will provide contact information to the public for obtaining more information or submitting complaints related to construction activities.¹⁴⁴ The Applicant and DPS agreed to a Facility Communications and Complaint Resolution Plan for addressing complaints, including complaints during construction.¹⁴⁵ To ensure the public is aware of how important notices will be issued, and how a complaint may be submitted, the Applicant will file the final Facility Communications and Complaint Resolution Plan with the Siting Board and host municipalities, and will also provide copies to local document

¹⁴⁰ Hearing Exh. 3 (Application Exh. 12 and Appendix 12-A). The final site-specific QA/QC Plan will be developed once the balance of plant contractor has been selected and Facility construction proceeds.

¹⁴¹ Hearing Exh. 3 (Application Exh. 12).

¹⁴² Hearing Exh. 2 (Certificate Condition 70).

¹⁴³ Hearing Exh. 2 (Conditions 21-25, 59-60).

¹⁴⁴ Hearing Exh. 2 (Conditions 21-22); Hearing Exh. 3 (Application Appx. 12-C, Facility Communications and Complaint Resolution Plan).

¹⁴⁵ Hearing Exh. 20 (Appx. 12-C [Rev 2]).

repositories.¹⁴⁶

The record information described above provides a sound basis for finding that the construction and operational impacts of the Project will not adversely impact public health or safety. Accordingly, we find that the adverse environmental effects of the construction and operation of the Facility related to public health, safety, and security have been avoided or minimized to the maximum extent practicable.¹⁴⁷

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

Article 10 requires that we make findings regarding cultural, historic, and recreational resources, including aesthetic and scenic values and any significant, adverse impacts that the Project may create.¹⁴⁸ The impact of construction and operation of the Facility on cultural, historic, and recreational resources is addressed in Application Exhibit 20.¹⁴⁹

The Applicant supplemented its analysis of potential cultural resource impacts in conjunction with its proposal of the Settlement Layout.¹⁵⁰ Consistent with 16 NYCRR §1001.20, the Applicant consulted with Office of Parks, Recreation, and Historic Preservation (OPRHP) to develop the scope and

¹⁴⁶ Hearing Exh. 2, Condition 40.

¹⁴⁷ PSL §168(2)(b), (3)(c).

¹⁴⁸ PSL §168(2)(c).

¹⁴⁹ Hearing Exh. 3-5 (Application Exh. 20; Appx 20- A, SHPO Correspondence; 20-B, Phase 1B Archeological Survey Scope of Work; 20-C, Phase 1B Archaeological Survey Report; 20-D, Unanticipated Discovery Plan; 20-E, and Historic Resources Survey Report); Hearing Exh. 6 (Supplement to Appx. 20-A, Additional SHPO Correspondence); Hearing Exhs. 63-64.

¹⁵⁰ Hearing Exh. 14 (Settlement Layout Memo); Hearing Exh. 16 (Figure 6, Supplemental Archeological Reconnaissance).

methodology for the resource studies conducted for the Facility and included with the Application.¹⁵¹ As discussed below, the Application includes the information needed for us to make its required findings under PSL §168(2)(c).

a. Archeological Resources

Beginning during Facility development, the Applicant examined the archaeological sensitivity of the Project area and the potential impacts of construction and operation of the Facility on archeological resources.¹⁵² Approximately 70% of the Facility Area is within the Flint Mine Hill Archaeological District, which is listed in the State and National Registers of Historic Places.¹⁵³ The Applicant engaged in extensive outreach, formal and informal consultations with the New York State Historic Preservation Office (SHPO), the Stockbridge Munsee Band of Mohicans, the Southold Indian Museum, and the Archeological Conservancy to discuss cultural and archeological resources, and potential methods for avoiding, minimizing and mitigating impacts to such resources in the area.¹⁵⁴

To identify potential archaeological sites within the Facility Site, the Applicant completed a Phase IB archaeological survey in accordance with a Phase IB archaeological scope of work which was reviewed and approved by the OPRHP/SHPO.¹⁵⁵ In December 2020, the Applicant conducted a supplemental archeological reconnaissance on the Facility Site to evaluate any additional

¹⁵¹ Hearing Exh. 3 (Application Exh. 20)

¹⁵² Hearing Exh. 3 (Application Exh. 20 and Appx 2-C).

¹⁵³ Hearing Exh. 3 (Application Exh. 20).

¹⁵⁴ Hearing Exh. 3 (Application Exh. 20 and Appx 2-C).

¹⁵⁵ Hearing Exh. 3 (Application Appx. 20-B); Hearing Exh. 5 (Application Appx 20-C).

areas proposed for PV arrays in the Settlement Layout and reported the results of that reconnaissance in the Record.¹⁵⁶ No quarries or other readily visible archeological resources were observed in the additional areas surveyed.¹⁵⁷

The Applicant prioritized design and construction measures to minimize soil disturbance and thereby minimize potential impacts to archaeological sites.¹⁵⁸ While the Applicant changed the proposed locations of some Facility components in the Settlement Layout, Flint Mine intends to install the Facility utilizing the same measures to minimize disturbance described in the Application.¹⁵⁹ The measures to be used to avoid soil disturbance during construction are described in detail in the Application. In most instances the Applicant will employ pile-driven posts and low-profile racking systems. These are the least intrusive systems available for mounting PV modules and will help minimize soil disturbance from excavation, concrete or other foundations.¹⁶⁰ The Applicant also will utilize racking-integrated wire management and messenger-supported wiring systems for collection lines among the PV modules. These methods of wire management which also avoid soil disturbance. Horizontal directional drilling (HDD) or overhead collection lines will be employed in some limited locations to minimize impacts to archeologically sensitive

¹⁵⁶ Hearing Exh. 14 and 16.

¹⁵⁷ Id.

¹⁵⁸ Hearing Exh. 14 (Supplement Layout Memo).

¹⁵⁹ Id. See Hearing Exh. 3 (Application Exh. 20).

¹⁶⁰ Hearing Exh. 3 (Application Exh. 20).

areas.¹⁶¹ The Applicant will use earthen berms for equipment pad foundations and earthen dikes as stormwater management practices to minimize the need for excavation. Flint Mine will also install pervious gravel access driveways to reduce soil disturbance and minimize the need for excavation for additional stormwater management features that might otherwise be needed to manage runoff from impervious access roads.¹⁶²

To mitigate unavoidable impacts from Facility construction and operation upon these resources, the Applicant is also investigating the purchase of a portion of the nearby Flint Mine Hill archaeological site¹⁶³ and is committed to implementing the mitigation measures for cultural resources described in the Application.¹⁶⁴ The Applicant is consulting with other key stakeholders on the proposed mitigation plans, and will include details of its final mitigation plan in a Cultural Resources Avoidance, Minimization and Mitigation Plan, which will be submitted as a compliance filing in this proceeding.¹⁶⁵

No parties have identified issues relating to the potential archaeological impacts associated with the Facility.

¹⁶¹ Hearing Exh. 3 (Application Exh. 20; Application Appx. 11-A, sheet E-5.3 (describing specific locations)).

¹⁶² Hearing Exh. 3 (Application Exh. 20).

¹⁶³ Hearing Exh. 3 (Application Exh. 20 and Appx 2-C). The New York State Office of Historic Preservation has accepted Flint Mine's proposal to purchase the 62.5-acre Flint Mine Hill parcel for transfer into a permanent conservation easement, or to redraft the 1978 Flint Mine Hill Archeological District nomination. Hearing Exh. 15 (Supplement Layout Memo); Hearing Exh. 63-64.

¹⁶⁴ Hearing Exh. 15 (Supplement Layout Memo).

¹⁶⁵ Hearing Exh. 15 (Supplement Layout Memo); Hearing Exh. 2, Certificate Condition 52.

DPS Staff testified that Flint Mine has successfully avoided and minimized impacts to archeological resources and that the stipulated Certificate Conditions were consistent with those imposed by the Siting Board on other major renewable energy projects.¹⁶⁶ SHPO has determined that the Applicant has reduced direct effects to archeological resources to the greatest extent possible by incorporating construction techniques that minimize soil disturbance into the project design.¹⁶⁷

Based on the record, we find that the Facility has avoided, minimized and mitigated potential impacts on archaeological resources to the maximum extent practicable.¹⁶⁸

b. Cultural and Historic Resources

The Facility will have no physical impacts to aboveground historic resources (i.e., no historic structures will be damaged or removed). The Facility's potential effect on any given historic property would be a change in the property's visual setting, due to the introduction of PV panel arrays or other Facility components.¹⁶⁹ Flint Mine conducted a historic resources survey for the Facility.¹⁷⁰ There were 14 resources evaluated as part of the historic resources survey, which were incorporated into the Applicant's analysis of visual impacts on visually sensitive resources.¹⁷¹ Some of these resources may have limited views of the Facility, though most views are distant and in the background. The effect of the Facility on

¹⁶⁶ Hearing Exh. 63; DPS SPSS at 34-39.

¹⁶⁷ Hearing Exh. 63

¹⁶⁸ PSL §168(2)(c).

¹⁶⁹ Hearing Exh. 3 (Application Exhibit 20(b)).

¹⁷⁰ Hearing Exh. 3 (Application Appx. 20-E).

¹⁷¹ Hearing Exh. 3 (Application Appx 24-I).

these historic resources depends on a number of factors including distance to the Facility, the number of visible PV panels, the extent to which the Facility is screened or partially screened by buildings, trees, or other objects, and the amount of existing visual clutter and/or modern intrusions in the view.¹⁷² For most of the identified historic structures and properties identified within the Historic Resources Study Area, their distance from the Project effectively minimizes the Project's visual impacts. SHPO has not raised additional concerns specific as regards historic resources impacts, beyond the archeological resources already discussed above.

The next step in the review of cultural and historical resources impacts is to wait until the involved federal agency initiates a formal consultation process under Section 106 of the National Historic Preservation Act. Once this process begins, OPRHP will finalize its review and provide the involved Federal agency with its recommendations on effects and possible mitigation measures. In anticipation of this process, the Parties have stipulated to Certificate Conditions 52-53, which call for (a) plans to avoid or minimize impacts to archaeological and historic resources to the extent practicable; (b) preparation of a final Unanticipated Discovery Plan; (c) consultation with OPRHP and DPS Staff if complete avoidance of archaeological sites is impossible; and (d) preparation of a final Cultural Resources Avoidance, Minimization and Mitigation Plan.¹⁷³

Based on the above, we find that that the Applicant has avoided, minimized, and mitigated impacts to archaeological,

¹⁷² Hearing Exh. 3 (Application Exh 20 and 24-I).

¹⁷³ Hearing Exh. 2; Certificate Condition 52.

cultural and historic resources to the maximum extent practicable.¹⁷⁴

c. Visual Impacts

Probable visual impacts of the Facility are addressed in detail in the Application.¹⁷⁵ The Applicant performed a Visual Impacts Analysis (VIA), which was then updated to reflect the Settlement Layout.¹⁷⁶ The VIA assessed the potential visibility of the Project and evaluated the character and visual quality of the existing landscape. This analysis includes identification of visually sensitive resources, viewshed mapping, visual assessment fieldwork, visual simulations in the form of photographic overlays, and potential visual mitigation measures.¹⁷⁷

The Facility will be visible from approximately 2.7 square miles, most of which is within the Facility Area itself, with approximately one square mile visibility from outside the boundaries of the Facility Area.¹⁷⁸ Visual impacts during construction are anticipated to be relatively minor and temporary in nature.¹⁷⁹ Representative photographs of

¹⁷⁴ PSL §168(3)(c).

¹⁷⁵ Hearing Exhs. 3-5 (Application Exh. 24, Figures 24-1 through 24-12; Appendices 24-A through 24-K); Hearing Exh. 6 (Appendices 24-H and 24-K); Hearing Exhs. 14 and 16.

¹⁷⁶ Hearing Exhs. 14 and 16, Figure 7. During discovery, in response to a request from the Town of Coxsackie, the Applicant produced additional mapping showing the location of representative viewpoints relative to the Settlement Layout. Hearing Exh. 49.

¹⁷⁷ Hearing Exh. 3, Hearing Exh. 16, Figures 7-8.

¹⁷⁸ Hearing Exh. 14 (Settlement Layout Memo).

¹⁷⁹ Hearing Exh. 3 (Application Exh. 24(a)(7)).

construction activities were included in the VIA.¹⁸⁰ Visual impacts associated with construction may include but are not limited to: temporary increase in truck traffic on area roadways, construction/operation of construction laydown yards, disturbance associated with construction and operation of the access roads, and installation of PV modules and other components. Temporarily disturbed areas will be restored and reseeded to minimize visual impacts following the completion of construction.¹⁸¹

To address potential visual impacts during operation, the Applicant developed a conceptual Visual Mitigation Planting Plan. This conceptual planting plan was developed as a site-specific solution appropriate to the scale of the Facility and the visual character of its setting. The plan uses native species and mimics the character of successional fields in the study area to minimize and mitigate the Facility's visual effect on the surrounding landscape.¹⁸² This analysis was conducted as part of the siting process, and the Facility was specifically located in areas that have natural screening afforded by adjacent hills and vegetation. During this process, long stretches of open roadways were avoided to the extent possible.¹⁸³ The planting of native tree and shrub mixes interspersed with pollinator plants along the roadsides adjacent to the Facility will provide a visual buffer of natural vegetation between the Facility and the viewer, effectively

¹⁸⁰ Hearing Exh. 3 (Application Figure 24-8).

¹⁸¹ Hearing Exh. 3 (Application Exh. 24(a)(7)).

¹⁸² Hearing Exh. 3 (Application Exh. 24(a)(10) and Appx 24-D).

¹⁸³ Hearing Exh. 3 (Application Exh. 24(a)(10)).

minimizing the potential visual effect of the Facility.¹⁸⁴ In response to a request from the Town of Athens, the Applicant revised its visual mitigation proposal to add visual mitigation for residences in the vicinity of Scott Road.¹⁸⁵ The Applicant also agreed to other minor modifications of the Visual Mitigation Planting Plan to address comments and questions from Parties and will continue these discussions during the compliance phase.¹⁸⁶

The Applicant has agreed to submit a final Visual Mitigation Planting Plan as a compliance filing.¹⁸⁷ The Settlement Agreement requires a 5-year monitoring period for the Visual Mitigation Planting Plan and requires that mitigation be appropriate for the scale of the Facility and visual character of the surrounding area and use only native species or orchard crop species.¹⁸⁸ DPS Staff testified that the Applicant has appropriately assessed visual impacts from the Facility and that, given the Settlement Agreement achieved, has avoided, minimized and mitigated visual impacts from the Facility to the maximum extent practicable, and is consistent with other Article 10 facilities.¹⁸⁹

The Town of Coxsackie raised concerns about two discrete aspects of the Applicant's visual mitigation proposals:

¹⁸⁴ Hearing Exh. 3; Hearing Exh. 16 (Figure 8); Hearing Exhs. 30, 33-34, 38, 48-49.

¹⁸⁵ Hearing Exh. 30; Applicant Technical Panel Rebuttal at 8-9.

¹⁸⁶ Hearing Exhs. 33, 34, 39, 48-49; Applicant Technical Panel Rebuttal at 9-12.

¹⁸⁷ Hearing Exh. 2, Condition 57.

¹⁸⁸ Hearing Exh. 2, Condition 57; see generally, Applicant Technical Panel Rebuttal at 9-12.

¹⁸⁹ DPS SPSS at 39-43.

the spacing of plantings and the proposed seeding rate for pollinator seed mixes to be used in some areas where the Applicant proposed pollinator-friendly plantings as a visual mitigation measure.¹⁹⁰ The Applicant maintains that the record supports its approach on both issues and notes that the Town's concerns can be resolved when the Visual Mitigation Planting Plan is revised and finalized post-certification but prior to commencement of construction.¹⁹¹

We find that the record supports the Applicant's approach to mitigation of visual impacts. Coxsackie has not provided any specific visual impact it believes has not been addressed and has not offered any proof that the Applicant's proposed mitigation measures will not be effective.¹⁹² We therefore find the Applicant's visual mitigation proposals are sufficient. Therefore, based upon the record, including Certificate Conditions 45 and 57, we find that the visual impacts of the construction and operation of the Project will be avoided or minimized to the maximum extent practicable.¹⁹³

d. Land Use and Cumulative Impacts

The Applicant conducted a land use analysis to determine whether the Facility is compatible with existing and proposed land uses and confirm that impacts on land use will be minimized or avoided to the maximum extent practicable.¹⁹⁴ This

¹⁹⁰ Hearing Exh. 33 and 39; Applicant Technical Panel Rebuttal at 11-12.

¹⁹¹ Hearing Exh. 2, Condition 57.

¹⁹² Hearing Exh. 33 and 39; Applicant Technical Panel Rebuttal at 11-12.

¹⁹³ PSL §168(2)(c) and (3)(c).

¹⁹⁴ Hearing Exh. 3-5 (Application Exh. 4, Figures 4-1 through 4-9).

analysis is set forth in Exhibit 4 to the Application. During this review, the Applicant identified existing and proposed land uses based on publicly available data from publicly available sources, including Greene County GIS resources, as well as from host municipalities and adjacent municipalities within a 2-mile radius of the Facility Site.¹⁹⁵ The Applicant also reviewed land use-related data, including comprehensive plans for the Towns, data relating to specially designated areas (e.g., agricultural districts, flood hazard areas, etc.) and recreational areas and other sensitive land uses (e.g., open space, archaeological, geologic, historical or scenic areas, and the like) and regional planning documents.¹⁹⁶

The operation of the Project is not anticipated to impact land uses outside of the Facility Site itself.¹⁹⁷ The main off-site impacts during Facility operations will be visual impacts from those limited vantage points from which the Facility will be visible. However, the visual impact analysis for the Facility concluded that the overall contrast presented by the Facility is likely to be moderate. In addition, the viewshed analysis affirmed that most Facility visibility would be constrained to the Facility Area itself.¹⁹⁸ DPS Staff testified that, through the Settlement Layout and the Settlement Agreement,

¹⁹⁵ Hearing Exh. 3 (Application Exh. 3 and Appx 4-C, Land Use Outreach Letter); Hearing Exh. 5 (Application Exh. 4).

¹⁹⁶ Hearing Exh. 5 (Application Exh. 4(c), (e), (g)-(i)); Hearing Exh. 3 (Appendix 4-A, Comprehensive Plans, and Figures 4-1 through 4-9).

¹⁹⁷ Hearing Exh. 5 (Application Exh. 4(i)).

¹⁹⁸ Hearing Exh. 5 (Application Exh. 4(i)); Hearing Exh. 3 (Application Exh. 24, Visual Impacts Analysis); Hearing Exhibits 14 and 16.

the Applicant has avoided, minimized and mitigated impacts to land uses.¹⁹⁹

Witnesses for the Town of Coxsackie testified that the Facility was inconsistent with the Town's Comprehensive Plan.²⁰⁰ The Applicant challenges this procedurally, based on the Town's past actions. Flint Mine notes that, in 2016, Coxsackie adopted solar regulations permitting utility-scale solar uses in areas zoned as Residential Agricultural-2 (RA-2), just as proposed by Flint Mine in this case.²⁰¹ At that time, Flint Mine asserts, Coxsackie was legally required to consider the consistency of that 2016 local law with Coxsackie's Comprehensive Plan, because that Plan was adopted in 2008 and has not been amended since.²⁰² Flint Mine charges that the character of the Town did not change between the passage of the 2016 law and the Town's subsequent 2019 amendments to its local law, which prohibited, and still prohibit, commercial scale solar facilities in areas zoned RA-2.²⁰³ Given this history, Flint Mine asserts that the Town's present claim, that the Project is inconsistent with the Town's Comprehensive Plan, is illogical.²⁰⁴

Flint Mine also challenges the substance of Coxsackie's claim that the Project is not consistent with Coxsackie's Comprehensive Plan.²⁰⁵ Flint Mine argues that the Town's testimony selectively focuses on certain vague and broad

¹⁹⁹ DPS SPSS Testimony at 3-33, 52-53.

²⁰⁰ Coxsackie Panel at 5.

²⁰¹ Applicant Panel at 13; Hearing Exh. 23.

²⁰² Hearing Exh. 46.

²⁰³ Applicant Panel at 13-14.

²⁰⁴ Applicant Panel at 13.

²⁰⁵ Applicant Panel at 14-17.

statements in the Comprehensive Plan about preservation of rural character and conservation of open space to support its claim that the Project is inconsistent with the Plan. Flint Mine argues that a key element of its proposal is the protection of up to 1,000 acres of open space in the Town of Coxsackie. This will include the proposed protection of Flint Mine Hill as an archeological resource and the proposed conservation of nearly 300 acres of grassland habitat along Flint Mine Road, in exchange for developing approximately 103.6 acres of well-screened vacant land further back from the roadway with PV modules and related components.²⁰⁶ Flint Mine argues that, because it proposes to conserve up to ten times more open space than it seeks to develop for solar electric generation facilities, the Project represents a significant advancement of the Town Comprehensive Plan's open space conservation goals and, therefore, is fully consistent with the Coxsackie's Comprehensive Plan.

Flint Mine also argues that Coxsackie fails to credit those portions of its Comprehensive Plan that emphasize the importance of increased use of alternative energy sources, such as solar, and commits the Town to consider incentivizing renewable development.²⁰⁷ The Applicant also notes that Coxsackie's Plan recognizes the existing utility and transmission land uses within the Town and encourages consideration of shared utility corridors and consolidation of

²⁰⁶ Applicant Panel at 14-17.

²⁰⁷ Applicant Panel at 14-17.

utility uses along existing utility rights-of-way.²⁰⁸ Inasmuch as this is what Flint Mine proposes to do, Flint Mine argues its proposed use is consistent with Cocksackie's Comprehensive Plan.

Cocksackie also asserted in testimony that Flint Mine failed to evaluate the cumulative impacts of the Project and another nearby Article 10 solar facility, the Hecate Greene County Solar Facility.²⁰⁹ Flint Mine responds first by arguing that Cocksackie is estopped from challenging the scope of Flint Mine's studies relating to cumulative impacts because Cocksackie executed pre-application stipulations agreeing to the scope and methodology of studies to be performed by Flint Mine in support of its Application and none of the exceptions raised by Cocksackie when it signed the pre-application stipulations related to a cumulative impacts analysis. Therefore, Flint Mine argues, Cocksackie cannot now claim that the Application is deficient for lack of a cumulative impacts analysis.

Addressing the substance of this dispute, Flint Mine argues that Cocksackie's claims are legally and factually incorrect. First, Flint Mine argues that Article 10 does not per se require applicants to evaluate cumulative impacts. To the contrary, Flint Mine argues, the only textual references to cumulative impacts in both the Article 10 and its implementing regulations involve (1) the evaluation of cumulative air quality

²⁰⁸ Applicant Panel at 14-17. Here again, Flint Mine notes that these already existing electric transmission facilities were a major factor in its decision to propose development of the Project in this particular area.

²⁰⁹ Cocksackie Panel at 11-13 (citing Case 17-F-0619, Application of Hecate Energy Greene 1 LLC, Hecate Energy Greene 2 LLC, and Hecate Energy Greene County 3 LLC).

impacts on environmental justice communities;²¹⁰ (2) a reference to cumulative impacts of construction and operation of related facilities;²¹¹ and (3) one reference to a "cumulative visual impact analysis" in 16 NYCRR §1001.24(a). Therefore, Flint Mine argues, at most the regulations require a cumulative visual impacts analysis of the Project, which Flint Mine argues, it has provided.²¹²

Based on the above, we find Cossackie's arguments regarding land use impacts to be unpersuasive. Based on this record, we find that the Project as proposed, if constructed and operated in accordance with the terms and conditions under this Order, will avoid, minimize and mitigate land use impacts to the maximum extent practicable.

4. Impacts on 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 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

²¹⁰ PSL §§164(1)(g), 168(2) and 168(4)(f); 16 NYCRR §§1000.5(1)(2)(xi) and 1001.17(d)(3)).

²¹¹ PSL §168(2). Flint Mine notes that "related facilities" is defined only in regulations, as "[t]he interconnections, all offsite ancillary facilities, and all onsite and offsite ancillary equipment, including mobile or moveable equipment, associated with the Major Electric Generating Facility." 16 NYCRR §1000.2(aj). Here, Flint Mine argues, it does not propose any "related facilities" as so defined, so the Siting Board need not make any findings regarding such facilities.

²¹² Hearing Exh. 3-5 (Application Exhibit 24/VIA materials); Figure 24-11, Cumulative Viewshed Analysis; Hearing Exh. 48, Response to IR- 1C; Applicant Panel at 36-37.

operation of the facility will be minimized or avoided to the maximum extent practicable.

a. Transportation

The regulations at 16 NYCRR §1001.25 require, among other things, an applicant to provide a conceptual site plan of all facility site access roads and driveways and an analysis of traffic and transportation impacts related to the construction and operation of the facility. Flint Mine identified the probable impacts to transportation in Exhibit 25 of the Application.²¹³ The Transportation Study Area includes roadways between the Catskill (exit 21) and Coxsackie (exit 21-B of I-87). Roadways in this area include State Route 23 (SR23), US Route 9W (Route 9W), County Route 49/Green Lake Road (Green Lake Rd), Country Route 28 (CR28)/Schoharie Turnpike, and Flint Mine Road. The major connector for this project will be Route 9W, which bisects the Facility Site and runs north/south between exits 21-B and 21 of I-87. I87 and SR23 were not studied in detail in the Transportation Study Area as they currently support large volumes of commercial traffic and the added volumes from this project would be negligible.²¹⁴

Traffic volume and accident data along the listed roadways were analyzed and discussed in Appendix 25-A, which concludes that, because the existing traffic volumes are low to moderate for the identified haul routes, construction and operation of the Project, it is not anticipated to have a significant impact on the traffic volumes within the Facility vicinity. An increase in accident occurrences due to minor

²¹³ Hearing Exh. 3 (Application Exhibit 25).

²¹⁴ Hearing Exh. 3 (Application Appendix 25-A).

increases in traffic volume is not anticipated.²¹⁵ Therefore, traffic from Facility operations should not appreciably increase daily traffic counts on any of the roadways surrounding the Facility area.²¹⁶

As reflected in the Proposed Certificate Conditions,²¹⁷ Flint Mine will provide SEEP filings to mitigate potential transportation impacts associated with construction and operation of the Facility. The SEEP Guide requires the Certificate Holder to provide to the Secretary copies of any required Road Use Agreements, utility crossing agreements, a Route Evaluation Study, and a Traffic Control Plan. Also, as required by section B.7 of the SEEP Guide, the Certificate Holder shall not permit construction vehicles or construction equipment to park or idle at public roadside locations for extended periods of time.²¹⁸

Proposed Certificate Condition 62 requires the Certificate Holder to hold a preconstruction meeting with agencies, including the New York State Department of Transportation (NYSDOT), Town supervisors, highway departments, and local first responders, and to provide maps showing designated travel routes, construction worker parking and access road locations and a general facility schedule.²¹⁹

Proposed Condition 70 requires the Certificate Holder to comply with all local laws regarding construction noise

²¹⁵ Hearing Exh. 3 (Application Appendix 25-A).

²¹⁶ Hearing Exh. 3 (Application Exhibit 25).

²¹⁷ Hearing Exh. 2 (Certificate Condition 26).

²¹⁸ Hearing Exh. 2 (SEEP Guide).

²¹⁹ Hearing Exh. 2 (Certificate Condition 62).

(unless they are waived), to maintain functioning mufflers on vehicles and machinery used during construction, and to respond to noise and vibration complaints according to protocols established in the Complaint Resolution Plan.²²⁰

b. Communications

The Article 10 regulations, codified at 16 NYCRR §1001.26, require all applications to include analyses and a discussion of potential impacts to communication systems. This information is included in Application Exhibit 26.²²¹ A Communications Study prepared on behalf of the Applicant is included as Appendix 26-A. This study identified three tower structures and 37 communication antennas (4 microwave transmission antennas, and 33 land mobile antennas) within two miles of the Facility and the associated interconnection. Half of the land mobile services in the area are associated with local services, such as emergency response, school districts, highway departments, and police stations. The other land mobile antennas are associated with commercial uses, such as CSX Rail, electric and gas utility owners, telecommunications companies, and others. Also, according to the study, there is no research conducted to date that indicates utility-scale solar generation facilities interfere with or otherwise affect communication systems, as the Facility lacks tall structures and does not have exposed moving parts.

The PV arrays generate weak electromagnetic fields (EMFs) during the day that dissipate at short distances. The EMFs are generated in the same low frequency range as electrical

²²⁰ Hearing Exh. 2 (Certificate Condition 70).

²²¹ Hearing Exh. 3 (Application Exhibit 26).

appliances and wiring found in most homes and buildings. Therefore, the Project is not expected to have any material impact on communication systems related to AM/FM radio, television, telephone, microwave transmission, military or civilian radar, air traffic control, armed forces, global positioning system (GPS), long-range navigation (LORAN) system, amateur radio, or the NYS Mesonet system.²²²

If the Facility does impact communications systems, Certificate Condition 40 requires the Applicant to take appropriate steps to review and respond to related complaints. Certificate Condition 40 requires the Certificate Holder to submit a "Final Complaint Resolution Plan" and imposes other requirements for complaint reporting and resolution procedures.²²³

c. Utilities

Among other things, the Article 10 regulations require that applications include discussions of conformance with Public Service Commission requirements and plans to avoid interference with existing utility systems.²²⁴ The Applicant has identified the location of two transmission corridors with lines owned by National Grid that will require crossing agreements. There is a significant 345kV corridor owned by National Grid that runs through the northern portion of the Facility Area on the western side of 9W before crossing 9W to the eastern portion of 9W in Athens. National Grid also owns two 115kV transmission lines on the eastern side of 9W, which the Facility has proposed to

²²² Hearing Exh. 3 (Application Exhibit 26).

²²³ Hearing Exh. 2 (Certificate Conditions).

²²⁴ 16 NYCRR §1001.12. Hearing Exh. 3 (Application Exhibit 12).

interconnect. Although Central Hudson does not own any transmission lines in the area, it does own distribution lines that run through the Facility Area. There are multiple underground crossings proposed beneath the distribution lines. Finally, the Champlain Hudson Power Express Line, is proposed to be installed within the CSX right of way (ROW) which is located east of the Facility Area. However, it is not anticipated that the construction of the Facility would require any work within the CSX ROW. Pursuant to the SEEP Guide, post-certificate filings shall include copies of any crossing agreements with utility companies. Also, the SEEP Guide requires the submission of proof that details and methods of construction are approved by owners of existing utilities subject to co-locations or crossings by proposed facilities.²²⁵

Proposed Certificate Condition 65 requires the Certificate Holder to comply with the requirements of the Commission's regulations regarding the protection of underground facilities²²⁶ and also requires that, prior to commencement of operations, the Certificate Holder must become a member of the Dig Safely New York system.²²⁷ Additionally, Certificate Condition 67 requires the Certificate Holder to comply with all requirements of the Commission's regulations regarding identification and numbering of aboveground utility poles.²²⁸

We therefore find that the probable transportation, communications, and utility impacts from construction and

²²⁵ Hearing Exh. 2 (SEEP Guide).

²²⁶ 16 NYCRR Part 753.

²²⁷ Hearing Exh. 2 (Certificate Condition 65).

²²⁸ 16 NYCRR Part 217; Hearing Exh. 2 (Certificate Condition 67).

operation of the Facility have been identified and will be minimized to the greatest extent practicable.²²⁹

5. Decommissioning, Site Restoration, and Financial Security

Article 10 requires every applicant to provide a plan for the decommissioning and restoration of the facility site, including how such decommissioning and site restoration shall be funded and a schedule for the conduct of decommissioning and site restoration activities. This information is included in Application Exhibit 29.²³⁰

Certificate Condition 39 includes detailed requirements for decommissioning and site restoration, including financial assurance requirements and obligations regarding submission of estimates and financial agreements.²³¹ Certificate Condition 39 requires the Certificate Holder to file a final Decommissioning and Site Restoration Plan with the Secretary. The final plan must include a decommissioning and site restoration estimate based on final design of the Project and a description of procedures and timeframes for providing written notice to the Towns of Athens and Coxsackie, DEC, and host and adjacent landowners, of planned decommissioning and site restoration activities prior to commencement of those activities.

Certificate Condition 39 requires the Applicant to restore agricultural lands according to the New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects - Construction mitigation for Agricultural lands

²²⁹ PSL §168(2)(d).

²³⁰ Hearing Exhibit 3.

²³¹ Hearing Exh. 2 (Certificate Condition 39).

(Revision 10/18/2019).²³²

Certificate Condition requires the Certificate Holder to provide financial assurances for decommissioning which must be in the form of letters of credit, to be held by the Towns of Athens and Coxsackie. The letters of credit must be based on the final overall decommissioning and site restoration estimate (exclusive of project salvage value). That estimate must be updated to reflect inflation (and any other changes), and must be submitted to the Secretary after one year of operation and every fifth year thereafter. Certificate Condition 39 also requires the Certificate Holder to file with the Secretary proof that the letters of credit have been obtained in the required amount, along with copies of agreements between the Certificate Holder and the Towns of Athens and Coxsackie, demonstrating the right of those Towns to draw upon the financial security for decommissioning purposes.²³³ The terms of Certificate Condition 39 are generally consistent with conditions imposed by the Siting Board in prior orders.

Based on the above, we find that the adverse environmental effects of the construction and operation of the facility related to decommissioning and site restoration will be minimized or avoided to the maximum extent practicable.²³⁴

E. Environmental Justice - PSL §168(2)(a) and (3)(d)

PSL §168(2)(d) requires that the Siting Board make explicit findings regarding the cumulative impact of emissions on the local community, including whether the construction and

²³² Hearing Exh. 2 (Certificate Condition 39).

²³³ Hearing Exh. 2 (Certificate Condition 39).

²³⁴ PSL §168(3)(c).

operation of a facility would result in a significant and adverse disproportionate environmental impact to an environmental justice (EJ) area. This required finding must be made in accordance with the environmental justice regulations promulgated by DEC at 6 NYCRR Part 487 (Part 487).

In accordance with the provisions of 6 NYCRR §487.5, an applicant must determine whether the impact study area for a project contains an EJ area. The impact study area must, at a minimum, encompass the geographic area within a one-half mile radius around the proposed location of the facility. As set forth at 6 NYCRR §487.5(e), if an EJ area is not present within the impact study area, the applicant is not required to undertake a full environmental justice analysis. If an EJ area is present within the impact study area, the applicant must undertake a full EJ analysis in compliance with the requirements of 6 NYCRR §487.²³⁵

Here, the Applicant evaluated an impact study area within a one-half mile radius around the Facility Site. Using 2014-2018 American Community Survey (ACS) census data, the Applicant identified two U.S. census block groups within the impact study area that qualified as EJ areas. The first, census tract 808, occurs 0.3 miles north of the Facility Site, bordering the Village of Coxsackie, and exclusively contains the incarcerated populations within both the Coxsackie Correctional Facility and the New York State Department of Corrections Greene Correctional Facility. The second, census tract 809, is located 0.3 miles southwest of the Facility Site bordering the New York State Thruway to the west, in the Town of Athens. Although the

²³⁵ 6 NYCRR §487.5(d).

population in census tract 809 is approximately 25 percent low income, the Applicant determined that no residences were located within that portion of the census block located in the applicable EJ study area.²³⁶

Given the absence of residences within the portion of census block 809 that is located in the EJ study area for the Facility, the Applicant did not include a full environmental justice analysis for that census block.²³⁷

With respect to avoidance, minimization, and mitigation measures, the Applicant stated that the Facility is not anticipated to create any disproportionate environmental impacts to the EJ areas identified in the impact study area. The Applicant noted that the Facility will not generate odor or significant noise that might adversely impact those living around the Facility, and the Facility is not anticipated to be visible, audible, or otherwise noticeable for the persons residing in the EJ areas identified above. The Applicant further noted that the Facility presents an opportunity to generate electricity in a clean manner, without contributing to air or water pollution in these EJ areas, or elsewhere in the community. Because no adverse impacts are anticipated, the Applicant proposed no further avoidance, minimization, or mitigation measures.²³⁸

The Applicant argues that given the lack of environmental impacts to persons residing in the identified EJ areas -- a population that is limited to those persons

²³⁶ Hearing Exhibit 3, Application Exhibit 28 at 1-3.

²³⁷ Hearing Exhibit 3, Application Exhibit 28 at 3.

²³⁸ Hearing Exhibit 3, Application Exhibit 28 at 3.

incarcerated at the two State prisons -- the Siting Board can find under PSL §168(3)(d) that no disproportionate environmental impacts from the Facility are anticipated to occur on either of the potential EJ communities.²³⁹ DPS Staff reviewed the Applicant's evaluation of potential environmental justice issues and concluded that the Facility is not expected to have any environmental justice impacts.²⁴⁰ No party challenged or objected to the Applicant's analysis of the environmental justice issue.

Based upon our review of the record, we conclude that the proposed project would not result in a significant and adverse disproportionate environmental impact to an environmental justice area.

F. State and Local Laws and Regulations - PSL §168(2)(d) and (3)(d)

PSL §168(3)(e) addresses the applicability of State and local law requirements to the construction and operation of a proposed major electric generating facility under Article 10. It requires the Siting Board to find that the facility is designed to operate in compliance with all applicable State and local laws and regulations concerning the environment, public health and safety, all of which are binding on the applicant.²⁴¹ With certain limited exceptions, State and local procedural requirements for solar facilities are preempted, including any local approval, consent, permit, certificate, or other condition

²³⁹ Flint Mine Solar Initial Brief at 74.

²⁴⁰ DPS Staff Initial Brief at 37.

²⁴¹ PSL §168(3)(e).

for construction and operation of a facility.²⁴²

We may elect not to apply, in whole or in part, a substantive local environmental or public health and safety requirement if we find that, as applied to the proposed facility, it is unreasonably burdensome in view of the technology or the needs of, or costs to, ratepayers whether located inside or outside of the municipality in which the facility is located.²⁴³ An applicant may seek a waiver of a local substantive requirement and has the burden of justifying its 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 in granting the request are mitigated to the maximum extent practicable."²⁴⁴ Thus, we may elect not to apply, in whole or in part, any otherwise applicable local requirement if we find that it is unreasonably burdensome.²⁴⁵

1. State Law

The discussion of issues elsewhere in this Order supports our finding that, subject to appropriate Certificate Conditions and SEEP Guide, the construction and operation of the Facility would comply with applicable State laws and regulations.

2. Local Laws

The Application identified a list of substantive local

²⁴² PSL §172(1); 16 NYCRR §1001.31(a).

²⁴³ PSL §172(1); 16 NYCRR §1001.31(a).

²⁴⁴ 16 NYCRR §1001.31(e).

²⁴⁵ PSL §168(3)(e).

ordinances and laws that the Applicant is requesting the Siting Board waive pursuant to PSL §168(3)(e) because their application to the Facility would be unreasonably burdensome. In connection with the proposed Settlement Layout, the Applicant provided an updated analysis of local law compliance, which was largely unchanged except that the Applicant identified a small number of local law provisions for which additional waivers from the Siting Board were needed.²⁴⁶

Both Towns raised potential issues in direct testimony regarding the Settlement Layout's compliance with local laws. The Town of Athens questioned whether the Settlement Layout complied with Town lot coverage requirements, agricultural buffers, grade of access driveways, and construction on steep slopes.²⁴⁷ The Applicant then clarified that the Project meets the Town of Athens' lot coverage requirements²⁴⁸ and complies with the Town's agricultural buffer requirements.²⁴⁹

The Applicant seeks waivers of certain sections of the Athens access driveway grade and steep slopes requirements.²⁵⁰ The Applicant believes these issues have been resolved with the Town.

In its testimony, the Town of Coxsackie raised a potential issue regarding the Settlement Layout's compliance with setbacks, buffer requirements and lot coverage.²⁵¹ In

²⁴⁶ Hearing Exh. 14, Settlement Layout Memo.

²⁴⁷ Direct Testimony of Tighe Bond at 3 and 8.

²⁴⁸ Applicant Rebuttal Panel at 7; Hearing Exh. 21.

²⁴⁹ Applicant Technical Panel at 9.

²⁵⁰ Applicant Technical Panel at P6, L9 through P9, L2; Hearing Exhs. 28-29.

²⁵¹ Coxsackie Panel at 8-9.

rebuttal testimony, the Applicant confirmed that the Facility complies with local setbacks (except with respect to a National Grid parcel for which the Applicant sought a waiver in Exhibit 31 of the Application).

Flint Mine Solar requests that the Siting Board authorize both Towns to exercise their authority under local law to issue ministerial permits and/or dispense with ministerial permits through execution of Road Use Agreements with the Applicant for permits related to streets, driveways, and local roads (Hearing Exh. 3, Application Exh. 31(b)). This would allow the Towns to either impose existing permitting requirements and local ordinances or enter into Road Use Agreements in lieu of highway work permit applications and the application of substantive road use and maintenance laws. Thus, to the extent the Towns have such road-use related local laws, the Applicant requests Siting Board authorization for local oversight of such ministerial approvals, to the extent they are applicable in this case.

Local Law Waivers

The Applicant requests that the Siting Board waive the following local laws and ordinances, on the ground that requiring compliance with such local requirements would be unreasonably burdensome:

Town of Coxsackie Code:

- (1) Section 167-6(B)(1)-(2) use restriction
- (2) Section 167-6(C)(4)(b)'s setback requirement (only as applied to a parcel owned in fee by National Grid)
- (3) Section 167-6(B)(5) lot coverage
- (4) Section 167-6(C)(4)(d) fencing requirements, as applied to substations

- (5) Section 167-6(C) (4) (e) buffer inside fence line
- (6) Section 167-6(C) (4) (q) on burial of lines
- (7) Section 167-6(C) (4) (t) on height, as applied to substations
- (8) Section 167-6(F) (2)-(3) decommissioning timelines
- (9) Section 201-48(A) watercourse buffers

Town of Athens Code:

- (1) Section 180-52(D) (4) (a)'s setback requirement (only as applied to a parcel owned in fee by National Grid)
- (2) Section 180-52(D) (7) decommissioning timelines
- (3) Section 180-29(G)'s maximum grade of access drives and parking areas
- (4) Section 180-32(D)-(E) provisions on steep slopes

The Applicant's justification for these waivers is set out in Application Exhibit 31, the Settlement Layout Memorandum, and in the Applicant's rebuttal testimony.²⁵² What follows is a summary of the salient points of the disputed matters relating to compliance with, or the waivers of, local laws as applied to the Project.

Town of Cossackie-Use Restriction

Utility scale solar collector systems are a permitted use only within the Town's Commercial District and its Industrial District. Under Flint Mine's proposed settlement layout, the Project is wholly within the Town's Residential Agricultural-2 district and is not a permitted use under local

²⁵² Hearing Exh. 3 (Application Exh. 31); Hearing Exh. 14, 22, 26-29, 41; Applicant Technical Panel at 4-8; Applicant Panel at 7-34.

law. (Hearing Exh. 3, Application Exh. 31 and Figure 4-5; Hearing Exhs. 26-27). As a result, absent a waiver of this local law, the Project cannot be constructed.

Flint Mine argues that, given the clean energy mandates under the CLCPA and the CES, the Cocksackie zoning law is unreasonably burdensome in view of existing technology, costs, economics, and/or consumer needs. The Applicant cites a prior Siting Board decision stating that a local law preventing construction of a Facility is per se unreasonably burdensome. Case 17-F-0597, High River Energy Center, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions (issued March 11, 2021), at 110.

Flint Mine also points out that the Siting Board has waived compliance with local law where the locality has not raised any valid substantive objections to the requested waiver and the Applicant's "design adequately reflects the balancing of competing interests that is both characteristic of such projects and consistent with Article 10's overall intent." Id. at 110. Here, Flint Mine argues, the record supports the requested waiver and the Town of Cocksackie has not raised any substantive objection thereto.

Cocksackie argues that it is a small rural and historic Town with a valid local zoning law limiting the siting of commercial-scale solar energy generating facilities to lands zoned as Commercial and Industrial Districts. This local law, Cocksackie asserts, is a valid exercise of the Town's police powers, and serves the important purpose of protecting the Town's agricultural areas and landscapes. If built as proposed, Cocksackie argues, the Project would be inconsistent with the rural character of the Town and would therefore cause

irreparable harm to the Town.²⁵³

The Town charges that Flint Mine has not shown that requiring compliance with the Town's use restriction would be unreasonably burdensome. First, Cocksackie denies that it has wholly prohibited the Flint Mine project. Rather, Cocksackie argues, its zoning law limits the size of the Flint Mine project to the amount of lands potentially available within the Town's Industrial and Commercial Districts. The mere fact that Flint Mine proposes a project larger than the lands potentially available, Cocksackie argues, does not justify waiving compliance with the Town's zoning law when there are other Towns in the State that can host such a facility. Because Flint has not shown that the Project must be built in this particular Town, Cocksackie argues, the record does not support a finding that requiring compliance with the local zoning law would be unreasonably burdensome.²⁵⁴

Flint Mine responds that the record supports a determination from the Siting Board that the Project meets the requirements of PSL §168 and that the substantive provisions of local law for which the Applicant has sought a waiver are unreasonably burdensome. Flint Mine also asserts that Cocksackie has not introduced any competent evidence to the contrary. Flint Mine argues the record demonstrates that the Project area does not have an agricultural character and that the lands within the Project area are not viable for agricultural uses.²⁵⁵

²⁵³ Cocksackie Direct at 5-8.

²⁵⁴ See Cocksackie Direct at 8 (Cocksackie is not the only Town in which solar projects can be sited in this State).

²⁵⁵ Hearing Exh. 3, Application Appx. 4-B; Hearing Exhs. 48, 58, and 60.

Flint Mine points out that the Project site already hosts existing high-voltage transmission infrastructure, and the local zoning requirements are inconsistent with achieving the stated goals in the CLCPA and other State renewable energy policies.

More generally, Flint Mine argues that allowing the Town to enforce what amounts to a local ban on renewable energy development would be unreasonable because it would encourage other municipalities to adopt similar local laws which would be inconsistent with State law and policies. Flint Mine argues that the Siting Board cannot allow local municipalities to erect hurdles preventing renewable energy developers from gaining access to pre-existing high-voltage transmission infrastructure. Such access is needed in order to interconnect new renewable energy projects to the State's electric grid. The State cannot meet its CLCPA targets, Flint Mine argues, if localities are, in effect, allowed to prohibit renewable energy projects within their borders.²⁵⁶

The Town of Athens Local Laws

The Applicant has clarified that the Project meets the Town of Athens' lot coverage requirements²⁵⁷ and complies with the Town's agricultural buffer requirements.²⁵⁸ Therefore, those requested waivers are moot. Flint Mine also seeks a waiver of Athens' local laws establishing minimum grade requirements for

²⁵⁶ In this case, Flint Mine asserts, the Town of Coxsackie responded to local objections to another proposed solar facility by amending its local zoning law in a way that, if enforced, would prohibit the Flint Mine Project. Applicant Initial Brief at 81.

²⁵⁷ Applicant Rebuttal Panel at 7; Hearing Exh. 21.

²⁵⁸ Applicant Technical Panel at 9.

access driveways and parking lots, as well as local laws regulating construction activity on lands having steep slopes.²⁵⁹

Maximum Grades for Access Driveways and Parking Areas

Under section 180-29 of the Athens Town Code, access driveways must have a grade of no more than 8% and parking areas must have a grade of no more than 3%. As proposed under the Settlement Layout, grading of certain access drives would be necessary to comply with this local law. Specifically, access drives 1, 5, 5-1, 6, 6-2, 7, and 12 have grades greater than 8%. With respect to these particular access drives, Flint Mine seeks a waiver because these driveways will be used primarily during construction and will be used only infrequently after construction is finished. Also, Flint Mine reviewed the Project's access driveway design with the Town of Athens Highway Superintendent and the West Athens Limestreet Fire Chief and neither of those officials expressed concern with the proposed access driveway grades.²⁶⁰ Flint Mine argues that, under these circumstances, requiring compliance would be unduly burdensome.

In addition, there are some temporary parking areas that will be used during Project construction that have an existing grade of greater than the 3% grade permitted under provisions of the Town of Athens Code that govern parking lots. Here again, Flint Mine seeks a waiver because it does not intend to grade these temporary parking areas. Instead Flint Mine proposed to leave them undisturbed, to limit ground disturbance that would itself create increased risks of runoff and, potentially, surface water impacts. Flint Mine argues the local

²⁵⁹ Direct Testimony of Tighe Bond at 3 and 8.

²⁶⁰ Hearing Exh. 14, Settlement Layout Memorandum, at 5.

law was intended for permanent parking areas and does not apply to the temporary parking areas in question. Even if applicable, Flint Mine argues, a waiver of this requirement will mitigate environmental impacts by avoiding the need to grade these areas merely for the purpose of compliance.²⁶¹

Construction on Steep Slopes

The Athens Zoning Code, Sections 180-32(D) and (E), prohibit development, grading, and vegetation stripping on parcels that feature "steep slopes" as defined under the Town Code.²⁶² For such parcels, a local variances is required for roadway or utility crossings. Unless waived, this local law would apply to three Facility parcels comprising a total of approximately 150 acres.²⁶³ The area to be actually affected, however, is only 0.5 acres, where there will be soil disturbance on slopes greater than 25% (in connection with access driveways and collection lines).²⁶⁴ In any event, the Applicant does not propose vegetation stripping on these steep slopes.

Flint Mine argues a waiver is warranted because requiring compliance would be unreasonably burdensome due to technical infeasibility and impossibility.²⁶⁵ Flint Mine asserts it has avoided or minimized any disturbance on steep slopes to the maximum extent practicable but cannot redesign the Project

²⁶¹ Id.

²⁶² This requirement applies to any parcel that falls, in whole or in part, on a parcel containing more than 10% of the total acreage in slopes 15% or greater. Hearing Exh. 3 (Application Exh. 31); Applicant Technical Panel at 6.

²⁶³ Applicant Technical Panel at 6.

²⁶⁴ Id.

²⁶⁵ Flint Mine Initial Brief at 97.

layout to avoid all disturbance of slopes of 25% or greater.²⁶⁶ For this reason, Flint Mine argues, the waiver is needed for construction of a necessary collection line between the involved PV module segments.²⁶⁷ The Applicant will implement best management practices to ensure that the adverse impacts of this needed work are mitigated to the maximum extent practicable.²⁶⁸ For these reasons, Flint Mine argues, it has demonstrated that compliance with this local requirement is unreasonably burdensome and the requested waiver should be granted.

DISCUSSION

The Town of Coxsackie does not dispute that the Town's local zoning law would prohibit the Project as proposed. The Town's argument, that the local law is not unreasonably burdensome because Flint Mine could build a smaller facility or find another Town to host the Project, is not persuasive. The Town's reasoning is inconsistent with Article 10 and would frustrate the siting of the Project. We find that requiring compliance with the Coxsackie local laws identified in the Application and the settlement materials would be unreasonably burdensome. Therefore, the requested waivers of Coxsackie's local laws are granted.

With respect to the requested waivers of the local laws of the Town of Athens, Flint Mine has demonstrated that requiring compliance with the Town of Athens' local laws would be unreasonably burdensome. We therefore grant Flint Mine's

²⁶⁶ Applicant Technical Panel at 7.

²⁶⁷ Id.

²⁶⁸ Id.

requested waivers of the local laws of the Town of Athens.

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 the Applicant, subject to the Certificate Conditions 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 Flint Mine Solar, LLC, for the construction and operation of a solar generating facility with a capacity of 100 megawatts, consisting of utility-scale arrays of photovoltaic solar generating panels located on private land, either leased or purchased from the landowners, and associated facility components to be located in the Towns of Coxsackie and Athens, New York, and connecting to the existing LaFarge to Pleasant Valley 115 kV transmission line and the Feura Bush to North Catskill 115 kV transmission line, both of which are owned and operated by National Grid, provided that Flint Mine Solar, LLC, 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, Flint Mine Solar, LLC, 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, Flint Mine Solar LLC, shall comply, to the extent required by law, with those requirements of Public Service Law §68 that do not relate to the construction and operation of the Facility.

5. If Flint Mine Solar, LLC, 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. If the Certificate Holder believes that any action taken, or determination made, by a State or municipal agency in connection with this Certificate is unreasonable or unreasonably delayed, it may petition the Siting Board, upon reasonable notice to that agency, to seek a resolution of any such unreasonable or unreasonably delayed action or determination. Such agency may respond to the petition, within five business days, to address the reasonableness of any requirement or delay.

7. 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.

8. This proceeding is continued.

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

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

APPENDIX A

GUIDANCE FOR THE DEVELOPMENT OF SITE ENGINEERING AND ENVIRONMENTAL PLAN FOR THE CONSTRUCTION OF FLINT MINE SOLAR PROJECT

The proposed Flint Mine Solar Project requires 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 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 Flint Mine Solar Project (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.

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, except for those areas adjacent to wetlands.

Linear Facility Components: electric transmission lines, electric collection or distribution lines, and temporary or permanent access roads, and fencing.

Non-Linear Facility Components: solar array PV modules, collection substation and point of interconnection switchyard, energy storage, inverters, storage facility, visual mitigation plantings, and staging/laydown area(s).

Facility Area: All parcels or portions of parcels under the Applicant's control that have been evaluated during development of the project, as well as any parcels or portions of parcels being considered for conservation, mitigation, or open space.

Facility Site: All areas where construction activities may occur (also called Limit of Construction Activity).

Facility Components: Linear Facility Components and Non-Linear Facility 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, visual mitigation plantings, and environmental control measures; plan and profile drawings of the development site and Facility components; and maps of the Facility Area and the overall Facility setting as appropriate to demonstrate compliance with the Certificate of Environmental Compatibility and Public Need for the Flint Mine Solar Project.

Plan sheets will be submitted showing the location and design details for all Facility components, including: linear facilities such as electric collection lines, transmission lines and associated access roads, communications lines, and all temporary and permanent access roads, staging/laydown areas, and fencing. Plans shall also indicate the location and size of all major structures, features and buildings, collection substation, point-of-interconnection switchyard, including associated access roads, visual mitigation plantings, 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. Plan, Profile, and Elevation Details

PV modules and Related Non-Linear Components:

For all proposed PV modules and other Non-Linear Facility components, the Certificate Holder shall provide site plans, elevations, and detail drawings (scale minimum 1 inch = 200 feet)¹ showing:

- a. Locations of existing utility infrastructure based on an American Land Title Association (ALTA) survey.
- b. Details and specifications of the selected PV module model(s).
- c. Foundation drawings including plan, elevation, and section details for each foundation type proposed; if multiple foundation designs are to be utilized for the Facility, the foundation type at each location shall be specified on site plans; applicable criteria regarding foundation design shall be listed and described in the drawings and details.
- d. Details showing limits of construction activity (LOCA), limits of vegetation management (LOVM), and temporary grading and permanent grading details based on the Stormwater Pollution Prevention Plan (SWPPP) 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 Visual Mitigation Planting Plan (VMPP) as prepared by the Applicant's Landscape Architect. A distinct, site-specific VMPP will be developed and implemented

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.

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 and splicing; or other materials preparation or processing sites; operations and maintenance buildings, yards and equipment 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 or local requirements.
- g. Maps showing the location for an operations and maintenance (O&M) (or storage facility) building, if proposed to be located on-site. If new building is to be constructed on-site, the Certificate Holder shall provide the final building details and construction drawings prior to construction. Plans for the building property indicating: zoning designation; compliance with use and area requirements, and setbacks to property lines; access, employee parking, building details, exterior lighting details; any outdoor storage areas, fencing and signage; water source and sewage disposal facilities (if applicable); and related site development information. This information may be submitted after Commencement of Construction (as that term is defined in the Certificate Conditions) of the Facility, in which case a plan for the timing of the submission of the building details and construction drawings will be provided.
- h. The locations or descriptions of locations for concrete chute washout and any other cleaning activities (e.g. equipment cleaning for control of invasive species).
- i. General concrete testing procedures including a plan outlining the Certificate Holder's monitoring and testing of concrete procedures in conformance with the NYS Uniform Code.

Linear Facility Components:

For all Linear Facility Components including: electric transmission lines, medium voltage electric collection or distribution lines, and access roads, site plan and profile figures shall include profile drawings of linear components' centerline; for medium voltage collection lines (whether above ground or underground) plans shall include sample Line² Profiles (at an appropriate scale) and plan drawings (scale minimum 1 inch = 200 feet) showing:

- a. *Collection System Medium Voltage 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 medium voltage

² The lowest conductor of an overhead electric transmission, collection or distribution facility design shall be shown in relation to ground elevation at the maximum permissible conductor temperature for which the line is designed to operate, i.e., normally the short-time emergency loading temperature specified by the New York Independent System Operator. If a lesser conductor temperature is used for the line profile, the maximum sag increase between the conductor temperature and the maximum conductor temperature shall be indicated for each ruling span. For underground Project design, show relation of Project to final surface grade, indicating design depth-of-cover.

collection lines. Each medium voltage circuit layout (single, double, triple, etc.) shall include a cross-section and clearing and ROW widths needed for accommodating circuit installations. Typical cross-sectional detail should include the proposed topsoil stripping, stockpile segregation from subsoils, and typical equipment access.

- c. Final details of overhead electric collection line layouts. Each Project circuit layout (single, double, triple, etc.) shall include typical elevation details for all overhead structures, proposed guying, and associated clearing.
- d. Final details of typical Direct Current (DC) PV Source and PV Output circuits including the maximum number of circuits per bundle, typical spacing and separation requirements, and typical elevation details for rack-integrated and messenger supported wiring.
- e. 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.
- f. 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.
- g. 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, berms, and associated plantings, if applicable.
- h. 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 under-layment, gravel surface, paved surface, pervious gravel, etc.);
 - iii. use of existing roads, driveways, farm lanes, rail beds, etc.; and,
 - iv. other access, e.g., temporary laydown and parking areas .
- i. For each temporary and permanent access type, provide a typical installation plan view, cross section and side view with appropriate distances and dimension and identification of material. Where existing access ways will be used, indicate provisions for upgrading for Facility construction. Identify any planned or proposed future access to sites and lands within or adjacent to the access road(s) and landowner requested improvements (e.g.,

- access roads across linear features such as wires, pipes, or conduits).
- j. 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 erosion control within ditches);
 - ii. water bar (for water diversion across the access road);
 - iii. roadside ditch with turnout and sediment 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.
 - k. Indicate the type(s) of stream and/or wetland crossing method(s) to be used 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 and wetland crossing methods and design may include, but not be limited to:
 - i. timber mats or other similar measures to prevent soil compaction;
 - ii. culverts including headwalls;
 - iii. bridges (either temporary or permanent); and,
 - iv. fords.
 - l. All diagrams and specifications should include material type and size to be placed in streams and/or wetland, as well as on stream or on wetland approaches.
 - m. Existing utility and non-utility structures on or adjacent to the Facility, indicating those to be removed or relocated (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.
 - n. 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 water bodies; 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 and/or proposed future utilities as of the issuance date of the Certificate, 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 Facility components (including construction equipment crossings of existing utilities);
- iii. Details of existing utility owner approved crossing plans (crossed by Facility components) showing methods, separation of existing utility and Facility 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.
- o. The location, design details, and site plan of any proposed Facility components, generator sites, collection station, control building, point of interconnection switchyard, or other terminal or associated utility or non-utility structure (attach plan³ - 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, buildings, sheds, relocated structures, and details of any plans for water service and sewage and waste disposal.

2. Stormwater Pollution Prevention

The plan drawings shall be consistent with the NYSDEC-acknowledged Stormwater Pollution Prevention Plan (SWPPP), 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 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.

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;

³ Preferably 1" = 50' scale with 2-foot contour lines.

- 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 Prevention and Management Plan (ISPMP).

4. Building and Structure Removal

- a. Indicate the locations of any buildings or 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, water quality classification and location of all rivers and streams (whether perennial and/or intermittent), and other drainages within the construction area or crossed by any proposed Linear or Non-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 any designated streamside “protective or buffer zone” in which construction activities will be restricted to the extent necessary to minimize impacts on rivers, streams, and/or other drainages;
 - ii. the activities to be restricted in such zones; and,
 - iii. identify any designated floodways or flood hazard areas within the Facility Site, 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 all potable water sources, including springs and wells, within 100 feet of 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 jurisdictional wetlands and state-regulated 100-foot adjacent areas (“adjacent areas”) located within the Facility Site, or those that will be 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 appropriate New York State Department of Environmental Conservation (DEC) Freshwater Wetland designations, when applicable (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.

7. **Land Uses**

- a. Agricultural Areas:
 - i. Indicate the locations of sites under cultivation or in active or recently active agricultural use (defined as active three (3) of the last five (5) years) including pastureland, hayfields, and cropland. Designations and descriptions will be those in current use by the NYS Department of Agriculture and Markets (NYSDAM).
 - ii. Indicate the location of any known unique agricultural lands, such as (if applicable) 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 NYSDAM 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 and/or proposed 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 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 sound sensitive receptors. 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/or environmentally sensitive sites (e.g., rare, threatened, and endangered species habitat areas; agricultural districts; special flood hazard areas; archaeological sites) 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”).
- b. Measures for avoidance of archaeological sites identified within the Facility Site 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 “Environmentally Sensitive 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 species pursuant to 6 NYCRR Part 575 and identified in the ISPMP 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 post-construction control of

on-site invasive species will be determined based on the results of post-construction monitoring as described in the annual monitoring report and 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 NYSDEC certified pesticide applicators in accordance with all label restrictions and notification requirements.

13. Visual Mitigation Landscaping and Buffers

The location of visual mitigation planting areas and specific planting modules proposed will be shown on the Visual Mitigation Planting Plan (VMPP). The VMPP will include the species composition, planting plans and specifications 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, Facility Site and Facility Area;
- b. A description of the construction hours and schedule as presented in the Certificate Conditions;
- c. A description of the PV modules and associated infrastructure selected for the Facility including any manufacturer provided information regarding the design, safety and testing information for the panels, substation, transformer, and battery storage equipment to be installed during construction;

2. Environmental Compliance and Monitoring Plan.

The SEEP shall include copies of the final *Environmental Compliance and Monitoring Plan*. The *Environmental Compliance and Monitoring Plan* 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)⁴ Environmental Monitor;
- b. Full-time General Construction Manager(s); and
- c. Part-time or full-time agricultural environmental monitor, if separate from environmental monitor, for work in active agricultural lands; and
- d. Part-time Safety Manager.,
- e. Part-time Administrative Manager,
- f. Part-time Design Manager, and
- g. Part-time Public Information Manager

⁴ The Plan will identify any times when a part-time monitor may be used.

The Certificate Holder may utilize one or more qualified individuals to satisfy the Project oversight responsibilities listed above and explained in more detail in the QA/QC Plan..

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 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 meeting prior to entry onto the site of work on such Certificate Holder’s Project Components.
- g. Include a procedure for providing NYSDPS Staff, NYSDAM, NYSDEC, and the Towns 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 *Facility Communication and 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 landowner prior to project staking/flagging for construction activity..
- c. Notifying the Towns 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 (eg. 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 Towns and DPS Staff any complaints not resolved within 30 days of receipt;
- i. Mediating complaints not resolved within 60 days, assuming the complainant and nature of 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 and Fire Response Plan (EFRP)* that shall be implemented during Facility construction, operation and decommissioning. Copies of the final plan also shall be provided to DPS Staff, the NYS Division of Homeland Security and Emergency Services, the Towns 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. The *Final Site Security Plan* for Facility construction. Copies of the final plan also shall be provided to DPS Staff, NYS Division of Homeland Security and Emergency Services, the Towns, 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.
- c. The *Final Health and Safety Plan* that shall be implemented during Facility construction.
- d. A final site-specific construction *Quality Assurance and Quality Control Plan (QA/QC Plan)*, to be developed in coordination with the selected General Construction Managers (GCMs).

5. **General Construction**

- a. Provide a copy of the SWPPP, which will include an Erosion and Sediment Control Plan and will specify appropriate measures 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* (NYSDEC, 2016a). The Erosion and Sediment Control Plan will also contain trenching details including:

- i. Though not prevalent in the proposed Facility, 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 wetland, stream, or 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 (i.e. bedrock) 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 ISPMP.
 - (b) Where topsoil has been segregated from trench spoil, backfill will be done in reverse order with trench spoil returned first.
 - (c) Excess subsoil spoil will be removed. Under no circumstances will excess spoil be spread within the Facility Site 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 final *Spill Prevention, Control and Countermeasures (SPCC) Plan* for construction to minimize the potential for unintended releases of petroleum and other hazardous chemicals 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 DEC and/or federal regulations.
 - ii. Storage, handling, transportation, and disposal of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances 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, oil, chemicals, hazardous substances, and other potentially harmful substances in accordance with applicable state and federal laws, regulations, and guidance, and include proposed methods of handling spills of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances 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 Towns and local emergency responders; notifying

the Towns and local emergency responders of locations of hazardous substance storage.

6. Clean up and Restoration

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.; and
- 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 demonstrate that all municipalities within the Route Evaluation Study Area including the NYS Department of Transportation, NYS State Police Barracks, County Department of Public Works, local school districts, County Sheriffs and local Police department have 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 Towns of Athens and Coxsackie, 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. 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.
- e. 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.
- b. 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 Towns.
 - 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, handling and disposal.
 - xi. Any drilling fluid inadvertently discharged must be removed from agricultural areas.

13. Visual Mitigation

- a. The SEEP shall attach a final VMPP, based on the mitigation section presented in the VIA that meets or exceeds the certificate conditions. The VMPP shall include:
 - i. 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 VMPP 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 &
 - b) Field assessment
 - iii. Maintenance/replacement program.
- b. The 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. Prior to the installation of exterior lighting on facility components a "Facility Exterior Lighting Plan" shall be submitted, which shall address:
1. security lighting needs at PV panel module arrays, inverter and transformer pads, substation and switchyard sites, the Facility Operations and Maintenance building site (if any), and any exterior equipment storage yards;
 2. plan and profile figures to demonstrate the lighting area needs and proposed lighting arrangement at the collection substation and switchyard sites, the Facility Operations and Maintenance building site, and any exterior equipment storage yards;
 3. lighting should be designed to provide safe working conditions at appropriate locations;
 4. exterior lighting design shall be specified to avoid off-site lighting effects, by:
 5. using 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;
 6. requiring full cutoff fixtures, with no drop-down optical elements (that can spread illumination and create glare) for permanent exterior lighting; and
 7. manufacturer's cut sheets of all proposed lighting fixtures shall be provided.

14. **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. The SEEP shall attach an approved *Cultural Resources Avoidance, Minimization and Mitigation Plan* (CRAMMP). The final CRAMMP will provide a detailed description of cultural resources mitigation measures approved by the New York State Office of Parks, Recreation, and Historic Preservation (NYSOPRHP).

15. **Avian and Bat Impacts**

- a. The SEEP shall describe clearing measures to be implemented during construction to avoid and minimize impacts to bird and bat species as outlined in the Certificate Conditions.

- b. The SEEP shall attach the final “Net Conservation Benefit Plan” (NCBP). The final NCBP shall identify which sections of the NCBP have been updated or changed from any preliminary NCBP filed prior to Certification the Facility.

At a minimum, the final NCBP shall address the Siting Board’s Order and Certificate (Certificate Condition 51) and contain the following information if not already included:

- a) A detailed description of measures identified by NYSDEC and those considered by the Certificate Holder to fully avoid impacts to Northern Harrier and Short-eared Owl (“Affected Species”), and a demonstration that measures to fully avoid impacts are impracticable;
- b) A detailed description of measures identified by NYSDEC and those considered by the Certificate Holder to minimize, to the greatest extent practicable, unavoidable impacts to the Affected Species, and a discussion of the minimization actions to be implemented at the Project;
- c) A detailed description of measures and sites considered by the Certificate Holder to mitigate for unavoidable impacts to the Affected Species;
- d) An identification of the mitigation actions to be undertaken by the Certificate Holder that will result in a net conservation benefit to the Affected Species and not solely an offset for the potential adverse modification of occupied habitat. To achieve a net conservation benefit for unavoidable impacts to the Affected Species, mitigation actions will be implemented to compensate for the loss of Northern Harrier and Short-eared Owl occupied wintering habitat as described in the Certificate;
- e) A detailed discussion of the net benefit calculations based on the actual location and type of minimization and mitigation measures to be taken for each of the Affected Species;
- f) Full source information used as inputs to the net benefit calculations for each of the Affected Species;
- g) An identification of the location(s) and size of mitigation area(s);
- h) A discussion of the management and maintenance actions required to achieve a net conservation benefit for impacts to the Affected Species, including conditions for maintenance of grassland bird habitat within freshwater wetlands and 100-foot adjacent areas regulated pursuant to Article 24 of the Environmental Conservation Law;
- i) A proposed method for monitoring the effectiveness of the plan;
- j) Identify a timeline for implementation of measures required by the plan;
- k) Proof of access to and right to perform land management activities on the mitigation site(s);

- l) Identification of all persons that will be involved in implementing the NCBP, with individuals responsible for funding and implementing the plan clearly identified;
- m) A letter or other indication of the Certificate Holder's financial and technical capability and commitment to fund and execute such management, maintenance, monitoring, and adaptive management for the 40-year life of the Project/term of the Certificate.; and,
- n) The Certificate Holder will consult with NYSDPS, NYSDEC, Scenic Hudson, and Greene Land Trust in the development of land management strategies for grassland habitat conservation areas proposed as part of the NCBP.

16. Wetlands, Streams, and Other Waterbodies

- a. The SEEP shall include a table listing all delineated federal and state jurisdictional wetlands, streams, vernal pools and other waterbodies located on or adjacent to the Facility site, along with the following information for each resource: Town name, centroid coordinates of the resource, location within/relative to the Facility site (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 (if any; specify the crossing distance across the resource or to the associated Facility construction area).
- b. A description of construction activities within delineated federal and state jurisdictional wetlands, streams⁵, and/or other waterbodies outlining the following requirements, where applicable:
 - i. Where any access roads in wetlands are to be constructed through wetlands
 - 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 of 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 temporary culverts designed to DEC and/or U.S. 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:

⁵ Delineated streams refer to the streams identified and delineated by Flint Mine Solar in the Application.

- 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 cofferdams, 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. Cut vegetation in wetlands may be left in place (i.e. drop and lop) or will be piled in upland areas outside of the State regulated 100-foot adjacent areas.
- c. Description of construction activities to facilitate 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, streams, or waterbodies;
 - iv. Trench breakers/plugs shall be used at the edges of wetlands as needed to prevent

- v. 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 blankets;
 - 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) 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.
- e. A site-specific Stream Crossing Plan shall be developed for each permanent delineated stream crossing and shall include detailed plan, profile and cross-sectional view plans.. Bridges or culverts can be utilized at each permanent delineated stream crossing and culverts 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 2% annual (50-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 width of the mean (ordinary) high-water channel;
 - v. The slope shall remain consistent with the slope of the adjacent stream channel. For slopes greater than 3%, an open bottom culvert;
 - 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 in-stream 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 six inches;
 - iv. All disturbed stream banks below the normal high-water elevation must be graded no steeper than one vertical to two horizontal slope (1:2), or to the original grade as appropriate, 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 where appropriate, seeded with an appropriate perennial native conservation seed mix, and stabilized 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. The SEEP shall attach a copy of the final Wetland Mitigation Plan, developed in coordination with DEC and DPS Staff, addressing permanent impacts to state-regulated wetlands. The final Wetland Mitigation Plan shall:
- i. Describe all activities that will occur within federal and state-regulated 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 (i.e., 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 mitigation 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 five years after completion of the wetland mitigation project. 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 five years. If, after five 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.

17. Invasive Species Prevention and Management Plan

- d. The SEEP shall attach a final ISPMP, based on the pre-construction invasive species survey of invasive species conducted within the Project Area during the previous growing season. The ISCP 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 ISCP effectiveness and inform

potential remedial action.

18. Sound

- a. A statement that the Certificate Holder will comply with the following conditions regarding construction noise:
 - i. Comply with all local laws regulating construction noise;
 - ii. Maintain functioning mufflers on all transportation and construction machinery;
 - iii. Respond to noise and vibration complaints according to the protocols established in the Complaint Resolution Plan.
- b. Specify procedures to be followed to minimize noise impacts related to facility site 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 water bodies, if any;
 - v. A height of evaluation of 1.5 meters for all receptors; and
 - vi. A temperature of 10 degrees Celsius and 70% Relative Humidity.
- d. Sound modeling results shall include sound results in tabular and graphical format 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 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" x 34") 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 lines, and participating status shall be forwarded to DPS Staff in digital media.
 - vii. Final computer noise modeling files shall be delivered to DPS Staff.
- 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 10 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)⁶,
 - b) atmospheric absorption for a temperature of 10 degrees Celsius and 70% Relative Humidity (Aatm)⁷,

⁶ Adiv can be assumed to be the same at all 1/3-octave bands and be omitted from analysis.

⁷ The same full-octave band atmospheric attenuation coefficients indicate in Table 2 of ANSI S12.62 , can be used for the three adjacent one-third octave bands corresponding to each full-octave band.

- c) Attenuation to the ground effect ($A_{gr}^{8,9}$),
 - d) Attenuation due to a barrier (A_{bar}) if any¹⁰.
 - e) No miscellaneous attenuations (A_{misc}) will be included.
- iv. If no manufacturers information or 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 58 (b) (i) and (ii).

19. Operations Plans/Reports, Schedule and Timing

- 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 Communications and Complaint Resolution Plan 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 Operations and Maintenance (O&M) 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 and limitations, specifications, and notification requirements will be included. In areas where herbicides are allowed, such use will be conducted by NYSDEC certified pesticide applicators in accordance with all label restrictions and notification requirements;

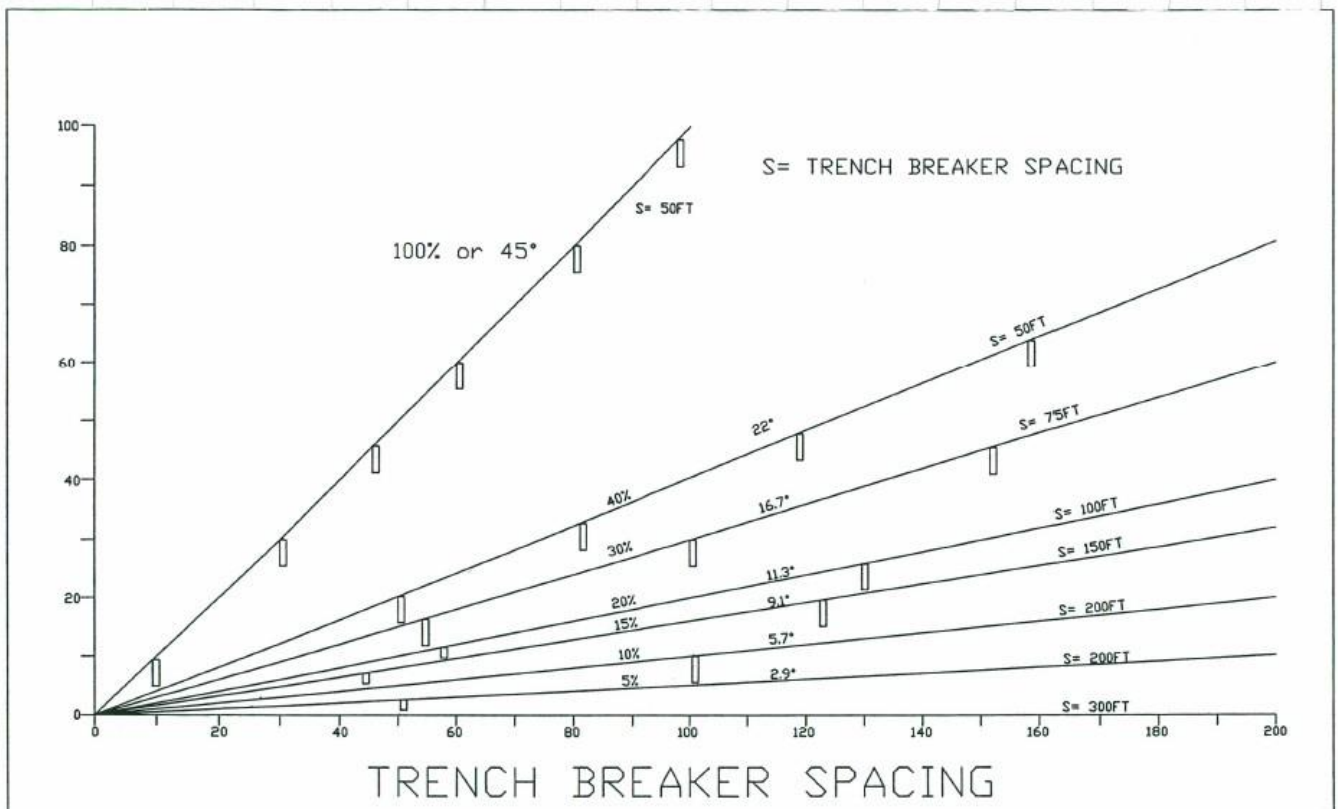
⁸ The same full-octave band attenuations as indicated in Table 3 of ANSI S12.62 , can be used for the three adjacent one-third octave bands corresponding to each full-octave band.

⁹ Calculations will use the maximum height of the equipment as the height of the noise source.

¹⁰ Should the analysis show that a barrier will be needed, the barrier will be implemented before the start date of operations.

- 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



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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	FIGURE NO: TABLE 2
	File Name:	

Flint Mine Solar Proposed Certificate Conditions

I. Facility Authorization

1. The Certificate Holder is authorized to construct and operate the Facility (or the Project), as described in the Application by Flint Mine Solar, LLC (Flint Mine) 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 clarified by the Certificate Holder's supplemental filings, except as waived, modified or supplemented by the New York State Board on Electric Generation Siting and the Environment's (Siting Board's) Order Granting Certificate or other permits.
2. 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.
3. 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 Siting Board is not empowered to provide, or has expressly authorized. In addition, the following are expressly authorized:
 - a. The PSC to require approvals, consents, permits, other conditions for the construction or operation of the facility under PSL Sections 68, 69, 70, and Article VII, as applicable, with the understanding that the PSC will not duplicate any issue already addressed in this proceeding and will instead only act on its police power functions related to the entity as described in the body of this siting permit;
 - b. The NYSDOT to administer permits associated with oversize/overweight vehicles and deliveries, highway work permits, and associated use and occupancy approvals as needed to construct and operate the facility; and
 - c. The Towns of Cossackie and Athens to implement the New York State Uniform Fire Prevention and Building Code, as necessary and applicable.
 - d. Greene County and the Towns of Cossackie and Athens to handle local approvals for work within municipal rights-of way or on municipally owned roads, for the installation of driveways, and the repair of roads damaged by construction of the Facility, through the execution of a Road Use Agreement (RUA) with the Applicant or through the issuance of local ministerial permits. Such RUAs will be executed prior to commencement of construction.
4. If the Certificate Holder believes that any action taken, or determination made, by a State or local agency or their respective staffs, in furtherance of such agency's review of any applicable regulatory permits or approvals, or actions or the lack thereof by a utility subject to the Commission's jurisdiction, is unreasonable or unreasonably delayed, conditioned or withheld, the

Certificate Holder may petition the Siting Board or the Commission, as the case may be, upon reasonable notice to that agency, to seek a determination of any such unreasonable or unreasonably delayed, conditioned or withheld, action or determination. The permitting agency, 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.

5. Facility construction is authorized for a photovoltaic (PV) solar energy generating project in the Towns of Athens and Coxsackie, in Greene County, together with the following: PV modules producing direct current (DC) mounted on metal pier structures, inverters to convert DC electricity to alternating current (AC) electricity, transformers, energy storage components, 34.5 kilovolt (kV) underground and above ground collection system, collection substation, point of interconnect switchyard, loop-in/loop-out interconnection structures, temporary or permanent access roads, fencing and gates, operations and maintenance building (if necessary), underground communication/fiber cables, and temporary staging areas. The total nameplate capacity of the Facility interconnected to the grid shall not exceed 100 megawatts (MWs-AC).

6. If the Certificate Holder decides not to commence construction of any portion of the Project (not including the removal of modules, inverters, or associated infrastructure as a result of final facility design), it shall so notify the Secretary to the Siting Board (Secretary) promptly 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. Should there be any removal of modules, inverters, or associated infrastructure as a result of final facility design, such removals shall not require an amendment to the Certificate.

7. Prior to commencing construction, the Certificate Holder shall request and obtain a water quality certification pursuant to Section 401 of the Clean Water Act for areas regulated under federal law, if required. This request shall be filed and served and noticed pursuant to 16 NYCRR §1000.8(a)(8) and shall be filed concurrently with the permit application filed with the United States Army Corps of Engineers (USACE or Corps) pursuant to Section 404 of the Clean Water Act. Construction activities regulated under federal law may not commence until a Water Quality Certification has been issued:

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.

8. The Certificate Holder has not asserted that it has the power of eminent domain to acquire real property or demonstrated that the feasibility of the Project relies in any way upon the Certificate Holder or any other entity having the power of eminent domain or exercising the power of eminent

domain to acquire permanent or temporary real property rights 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, an entity in the nature of a merchant generator and not in the nature of a fully regulated public utility company with an obligation to serve customers, the Siting Board is not making a finding of public need for any particular parcel of land such that a condemnor 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, construction staging areas or interconnections necessary to service the Facility without an express amendment to this Certificate, granted by the Siting Board, authorizing such proceedings.

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.

10. The Secretary to the Siting Board, or Secretary to the Commission after the Siting Board’s jurisdiction has ceased, may extend any deadlines established by this order for good cause shown. Any request for an extension must be in writing, include a justification for the extension, and be filed prior to the expiration of the affected deadline.

11. 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 the Certificate Holder of all required information.

II. General Conditions

12. Certificate Holder and its contractors shall not commence construction until a “Notice to Proceed with Construction” has been issued by the Secretary or by the Deputy Director of the Environmental Certification and Compliance Section of the DPS Office of Electric, Gas & Water. The “Notice to Proceed with Construction” will be issued promptly after all applicable pre-construction compliance and informational filings have been filed by the Certificate Holder and approved, accepted or revised by the Commission or Secretary. The Notice to Proceed will not be unreasonably withheld or delayed by the Commission or Secretary.

13. Commencement of construction is defined as the beginning of unlimited and continuous site clearing, site preparation (except installation of temporary erosion and sedimentation control measures) and grading activity, and construction of the Facility does not include staging, tree-cutting activities related to testing or surveying (such as geotechnical investigation), together with such testing, drilling and similar pre-construction activities to determine the adequacy of the site for construction and the preparation of filings pursuant to these conditions, such as limited staging and limited tree cutting, that are required to perform such pre-construction

activities.

14. Construction may commence in phases or stages provided the Certificate Holder files all applicable compliance and informational filings prior to the commencement of construction for each phase or stage of the Facility. Phases of construction have been identified as (a) Site Preparation, which includes tree clearing; (b) Commencement of Civil Construction; and (c) Commencement of Operations.

15. 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 during commissioning of the Project.

16. The Certificate Holder shall implement the impact avoidance, minimization and/or mitigation measures, as described in the Order Granting Certificate.

17. The Certificate Holder shall construct and operate the facility in accordance with the substantive provisions of the applicable local laws as identified in this proceeding, except for those provisions of local laws that the Siting Board determined to be unreasonably burdensome, as stated in the Order Granting Certificate.

18. The Certificate Holder shall construct and operate the Facility in a manner that conforms to all substantive State requirements identified in Exhibit 32 of the Application.

19. The Certificate Holder shall incorporate and implement as appropriate, in all compliance filings and construction activities, American National Standards Institute (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.

20. The Certificate Holder shall work with National Grid and any successor Transmission Owner (as defined in the New York Independent System Operator (NYISO) Agreement), to ensure that, with the addition of the Facility (as defined in the Interconnection Agreement between the Certificate Holder, NYISO and National Grid), the system will have power system relay protection and appropriate communication capabilities to ensure 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 may be required to demonstrate compliance 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, NERC and National Grid criteria.

21. 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. The Certificate Holder shall regard Department of Public Service (Staff or DPS Staff), 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 Public Service Commission's (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, DPS Staff may issue a stop work order for that location or activity. Any stop work orders shall be, to the maximum extent possible, limited to affected portions of the Project.

b. A stop work order shall expire 24 hours after issuance, or earlier if the issue promoting the stop work order is resolved, 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 shall use best efforts to provide Certificate Holder notice of any application to the Siting Board or Commission 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 DPS Staff, the stop work order will be lifted. If the emergency has not been satisfactorily resolved, the stop work order will remain in effect.

c. Stop work authority shall be exercised sparingly and with due regard to potential environmental impact, economic costs and consequential damages involved, possible impact on construction activities, and whether an applicable statute or regulation is violated. Before exercising such authority, DPS Staff will consult wherever practicable with the Certificate Holder's authorized representative(s). 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 Director of the DPS Office of Electric, Gas and Water. If DPS Staff 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. Issuance of a stop work order or the implementation of measures as described below may be directed at the sole discretion of DPS Staff during these discussions.

d. If DPS Staff 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, DPS Staff may, in the absence of responsible Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with DPS Staff, refuse to take objectively appropriate action, direct the field crews to stop the specific potentially harmful activity immediately. If responsible Certificate Holder personnel are not on site or available by telephone, DPS Staff will immediately thereafter inform the Certificate Holder's construction supervisor(s) (during Construction), National Control Center (during operation) and environmental monitor(s) of the action taken. The stop work order may be lifted by DPS Staff if the situation prompting its issuance is resolved.

e. If DPS Staff 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, DPS Staff may, in the absence of responsible Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with DPS Staff, refuse to take objectively appropriate action, direct the Certificate Holder or the relevant Contractors to implement the corrective measures identified in the approved Certificate. However, all directives must follow the protocol established for communication between parties as identified in a flowchart of proper communications which will be included in the relevant Facility plans (QA/QC, Site Security Plan, Facility Communication and Complaint Resolution Plan, as appropriate), and made available at the construction site for Flint Mine Solar. The field crews shall immediately comply with DPS Staff's directive as provided through the communication protocol. DPS Staff will immediately thereafter inform Certificate Holder's Construction supervisor(s) and or Environmental Monitor(s) of the action taken.

22. The Certificate Holder will adhere to National Grid and NYISO requirements for any additional studies, as well as design parameters involving relays and other necessary components per the interconnection agreement.

23. The Certificate Holder shall provide host community benefits, such as Payments in Lieu of Taxes (PILOTs), other payments or other project(s) agreed to by the host community (i.e., the Towns of Coxsackie and Athens) pursuant to a host community agreement. Such host community agreement(s) will be executed prior to commencement of construction.

III. Notifications

21. At least fourteen (14) days prior to the commencement of construction date, the Certificate Holder shall notify the public as follows:

(a) Provide notice by mail to host landowners, and to adjacent landowners within 2,500 feet of parcels with Project components, and persons who reside on such property (if different than the landowner);

(b) Provide notice to local Town Supervisors and County Administrator and emergency personnel;

(c) Publish notice in the local newspapers of record for dissemination, including at least one free publication, if available (e.g., Pennysaver);

(d) Provide notice for display in public places, which shall include, but not be limited to, the Town Halls of the host municipalities, at least one (1) library in each host municipality, at least one (1) post office in each host municipality, the Facility website, and the Facility on-site construction trailers/offices;

(e) Provide notice to Parties to this proceeding; and

(f) File notice with the Secretary for posting on the DPS Document Matter Management website.

22. The Certificate Holder shall write the notice(s) required in subdivisions (a) and (c) of this section in plain language reasonably understandable to the average person and shall ensure that the notice(s) contain(s):

- a. A map of the Facility;
- b. A brief description of the Facility;
- c. The construction schedule and transportation routes;
- d. The name, mailing address, local or toll-free telephone number, and email address of the appropriate Facility contact for all inquiries, including complaints;
- e. Instructions on how to register a complaint (e.g. in writing, by telephone, in-person and online) and where to find a copy of the Facility Complaint Resolution Plan;
- f. Contact information for the NYSDPS and Commission; and
- g. A list of public locations where information on the Facility, construction, and the Certificate Holder will be posted.

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

24. The Certificate Holder shall file a written notice with the Secretary within 14 days in advance of the declared date of commencement of commercial operation of the Facility. Prior to project declared Commercial Operation Date, the Certificate Holder shall notify the entities identified in Condition 21 and provide a telephone number, email and mailing address for the Facility.

25. Within fourteen (14) days of the completion of all final post-construction restoration, the Certificate Holder shall notify the Secretary that all such restoration has been completed in compliance with the Certificate and the Order(s) approving applicable compliance filings.

IV. SEEP, Information Reports and Compliance Filings

A. *Site Engineering and Environmental Plan (SEEP)*

26. Prior to the commencement of construction of the Facility, the Certificate Holder shall submit a Site Engineering and Environmental Plan (SEEP) in accordance with the attached “Guidance for the Development of Site Engineering and Environmental Plan for the Construction of Flint Mine Solar” (SEEP Guide) which shall describe in detail the final Facility design and the environmental protection measures to be implemented during construction of the Facility. The Certificate Holder’s adherence to the SEEP 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. 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.

27. The SEEP shall be submitted in accordance with the rules for submittal, public comment, and decisions set forth in 16 NYCRR §1002.2 such that the Siting Board, or Commission after the Board's jurisdiction has ceased, can review and approve the incorporated compliance filings as outlined in this Certificate.

B. Information Reports

The following information will be reported to and shall be filed with Secretary to the Siting Board in accordance with 16 NYCRR §1002.4. The following information shall be filed prior to the commencement of activity pertaining to the phase of construction in which the information is relevant.

General

28. A table of all participating landowners associated with Flint Mine Solar shall be provided to DPS Staff and redacted to protect confidential information prior to the Commencement of Construction.

29. Interconnection:

a. Provide a copy of the Interconnection Agreement (IA) between the NYISO, National Grid, and the Certificate Holder upon receipt. Any updates or revisions to the Interconnection Agreement shall be submitted throughout the life of the Project.

b. Except in the event of an emergency, if any equipment or control system with materially different characteristics than in the IA is installed throughout the life of the Project, the Certificate Holder shall, at least 90 days 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. If any such change(s) is made in the event of an emergency, the Certificate Holder shall notify the Secretary as soon as practicable, within one week of the date of installation.

30. All Facilities Studies issued by National Grid and the NYISO related to the Facility, and any updated facilities agreements, will be filed throughout the life of the Facility.

31. Any System Reliability Impact Study (SRIS) required as part of a future Facility modification or upgrade, performed in accordance with the NYISO Open Access Transmission Tariff (OATT) approved by the Federal Energy Regulatory Commission, and all appendices thereto, reflecting the interconnection of the modified Facility will be filed.

32. The Certificate Holder shall file with the Secretary within 60 days after the commercial

operation date a certification that the collector lines were constructed to the latest editions of ANSI standards. 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.

33. Prior to Certificate Holder providing final design plans and profile drawings of the interconnection facilities, the Certificate Holder shall work with National Grid to ensure such documents are in accordance with the Interconnection Agreement and Facility Study Report and National Grid's Electric System Bulletins, as well as the New York State High Voltage Proximity Act.

34. The Certificate Holder shall 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.

Local or State Permits and Approvals

35. Upon receipt, copies of any local or state permits and/or approvals required for construction and operation of the Facility, if such approvals were authorized by the Siting Board in Condition 3 above, and not otherwise included in other filings (e.g., Stormwater Pollution Prevention Plan (SWPPP), 5-acre waiver (if necessary), DEC's acknowledgment of Notice of Intent for coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity, county or local permits for sewage and water, and local certificates of completion and temporary certificates of completion issued by a qualified independent engineering firm engaged by the Towns) shall be filed with the Secretary. If relevant Project plans require modifications due to conditions of local or state permits, the final design drawings and all applicable compliance filings shall be revised accordingly.

Plans, Profiles, and Details Drawings

36. As-Built Plans in both hard and electronic copies shall be filed within one year of the commencement of commercial operation of the Facility and shall include the following:

- a. GIS shapefiles showing all components of the Project (PV panel array locations, electrical collection system, substation, buildings, access roads, point of interconnection, etc.);
- b. Collection circuit layout map; and
- c. Details for all Project component crossings of, and co-located installations with existing high-pressure pipelines showing: cover; separations; any protection measures installed; locations of such crossings; and co-located installations.

37. Prior to installation of any PV modules, if not already provided to the Siting Board, the Certificate Holder shall file equipment specifications indicating that the PV modules have received an Underwriters Laboratories (UL) certification.

C. 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 the phase identified as directly related to the filing, unless otherwise noted.

General

38. The Certificate Holder shall file Operation and Maintenance Plan(s) for the Facility with the Secretary prior to commencement of operations. The plan will address vegetation and stormwater management as well as maintenance of built facilities and equipment, including conformance with manufacturer's required maintenance schedules.

39. Prior to installation of PV modules, a final Decommissioning and Site Restoration Plan shall be submitted. Financial security will be in the form of a letter of credit and will be established by the Certificate Holder to be held by the Towns of Athens and Coxsackie. The total amount of the financial security created for the Towns will represent the total final decommissioning and site restoration estimate, as described below. The financial security shall remain active until the Facility is fully decommissioned. The letter of credit 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 final Decommissioning and Site Restoration Plan will include:

- a. A final decommissioning and site restoration estimate (offset for project salvage value is not permitted in the calculation of the estimate) based on the final Project layout. The costs will be allocated between the Towns of Athens and Coxsackie based on the estimated cost associated with the removal and restoration of the facilities located in each Town. The estimate shall be updated by a qualified independent engineer licensed to practice engineering in the State of New York to reflect inflation and any other changes after one year of Facility operation, and every fifth year thereafter. Updated estimates will be filed with the Secretary after one year of Project operation and every fifth year thereafter;
- b. Affirmation that, prior to commencement of construction, (i) the letter of credit will be obtained in the final decommissioning and site restoration estimate amount, as calculated pursuant to subsection (a) of this Condition, (ii) the Towns' approval of the letter of credit form will be obtained, and (iii) copies of agreements between the Certificate Holder and the Towns, establishing a right for the Towns to draw on the letters of credit until the Facility is fully decommissioned and the Facility Site restored, shall be filed with the Secretary;
- c. Procedures and timeframes for providing written notice to the Towns, DEC and host/adjacent landowners of planned decommissioning and site restoration activities prior to commencement of those activities.
- d. Where former agricultural lands will be returned to their former agricultural state, the Certificate Holder will follow the restoration of agricultural lands according to the Solar Energy Projects – Construction mitigation for Agricultural lands (Revision 10/18/2019); and
- e. The Certificate Holder's decommissioning plan shall adhere to all state laws and regulations in effect at the time of decommissioning regarding the disposal and/or, recycling

of components.

f. Decommissioning and site restoration processes will be triggered if the Project has not generated electricity for a period of 12 continuous months, unless (i) 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 Certificate Holder, or (ii) the Facility has been directed by the New York Independent Systems Operator (NYISO) or interconnecting utility not to feed energy into the state's electric grid. 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.

40. The Certificate Holder shall submit a final Facility Communications and Complaint Resolution Plan for both construction and operation phases of the Project, which shall identify the Certificate Holder's construction organizational structure, contact list, and protocol for communication between parties, as well as the complaint reporting and resolution process for construction and operational phases.

- a. A copy of the Facility Communications and Complaint Resolution Plan shall be submitted to DPS Staff, the Towns and filed at the Facility document repositories.
- b. The Certificate Holder shall provide to DPS Staff and the Towns 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 and the agricultural-specific environmental monitor.
- c. The Certificate Holder may submit separate Facility Communications and Complaint Resolution Plans for construction and operation. Complaint procedures for construction must be submitted prior to the commencement of construction and complaint procedures for operation must be submitted prior to the commencement of commercial operation.

Health and Safety

41. A final Emergency and Fire Response Plan (EFRP) that shall be implemented during Facility construction, operation, and decommissioning. The Certificate Holder may submit separate emergency procedures for construction and operation, if preferred. Emergency procedures for construction must be submitted prior to the commencement of construction and emergency procedures for operation must be submitted prior the commencement of commercial operation.

- a. The EFRP shall address, amongst other potential contingencies, provisions for notification of emergencies.
- b. Training drills with emergency responders will be offered by the Certificate Holder at least once per year.
- c. Copies of the final EFRP shall be provided to DPS Staff, NYS Division of Homeland Security and Emergency Services, Greene County Emergency Management, the Towns of Athens and Coxsackie, and local emergency responders that serve the Facility.

42. A Site Security Plan for Facility construction and operations will be submitted. Copies of the final Site Security Plan shall be provided to DPS Staff, the NYS Division of Homeland Security

and Emergency Services, the Towns of Athens and Coxsackie and local emergency responders that serve the Facility. The Certificate Holder may submit separate Site Security Plans for construction and operation. Security procedures for construction must be submitted prior to the commencement of construction and security procedures for operation must be submitted prior the commencement of commercial operation.

43. A Health and Safety Plan that shall be implemented during Facility operation and construction will be submitted. The Certificate Holder may submit separate health and safety procedures for construction and operation. Health and safety procedures for construction must be submitted prior to the commencement of construction and health and safety procedures for operation must be submitted prior the commencement of commercial operation.

44. A final site-specific construction Quality Assurance and Quality Control Plan (QA/QC Plan) will be submitted prior to the commencement of construction.

45. Prior to the installation of exterior lighting on facility components a Facility Exterior Lighting Plan shall be submitted, which shall address those requirements set forth in the SEEP.

Transportation

46. The Certificate Holder will develop final construction routes in consultation with the Towns and will use the final construction routes in preparing the final construction drawings. The Certificate Holder shall file the following:

- a. Pursuant to 16 NYCRR §1002.4, prior to using a route to haul equipment or materials requiring a permit, the Certificate Holder shall file copies of all necessary transportation permits from the affected State, County, and Town agencies for such equipment and materials on such route. Such permits shall include but not be limited to: Highway Work Permits to work within the highway Right-of-Way (ROW), permits to exceed posted weight limits, Highway Utility Permits to work within the highway ROW, Traffic Signal Permits to work within the highway ROW, Special Haul Permits for oversized or overweight vehicles, and Divisible Load overweight Permits;
- b. Final or updated “Route Evaluation Study,” including maps of final transportation routes for Project component deliveries;
- c. “Traffic Control Plans” for any City, Town, or Village that may experience delays to local traffic during construction activities. The “Traffic Control Plans” shall include copies of any Road Use Agreements with Greene County and any affected towns where the local roads will be utilized for delivery or construction vehicle transportation; and
- d. Upon receipt, pursuant to 16 NYCRR §1002.4 copies of all necessary agreements with utility companies for raising overhead wires where necessary to accommodate the oversized or overweight delivery vehicles, if applicable.

Plans, Profiles and Detail Drawings

47. The Certificate Holder shall provide all of the information required pursuant to Section A of the SEEP Guide as applicable to the Project. Maps, site plans, profile figures, and environmental controls and construction details incorporating all components of the final layout of the Project shall be provided in the SEEP for Flint Mine Solar.

48. Shapefile data shall be provided to DPS Staff, DEC and the Towns upon submittal of the SEEP document for the final locations of PV panel arrays, collection lines, transmission lines, substation, designated clearing, construction and laydown areas, access ways, limits of disturbance and other Project facilities.

Environmental

49. The Certificate Holder shall prepare a Geotechnical Engineering Report verifying subsurface conditions and characterizing subsurface conditions at the Facility site, including where horizontal directional drilling (HDD) is proposed. The Geotechnical Engineering Report shall identify appropriate mitigation measures required in locations with highly corrosive soils, soils with a high frost risk, soils with high shrink or swell potential, and locations where subsurface karst conditions are observed. This report shall be submitted prior to commencement of construction.

50. An Inadvertent Return Plan showing all locations where horizontal directional drilling (HDD) or jack and bore is proposed. The plan shall assess the potential impacts from frac-outs at the proposed drilling locations, establish measures for minimizing the risk of adverse impacts to nearby environmental resources, and contain details as outlined in Section B of SEEP Guide.

51. The Certificate Holder shall prepare and implement a final “Net Conservation Benefit Plan” (NCBP) in accordance with 6 NYCRR Part 182 for the take of State-listed threatened and endangered grassland bird species occupied habitat. The NCBP shall be developed in consultation with NYSDPS, NYSDEC, Scenic Hudson, and Greene Land Trust, and that shall be accepted by NYSDEC. The NCBP shall be filed prior to commencement of construction activities (as defined in Condition 13 above) in occupied habitat, and shall include the following:

- a. A demonstration that the NCBP results in a net conservation benefit on each of the affected species (Short-eared Owl and Northern Harrier);
- b. Detailed explanation of the net conservation benefit to the species based on the actual location and type of minimization and mitigation measures to be taken for each of the affected species;
- c. Full source information supporting a determination as to the net conservation benefit for each of the affected species;
- d. A consideration of impact minimization and mitigation measures for each of the affected species;
- e. An identification of sites for mitigation measures for the affected species;
- f. A letter or other indication proof of the Certificate Holder’s financial and technical capability and commitment to fund and execute such management, maintenance and monitoring for the life of the Facility/term of the Certificate;
- g. The Certificate Holder will consult with NYSDPS, NYSDEC, Scenic Hudson, and

Greene Land Trust in the development of land management strategies for grassland habitat conservation areas proposed as part of the NCBP;

h. On-site grassland bird habitat management activities performed within freshwater wetlands and 100-foot adjacent areas regulated pursuant to Article 24 of the Environmental Conservation Law will adhere to the requirements specified in the NCBP.

52. The Certificate Holder shall implement the approved Cultural Resources Avoidance, Minimization and Mitigation Plan (CRAMMP). The final CRAMMP will provide a detailed description of cultural resources mitigation measures approved by the New York State Office of Parks, Recreation, and Historic Preservation (NYSOPRHP). Prior to construction, the Certificate Holder will provide demonstration of land rights for mitigation parcels that would be placed into a conservation easement (or similar).

53. The Certificate Holder shall implement a Final Unanticipated Discovery Plan, approved by NYSOPRHP, which will describe procedures that will be followed in the event that unanticipated archaeological finds are observed during construction.

54. A long-range Facility Operations and Maintenance (O&M) Plan shall be filed within one year after the commencement of operation. The plan shall address specific standards, protocols, procedures and specifications as indicated in the SEEP Guide.

55. The Certificate Holder shall prepare a Final Invasive Species Prevention and Management Plan (ISPMP) which shall be submitted by commencement of construction. The Final ISPMP shall include pre-construction invasive species control if necessary, construction materials inspection and sanitation, 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 ISPMP effectiveness. At the conclusion of the MP, a report shall be submitted to DPS Staff, DEC, the Towns, and DAM, 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 ISPMP goals are not met, and there is an increase of invasive species due to Facility construction, the Certificate Holder, DPS, DEC and DAM 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.

56. The Certificate Holder shall prepare an Agricultural Area Plan consistent with the New York State Department of Agriculture and Markets "Guidelines for Solar Energy Project – Construction Mitigation for Agricultural Lands (Revision 10/18/2019)."

Visual

57. 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, based on the conceptual mitigation plan presented in Appendix 24-D of the Application. 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. All plantings shall be appropriate for the scale of the Facility and visual character of the surrounding area.
- b. Visual contrast minimization and mitigation measures;
- c. Solar glare mitigation requirements.
- d. 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.
- e. A maintenance and replacement program which shall specify that:
 - (i) The Certificate Holder will retain a landscape architect and/or Certified Landscape and Nursery Professional (CLNP) to 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 retain a landscape architect and/or CLNP to 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 VMPP. 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 retain a landscape architect and/or CLNP 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 excessive damage or 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 VMPP. 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

Noise

58. Sixty (60) days prior to commencement of construction, the Certificate Holder shall submit:
 - a. Final drawings for the Solar Generating Facility, incorporating any appropriate 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 elevation;

- iii. Site plan and elevation detail 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); and
 - v. Sound information from the manufacturers for all noise sources (e.g., transformers, inverters, and HVAC equipment, 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 noise limits:
- i. A maximum noise limit of forty-five (45) dBA Leq (8-hour), at the outside of any non-participating residence (existing at the date the Order is issued), and fifty-five (55) dBA Leq (8-hour) at the outside of any existing participating residence;
 - ii. A maximum noise limit of forty (40) dBA Leq (1-hour) at the outside of any existing non-participating residence from the collector substation equipment;
 - iii. A prohibition on producing any audible prominent tones, as defined by using the constant level differences listed under ANSI S12 .9-2005/Part 4 Annex C (sounds with tonal content), at the outside of any existing non-participating residence. Should a prominent tone occur, the broadband overall (dBA) noise level at the evaluated non-participating position shall be increased by 5 dBA for evaluation of compliance with subparagraph (i) and (ii) of this paragraph; and
 - iv. A maximum noise limit of fifty-five (55) dBA Leq (8-hour), short-term equivalent continuous average sound level from the facility across any portion of a non-participating property (except for portions delineated as NYS-regulated wetlands and utility/transportation ROWs), to be demonstrated with modeled sound contours drawings and discrete sound levels at worst-case locations. 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.

V. Facility Construction and Maintenance

59. Construction Hours. Construction activities which may result in noise off-site, including excavation, tree clearing, or pile driving activities, shall be limited to 7 a.m. to 7 p.m. Monday through Saturday and 8 a.m. to 7 p.m. on Sunday and national holidays, with the exception of construction, deliveries or maintenance work which may need to occur during extended hours beyond this schedule on an as-needed basis, subject to the notice requirements in subsection (b).

- (a) Construction work hour limits apply to facility construction and to construction-related activities, including maintenance and repairs of construction equipment at outdoor locations, large vehicles idling for extended periods at roadside locations, delivery and off-loading of equipment, and related disturbances. This condition shall not apply to vehicles used for

transporting construction or maintenance workers, small equipment, and tools used at the facility site for construction or maintenance activities. Crews will be allowed to assemble in Project Area and conduct pre and/or post workday meetings (i.e. morning plan of the day and/or safety brief, evening progress meeting) outside of the timeframes identified in this Condition. This condition shall also not apply to activities that do not generate noise.

(b) If, due to safety or continuous operation requirements, construction activities are required to occur beyond the allowable work hours, the Certificate Holder shall notify the NYSDPS, affected landowners and the host Towns. Such notice shall be given at least twenty-four (24) hours in advance, unless such construction activities are required to address emergency situations threatening personal injury, property, or severe adverse environmental impact that arise less than twenty-four (24) hours in advance. In such cases, as much advance notice as is practical shall be provided. Such notice shall include appropriate measures taken to avoid, minimize and mitigate any noise, traffic or other construction impacts.

60. During Facility operations, maintenance activities which generate noise off-site will generally be conducted between the hours of 7 a.m. to 7 p.m. Monday through Saturday. If, due to safety or continuous operation requirements, noise-producing maintenance activities are required to occur beyond the allowable work hours, the Certificate Holder will provide the notices outlined in Condition 59(b). This condition shall not apply to routine snow removal or mowing activities.

61. *Environmental and Agricultural Monitoring.*

a. The Certificate Holder shall hire an independent, third-party environmental monitor to oversee compliance with environmental commitments and siting permit requirements. The environmental monitor will have sufficient expertise (or training) to implement Certificate Conditions specific to threatened and endangered species concerns, as described herein. The environmental monitor shall perform regular site inspections of construction work sites and, in consultation with the NYSDPS, issue regular reporting and compliance audits.

b. The environmental monitor shall have stop work authority over all aspects of the facility. Any stop work orders shall be limited to affected areas of the facility. Copies of the reporting and compliance audits shall be provided to the host town(s) upon request.

c. The Certificate Holder shall identify and provide qualifications and contact information for the independent, third-party environmental monitor to the NYSDPS, with a copy to the appropriate State permitting agency.

d. If the New York State Department of Agriculture and Markets (NYSDAM) determines that the environmental monitor is not qualified to serve as an agriculture-specific Environmental Monitor, the Certificate Holder shall also retain an independent, third-party agriculture-specific environmental monitor (if required by subsection(s) below).

e. The Certificate Holder shall ensure that its environmental monitor (and agricultural-specific Environmental Monitor, if a separate entity) are equipped with sufficient access to documentation, transportation, and communication equipment to effectively monitor the

Certificate Holder's contractor's compliance with the provisions of the siting permit with respect to such Certificate Holder's facility components and to applicable sections of the Public Service Law, Executive Law, Environmental Conservation Law, and Clean Water Act Section 401 Water Quality Certification, substantive provisions of local law (not otherwise waived by the Siting Board), and the SEEP.

f. The Certificate Holder shall implement a construction impact monitoring plan that generally includes the following provisions:

- (i) Surface water sampling shall be conducted at up to 3 discharge or design point/outfalls from the Facility Site which are within the Sleepy Hollow Lake Watershed.
- (ii) Test results shall be recorded on site and will include, at a minimum, turbidity (NTU) and total suspended solids (TSS)
- (iii) Sampling shall be conducted at least 4 times prior to construction, twice quarterly during construction, and at least 4 times after construction. Samples shall be collected following rain events.

62. *Pre-Construction Meeting.* At least fourteen (14) days before the commencement of construction, the Certificate Holder shall hold a pre-construction meeting or meetings with staff of the appropriate State permitting agency, NYSDPS, NYSDEC, NYSAGM, NYSDOT, Town of Athens and Coxsackie supervisors and highway departments, county highway departments and appropriate local first responders. The balance of plant (BOP) construction contractor, the agricultural monitor and environmental monitor shall be required to attend the pre-construction meeting. If necessary due to public health restrictions, pre-construction meetings discussed herein may be held virtually or in person.

- a. An agenda, the location, and an attendee list shall be agreed upon between staff of the appropriate State permitting agency and the NYSDPS and the Certificate Holder and distributed to the attendee list at least one (1) week prior to the meeting;
- b. Maps showing designated travel routes, construction worker parking and access road locations and a general facility schedule shall be distributed to the attendee list at least one (1) week prior to the meeting;
- c. The Certificate Holder shall supply draft minutes from this meeting to the attendee list for corrections or comments, and thereafter the Certificate Holder shall issue the finalized meeting minutes; and
- d. If, for any reason, the BOP contractor cannot finish the construction of the facility, and one (1) or more new BOP contractors are needed, there shall be another pre-construction meeting with the same format as outlined in this section.

63. *Construction Reporting and Inspections.* During facility construction, the Certificate Holder shall report construction status and support inspections as follows:

- a. Every two (2) weeks, the Certificate Holder shall provide NYSDPS and appropriate

State permitting agency staff, and the host municipalities with a report summarizing the status of construction activities, and the schedule and locations of construction activities for the next two (2) weeks.

b. Prior to their entry onto the facility site for on-site inspections, the Certificate Holder shall conduct a tailgate meeting to communicate required safety procedures and worksite hazards to site inspectors.

c. The Certificate Holder shall accommodate reviews of any of the following during a monthly inspection and at other times as may be determined by NYSDPS staff:

(i) The status of compliance with siting permit conditions;

(ii) Field reviews of the facility site;

(iii) Actual or planned resolutions of complaints;

(iv) Significant comments, concerns, or suggestions made by the public, municipalities, or other agencies and indicate how the Certificate Holder has responded to the public, local governments, or other agencies; and

(v) The status of the facility in relation to the overall schedule established prior to the commencement of construction; and

(vi) Other items the Certificate Holder, NYSDPS staff, or staff of the appropriate State permitting agency consider appropriate.

d. After every monthly inspection, the Certificate Holder shall provide the municipalities and agencies involved in the inspection with a written record of the results of the inspection, including resolution of issues and additional measures to be taken.

64. *Flagging*. Prior to commencement of construction in any project component area, the Certificate Holder shall stake or flag the following:

a. The limits of tree clearing;

b. The limits of disturbance;

c. Wetlands, streams, waterbodies and DEC wetland adjacent areas within limits of disturbance;

d. Designated restrictive areas and sensitive environmental resources.

e. All on or off ROW access roads

f. Other areas needed for construction such as, but not limited to, laydown, and storage areas and areas to be planted with landscaping as visual screening.

65. *Dig Safely NY*. Prior to the commencement of construction, the Certificate Holder shall become a member of Dig Safely New York. The Certificate Holder shall require all contractors, excavators, and operators associated with its facilities to comply with the requirements of the PSC's regulations regarding the protection of underground facilities at 16 NYCRR Part 753.

66. *Natural Gas Pipeline Cathodic Protection.* The Certificate Holder shall contact any pipeline operators within the facility site and land owners, if necessary, on which facility components are to be located or whose property lines are within the zone of safe siting clearance, if any, and shall reach an agreement with each operator to provide that construction and operation of the Facility 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 and interconnection systems, specifically addressing 16 NYCRR Section 255.467 (External corrosion control; electrical isolation).

67. *Pole Numbering.* The Certificate Holder shall comply with all requirements of the PSC's regulations regarding identification and numbering of above ground utility poles at 16 NYCRR Part 217.

68. *Fencing.* All mechanical equipment, including any structure for storage of batteries, shall be enclosed by fencing of a minimum height of seven (7) feet with a self-locking gate to prevent unauthorized access.

69. *Air Emissions.* To minimize air emissions during construction, the Certificate Holder shall:

- a. Prohibit contractors from leaving generators idling when electricity is not needed and from leaving diesel engines idling when equipment is not actively being used;
- b. Implement dust control procedures to minimize the amount of dust generated by construction activities in a manner consistent with the Standards and Specifications for Dust Control, as outlined in the New York State Standards and Specifications for Erosion and Sediment Controls;
- c. Use construction equipment powered by electric motors where feasible, or by ultra-low sulfur diesel; and
- d. Dispose or reuse cleared vegetation in such a way that that minimizes greenhouse gas emissions (e.g., lumber production or composting).

70. *Construction Noise.* To minimize noise impacts during construction, the Certificate Holder shall:

- a. Maintain functioning mufflers on all transportation and construction machinery;
- b. Respond to noise and vibration complaints in accordance with the Complaint Resolution Plan; and
- c. Comply with all substantive provisions of all local laws regulating construction noise unless they are waived.

71. *General Environmental Requirements.*

- a. *Limits of Construction Activity (LOCA)*. Construction shall not disturb areas outside the construction limits shown on the design drawings.
- b. The use of blasting is prohibited.
- c. *E&S Materials*. Permanent erosion control fabric or netting used to stabilize soils prior to establishment of vegetative cover or other permanent measures shall be one hundred (100) percent natural or biodegradable product, to the maximum extent practicable (except for example, on steep slopes). Use of hay for erosion control or other construction-related purposes is prohibited to minimize the risk of introduction of invasive plant species.
- d. *Spill Kits*. All construction vehicles and equipment shall be equipped with a spill kit. All equipment shall 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. Any leaks shall be stopped and cleaned up immediately. Spillage of fuels, waste oils, other petroleum products or hazardous materials shall be reported to the NYSDEC's Spill Hotline within two (2) hours, in accordance with the NYSDEC Spill Reporting and Initial Notification Requirements Technical Field Guidance (see section 900-15.1(i)(1)(iii) of this Part). NYSDDS staff and Sleepy Hollow Lake Association of Property Owners shall also be notified of all reported spills in a timely manner.
- e. *Construction Debris*. Any debris or excess construction materials shall be removed to a facility duly authorized to receive such material. No burying of construction debris or excess construction materials is allowed.
- f. *Clearing Areas*. Tree and vegetation clearing shall be limited to the minimum necessary for facility construction and operation, and as detailed on final construction plans.
- g. *Clearing Methods*. When conducting clearing, the Certificate Holder shall:
 - (i) Comply with the provisions of 6 NYCRR Part 192, Forest Insect and Disease Control, and ECL Section 9-1303 and any quarantine orders issued thereunder;
 - (ii) Not create a maximum wood chip depth greater than three (3) inches nor store or dispose wood chips in wetlands, within stream banks, delineated floodways, or active agricultural fields. This provision shall not apply to chip roads, if proposed;
 - (iii) Not dispose of vegetation or slash by burning anywhere or burying within a wetland or adjacent area, or any areas proposed to return to agricultural production post decommissioning; and
 - (iv) Coordinate with landowners to salvage merchantable logs and fuel wood. Where merchantable logs and fuel wood will not be removed from the facility site during clearing activities, final construction plans shall indicate locations of stockpiles to be established for removal from site or future landowner resource recovery.

(v) Specific paths/routes will be prepared for clearing, which will be completed with tracked, low ground pressure vehicles and then followed up by shallow, superficial decompaction methods, such as aeration to a maximum depth of 6 inches.

h. *Invasive Species.* To control the spread of invasive insects, the Certificate Holder shall provide training for clearing and construction crews to identify the Asian Longhorn Beetle, the Emerald Ash Borer, Sirex Woodwasp, Spotted Lanternfly, and Hemlock Woolly Adelgid and other invasive insects of concern listed per NYSDEC Part 575 Regulations as a potential problem at the project site. If these insects are found, they shall be reported to the NYSDEC as soon as practicable.

72. *Water Supply Protection.*

(i) HDD and pier and post driving activities, except for fence poles or ground screws (which are permitted), shall be prohibited within one hundred (100) feet of any existing, active drinking water supply well.

(ii) HDD operations shall be prohibited within five hundred (500) feet of an existing, active drinking water supply well on a non-participating parcel.

(iii) 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 the Certificate Holder is granted access by the property owner:

A. Collection lines or access roads within one hundred (100) feet of an existing, active water supply well on a non-participating property;

B. Pier or post installations within two hundred (200) feet of an existing, active water supply well on a non-participating property; and

C. HDD operations within five hundred (500) feet of an existing, active water supply well on a non-participating property.

(iv) Should the third-party testing conclude that the water supplied by an existing, active water supply well meet applicable federal and state standards for potable water prior to construction, but failed to meet such standards post construction as a result of facility activities, the Certificate Holder shall cause a new water well to be constructed, in consultation with the property owner, at least one hundred (100) feet from collection lines and access roads, and at least two hundred (200) feet from all other facility components. The results of such tests and reports shall be made available to the relevant municipalities upon request.

73. *Threatened and Endangered Species.*

a. For purposes of avoiding and minimizing impacts to NYS threatened or endangered

grassland birds, the Certificate Holder shall implement the following:

- (i) To avoid direct impacts to NYS threatened or endangered grassland bird species, the following work windows apply for all ground disturbance and construction-related activities, including restoration and equipment/component staging, storage, and transportation, within occupied habitat: In NYS threatened or endangered grassland bird occupied wintering habitat, work shall be conducted in occupied wintering habitat only between April 1 and October 31 to the maximum extent practicable;
- (ii) If the Certificate Holder has identified construction activities that must occur between November 1 and March 31 in identified NYS threatened or endangered grassland bird occupied wintering habitat, the occupied habitat area(s) proposed for active construction shall be assessed by an on-site environmental monitor or biologist who shall conduct surveys for NYS threatened or endangered grassland bird species. The surveys shall occur daily, following protocol provided by DEC, until construction activities have been completed in the occupied habitat area, unless otherwise agreed to by NYSDEC. If no NYS threatened or endangered grassland bird species are detected during the survey of a given area, the area shall be considered clear for no more than twenty-four (24) hours. If NYS threatened or endangered grassland bird species are detected, a stop work order shall immediately be issued for that survey area and shall remain in place until such time until notice to continue construction is granted by NYSDPS staff, in concurrence with NYSDEC, provided however that the Certificate Holder may engage in emergency activities (such as those situations threatening personal injury, property, or severe adverse environmental impact) within such survey area.
- (iii) All temporary disturbance or modification of established grassland vegetation communities that occurs as a result of facility construction, restoration, or maintenance activities shall be restored utilizing a native herbaceous or pollinator-friendly seed mix by re-grading and re-seeding after disturbance activities are completed. These temporarily disturbed or modified areas include all areas within the facility site that do not have impervious cover such as temporary roads, material and equipment staging and storage areas, and electric line rights of way.
- (iv) The Certificate Holder shall implement avoidance and minimization measures as defined in the NCBP to avoid and minimize potential take of the species.
- (v) A post-construction avian monitoring plan for the Facility Site shall be developed in consultation with NYSDEC and a final, NYSDEC-accepted Monitoring Plan filed prior to the Start of Facility operation. The Monitoring Plan shall include breeding and wintering bird surveys, and include details of the surveys (i.e., start and end dates, point count and transect locations, frequency and scope of monitoring, methods for observation and survey, and reporting requirements). The Monitoring Plan will be used to gather data regarding use of the Facility Site 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.

b. To avoid impacts to NYS threatened or endangered bat species, the Certificate Holder shall implement the following:

(i) No Facility component shall be sited or located within one hundred fifty (150) feet of any known northern long-eared bat maternity roost, or within one quarter (0.25) mile of any known northern long-eared bat hibernaculum.

(ii) If at any time during the life of the facility, a NYS and/or federally threatened or endangered bat species maternity colony roost tree (or structure) is discovered within the facility site, the NYSDPS, NYSDEC, and USFWS shall be notified within twenty-four (24) hours of discovery (during construction) and forty-eight (48) hours of discovery (during operation), and the colony site shall be marked. A five hundred (500)-foot radius around the colony shall be posted and avoided until notice to continue construction, ground clearing, grading, non-emergency maintenance or restoration activities, as applicable, at that site is granted by the NYSDPS, NYSDEC, and USFWS. A re-evaluation of the potential impacts of the Project on NYS and/or federally listed bat species shall be prepared and provided to the NYSDPS, NYSDEC, and USFWS.

(iii) *Tree Clearing Limitations for Northern Long-eared Bats*

A. No tree clearing activities shall occur at any time within one hundred fifty (150) feet of any known maternity roost or one quarter (0.25) mile of any known hibernaculum.

B. All tree clearing activities (except for hazard tree removal to protect human life or property) occurring within one and a half (1.5) miles of a maternity roost site or five (5) miles of a hibernaculum site, but not subject to clause (a) of this subparagraph, shall be conducted during the hibernation season (between November 1 and March 31) without further restrictions unless otherwise approved by NYSDEC. This limitation does not include trees less than or equal to four (4) inches in diameter at breast height (DBH).

C. From April 1 to October 31, the following restrictions shall be implemented for all tree clearing activities in the facility site, unless otherwise agreed to by NYSDEC:

1) The Certificate Holder shall leave uncut all snag and cavity trees, as defined under the NYSDEC Program Policy ONRDLF-2 Retention on State Forests, unless their removal is necessary for protection of human life and property. This restriction pertains to trees that are greater than or equal to four (4) inches DBH. When necessary, snag or cavity trees may be removed after being cleared by an environmental monitor who shall conduct a survey for bats

exiting the tree. This survey shall begin thirty (30) minutes before sunset and continue until at least one (1) hour after sunset or until it is otherwise too dark to see emerging bats. Unoccupied snag and cavity trees in the approved clearing area shall be removed within forty-eight (48) hours of observation.

2. If any bats are observed flying from a tree, or from a tree that has been cut, tree clearing activities within five hundred (500) feet of the tree shall be suspended and the NYSDPS and NYSDEC shall be notified as soon as possible. The Certificate Holder shall have an environmental monitor present on site during all tree clearing activities. If any bat activity is noted, a stop work order will immediately be issued and shall remain in place until such time as the NYSDPS and NYSDEC have been consulted and authorize resumption of work. Such authorization shall not be unreasonably withheld, and consultations must take place in a timely manner.

c. *Record All Observations of NYS Threatened or Endangered Species.* During construction, restoration, operation and maintenance of the Facility and associated facilities, the Certificate Holder shall maintain a record of all observations of NYS threatened or endangered species as follows:

(i) *Construction.* During construction, the on-site environmental monitor shall be responsible for recording all occurrences of NYS threatened or endangered species within the Facility Site. All occurrences shall be reported in a biweekly monitoring report submitted to the NYSDPS and NYSDEC and such reports shall include the information described in subparagraph (iii) of this paragraph. If a NYS threatened or endangered bird species is demonstrating breeding or roosting behavior, it shall be reported to the NYSDPS and NYSDEC within twenty-four (24) hours (or as soon as possible, in the event that more than 24 hours are needed to compile the required details for such reports/notifications).

(ii) *Post-Construction Restoration.* After construction is complete, incidental observations of any NYS threatened or endangered species shall be documented and reported to the NYSDPS and NYSDEC, in accordance with the reporting requirements in subparagraph (iii) of this paragraph.

(iii) *Operation and Maintenance:* During regular operation and maintenance, the Certificate Holder will be responsible for training permanent operation and maintenance staff to focus on successfully identifying the following T&E bird species for which occupied habitat has been defined within the Facility area: short-eared owl (*Asio flammeus*), northern harrier (*Circus hudsonius*), Certificate Holder will keep a record of occurrences of these species with the Facility Site and report all observations to DEC within one week of the identification of the T&E species. This provision shall not apply to seasonally contracted workers performing routine snow removal or mowing activities outside of designated grassland habitat preserve areas.

(iv) *Reporting Requirements.* All reports of NYS and/or federally threatened or endangered species shall include the following information: species; number of individuals; age and sex of individuals (if known); observation date(s) and time(s); Global Positioning System (GPS) coordinates of each individual observed (if operation and maintenance staff do not have GPS available, the report shall specify the nearest solar panel array and road or cross roads location); behavior(s) observed; identification and contact information of the observer(s); and the nature of and distance to any Facility construction, maintenance or restoration activity.

d. *Discovery of Nests or Dead or Injured NYS Threatened or Endangered Bird Species*

(i) If at any time during construction or operational life of the Facility, an active nest or roost of a federal or NYS threatened or endangered bird species is discovered (by the Certificate Holder's environmental monitor or other designated agents) within the facility site, the following actions shall be taken:

A. The NYSDPS and NYSDEC shall be notified within twenty-four (24) hours of discovery (or as soon as possible, in the event that more than 24 hours are needed to compile the required details for such reports/notifications) and prior to any further disturbance around the nest, roost, or area where the species were seen exhibiting any breeding or roosting behavior;

B. Excluding bald eagles an area at least five hundred (500) feet in radius around the active nest or roost shall be posted and avoided until notice to continue construction, ground clearing, grading, maintenance or restoration activities are granted by NYSDPS and NYSDEC.

C. For bald eagles, an area at least six hundred sixty (660) feet in radius with a visual buffer, or one quarter (1/4) mile with no visual buffer, around the active nest or roost shall be posted and avoided until notice to continue construction, ground clearing, grading, maintenance or restoration activities are granted by NYSDPS and NYSDEC; and

D. The active nest(s) or nest tree(s) or roost(s) shall not be approached under any circumstances unless authorized by NYSDPS or NYSDEC.

(ii) If any dead or injured federal or NYS threatened or endangered bird species, or eggs or nests thereof, are discovered by the Certificate Holder's on-site environmental monitor or other designated agent at any time during the life of the facility, the Certificate Holder shall as soon as possible contact the NYSDEC and the United States Fish and Wildlife Service (USFWS) for federally-listed species, to arrange for recovery and transfer of the specimen(s). The NYSDPS and NYSDEC shall also be notified. 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 discovery;
- F. Name(s) and contact information of the person(s) involved with the incident(s) and find(s);
- G. Weather conditions at the facility site for the previous forty-eight (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 (for federally-listed species only) within twenty-four (24) hours of discovery. Hard copies of the same shall be kept and given to the NYSDEC and the USFWS at the time of specimen transfer. If the discovery is followed by a non-business day, the Certificate Holder shall ensure all the information listed above is properly documented and stored with the specimen(s). Unless otherwise directed by the NYSDEC or the USFWS, after all information has been collected in the field, the fatality specimen(s) shall 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.

- e. The provisions of this subdivision (d) of this section shall remain in effect for as long as the relevant species is listed as endangered or threatened in New York State.

74. *Wetlands, Waterbodies, and Streams.* The Certificate Holder shall implement the following procedures for construction within wetlands and adjacent areas subject to ECL Article 24, waterbodies and streams regulated pursuant to ECL Article 15 and other federal jurisdictional wetlands/waters outside of State jurisdiction, where specified:

- a. The Certificate Holder shall perform all construction, operation and maintenance in a manner that avoids and minimizes adverse impacts to State-regulated waterbodies, wetlands, and one hundred (100)-foot adjacent areas to the maximum extent practicable. The Certificate Holder shall ensure the provisions to protect wetlands, waterbodies, and adjacent areas are in accordance with the details contained in Appendix A of SEEP Guide.

b. *Environmentally Sensitive Area (ESA) Flagging.* Prior to performing construction in an ESA, defined herein as any State-regulated wetlands, waterbodies or streams and associated 100-foot adjacent areas identified in the delineations approved by the NYSDEC, the Certificate Holder shall mark the boundaries of the ESA with colored flagging, “protected area” signs, or erosion and sediment control measures specified by the SWPPP. The Certificate Holder shall install additional markers or signs stating, “No Equipment Access.” as necessary to prevent access by motorized vehicles into ESAs where no construction is planned.

c. *Equipment Maintenance and Refueling.* Equipment storage, refueling, maintenance, and repair shall be conducted and safely contained more than one hundred (100) feet from all wetlands, waterbodies, and streams and stored at the end of each workday unless moving the equipment will cause additional environmental impact. Dewatering pumps operating within one hundred (100) feet of wetlands, waterbodies, or streams may be refueled in place and shall be within a secondary containment large enough to hold the pump and accommodate refueling. All mobile equipment, excluding dewatering pumps, shall be fueled in a location at least one hundred (100) feet from wetlands, waterbodies and streams unless moving the equipment will cause additional environmental impact.

d. *Fuel Storage.* Fuel or other chemical storage containers shall be appropriately contained and located at least three hundred (300) feet from wetlands, waterbodies, and streams.

e. *Clean Fill.* All fill shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, fly ash, demolition debris, broken concrete, garbage, household refuse, tires, woody materials, and metal objects. Reasonable efforts shall be made to use fill materials that are visually free of invasive species based on onsite and source inspections. The introduction of materials toxic to aquatic life is expressly prohibited.

f. *Turbid Water.* Turbid water resulting from dewatering operations shall not be allowed to enter any wetland, waterbody, or stream. Water resulting from dewatering operations shall be discharged directly to settling basins, filter bags, or other approved devices. Said devices shall be placed at least 50 feet from all State-regulated wetlands, streams, or other surface waters. All necessary measures shall be implemented to prevent any substantial visible contrast due to turbidity or sedimentation downstream of the work site.

g. *Truck Washing.* Washing of trucks and equipment shall occur one hundred (100) feet or more from State-regulated wetlands, streams, or other wetlands/surface waters and located outside of 100-foot adjacent areas. Waste concrete and water from such activities shall be controlled to avoid it flowing into any wetland or 100-foot adjacent area, waterbody or stream.

h. *Concrete Washouts.* Concrete washouts and batch plants, or concrete from truck cleanout activity, any wash water from trucks, equipment, or tools, if done on site, shall be located and installed to minimize impacts to water resources. Locations shall be at least three hundred (300) feet from any wetland, waterbody or stream, and located outside wetland adjacent areas to the maximum extent practicable. If the minimum setback cannot be achieved, the SEEP shall provide justification and demonstrate that impacts to wetlands and

waterbodies from concrete batch plants and concrete washout areas shall be avoided or minimized to the maximum extent practicable.

i. *Use of Trenchless Methods.* Installation of underground collection lines across wetlands, waterbodies and streams shall be performed via trenchless methods, such as HDD, to the maximum extent practicable.

j. *Trenching.* Open cut trenching in wetlands, waterbodies and streams shall be conducted in one continuous operation and shall not exceed the length that can be completed in one (1) day.

k. The Certificate Holder shall notify the NYSDEC and the NYSDPS within two (2) hours if there is a discharge to a wetland, waterbody or stream resulting in a violation of New York Water Quality Standards at 6 NYCRR Section 703.

75. *Wetlands.* The Certificate Holder shall implement the following requirements for freshwater wetlands and regulated 100-foot adjacent areas:

a. *Construction in Wetlands and Adjacent Areas.* All construction activities completed within wetlands and/or adjacent areas shall adhere to the following requirements:

(i) Work should be conducted during dry conditions without standing water or when the ground is frozen, where practicable.

(ii) Excavation, installation, and backfilling in wetlands shall be performed in one continuous operation, to the maximum extent practicable.

(iii) Temporary construction matting shall be used as necessary to minimize disturbance to the wetland soil profile during all construction and maintenance activities. All temporary construction matting shall be removed as soon as practicable but no later than two months following installation from the wetland and cleaned of any invasive species (seed, plant materials, insects, etc.) after construction/maintenance activities are completed and removal shall be verified with the on-site environmental monitor after construction. Matting shall be removed by equipment stationed on a mat or areas outside the wetland or 100-foot adjacent area.

(iv) In the event that construction results in an unanticipated alteration to the hydrology of a wetland (i.e., lowering), the breach shall be immediately sealed, and no further activity shall take place until the NYSDPS is notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved. The Sleepy Hollow Lake Association of Property Owners will also be notified.

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

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

(vii) In wetland areas, the topsoil shall be removed and stored separate from subsoil. The top twelve (12) inches of wetland topsoil shall be removed first and temporarily placed onto a geo-textile blanket. Generally, topsoil will not be stockpiled greater than 3 feet in height in order to maintain the biological activity in the topsoil.

(viii) Only the excavated wetland topsoil and subsoil shall be utilized as backfill, with the exception of clean bedding material for electrical collection lines and/or conduits, provided there is no change to the pre-construction contours upon restoration; and trench-breakers are used to prevent draining the wetland.

(ix) 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.

(x) Trenches 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 one hundred (100) feet from the wetland and suitably stabilized.

(xi) 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.

(xii) All disturbed soils within wetlands and adjacent areas shall be seeded with an appropriate native wetland seed mix, shrubs, live stakes, or tree planting as site conditions and design allow, as appropriate for existing land uses. Straw mulch shall be maintained until the disturbed area is permanently stabilized. Hay shall not be used for mulching of wetlands or adjacent areas.

(xiii) In agricultural or farmed wetlands, crop covers consistent with existing agricultural uses shall be utilized in all areas of soil disturbance if the area is returning to active agricultural or farm use.

(xiv) Installation of underground collection lines in wetlands shall be performed using the following methods:

A. The Certificate Holder shall implement best management practices to minimize soil compaction;

B. During excavation, all topsoil shall be stripped and segregated from subsoils. The Certificate Holder shall consolidate trenching areas to the maximum extent practicable to minimize impacts to agricultural soils;

C. All reasonable efforts shall be made to backfill open trenches within the same

workday if rain is predicted and as soon as practicable otherwise; and

D. All excess materials shall be completely removed from wetlands to upland areas. Excess topsoil from agricultural areas shall be spread within the immediate agricultural areas within the approved LOD, or within other nearby areas that will still be used for agricultural production.

b. *Wetland Restoration.* The following provisions apply to State-regulated wetlands and regulated 100-foot adjacent areas. The Certificate Holder will restore and mitigate federally regulated wetlands in accordance with USACOE guidelines and its Clean Water Act Section 404 permit.

(i) Wetland restoration for State-regulated wetlands shall be completed according to the approved Wetland Restoration and Mitigation Plan.

(ii) The Certificate Holder shall restore disturbed areas, ruts, and rills within State-regulated wetlands and 100-foot adjacent areas to original grades and conditions with permanent native vegetation and erosion controls appropriate for those locations.

(iii) Restoration of temporary impacts to State-regulated wetlands and adjacent areas shall be completed within forty-eight (48) hours of final backfilling of the trench/excavated areas and restored to pre-construction contours as soon as practicable.

(iv) Immediately upon completion of grading, and as consistent with existing land use/land cover, the area shall be seeded with an appropriate native species seed mix for wetlands and upland areas adjacent to wetlands.

(v) The Certificate Holder shall implement all practicable measures to attain eighty (80) percent vegetative cover across all disturbed soil areas by the end of the first full growing season following construction. Vegetative cover in restored areas shall be monitored for a minimum of five (5) years. Post-construction monitoring shall continue until an eighty (80) percent survivorship of native woody species or eighty-five (85) percent absolute cover of native herbaceous species appropriate wetland indicator status has been reestablished over all portions of the replanted area.

c. *Cut Vegetation.* Cut vegetation in wetlands, with the exception of invasive species, may be left in place (i.e., drop and lop or piled in upland areas outside of state regulated 100 ft. adjacent areas). Brush piles shall not alter hydrology or prevent revegetation in areas.

d. *Access Roads Through Wetlands.* Installation of access roads through wetlands shall be performed using the following methods:

(i) Temporary access roads shall use timber/construction matting that is completely removed after construction/maintenance activities are completed and removal shall be verified with the NYS DPS by the on-site environmental monitor

after construction activity has ceased, or by the facility operator after maintenance work is completed.

(ii) Permanent access roads shall use a layer of geotextile fabric and a minimum of six (6) inches of gravel shall be placed in the location of the wetland crossing after vegetation and topsoil is removed. Access roads shall be designed and constructed to adequately support the type and frequency of the anticipated vehicular traffic and include suitable culverting or other drainage infrastructure as needed to minimize the impact to wetland hydrology.

e. *Solar Panel Support Installation.* Installation and construction techniques shall minimize the disturbance of the wetland soil profiles (e.g., the use of helical screws and driven H-pile with no backfilling for solar arrays sites in wetlands).

f. *Tree Clearing.* Tree clearing shall be minimized to the maximum extent practicable in State-regulated wetlands and adjacent areas and be only that necessary for construction and operation of the facility. Any tree clearing in wetlands and adjacent area shall be noted on project plans.

g. *Fill Placement.* The placement of fill in wetlands shall be designed to maintain pre-construction surface water flows/conditions between remaining on- or off-site waters and to prevent draining of the wetland or permanent hydrologic alteration. This may require the use of culverts and/or other measures. Construction activity and final design shall not restrict or impede the passage of normal or expected high flows.

h. *Concrete Use.* For activities involving the placement of concrete into regulated wetlands, watertight forms shall be used. The forms shall be dewatered prior to the placement of the concrete. The use of tremie-supplied concrete is allowed if it complies with NYS water quality standards.

i. *Stormwater Setback.* Stormwater management infrastructure shall be located outside of State-regulated wetland and adjacent areas, to the maximum extent practicable.

j. *Mitigation.* The Certificate Holder shall implement the approved Wetland Restoration and Mitigation Plan for mitigation of impacts to State-regulated wetlands and adjacent areas. The Certificate Holder shall develop a final Wetland Mitigation Plan, that meets all NYS regulatory and permit requirements and general conditions. The Certificate Holder shall work with DEC to develop the final Wetland Mitigation Plan and shall submit the Wetland Mitigation Plan for DPS, and DEC review and acceptance within six months of the commencement of construction. If, after five 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). Further requirements for the Wetland mitigation plan and WMRP are set forth in the SEEP guide. The Certificate Holder will implement mitigation for federally regulated wetlands in accordance with USACOE guidelines and its Clean Water Act Section 404 permit.

76. *Work in NYS-protected waters.* The Certificate Holder shall implement the following:

- a. *Dry Conditions.* In-stream work shall only occur in dry conditions, using appropriate water handling measures to isolate work areas and direct stream flow around the work area. Any waters accumulated in isolated work areas shall be discharged to an upland settling basin, field, or wooded area to provide for settling and filtering of solids and sediment before water is return to the stream. If measures fail to divert all flow around the work area, in-stream work shall stop until dewatering measures are functioning properly.
- b. *In-Water Work Windows.* In-stream work shall be prohibited from September 15 through May 31 in cold water fisheries and March 15 through July 15 in warm water fisheries unless the Certificate Holder receives site-specific approval from the appropriate State permitting agency.
- c. *Stream Channels.* The restored stream channel shall be equal in width, depth, gradient, length and character to the pre-existing stream channel and tie in smoothly to the profile of the stream channel upstream and downstream of the disturbance. The planform of any permanent stream shall not be changed, unless dictated by restoration or mitigation objectives. All disturbed stream banks shall be stabilized within two (2) days of final grading, stabilized with one hundred (100) percent natural or biodegradable fiber matting to the maximum extent practicable (except for example, on steep slopes), and seeded with an appropriate riparian seed mix.
- d. *Felled Trees.* Trees shall not be felled into a stream or its stream bank. Snags in streams shall not be disturbed unless they cause serious obstructions, scouring or erosion.
- e. *Culvert Repairs.* If a culvert is blocked or crushed, or otherwise damaged by construction or maintenance activities, the Certificate Holder shall repair the culvert or replace it with alternative measures appropriate to maintaining proper drainage, embedment and aquatic connectivity.
- f. *Access Road Crossings of Streams.* The creation, modification or improvement of any permanent road crossing of a NYS-protected waterbody shall meet the following requirements:
- (i) New culvert pipes that the Certificate Holder is required to install shall be designed to safely pass the two (2) percent annual chance storm event;
 - (ii) Culvert pipes shall be embedded into the stream bed at least 20% of the culvert height at the downstream invert;
 - (iii) Width of the structure shall be a minimum of one and a quarter (1.25) times the width of the mean high-water channel; and
 - (iv) The culvert slope shall remain consistent with the slope of the adjacent stream channel. For slopes greater than three (3) percent, an open bottom culvert shall be used.

g. *Overhead Lines Across NYSDEC-Protected Streams.* If construction of overhead power line crossings requires cutting of trees or shrubs within fifty (50) feet of a NYS-protected waterbody:

(i) Cut materials shall be left on the ground; and

(ii) To facilitate stump sprouting stumps and root systems shall not be damaged .

h. *Stream Flows.* During periods of work activity, flow immediately downstream of the work site shall equal flow immediately upstream of the work site. If measures fail to divert all flow around the work area, in-stream work shall stop until dewatering measures are functioning properly.

i. *No Aquatic Impediments.* In-stream work, including the installation of structures and bed material, but excluding dewatering associated with dry trench crossings, shall not result in an impediment to aquatic organisms. 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.

j. *Drop Height.* Any in-stream structures placed in a stream shall not create a drop height greater than six (6) inches.

k. *Restoration and Mitigation.* The Certificate Holder shall implement the approved Stream Restoration and Mitigation Plan.

77. In all instances in which the applicant proposes to permanently or temporarily impact active agricultural lands (i.e., land in active agriculture production defined as active three (3) of the last five (5) years) , the Certificate Holder shall:

a. Construct the facility consistent with the NYSAGM “Guidelines for Solar Energy Projects-Construction Mitigation for Agricultural Lands”, dated 10/18/2019, to the maximum extent practicable. The Certificate Holder will consult with the AGM for any guidelines which are not practicable, where the parties will negotiate alternatives.

b. Hire an independent, third-party agriculture-specific Environmental Monitor qualified to oversee compliance with agricultural conditions and requirements (in active agricultural areas).

78. *Stormwater Impact.* Prior to Facility construction, the Applicant will provide a final Stormwater Pollution Prevention Plan (SWPPP) and obtain a State Pollutant Discharge Elimination System (SPDES) permit which will show, among other things, that the Facility will result in no net increase in stormwater runoff to Sleepy Hollow Lake and its associated dam. During preparation of the final SWPPP and SPDES, the Applicant will consult with NYSDEC and the Sleepy Hollow Lake Association of Property Owners (SHLAPO), as appropriate, and including such topics as appropriate seed mixes to be used in restoration of those limited areas where grading is proposed. Copies of the Final SWPPP and SPDES Permit will be provided to the Towns of Athens and Coxsackie.

VIII. Facility Operation

79. 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.

80. 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 the Certificate Holder fails to meet the reliability criteria at any time, the Certificate Holder shall notify the NYISO immediately if required by the 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 a copy of the NYISO notice.

81. 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 encounters communication difficulties, the Certificate Holder shall obey dispatch instructions issued by the National Grid Control Center, or its successor, in order to maintain the reliability of the transmission system.

82. Good Utility Practices:

a. The Certificate Holder shall abide by Good Utility Practice, which shall include, but not be limited to, NERC, NPCC, NYSRC, and NYISO criteria, rules, guidelines and standards, including the rules, guidelines and criteria of any successor organization to the foregoing entities.

b. When applied to the Certificate Holder, the term Good Utility Practice means the standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility.

c. 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.

83. The Certificate Holder shall work with National Grid engineers and safety personnel on testing and energizing equipment in the authorized interconnection and collection substations. If National Grid's testing protocol is not used, a testing protocol shall be developed and provided to National Grid for review and acceptance. The Certificate Holder shall file with the Secretary a copy of the final testing design protocol within 30 days of National Grid's acceptance.

84. The Certificate Holder shall notify DPS Staff of meetings related to the electrical interconnection of the project to the National Grid transmission system and provide the opportunity for DPS Staff to attend those meetings.

85. Transmission Related Incidents:

- a. The Certificate Holder shall call the DPS Electric Safety and Reliability Section within a reasonable time to report any transmission related incident that affects the operation of the Facility.
- b. The Certificate Holder shall file with the Secretary a report on any such incident within seven days and provide a copy of the report to National Grid. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented.
- c. The Certificate Holder shall work cooperatively with National Grid, NYISO, NYSRC, NERC and the NPCC to prevent any future occurrences.

86. 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 NYISO or National Grid find such facilities are causing, or have caused, reliability problems to the New York State Transmission System.

87. If, subsequent to construction 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.

88. Facility Malfunction:

- a. 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.
- b. The Certificate Holder shall provide monthly reports to the Secretary and National Grid on the progress of any repairs.
- c. 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, setting forth the progress on the repairs and indicating whether the repairs will be completed within one year of the date of failure. PV modules shall be decommissioned if they are non-operational for a period of one year and a day. However, if the Certificate Holder is expecting delays due to a part manufacturer or complications regarding the repair of non-operational PV modules(s), it shall petition the Secretary for an extended amount of time if it is expected that certain PV modules(s) will not be in operation for more than one year and a day. The petition shall include an explanation of the circumstance and an estimation of the amount of time it will take to repair the PV modules(s).

89. In the event of a fire or other catastrophic event involving a PV panel and its associated equipment, the DPS Chief of Electric Safety and Reliability shall be notified no later than 12 hours following such an event and the Certificate Holder shall implement any requirements under the

E&FRP as appropriate.

90. The Certificate Holder shall have an inspection program for PV modules and associated equipment. Logs shall be maintained on site identifying any major damage, defects or any other problems with the PV modules, or indicating that no such damage, defect or problem was found. The Logs shall summarize maintenance and inspection activities performed and the repairs undertaken.